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October 13, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 6, 2005

Case Number: TSO-0224

This decision concerns the eligibility of XXXX X XXXXX(hereinafter referred to as "the Individual") to retain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ This decision considers whether, on the basis of the evidence in the record, the Individual's access authorization should be restored. For the reasons stated below, I find that the Individual's access authorization should not be restored.

I. BACKGROUND

The present case concerns an Individual who has been diagnosed with Pathological Gambling. DOE Exhibit 9 at 7-8. The Individual filed for Bankruptcy on March 17, 2004. The Individual reported the bankruptcy filing to the Local Security Office (LSO) the following day. A personnel security interview (PSI) of the Individual was conducted on June 9, 2004. The Individual was then asked to submit to an examination by a DOE Psychiatrist. On August 19, 2004, a DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. In addition to conducting this examination, the DOE Psychiatrist administered a series of psychological tests to the Individual. The DOE Psychiatrist also reviewed selected portions of the Individual's security case file including the transcript of the PSI. On August 19, 2004, the DOE Psychiatrist issued a report in which he stated that the Individual met the criteria for Pathological Gambling, as set forth in Diagnostic and Statistical Manual of Mental Disorders IV-

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

TR (DSM-IV-TR). DOE Exhibit 9 at 7-8. The DOE Psychiatrist, noting that the Individual was still gambling, further opined that the Individual was not sufficiently rehabilitated or reformed to resolve the security concerns raised by his pathological gambling.

Accordingly, an administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification letter alleges that the Individual has: “an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h) (Criterion H). The Notification Letter also alleges that the Individual has: “engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, a pattern of financial irresponsibility . . .” 10 C.F.R. § 710.8(l) (Criterion L).

The Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA), who appointed me as Hearing Officer.

I conducted a Hearing on August 2, 2005, in order to provide the parties with an opportunity to submit testimony, physical evidence and oral argument. At the Hearing, the LSO presented one witness: the DOE Psychiatrist. The Individual presented no witnesses. However, the Individual testified on his own behalf.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. §710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

The Individual does not dispute the charges against him set forth in the Notification Letter. After conducting a forensic psychiatric examination, administering a series of six psychological evaluation tests and reviewing selected portions of the Individual's security file, the DOE Psychiatrist issued a report in which he diagnosed him with "Pathological Gambling"² DOE Exhibit 9 at 7-8. The DOE Psychiatrist also testified that the Individual met the criteria for Pathological Gambling, set forth in the DSM-IV TR. Transcript of Hearing (Tr.) at 19. The DSM-IV TR defines Pathological Gambling as

Persistent and recurring maladaptive gambling behavior as indicated by five (or more) of the following:

- (1) is preoccupied with gambling(e.g., preoccupied with reliving past gambling experiences, handicapping or planning the next venture, or thinking of ways in which to get money to gamble)
- (2) needs to gamble with increasing amounts of money in order to achieve the desired excitement
- (3) has repeated unsuccessful efforts to control, cut back, or stop gambling
- (4) is restless or irritable when attempting to cut down or stop gambling
- (5) gambles as a way of escaping from problems or of reliving a dysphoric mood (e.g., feelings of helplessness, guilt, anxiety, depression)
- (6) after losing money gambling, often returns another day to get even ("chasing one's losses")
- (7) lies to family members, therapist, or others to conceal the extent of involvement with gambling
- (8) has committed illegal acts such as forgery, fraud, theft, or embezzlement to finance gambling
- (9) has jeopardized or lost a significant relationship, job, or educational or career opportunity because of gambling
- (10) relies on others to provide money to relieve a desperate financial situation caused by gambling

DSM-IV TR at 674.³ The DOE Psychiatrist's Report concluded that the Individual exhibited eight

² The six psychological instruments applied to the Individual were (1) the Zung Depression Scale, (2) the Hamilton Anxiety Rating Scale, (3) the Yale-Brown Obsessive Compulsive Screener, (4) the Mood Disorder Questionnaire (5) the Mini-Patient Health Survey (MPHS), and (6) the Personality Assessment Inventory. DOE Exhibit 9 at 5.

³ In order to constitute Pathological Gambling, the gambling behavior cannot be better accounted for by a Manic Episode. DSM-IV TR at 674.

of the ten criteria: specifically criteria 1-7, and 10. DOE Exhibit 9 at 7. At the Hearing, the DOE Psychiatrist reiterated his opinion that the Individual engages in Pathological Gambling. The Individual does not dispute this diagnosis. At the time of the psychiatric examination, the Individual admitted that he had “a problem with gambling.” DOE Exhibit 9 at 4. At the Hearing, the Individual again admitted that he has a gambling problem. Tr. at 5, 7-8, and 11-12. Nor does the Individual deny that his gambling caused him to exhibit a pattern of financial irresponsibility. The Individual acknowledged spending up to \$300 a week on gambling. PSI at 30. In some weeks, the Individual lost over \$1,000 gambling. PSI at 31-32. The Individual apparently gambled his way into substantial credit card debt. PSI at 107. At the time of the PSI, he still owed both Federal and State taxes. PSI at 63-64. As a result of his gambling, he experienced severe financial difficulties which required him to file for bankruptcy on March 17, 2004. PSI at 10, 14, 16-17, 19, and 102.

Emotional, mental, and personality disorders can cause a significant defect in an individual’s psychological, social and occupational functioning. These disorders are of security concern because they may indicate a defect in judgment, reliability, or stability. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Financial problems that are linked to gambling, are of particular concern. Accordingly, the LSO has an appropriate basis for invoking Criteria H and L.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual’s eligibility for access authorization. See *Personnel Security Hearing (Case No. VSO-0244)*, 27 DOE ¶ 82,797 (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff’d*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶ 83,008 (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment in deciding whether the Individual’s access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, I must determine whether the Individual has submitted sufficient evidence of rehabilitation or reformation to resolve the security concerns raised by his Pathological Gambling. After considering all of the evidence in the record, I find that he has not.

In his Report, the DOE Psychiatrist contended that, in order to establish *rehabilitation* from his Pathological Gambling, the Individual must either:

(1) [B]an himself from all of the [local] casinos and produce documented evidence of attendance at Gambler’s Anonymous for a minimum of 150 hours with a sponsor, at least once a week, for a minimum of one year and be completely abstinent from gambling for minimum of one year after completing this program; i.e. two years of abstinence; **or**,

(2) [B]an himself from all of the [local] casinos and satisfactorily complete a minimum of 50 hours of a professionally led, gamblers abuse treatment program, for a minimum of six-months, including what is called “aftercare” and be completely abstinent from gambling for a minimum of one and one-half years following the completion of this program; i.e. two years abstinence.

Psychiatrist's Report at 7-8 (emphasis in the original).⁴ In his Report, the DOE Psychiatrist further contended that, in order to establish *reformation* from his Pathological Gambling, the Individual must either: (1) complete one of the two rehabilitation programs listed above, then two years of absolute abstinence from gambling, or (2) complete three years of absolute abstinence from gambling DOE Exhibit 9 at 8.

The Individual has taken action to have himself permanently excluded from casinos. The Individual submitted a letter from the State Gaming Commission indicating that the Individual requested to be, and has been, placed on the State Gaming Commission's List of Disassociated Persons, which permanently bans him from entering any of the state's casinos.⁵ In addition, the Individual submitted a copy of a "Request for Self-Exclusion" that he filed with Harrah's Casinos excluding him from Harrah's Casinos nationwide. The Individual also testified that he has submitted similar self-exclusion requests with three other casino companies. Tr. at 18. The Individual further testified that he had only gambled on one occasion since November 2004. Tr. at 17 and 20. Finally, the Individual testified he intended to join Gamblers Anonymous. Tr. at 14, and 16-18.

However, the Individual's actions addressing his gambling problems fall far short of the very reasonable requirements set by the DOE Psychiatrist in his report for either rehabilitation or reformation. At the time of the Hearing, the Individual had yet to seek treatment for his Pathological Gambling. Tr. at 12,14, and 16-18. Most importantly, the Individual admitted that he had gambled at a dog track just a few months prior to the Hearing. Tr. at 20.

The DOE Psychiatrist observed the Individual's testimony. At the conclusion of the Individual's testimony, the DOE Psychiatrist was called to testify. The DOE Psychiatrist testified that he remained concerned about the Individual's failure to become involved in a treatment program, the revelation that the Individual had recently gambled, and the length of time it took before the Individual placed himself on the List of Disassociated Persons. Tr. at 26.

The record conclusively establishes that the Individual has been properly diagnosed with Pathological Gambling and is without sufficient evidence of reformation or rehabilitation. The Individual has therefore failed to resolve the security concerns raised by his Pathological Gambling.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criteria H and L. Therefore, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access authorization should not

⁴ The DOE Psychiatrist further noted that "any future resumption of gambling would be evidence that the [Individual] is not showing adequate evidence of rehabilitation." DOE Exhibit 9 at 8.

⁵ As a result, the Individual is subject to arrest if he enters any of the State's casinos. Tr. at 13.

be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: October 13, 2005