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DEPARTMENT OF ENERGY

OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: April 15, 2003
Case Number: TSO-0032

This Decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as the "individual") to hold 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." A Department of Energy Operations Office (DOE Operations Office) suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth below, it is my decision that the individual's security clearance should not be restored.

I. Background

The individual is employed by a contractor at a DOE facility and his employer requested a security clearance for the individual as a requirement of his job. In October 2002, the individual reported to DOE security that he had been served with a restraining order on behalf of his spouse. In November 2002, DOE conducted a Personnel Security Interview (PSI) with the individual. Exhibit 6 (PSI). Based on that information and the diagnosis made by a DOE consultant-psychiatrist later in that month, DOE suspended the individual's security clearance. In March 2003, DOE notified the individual that the agency was in possession of reliable information that created a substantial doubt concerning his continued eligibility for a security clearance, and the doubt could be resolved by a hearing. Notification Letter (Exhibit 4).

The Notification Letter stated that the derogatory information regarding the individual falls within 10 C.F.R. § 710.8 (h) (Criterion H). The DOE Operations Office invoked Criterion H on the basis of information that the individual has an illness or mental condition of a nature which causes, or may cause, a significant defect in his judgment or reliability. In this regard, the Notification Letter stated that a DOE consultant-psychiatrist diagnosed the individual in November 2002 as suffering from Pathological Gambling and Impulse Control Disorder, Not Otherwise Specified (NOS) without adequate evidence of rehabilitation or reformation.

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On April 15, 2003, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE consultant-psychiatrist (DOE psychiatrist) and a DOE personnel security specialist testified on behalf of the agency. The individual testified and also elected to call a family counselor and his wife as witnesses. The transcript taken at the hearing shall be hereinafter cited as “Tr.” Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as “Ex.” Documents that were submitted by the individual during this proceeding are also exhibits to the hearing transcript and shall be cited as “Indiv. Ex.” After the hearing, the individual’s family counselor submitted a written report and the record was closed.

II. Analysis

The applicable regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all 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). Although it is impossible to predict with absolute certainty an individual’s future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for the granting of security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th. Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the 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 continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual’s access authorization should not be restored because I cannot conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

The individual began gambling during high school and continued gambling into adulthood. Ex. 8 (Report) at 1. As an adult, he began to experience financial losses as a result of his gambling, and he would bet substantial amounts of money, causing marital problems. PSI at 58-63. His wife did not approve of his gambling, and was also concerned with the individual's temper, and his physical punishment of the couple's three children. *Id.* at 76. In 1992, he began attending Gamblers Anonymous (GA). *Id.* at 81. However, the individual continued to suffer financial and marital problems and filed for bankruptcy in 1994. *Id.* at 63. That year, he also lost his house. *Id.* In June 1994, the wife reported the individual to the local police department for pinching one of his children and leaving a black and blue mark. *Id.* at 23. In 1994 the individual began gambling again in small amounts. *Id.* at 59. The DOE psychiatrist diagnosed him in 1995 as suffering from Pathological Gambling, in complete remission. At that time, the psychiatrist determined that the individual had no impairment in judgment and reliability, only gambled periodically, and was in control of his gambling. Report at 2; Tr. at 46, 81. The individual recovered financially and was able to purchase another house in 1997. PSI at 63.

The individual's family problems continued and, from the mid-1990s to 2002, the individual and his wife separated three times. Ex. 8 at 1; PSI at 89. He felt depressed and became verbally abusive and confrontational with his family. Ex. 8 at 1. The individual admitted to violent behavior towards his family including choking one of his daughters, pulling his children's hair, using his belt on his children, kicking his children, and screaming at the children and his wife. Report at 2; PSI at 17, 41-47; Tr. at 89-90. Around 2001, the individual began to increase the frequency and dollar amount of his gambling. PSI at 60. He gambled at casinos four to six times in 2001, and increased his gambling activity to monthly casino visits in 2002. *Id.* at 52, 58. He began to experience frustration with his wife due to their disagreements over disciplining the children and her disapproval of his gambling. *Id.* at 47, 79. He won frequently in 2002, but would then return to the casino and lose his winnings. Ex. 8 at 2. He said that he returned to the casino to avoid the stress of his family life. PSI at 55, 65, 87. In February 2002, the wife told her therapist that the individual was taking out his frustration on the children, and the therapist notified Child Protective Services (CPS). *Id.* at 20. The CPS officer recommended therapy for the individual, but he did not attend. Report at 3. In October 2002, one of the individual's daughters ran away and refused to return home because of the individual's violent outbursts. PSI at 25. On October 17, 2002, he was served with a restraining order and his wife filed for divorce. *Id.* at 8. She told the court that she was afraid for the safety of the children. Report at 3. The individual reported the restraining order to DOE security two days later. PSI at 8. At a court hearing on October 30, 2002, the individual was restricted to supervised visitation with his children. Ex. 8 at 5.

In order to please his wife, the individual began to attend GA weekly in October 2002. Report at 3; PSI at 78. He was also ordered by the court to attend therapy, and did so. PSI at 93. He attended individual sessions, and also used the same provider for family counseling. Report at 3. The individual's wife had initially planned to sell the house, but changed her mind. Report at 8. In addition, she withdrew her petition

for divorce, the individual moved back home, and the couple reconciled in November 2002. Ex. 8. They successfully completed a church-related family-counseling course. Tr. at 83.

As a result of the restraining order, DOE conducted a PSI with the individual on November 6, 2002. PSI. During the PSI, the individual agreed to a psychiatric evaluation. PSI at 104. On November 26, 2002, the individual met with and was evaluated by the same DOE psychiatrist who had interviewed him in 1995. Ex. 8. The DOE psychiatrist conducted a clinical interview, and reviewed the individual's personnel security file and counselor's records. Ex. 8. The DOE psychiatrist concluded that the individual demonstrated evidence for a diagnosis of poorly controlled Pathological Gambling and Impulse Control Disorder, Not Otherwise Specified, supported by the individual's clinical history. *Id.* at 8. The psychologist also found that the individual has a history of exacerbations of his gambling activity. *Id.* He concluded that difficulty controlling the individual's impulses had seriously affected his judgment and reliability. *Id.* In November 2002, the individual maintained that he no longer gambled and that "you guys [DOE] can fire me if I gamble another dollar again." Report at 4; PSI at 106.

In February 2003, DOE issued a Notification Letter to the individual advising him of his procedural rights in the resolution of his eligibility for a security clearance. Ex. 5. The individual requested a hearing on February 28, 2003. *Id.*

B. DOE's Security Concern

The DOE psychiatrist's diagnosis of pathological gambling raises a security concern because the individual's demonstrated inability to control his gambling, given the serious financial and marital consequences of his behavior, has seriously affected his judgment and reliability. Ex. 13. The DOE personnel security specialist testified that a significant impairment of judgment and reliability can affect an individual's ability or willingness to follow rules and regulations, and could indicate that a person may not properly safeguard classified information. Tr. at 22-23. These security concerns are important and have been recognized by a number of Hearing Officers in similar cases. *See Personnel Security Hearing*, OHA Case No. VSO-0244, 27 DOE ¶ 82,797 (1999); *Personnel Security Hearing*, OHA Case No. VSO-0462, 28 ¶ 82,822 (2001), *affirmed* OSA (2002); *Personnel Security Hearing*, OHA Case No. VSO-0475, 28 ¶ 82,832 (2001), *affirmed* OSA (2002). Therefore, DOE's security concerns are valid and the agency has properly invoked Criterion H in this case.

C. Hearing Testimony

1. The DOE Psychiatrist

The DOE psychiatrist testified that in November 2002, he performed a standard psychiatric examination of the individual and reviewed relevant records. Tr. at 33. As a result of the interview, he diagnosed the individual with Pathological Gambling and Impulse Control Disorder NOS. *Id.* at 36-37. The psychiatrist testified that the individual did not fall squarely within the criteria for Impulse Control Disorder, but that

there were suggestions of that diagnosis in the interview. *Id.* at 38. The psychiatrist testified that he arrived at the diagnosis of Pathological Gambling because the individual had continued to gamble despite the serious problems that gambling caused his family, his finances, and his job (the suspension of his security clearance). *Id.* at 44. The psychiatrist explained that one year of abstinence from gambling would demonstrate rehabilitation from the diagnosis of Pathological Gambling because during 12 months, the individual would go through a complete “life cycle,” a time frame sufficient for any potential problems to develop. *Id.* at 46-47.

The psychiatrist found some mitigation of DOE’s security concerns in the individual’s attendance at GA, his participation in counseling at his workplace, his participation in family counseling, and the recent reconciliation with his wife. *Id.* at 44-45.

2. The Individual’s Counselor

The counselor testified that he met with the individual on November 2, 2002, as the result of a court order for therapy stemming from the violence and family issues that caused the wife to file a restraining order. Tr. at 61. He met weekly with the individual and his wife six times, and a few times with the individual and his children until December 2002, then resumed sessions in September 2003 and completed sessions in October 2003. *Id.* at 61-62. In early sessions, the counselor diagnosed the individual as exhibiting “highly inappropriate and overly controlling” behavior. *Id.* at 67. However, by the end of the sessions, he felt that the individual did not pose a risk to his children. *Id.* When asked for an updated diagnosis at the hearing, the counselor testified that he still had no concerns about the safety of the children, and that he did not expect violence to recur in the household. *Id.* at 73-74. The counselor did not have much information to offer at the hearing on the diagnosis of Pathological Gambling because he did not discuss gambling with the individual until October 2003. *Id.* at 64, 69. The court order did not require therapy regarding the gambling issues. The counselor testified that in regards to the individual’s gambling, the individual explained to him that he had reduced his gambling activity from several times a week with unpredictable amounts of money to monthly gambling with a budgeted amount of money. *Id.* at 69.

3. The Individual

The individual testified that he continued to attend GA meetings. Tr. at 83; Indiv. Ex. 2 and 3. He also explained that he and his wife completed a church-sponsored counseling program to resolve a problem with one of his daughters. *Id.* at 84; Indiv. Ex. 4. In questioning by the DOE counsel, the individual admitted that he had resumed gambling. *Id.* at 94. He explained that no one in DOE told him not to gamble, and he felt that GA did not work for him. *Id.* at 94, 116. He instead used a method of “weaning” himself gradually from gambling by going less frequently until his pattern now is “one row of machines, once a month.” *Id.* at 95. He spends only a few hours at the casino now, compared to a typical stay of 10-12 hours in the past. *Id.* at 96. The individual also testified that he won some money recently but began to realize that he was not enjoying gambling as much as before and that he would rather spend time with his family. *Id.* He explained that he came to realize that he enjoyed the drive to the casino, and not the actual

gambling. *Id.* at 97. At the time of the hearing, he had imposed a spending limit of approximately \$400 per visit, unlike the early 1990s when he would frequently gamble away his entire paycheck. *Id.* at 100-102, 104. He moved back into the family home around the end of November 2002. *Id.* at 102. He discussed gambling and family issues with the DOE facility psychologist weekly upon his separation from his wife, but did not continue with regular sessions. *Id.* at 105-106. In addition, the individual admitted that he is a compulsive gambler, but contends that the healthy state of his current finances, along with the reduction in his current gambling activity, is evidence of his rehabilitation and reformation from the diagnosis of pathological gambling. *Id.* at 115.

4. The Individual's Wife

At the hearing, the individual's wife read a statement into the record, and then answered questions. In her statement, she explained that she and her husband had communication problems that they have resolved successfully. Tr. at 108. She and her husband have discussed his gambling and it no longer appears to be a problem. *Id.* They have agreed that he can gamble monthly with a set limit, and he has followed that guideline, leading to improvement in their finances. *Id.* at 110. She testified that she and her children are not afraid of the individual, and acknowledged that she was under a lot of stress when she filed for the restraining order. *Id.* at 109. They have been reconciled for a year and do not plan to get divorced. *Id.*

5. The DOE Psychiatrist's Update

The DOE psychiatrist was present during the entire hearing, and concluded at the end of the hearing that the diagnosis of Impulse Control Disorder NOS, "a transient and situational type of depression," was in complete remission due to the significant improvement in the individual's family life. Tr. at 111-112. However, he further concluded that the individual continued to suffer from Pathological Gambling (although he reflected the decrease in the individual's gambling activity with a revised diagnosis of "partial remission"). Tr. at 112. The DOE psychiatrist found the potential for exacerbation of the illness, and concluded that the individual still had an illness that could cause a significant defect in his judgment or reliability. *Id.*

In a Part 708 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. *See Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). In this case, the individual's counselor submitted a treatment report maintaining that the individual did not have a significant defect in his judgment or reliability. *Indiv. Ex. 5.* However, the counselor testified that he had treated the individual for family and marital issues, and did not begin to explore the individual's gambling problem until October 2003. *Id.* The DOE psychiatrist persuasively testified that the individual had made major improvements in his behavior, but concluded that his diagnosis of Pathological Gambling was still correct and only in partial remission. Tr. at 111. I agree with the DOE psychiatrist, who had evaluated the individual in 1995, 2002, and during the 2003 hearing. As discussed above, the individual continues to gamble. He has not been able to sustain control over his gambling problem for the period of time recommended by the DOE psychiatrist (one year abstinence) to

demonstrate rehabilitation or reformation. Therefore, I find that the individual has not mitigated the Criterion H security concerns.

II. Conclusion

As explained in this Decision, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (h) in suspending the individual's access authorization. The individual has failed to present adequate mitigating factors that alleviate the legitimate security concerns of the DOE Operations Office. In view of this criterion and the record before me, I cannot find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: January 20, 2004