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United States Department of Energy  
Office of Hearings and Appeals

In the matter of Personnel Security Hearing )  
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Filing Date: May 15, 2012 ) Case No.: PSH-12-0055  
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Issued: August 30, 2012

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**Decision and Order**

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Robert B. Palmer, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) for 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.”<sup>1</sup> For the reasons set forth below, I conclude that the individual’s security clearance should not be restored at this time.<sup>2</sup>

**I. BACKGROUND**

The individual is employed by a Department of Energy (DOE) contractor, and was granted a security clearance in connection with that employment. On October 11, 2011, the individual filed for personal bankruptcy under Chapter 7 of the federal bankruptcy laws. Upon being apprised of this, the local security office (LSO) summoned the individual for an interview with a personnel

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<sup>1</sup>An 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 also be referred to in this Decision as a security clearance.

<sup>2</sup>Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov> . The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

security specialist in order to address the security concerns raised by this filing. After this Personnel Security Interview (PSI), the individual was referred to a local clinical psychologist (hereinafter referred to as “the DOE psychologist”) for an agency-sponsored evaluation. The DOE psychologist prepared a written report setting forth the results of her evaluation, and provided that report to the LSO. After reviewing this report, the transcript of the PSI, and the rest of the individual’s personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual’s eligibility for access authorization. They informed the individual of this determination in a letter that set forth the DOE’s security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced seven exhibits into the record of this proceeding and presented the testimony of the DOE psychologist at the hearing. The individual introduced 13 exhibits and presented the testimony of two witnesses, in addition to testifying himself.

## **II. THE NOTIFICATION LETTER AND THE DOE’S SECURITY CONCERNS**

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual’s eligibility to hold a clearance. This information pertains to paragraphs (h) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under criterion (h), information is derogatory if it indicates that an individual has an illness or mental condition which, in the opinion of a licensed clinical psychologist causes, or may cause, a significant defect in the individual’s judgement or reliability. 10 C.F.R. § 710.8(h). As support for this criterion, the Letter cites the diagnosis of the DOE psychologist that the individual suffers from Pathological Gambling Disorder and Impulse Control Disorder Not Otherwise Specified (NOS), and her conclusion that these Disorders cause, or could cause, a significant defect in the individual’s judgement or reliability.

Criterion (l) defines as derogatory information indicating that the individual has “engaged in any unusual conduct or is subject to any circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the national security.” Such conduct includes, but is not limited to, “a pattern of financial irresponsibility”

10 C.F.R. § 710.8(l). As support for this criterion, the Letter cites the individual's statements during his psychological evaluation and during his PSI indicating that:

1. Over the past year he has gambled one to three times per week and has set dollar limits of \$40 to \$60 per visit, but has regularly exceeded them, spending \$200 to \$300 per visit, with the most being \$500;
2. He sometimes "chases his losses" by withdrawing more money from automatic teller machines at the casinos and feels remorse after gambling because he believes that there were better things he could have done with his money;
3. He has used money allocated for paying bills, money obtained through payday loans, money borrowed from other financial institutions, and money borrowed from his brother to gamble;
4. He has continued to gamble despite owing \$17,937 and \$1,678, respectively, in back federal and state taxes and \$36,851 in student loans, which he has not yet begun to repay, and despite having to obtain multiple payday loans to pay for food, utilities, and other everyday necessities;
5. He has made unwise financial decisions and has purchased items on credit, not because he needed them, but because they were on sale; and
6. On October 11, 2011, he filed for bankruptcy under Chapter 7 of the federal bankruptcy laws.

This derogatory information adequately justifies the DOE's invocation of criteria (h) and (l), and raises significant security concerns. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Moreover, a duly qualified mental health professional has determined that the individual suffers from a mental or emotional condition that can impair his judgement, reliability or trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines F and I.*

### **III. REGULATORY STANDARDS**

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or

unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

#### **IV. FINDINGS OF FACT AND ANALYSIS**

At the hearing, the individual generally did not contest the allegations set forth in the Notification Letter, and testified that, overall, he agreed with the DOE psychologist's report. Hearing Transcript (Tr.) at 29. Accordingly, his testimony, and that of his brother and his psychologist, was aimed at demonstrating that he is now behaving in a financially responsible manner and that he is sufficiently rehabilitated from his gambling and impulse control disorders to no longer represent an unacceptable security risk. That testimony, as described below, indicates that the individual has taken all of the right initial steps to address his financial and psychiatric issues, but that these measures have been in effect for a relatively short period of time.

The individual testified about his current financial and psychological health. Regarding his finances, the individual testified that he has established repayment plans with each of the three creditors (the state and federal governments for unpaid back taxes and a private institution for his student loans) whose debts were not extinguished during the individual's 2011 bankruptcy, and that he is current on these payments and in paying his monthly bills. Tr. at 13-14. The individual was previously unable to pay his taxes in full because he falsely claimed nine exemptions in order to reduce the amount of money withheld from his bi-weekly paycheck. DOE Exhibit 7 at 61. At the hearing, however, he stated that he has corrected the number of exemptions claimed on his taxes, and an

appropriate amount is now being withheld from his paycheck. Tr. at 15. In fact, the individual testified that he is expecting a refund on his 2012 taxes, which will be applied to lower his debt to the IRS. Tr. at 24. Finally, the individual is receiving counseling from a financial advisor, has formulated a budget, and is adhering to that budget. Tr. at 22.

Concerning his gambling and impulse control disorders, the individual testified that he started gambling in 2000, but he does not believe that it became a problem until 2009, when he started going to casinos more frequently and betting more heavily. Tr. at 28-29. After his security clearance was suspended in March 2012, the individual decided to stop gambling. Tr. at 67. His last bet was placed on March 16. Tr. at 32. The individual's brother confirmed this, testifying that the individual is "a changed man." Tr. at 74, 77. Approximately one month prior to the hearing, the individual said, he began seeing a psychologist for treatment for his gambling and impulse control disorders. Tr. at 58. His four sessions with the psychologist, as of the date of the hearing, have helped him to realize that he had a serious gambling problem, one that he tended to minimize when he was evaluated by the DOE psychologist. Tr. at 29, 58. The individual further stated that he does not miss gambling, and that he feels strongly that he is not going to gamble again. Tr. at 32, 49.

The individual's psychologist testified that his four 45 minute sessions with the individual have been "principally concerned with the maintenance of the cessation of the spending," and recognition of the individual's culpability for his current situation. Tr. at 101, 104. The individual is serious about his therapy, and now seems to have a substantive understanding of his impulse control issues that he did not previously possess. Tr. at 103.

Like the DOE psychologist, the individual's psychologist diagnosed the individual as suffering from Impulse Control Disorder NOS. Although he testified that the individual has a "significant gambling problem," and meets a number of the diagnostic criteria for Pathological Gambling Disorder, he could not confirm the DOE psychologist's diagnosis in this respect. Tr. at 108. The individual's psychologist did not specify his reasons for disagreeing with this portion of the DOE psychologist's diagnosis. However, he observed that the individual's spending problems and gambling problems "com[e] from the same dynamic," and this, and not the exact diagnosis, is what is of particular concern to him. *Id.* The individual's psychologist concluded that the individual's prognosis is favorable, because of: (i) the individual's honesty in his meetings with him and with the DOE psychologist; (ii) the absence of co-morbid disorders; (iii) an absence of impulsive behaviors at work; and (iv) a decrease in the individual's defensiveness and minimization of his condition. Tr. at 113-114.

After reviewing this testimony and the exhibits submitted by the parties to this proceeding, I conclude that the individual is in the initial stages of his recovery from his gambling and impulse

control disorders.<sup>3</sup> As an initial matter, I find the DOE psychologist's diagnosis of Pathological Gambling Disorder to be more convincing than the individual's psychologist's apparent, but unspecified, disagreement with that diagnosis. In her report, the DOE psychologist concluded that the individual met eight of the ten diagnostic criteria for Pathological Gambling Disorder set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (Text Revision). DOE Ex. 4 at 8-9. The DOE psychologist's findings in this regard are adequately supported by the record.

Furthermore, the record in this matter indicates that, as of the date of the hearing, the individual had been in counseling for only one month and had abstained from gambling for only four months. Although the individual's psychologist testified that the individual's prognosis is good, he made it clear that there is additional work to be done in therapy. Specifically, he said that potential issues regarding shame on the part of the individual concerning his situation need to be addressed, as well as measures intended to insure the continuance of the individual's "spending sobriety." Tr. at 105.

The DOE psychologist agreed with the individual's psychologist that the individual's prognosis was good, but with the important caveat that he maintain his abstinence from gambling and his participation in therapy. Tr. at 134. She characterized the brevity of the individual's period of abstinence as one of her biggest concerns. Tr. at 136. Given the limited duration of his time in counseling and his relatively brief period of abstinence from gambling, I am not convinced that his chances of relapsing are sufficiently low at this time to justify restoration of his security clearance. *See, e.g., Personnel Security Hearing*, Case No. TSO-0921 (2010) (14 months' abstinence from gambling insufficient to demonstrate adequate evidence of reformation or rehabilitation from Pathological Gambling Disorder); *Personnel Security Hearing*, Case No. TSO-0852 (2009) (4 ½ months insufficient); *Personnel Security Hearing*, Case No. TSO-0767 (2009) (6 months insufficient); *Personnel Security Hearing*, Case No. TSO-0211 (2005) (6 months insufficient); *Personnel Security Hearing*, Case No. VSO-0462 (2001) (9 months insufficient).

I am further concerned that a resumption in gambling will lead to a return of the individual's financial difficulties. The individual's budget reflects a monthly income of \$3,473 and expenses, including debt repayment, in the same amount. Although there are discretionary funds in the budget

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<sup>3</sup> Although I requested it on two occasions, one of the exhibits referred to by the individual and his counsel at the hearing, Individual's Exhibit 4, was never formally submitted into evidence. *See* e-mails from Robert Palmer to Don Harris, counsel for the individual, dated July 24 and August 3, 2012. According to the individual, this exhibit consists of tithing statements from the individual's church and PayPal statements indicating the timing and amounts of the individual's tithes. Tr. at 15-16. Assuming that the individual's characterizations of these documents, and the documents themselves, are accurate, they do not alter my conclusion as to the individual's suitability for access authorization.

for entertainment and dining out, and \$100 per month allocated to savings, the individual himself called the budget “tight.” Tr. at 94. Given this situation, significant gambling losses like those that he previously experienced would likely make it impossible for him to continue to meet his financial obligations. For these reasons, I conclude that significant security concerns remain under criteria (h) and (l).

## **V. CONCLUSION**

As set forth above, I find that the individual has not successfully addressed the security concerns set forth in the Notification Letter. I therefore conclude that he has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the individual’s security clearance should not 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.

Robert B. Palmer  
Hearing Officer  
Office of Hearings and Appeals

Date: August 30, 2012