

12. Since the PSI did not resolve the psychological concerns which arose during the reinvestigation, the LSO referred the individual for evaluation by a DOE consulting psychologist, who conducted a psychological evaluation of the individual on April 20, 2015. *See* Exhibit 8.

Since neither the PSI nor the DOE psychologist's evaluation resolved the security concerns, the LSO informed the individual in a letter dated June 18, 2015 (Notification Letter), that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (l) (hereinafter referred to as Criterion H and Criterion L, respectively).² *See* Exhibit 1.

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO introduced 14 numbered exhibits into the record and presented the testimony of one witness, the DOE consulting psychologist. The individual introduced 12 lettered exhibits (Exhibits A – L) into the record and presented the testimony of five witnesses, including that of herself and of a counselor who had previously treated her for approximately nine years. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.³

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting 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).

² See Section III below.

³ OHA decisions are available on the OHA website at www.energy.gov/oha. A decision may be accessed by entering the case number in the search engine at www.energy.gov/oha.

The individual must come forward with evidence to convince the DOE that granting or restoring his or her 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). The individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Administrative Judge’s Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cited two criteria as the basis for suspending the individual’s security clearance: Criterion H and Criterion L. Criterion H concerns information that a person 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). It is well established that “certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines). Conduct influenced by such psychological conditions can raise questions about an individual’s ability to protect classified information. With respect to Criterion H, the LSO relied on the April 2015 report of the DOE consulting psychologist in which she opined that the individual met the criteria set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association, 5th Edition (DSM-5)*, for Gambling Disorder, Severe (Persistent, In Early Remission).⁴ Additionally, the DOE psychologist concluded that the individual’s Gambling Disorder is an illness

⁴ The penultimate paragraph of the written report of the DOE psychologist states that the individual’s diagnosis is “Pathological Gambling, Severe (DSM-5 312.31, Persistent, In Early Remission)” and this language was incorporated, as a *DSM-5* diagnosis, by the LSO into the Notification Letter. Ex. Ex. 1 at 1; Ex. 8 at 12. “Pathological Gambling” is a diagnosis that is contained in the *Diagnostic Statistical Manual of the American Psychiatric Association, IVth Edition, Text Revision (DSM-IV-TR)*, but not in the *DSM-5*. At the hearing, the DOE psychologist testified that her report should have stated that the diagnosis was “Gambling Disorder,” which is a *DSM-5* diagnosis. Tr. at 191-92. This clarification is consistent with the balance of the psychologist’s report. To avoid confusion, in this Decision, all references to the DOE psychologist’s diagnosis have been conformed to the *DSM-5* terminology of “Gambling Disorder.”

which causes, or may cause, a significant defect in judgment or reliability. Ex. 1; Ex. 8 at 12.

Criterion L concerns information that an individual has engaged in conduct “which tends to show that the individual is not honest, reliable, or trustworthy....” 10 C.F.R. § 710.8(l). Conduct reflecting questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations raises questions about an “individual’s reliability, trustworthiness and ability to protect classified information.” Adjudicative Guidelines at Guideline E. With respect to Criterion L, the LSO alleges: (1) the individual’s consistent gambling resulted in her being unable to meet financial obligations and (2) the individual failed to provide truthful answers during security clearance investigations regarding her mental health treatment. Ex. 1 at 1-2.

In light of the information available to the LSO, the LSO properly invoked Criterion H and Criterion L.

IV. Findings of Fact

The individual agreed that most of the factual matters set forth by the LSO in the Notification Letter are correct; however, in those instances of disagreement, I have carefully considered the testimony and the record as a whole, including the arguments presented by both the individual and the LSO, in reaching the findings of fact set forth below. *See* Tr. at 156-59, 163-73; Ex. 2.

Gambling and Related Matters. In approximately 1990, the individual believes that she had an issue with compulsive gambling with respect to bingo, but was not diagnosed or professionally counseled at that time. Tr. at 144-45, 148. She is a longtime participant in Narcotics Anonymous (NA) and her then-NA sponsor worked with her through a 12-step method to address her gambling issues. *Id.* at 37, 150. Following the work with her sponsor, the individual avoided gambling for approximately 20 years.

In 2010, the individual went to a casino at the suggestion of her then-partner and, while there, gambled. *Id.* at 145-46. Thereafter, she gambled periodically. Beginning in 2012, the individual’s gambling became problematic as it began to affect her finances. *Id.* She incurred debt in order to gamble and her gambling (and gambling-related debt) resulted in her being unable to meet her financial obligations on a current basis. Although the amount that the individual lost gambling is uncertain, she has estimated that her gambling losses ranged from \$10,000 up to \$15,000. *Id.* at 151-56, 165.

Beginning in 2013, the individual made several attempts to stop gambling, but experienced relapses. *Id.* at 132, 150.

At the time of the PSI in February 2015, the individual had abstained from gambling for approximately two months. *Id.* at 129-30. When the LSO asked the individual if she could provide assurances that she would not return to gambling, she articulated the philosophy of 12-step programs that she intended to take one day at a time. Ex. 12 at 91-

94. However, her intent then, as it was at the hearing, was to not gamble in the future. Tr. at 167-69.

In April 2015, the DOE consulting psychologist evaluated the individual who at that time had abstained from gambling for approximately four months. Ex. 8 at 3; Tr. at 129-30. The DOE psychologist concluded that the individual met the *DSM-5* diagnostic criteria for Gambling Disorder, Severe (Persistent, In Early Remission) and opined that this is an illness which causes, or may cause, a significant defect in judgment or reliability. Ex. 8 at 12.

The individual experienced additional relapses following her evaluation by the DOE psychologist. Tr. at 164. The individual last gambled on June 4, 2015. *Id.* at 129-30, 163.

On June 8, 2015, she voluntarily entered a six-week residential treatment program for gambling, which she subsequently completed. She also completed an intensive outpatient program (IOP) for gambling. Ex. B; Ex. C; Ex. D; Tr. at 137-38, 147. She participated fully and meaningfully in the treatment program. Ex. E at 1. As of the hearing, she continued to participate in the gambling treatment program and, through the program, was attending one individual counseling session per week and weekly meetings of each of a mindfulness group, a compulsive gambling group and an integrity group; additionally, the individual also attended weekly meetings of NA and Gamblers Anonymous (GA). Tr. at 139-40.

The individual has self-banned⁵ herself from all of the casinos in her geographic area. Ex. H; Ex. L; Tr. at 138.

The individual has developed a spreadsheet with respect to her finances, as part of her plan to eliminate debt (particularly high interest debt incurred while she was gambling). The individual is presently current on all of her financial obligations, with her present monthly income exceeding her monthly obligations. *Id.* at 156, 165-67; Ex. 14.

At the hearing, the DOE psychologist, who had been present throughout the testimony of all of the other witnesses, testified that the individual continued to qualify for the *DSM-5* diagnosis of Gambling Disorder, Severe (Persistent, In Early Remission). Tr. at 182. The psychologist was favorably impressed by much of what she heard at the hearing, but felt that the individual's gambling abstinence had been too brief. *Id.* at 182-84. She opined that if the individual successfully completed the balance of her 12-month gambling treatment program and remained abstinent during that time, the psychologist would view the individual as warranting a diagnosis of Gambling Disorder (In Full Sustained Remission), and have a good prognosis of maintaining gambling abstinence; further, such diagnosis would not be an illness which causes, or could cause, a significant defect in her judgment or reliability. *Id.* at 193-95. Until that time, the psychologist opined that the

⁵ Self-banning is a process by which the individual filed documentation with a casino pursuant to which she irrevocably banned herself from the casino for life. If an individual who is banned from a casino attempts to enter the casino, they are asked to leave on the first attempt to enter and subject to arrest on future attempts. Tr. at 138.

individual's illness causes, or could cause, a significant defect in her judgment or reliability. *Id.* at 188.

Disclosure of Mental Health Counseling. The individual first entered counseling in 1974, following the death of her mother. Subsequently, she episodically sought additional counseling on marital and family issues. Ex. 12 at 98-116.

The individual entered long-term counseling in approximately 2004.⁶ Tr. at 82. The initial focus of the therapy was on marital issues and, subsequent to a period of counseling, the individual succeeded in separating and, ultimately, divorcing an abusive spouse. *Id.* at 63, 78-79, 88-89. As the counseling continued, it shifted to childhood sexual abuse which had been perpetrated upon the individual by an adult male relative. *Id.* at 63, 76, 170-71. Her counselor described the individual's trauma resulting from the abuse as some the "worst" that she had treated during her 31 years of counseling. *Id.* at 63, 86-87. The counseling relationship continued until October 2012. *Id.* at 61-62.

The individual's counselor testified that she had diagnosed the individual was Post-Traumatic Stress Disorder and Dysrhythmia. *Id.* at 84. While the counselor normally discusses diagnoses with her patients, her notes do not reflect that she discussed these diagnoses with the individual and she has no recollection of having done so. *Id.* at 84-85. The individual recalls discussions about her having "low-grade depression," but has no recall of any discussion of psychological diagnoses. *Id.* at 126-27, 169-70.

The individual characterized her counseling as marital, grief and family and did not believe it was required to be reported in her QNSPs. *Id.* On the QNSPs that the individual completed in 2004, 2009, and 2014, with respect to the question as to whether, in the prior seven years,⁷ she had consulted with a health care professional regarding an emotional or mental health condition (excluding counseling for strictly marital, family or grief unrelated to violence by the individual), the individual responded "no" in each instance.⁸ Ex. 9 at 13; Ex. 10 at 38; Ex. 11 at 7.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been

⁶ The individual's former counselor initially testified that the counseling relationship began in 2006; however, through questioning by the individual, the counselor concluded that 2004 was the correct year and that the counselor had likely discarded her records from the initial two years of the counseling. Tr. at 61-62, 80-82.

⁷ The 2004 QNSP required disclosure of counseling in the prior ten years. Ex. 11 at 7.

⁸ DOE Exhibit 9 is a "compact copy" of the individual's 2014 QNSP and does not include the full questions and exclusions contained in the full QNSP completed by the individual; however, the standard QNSP in 2014 included the same exclusions as appeared on the individual's 2009 QNSP. *See* Ex. 9 at 13; Ex. 10 at 38.

guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)⁹ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Mitigating Evidence

The individual does not dispute the legitimacy of the diagnosis by the DOE consulting psychologist or that she has a gambling addiction. Tr. at 156, 163. She also acknowledges her prior attempts at gambling abstinence and her relapses. *Id.* at 132, 150, 164. Rather, she focuses on her efforts to mitigate these concerns by her current gambling abstinence and treatment since June 2015. She successfully completed both a six-week residential treatment program and an IOP for gambling. Ex. B; Ex. C; Ex. D; Tr. at 137-38, 147. She continues to attend, through her treatment program, individual counseling and meetings of three different groups on a weekly basis and is committed to completing the 12-month program sponsored by the treatment facility. She also attends weekly meetings of GA and NA. *Id.* at 139-40. Her expressed intent is to not gamble in the future. *Id.* at 167-69.

Additionally, the individual does not dispute the accuracy of any of the statements attributed to her in the Notification Letter. However, both she and her long-term counselor note that the individual has always had a poor memory and difficulty working with dates, amounts and numbers. *Id.* at 38-39, 81, 89-90, 172-73.

Although her gambling addiction negatively impacted her finances and resulted in her being unable to meet her financial obligations on a timely basis, she has subsequently brought all of her obligations current and is maintaining a budget which has a monthly surplus. *Id.* at 145-46, 151-56, 165-67.

She maintains that she did not disclose mental health counseling on her QNSPs because it was "family, marital or grief" counseling that was not required to be disclosed. *Id.* at 126-29, 169-71. Her former counselor testified that sexual abuse victims frequently have difficulty acknowledging treatment because of the shame they experience from the abuse and, during the hearing, the individual acknowledged that her characterization of her counseling while completing the QNSPs was possibly influenced by the pain and shame she experienced from her childhood sexual abuse and her inability to talk about it outside of the therapeutic context. *Id.* at 86-87, 171.

⁹ Those factors include the following: 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 at the time of the conduct, the voluntariness of his 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.

**B. Administrative Judge Evaluation of the Evidence – Criterion H
Security Concerns**

As previously noted, the individual does not dispute that she meets the *DSM-5* criteria for Gambling Disorder, Severe (Persistent, In Early Remission). Tr. at 156, 163. Following her evaluation by the DOE psychologist, the individual experienced gambling relapses and, ultimately, reached the conclusion that she needed to significant intervention to control her addiction and voluntarily entered a six-week residential treatment facility on June 8, 2015. *Id.* at 137-38, 147. She has abstained from gambling since June 4, 2015, and has since complied with all of the protocols of her treatment program; her treatment program reports that she has fully engaged in the treatment process. Ex. D at 1; Ex. E at 1; Tr. at 129-30, 163. While all of this merits in her favor, as of the date of the hearing she has been abstinent for merely three months. She has maintained equal or greater periods of abstinence previously, only to relapse.

For her current abstinence and her commitment to treatment, the individual is to be commended and encouraged. At the hearing, the individual was candid and credible. Aspects of the testimony by her former counselor were unexpected by the individual (e.g., opinions about topics and relationships that needed to be included in the individual's future trauma therapy); however, instead of resisting this unexpected information, the individual made notes on the recommendations and testified that she planned to discuss them with her present treatment counselor. *Id.* at 73-74, 82-83, 92-93, 141-42, 177. This openness to unexpected and potentially detriment testimony demonstrated the individual's focus on, and commitment to, her recovery. On an unrelated topic, the individual testified that she had not undertaken formal treatment in 1990 when she experienced gambling excesses with bingo and, therefore, did not have the knowledge to realize the risk she was taking by going to a casino with her partner in 2010. But she also volunteered that she should have appreciated that risk as a result of her years in NA, even without formal treatment for gambling addiction. *Id.* at 148-49. Thus, the individual demonstrated her acceptance of responsibility for her current gambling problem as well as her assumption of responsibility for her recovery, both of which are favorable for the eventual success of her treatment.

The DOE psychologist testified as the final witness, having heard the testimony of all the other witnesses. While she was encouraging of the individual's present treatment and characterized her present counselor as excellent in his addiction counseling, she also believes that the individual's treatment is in its early stages and has not progressed to cover such critical areas as relapse prevention and triggers. *Id.* at 183-84.

The DOE psychologist testified, the "the main issue [as of the date of the hearing] really is the brevity of [the individual's gambling] sobriety." *Id.* at 182. In light of that brevity, she concluded that as of the hearing the individual continued to meet the *DSM-5* criteria for Gambling Disorder, Severe (Persistent, In Early Remission) and that this is an illness which causes, or may cause, a significant defect in judgment and reliability. *Id.* at 182,

188. As of the date of the hearing, the DOE psychologist believed the individual's prognosis to maintain gambling abstinence was fair to good.¹⁰ *Id.* at 190. *Cf.* Adjudicative Guidelines at Guideline I, ¶ 29(c) (mitigation of a psychological condition is possible upon a recent opinion of a duly qualified mental health professional that the individual's psychological condition is under control or in remission and has a low probability of recurrence of exacerbation).

Administrative Judges traditionally accord deference to the opinions of mental health professionals with regard to security concerns raised under Criterion H and, accordingly, I find that the individual has not resolved the Criterion H security concerns at this time. *Personnel Security Hearing*, Case PSH-14-0095 (October 22, 2014) at 7.

C. Administrative Judge Evaluation of the Evidence – Criterion L Security Concerns

Finances. The LSO alleged that the individual's consistent gambling resulted in her being unable to meet her financial obligations and, notwithstanding the effect of gambling on her finances, she had continued to gambling. Ex. 1 at 1-2. The individual is uncertain as to the exact amount of her gambling losses, but believes they may have been as high as \$15,000, and acknowledges that gambling resulted in her having financial delinquencies. Tr. at 151-56, 165.

However, as of the date of the hearing, the individual is current¹¹ on all of her financial obligations and is living on a budget that has a monthly surplus and allows prepayment on certain high interest debt. *Id.* at 156, 165-67. The individual's financial delinquencies primarily resulted from her Gambling Disorder. As of the date of the hearing, the individual had been gambling abstinent for only three months and was evaluated as in early stages of her treatment for gambling. *Id.* at 129-30, 163, 182-84. Until the individual has resolved the security concerns with respect to her Gambling Disorder, I cannot find that the concerns arising under Criterion L from her financial delinquencies have been resolved. *See Personnel Security Hearing*, Case PSH-12-0118 at 9; Adjudicative Guidelines at Guideline F, ¶ 20(a) (mitigation of a financial concern possible upon showing that it occurred under circumstances unlikely to recur).

The LSO also cited as a related concern that, notwithstanding the individual's admission that she had not lived within her means due to gambling, the individual could not provide assurances during the PSI that she would not return to gambling in the future. Ex. 1 at 2. At the hearing, the individual clarified her comments during the PSI. She testified that she has long experience with 12-step programs and accepts the philosophy of those

¹⁰ The DOE psychologist also testified that upon the individual's successful completion of her 12-month treatment program, the individual would warrant a diagnosis of Gambling Disorder (In Full Sustained Remission) and have a good prognosis for continued gambling abstinence. Tr. at 193-95.

¹¹ The LSO introduced the individual's current credit report at the hearing which evidences that the individual is current on all debt with the exception of a credit union account which the individual credibly testified is a reporting error. The credit report also lists certain debts as charged-off by a check cashing service, which she credibly testified she had satisfied in full.

programs that one must take one day at a time and renew one's commitment each day. In the PSI, she was asked about her intentions regarding gambling in the future and responded "I hope not. I don't plan on it. I'm not wanting to, uh, but I don't know if you know about 12-Step Programs, we live like a day at a time, so for today, this day, I'm not going. I don't wanna go. Tomorrow, you know, if I just wake up every day and say that, it should ... just work." Ex. 12 at 94. The Adjudicative Guidelines recognize the value of 12-step programs in treating addictions and the individual's mere articulation of the underlying approach of such programs does not create a security concern. *See* Adjudicative Guidelines at Guideline G, ¶ 23(d). At the hearing, the individual clearly articulated that her present intention is to not gamble at any time in the future. Tr. at 167-69. The individual has resolved the security concerns arising from these comments in the PSI.

Disclosures Regarding Mental Health Treatment. On QNSPs that the individual completed in 2004, 2009 and 2014, the individual responded "No" to the question as to whether, in the prior seven years, she had consulted with a health care professional regarding an emotional or mental health condition (excluding counseling for strictly marital, family or grief unrelated to violence by the individual).¹² Ex. 9 at 13; Ex. 10 at 38; Ex. 11 at 7. The LSO cites that the individual acknowledged entering counseling as early as 1974 and, periodically thereafter, engaged in counseling. The individual has stated that her initial counseling was as a teenager following the death of her mother; later counseling, prior to 2004, related to marital and parenting issues. Ex. 12 at 98-116. These early periods of counseling both predated the reporting requirement and were grief, marital or family counseling not required to be reported.

In 2004, she commenced work with a counselor that continued until 2012. Tr. at 61-62, 82. At the hearing, both the individual and the counselor testified that the counseling originally focused on the individual's marriage to an abusive husband and that, through counseling, the individual was able to separate from her husband and, subsequently, divorce him. *Id.* at 63. In that counseling relationship, the individual was able to confront sexual abuse by an adult male family member that she experienced as a child; her therapist testified that the trauma resulting from the abuse was amongst the worst with which she had worked during her 31 years of counseling. *Id.* at 63. The individual credibly testified that she believed her counseling was for marital issues and, once it progressed to issues of childhood sexual abuse, she viewed that as family and grief counseling; further, she did not recall being given any specific psychological diagnosis. *Id.* at 127-29, 169-70. She acknowledged her counselor discussing issues of "low grade depression," but not diagnoses of Dysrhythmia or Post-Traumatic Stress Syndrome; she also acknowledged that the intensity of the counseling around the abuse issues may have limited what she heard from her counselor. *Id.* at 170-71.

The individual's counseling which commenced in 2004, clearly was focused on marital issues and, as such, was not reportable on the QNSP. In light of the manner in which it

¹² As noted previously, the 2004 QNSP requested information for the prior ten years and, in its exhibits, the LSO included a "Compact Copy" of the individual's 2014 QNSP which truncates the questions asked on the QNSP and does reflect the exclusion which appears on the full version of the 2014 QNSP. *See* Ex. 9; Ex. 11.

progressed to childhood sexual abuse committed by a family member, the individual's belief that her counseling continued to be family and grief counseling is credible. Her counselor testified that it was reasonable for the individual to have viewed her therapy at the time she completed her QNSP in 2004 as family or marital; the counselor also testified that she had no specific recollection (or counseling notes) that indicated that she discussed her diagnoses with the individual. *Id.* at 78-79, 85, 88-89. At the hearing, her former counselor testified that she believed that the shame experienced by many victims of childhood abuse preclude them from being able to discuss it and may have caused the individual to avoid disclosing the counseling; in the individual's testimony, she acknowledged the counselor's observations and testified that the psychological pain that she was experiencing around the abuse counseling was such that prospect of discussing it outside of the therapeutic relationship may have resulted in her interpreting the exclusion broadly. *Id.* at 86-87, 171. The DOE psychologist noted this testimony by the individual and opined such openness of the individual to the counselor's hypothesis reflected the progress the individual had made in her counseling. *Id.* at 182. Based on the foregoing, I find that the individual has resolved the Criterion L security concerns arising from her non-disclosure of mental health treatment on her 2004, 2009 and 2014 QNSPs. *See* Adjudicative Guidelines at Guideline E, ¶ 17(c) and (d).

The LSO also alleged that the individual had made inconsistent statements during the security investigation with respect to her gambling and her mental health treatment. Ex. 1 at 2. Most of these related to the individual's statements as to the dates of certain occurrences and amounts of gambling losses. The individual and her former counselor both testified that the individual did not have a good memory for details like dates and monetary amounts and the counselor attributed that to the individual's personality type. Tr. at 81, 89-90. The DOE psychologist testified that there are cognitive types that are not good with numbers and that she thought that applied to the individual; further, she opined that such cognitive types were "not better or worse" than other cognitive types, such as engineers, that were good with numbers. *Id.* at 187. With respect to instances that the DOE psychologist had noted in her written report of inconsistencies and lack of candor, the DOE psychologist testified that, having heard the testimony at the hearing, she would now categorize those instances as: (1) matters that had been clarified in a way that demonstrated there had been no lack of candor during the initial evaluation; (2) detail of the type that the individual's cognitive type is not good with; and (3) information that the individual was able to acknowledge at the hearing that was aimed at limiting her "having to discuss painful things or the problems that it may cause." *Id.* The DOE psychologist testified that the individual being able to provide more candid answers on matters that fell into the third category, reflected an awareness and openness that the individual did not have before and that that was a positive sign. *Id.* at 182. My own observations of the individual at the hearing were that she was open and candid, even to the point of clarifying matters that were not in issue (e.g., the gender of her former partner). *Id.* at 158. Many points on which the DOE psychologist felt the individual had limited her earlier responses related to disclosure requirements, which non-disclosure (as discussed above) I have held was a reasonable conclusion by the individual. For these reasons, the individual has resolved the Criterion L security concerns arising from her alleged inconsistent statements with respect to her gambling and mental health treatment. *See* Adjudicative Guidelines at Guideline E, ¶ 17(c) and (d).

VI. Conclusion

In the above analysis, I have found that the individual has sufficiently mitigated certain of the matters alleged with respect to Criterion L. Notwithstanding the foregoing, after considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to resolve other derogatory information in the possession of the DOE that raises serious security concerns under Criterion H and additional security concerns under Criterion L. Accordingly, I have determined that the individual's access authorization should not be restored at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell
Administrative Judge
Office of Hearings and Appeals

Date: October 26, 2015