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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: November 30, 2021) Case No.: PSH-22-0018
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Issued: March 2, 2022

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should not be granted.

I. Background

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. To apply for his security clearance, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in July 2019. Ex. 7. In the QNSP, the Individual denied any financial difficulties due to gambling. Ex. 7 at 66. The Individual subsequently underwent an Enhanced Subject Interview (ESI) with an Office of Personnel Management (OPM) investigator in September and October 2019. Ex. 7. During the ESI, the Individual answered questions pertaining to documented financial transactions at a casino the Individual frequents approximately two or three times a week. Ex. 7 at 81-82. As questions regarding the Individual’s fitness to hold a security clearance remained, the Individual was asked to undergo a psychiatric evaluation conducted by a DOE-consultant psychiatrist (DOE Psychiatrist), who ultimately compiled a Psychiatric Evaluation Report (report) in April 2021. Ex. 5.

¹ The regulations define access authorization as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf. *See* Transcript of Hearing, Case No. PSH-22-0018 (hereinafter cited as "Tr."). He also submitted twenty exhibits, marked as Exhibits A through T. The DOE Counsel presented the testimony of one witness and submitted seven exhibits marked as Exhibits 1 through 7.

II. Notification Letter and the Associated Concerns

Guideline F (Financial Considerations) provides that an individual's failure to live within one's means, satisfy debts, and meet financial obligations "may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Guideline F at ¶ 18. Under Guideline F, the LSO alleged that: 1) in a December 2018, response to a Divorce Petition, the Individual's ex-wife asked that the Individual's gambling debt be deemed his sole responsibility; 2) in a January 2019 emergency motion, the Individual's ex-wife asked that the proceeds from the sale of the Individual's home in which the couple previously resided be kept in escrow until a settlement is reached, as the Individual was incurring gambling debt on the couple's credit cards; 3) the casino frequented by the Individual provided a statement that the Individual had incurred gambling losses of \$82,163 in 2017 and losses of \$132,060 in 2018; 4) from April 12, 2019, to July 19, 2019, the casino indicated that the Individual made twelve deposits totaling \$160,963 and eleven withdrawals totaling \$153,654; and 5) the Individual used \$15,000 to \$20,000 from the sale of his home to satisfy debts that included gambling debts.

Guideline I (Psychological Conditions) provides that "[c]ertain emotional, mental, and personality conditions can impair judgement, reliability, or trustworthiness." Adjudicative Guidelines at ¶ 27. Under Guideline I, the LSO alleged that after conducting a psychological evaluation of the Individual on April 6, 2021, the DOE Psychiatrist concluded that the Individual suffers from "Gambling Disorder, In Early Remission," which can "impair judgement, stability, and trustworthiness." Ex. 5 at 9. Given the DOE Psychiatrist's evaluation, the LSO was justified in invoking Guideline I.

III. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, 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). 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) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence 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). The individual is afforded a full opportunity to present evidence supporting his 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). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Findings of Fact

During the September 2019 ESI, the Individual was confronted with a record of financial transactions at a casino dating as far back as May 2017. Ex. 7 at 81-82. Each individual deposit and withdrawal exceeded \$10,000, and from April 12, 2019, to July 19, 2019, the Individual had made twelve deposits totaling \$160,963 and eleven withdrawals totaling \$153,654. Ex. 7 at 81-82.² When confronted with the transactions, the OPM investigator noted that the Individual “[did] not understand [the] transactions.” Ex. 7 at 83. Although the Individual explained that he took a cash prize in lieu of a car won at the casino, he stated that he “[did] not have this kind of money to spend[,]” and generally takes “a few hundred dollars with him,” to play at tables and slots. Ex. 7 at 83. The Individual admitted that he suffers losses on occasion, but he denied losses or wins in the amounts provided, and further, he denied any debt that resulted from gambling losses and indicated that he meets all his financial obligations. Ex. 7 at 83. The Individual also noted that the 1099 forms he received to report gambling winnings on his income tax returns did not indicate winnings in the amounts shown in these transactions. Ex. 7 at 83. Also attached to the OPM investigator’s report (OPM report) were “win/loss” statements from the casino, indicating a loss of over \$80,000 in 2017 and a loss of over \$130,000 in 2018. Ex. 7 at 133-34.³

During the October 2019 ESI, the Individual informed the OPM investigator that he used \$15,000 to \$20,000 from the sale of his home to satisfy some debts and loans, “some of which were related to gambling.” Ex. 7 at 84.⁴ The Individual denied making the decision to sell the house to cover

² At the hearing, the Individual could not explain these amounts during his testimony and indicated that this information was “grossly inaccurate.” Tr. at 89.

³ The Individual submitted citations pertaining to United States Tax Court matters in which the courts conclude that win/loss statements are unreliable, as these statements contain caveats to their accuracy on their face. *Mayer v. Commissioner*, T.C. Memo. 2000-295, 2000 WL 1349156 (U.S.Tax Ct.); *Lutz v. Commissioner*, T.C. Memo. 2002-89, 2002 WL 506881 (U.S.Tax Ct.).

⁴ At the hearing, the Individual denied that he used proceeds from the sale of the house to cover any gambling debts, as he claimed that he did not have any debts. Tr. at 35. He did state that he satisfied some credit card debts, but that he could not remember why he incurred those debts. *Id.*

gambling debts. Ex. 7 at 86. Prior to the sale of his home, the Individual's ex-wife filed an emergency motion, asking that the proceeds from the sale of his house remain in escrow until the parties could reach a settlement, as the Individual had existing gambling debts after obtaining cash advances using the couple's credit cards. Ex. 7 at 96. The OPM report also indicated that in her response to the petition for divorce the Individual filed, the Individual's ex-wife asked that the Individual's gambling debts remain his sole responsibility. Ex. 7 at 96.

During his psychiatric evaluation, the Individual indicated that he began gambling to "relieve the stress of his marital problems." Ex. 5 at 2-3. When confronted with the large winnings and losses on the casino's win/loss statement, the Individual told the DOE Psychiatrist that he was breaking even, although he did not have an explanation for the documented losses. Ex. 5 at 4. He also denied any financial difficulties because of gambling, and further denied taking any money from family and friends or out of savings to cover gambling losses. Ex. 5 at 4. He also denied engaging in any illegal activity to cover gambling losses. Ex. 5 at 4. He acknowledged that his ex-wife accused him of being a "gambling addict[,]" and stated that although his ex-wife asked that all gambling debts be deemed his separate property upon their divorce, he did not have any gambling debts. Ex. 5 at 5. At the time of the evaluation, the Individual approximated the date of his last wager as November 2020. Ex. 5 at 6. The Individual was diagnosed with Gambling Disorder, Early Remission. Ex. 5 at 8. It was determined that this condition can impair his "judgement, stability, reliability, and trustworthiness[,]" and further, that the Individual has a fair prognosis. Ex. 5 at 10.

V. Individual's Exhibits

On October 19, 2021, the Individual underwent an evaluation conducted by a therapist of his choosing (Licensed Therapist). Ex. A.⁵ As indicated in the Licensed Therapist's October 2021 report, the Individual stated that he frequented casinos to escape his marriage, and took advantage of the restaurants, spa, overnight stays, and other accommodations. Ex. A at 3-4. The Individual insisted that on the occasions he did gamble, he would only gamble \$100 to \$200 at a time, and further, that the win-loss statements from the casino were incorrect and that the allegations made by his ex-wife were tantamount to "mudslinging." Ex. A at 3-4. Based on testing conducted on the Individual, the Licensed Therapist concluded that the Individual has "no probability of a gambling disorder." Ex. A at 10. As the Licensed Therapist found "[n]o [u]se [d]isorder," she did not recommend any treatment. Ex. A at 11.

The Individual also submitted a credit report, which does not contain debts amounting to the sums found in the win-loss statement provided by the casino. Ex. F. The Individual attended an hour-long course to improve his credit health. Ex. D.⁶ As part of the course, the Individual completed a budget exercise, which revealed that his net annual income totals just below \$70,000 and his monthly expenses total approximately \$4,300. Ex. D.

⁵ The Licensed Therapist's Curriculum Vitae indicates she is a Licensed Clinical Social Worker (LCSW), Certified Substance Abuse Counselor (CSAC), Master of Addiction Counseling (MAC), and Substance Abuse Professional (SAP). Ex. B. at 2. She has been certified by the Department of Defense's Department of Hearings and Appeals (DOHA) as an expert. Ex. B at 1. The Licensed Therapist did not testify at the hearing.

⁶ The course lasted one hour, and he did not receive any further financial counseling. Tr. at 40-41.

The Individual also submitted his income tax returns. For tax year 2017, he reported gambling winnings exceeding \$25,000 and losses equaling the same amount. Ex. G at 1, 3. For tax year 2018, the Individual reported gambling winnings exceeding \$47,000 and losses totaling the same amount. Ex. H at 4, 6. For tax year 2019, the Individual reported gambling winnings exceeding \$76,000 and gambling losses in the same amount. Ex. I at 3-4. Tax forms provided to the Individual from the casino indicate winnings in the same amount for each tax year. Ex. J.

The Individual also submitted four letters of support. Ex. O. These character witnesses describe the individual as reliable, trustworthy, and hardworking, and one indicated that he has personally witnessed the fact that the Individual meets his financial obligations. Ex. O at 1-4.

VI. Hearing Testimony

The Individual testified that after his child was born, his marriage steadily deteriorated, and his ex-wife had become “abusive” toward the end of their relationship. Tr. at 17. He claimed that, after he filed for divorce, his ex-wife used allegations related to his gambling against him in the proceedings to obtain proceeds from the sale of the home, even though she knew it would endanger his employment status. *Id.* at 19-20, 32-34, 61-62, 72.⁷ He began frequenting casinos approximately three times a week in 2017 when he could no longer “bear being at home with [his wife.]” *Id.* at 20-21, 48, 70-72. The Individual would spend anywhere from thirty minutes to three hours at the casino and would avail himself of other accommodations, like a free hotel stay, by receiving rewards for playing table games and entering drawings for “free play.” *Id.* at 21-23, 50-53. He stated that he would take only \$300-\$500 dollars with him to the casino, and if he lost that amount, he “[would not] do anything else[.]” in that he would not withdraw more money to play because he did not want to jeopardize his ability to satisfy his other obligations. *Id.* at 23-24, 48-49.⁸ He denied gambling more to recover any losses and stated that if he withdrew money from the automatic teller machine, he only withdrew amounts within his \$300 to \$500 self-imposed budget. *Id.* at 25, 65-66.

He indicated that he went to the casino only once or twice in 2021 to protect his own health during the pandemic and denied ever borrowing money from friends or family to pay gambling debts, placing larger bets to obtain feelings of excitement, writing bad checks to pay debts, or experiencing negative feelings while refraining from gambling. *Id.* at 25-26, 47-48. He also stated that he never went into credit card debt because of gambling and that none of his credit card debt at the time of his divorce was related to gambling. Tr. at 62-65. The Individual attempted to clarify

⁷ The Individual confirmed that he stopped frequenting casinos when he was attempting to reconcile with his wife, and that the 2019 emergency motion referred to in the Notification Letter was never heard by the court. *Id.* at 27, 34, 67-68. The proceeds from the home were kept in escrow and his ex-wife was provided with \$15,000 from the sale of the house, and further, the final divorce decree makes no mention of the allegations pertaining to gambling. *Id.* at 35, 68, 72-73.

⁸ Despite accounts recorded in the OPM report and the DOE Psychiatrist report, the Individual denied informing either the OPM investigator or the DOE Psychiatrist that he would take up to \$1,000 at a time to gamble. Tr. at 85-87. He insisted that he did not take up to \$100,000 per year to gamble, as that exceeded his annual salary, and accordingly, he would not be able to meet his financial obligations. Tr. at 87-88.

these statements by stating he “would win the cash drawings” and continue playing with the money he won. Tr. at 49. He stated that he would be willing to discontinue gambling altogether, as he never felt gambling was the center of his life, and accordingly, he does not feel he has a gambling disorder. *Id.* at 28-29.

Regarding the win/loss statements provided by the casino, the Individual could not explain the listed amounts. *Id.* at 29. The Individual testified that he learned that he could accumulate points by playing “on the tables and turning money over on the tables...cashing in, walking away.” *Id.* at 29-30. He expressed shock at seeing the win/loss statements and did not consider them to be accurate statements, as he denied any losses at the casino. *Id.* at 30-31, 57.⁹ The Individual stated that he would not be able to meet his financial obligations if he was losing the amount of money indicated on the win/loss statements. Tr. at 52. He also testified that the win/loss statements are issued by the Player’s Club, which is a different entity than the cashier system that provides tax documents. Tr. at 56. However, he did admit that he reported the winnings in his tax statements not only as winnings on his IRS income tax return, but also as losses, and that he keeps the win/loss statements, which he believes are “grossly inflated,” to provide to the IRS in the event he is audited. Tr. at 57-61. The Individual does not know how the win/loss statements are calculated, he could not estimate his losses for years 2017 through 2019 because he “[did not] think [he] lost any money[,]” and he asserted that these statements explicitly indicate that the casino “is not responsible for the accuracy...of [the] estimate.” Tr. at 59, 74, 80-81.¹⁰

In his testimony, the DOE Psychiatrist stated that he diagnosed the Individual with Gambling Disorder, Mild, in Early Remission, as the Individual met five of the nine diagnosing criteria, and that he did not hear anything during testimony that would change that diagnosis. Tr. at 96, 110. In arriving at this conclusion, the DOE Psychiatrist examined the Individual’s personnel security file in addition to conducting an hour-and-a-half long interview of the Individual. Tr. at 97, 113. The DOE Psychiatrist noted that the Individual exhibited some denial regarding his gambling, and further that he did not directly answer any questions pertaining to the documented deposits and withdrawals in the OPM report. Tr. at 98-101. When asked to opine on the Licensed Therapist’s report, the DOE Psychiatrist testified that the Licensed Therapist conducted screenings which relied on the Individual’s self-reports, and accordingly, was “inappropriate for a forensic evaluation.” *Id.* at 102-03. The DOE Psychiatrist noted that the Licensed Therapist had also asked the Individual to self-report about the diagnostic criteria, which he found unacceptable. *Id.* at 103. In addition, the DOE Psychiatrist noted that the Licensed Therapist’s methodology relied on self-reporting, and there did not appear to be any incorporated validity testing to determine whether the Individual was “faking good” or reporting in an “overly... self-favoring” manner. *Id.* at 104-05.

Although the DOE Psychiatrist observed that the Individual has improved, he does not believe the Individual has accepted that “[he has] ever had a gambling disorder, which make the prognosis more difficult[.]” Tr. at 110. However, as the Individual had gone approximately fourteen months

⁹ As indicated in the Findings of Fact, the win/loss statements and the tax documents indicate different amounts, in that the win/loss statements only provide losses, and the tax statements show winnings.

¹⁰ The Individual stated that he “rarely had losses[,]” in that if he used his own money to gamble and lost, he did not continue gambling to win his money back. Tr. at 81-82.

without gambling, he is moving from early remission to “sustained stage of remission[.]” Tr. at 110, 128-29. Further, the Individual has a fair prognosis, as there is concern that the Individual will “seek solace in a casino[.]” when confronted with interpersonal difficulty and the fact that the Individual does not believe he has a gambling disorder. Tr. at 111.¹¹ Further, the DOE Psychiatrist recommended treatment in the form of a program like Gamblers Anonymous or individual counseling, and stated that he would consider the Individual reformed or rehabilitated if he had one year of treatment without placing a wager during that time. Tr. at 111-12, 134.

While the DOE Psychiatrist acknowledged that he relied on the Individual’s ex-wife’s statements as well as the casino’s win/loss statements to an extent, he felt casinos would exercise some amount of accuracy monitoring the flow of cash in and out of its establishment. Tr. at 117-22. The DOE Psychiatrist also acknowledged that it appeared from the file that the Individual was not in any debt, did not have any outstanding financial obligations, and did not obtain any money from any illegal sources. Tr. at 125-27, 135-36. As the Individual was not gambling at the time of the hearing, it did not appear that the gambling disorder was active, but the DOE Psychiatrist observed that the chances of recurrence increase with the Individual’s level of stress. Tr. at 131. The DOE Psychiatrist opined that the Individual still had a mental or personality condition that impairs his judgement, trustworthiness, or reliability. Tr. at 131-32.

VII. Analysis

Guideline I

As previously stated, the LSO properly raised the Guideline I concern based on the DOE Psychiatrist’s opinion that the Individual suffers from a gambling disorder, in early remission. Although the Individual’s Licensed Therapist’s report was submitted into the record, she did not testify at the hearing. After reviewing the Licensed Therapist’s report, the DOE Psychiatrist expressed concern that to prepare her report, she relied on the Individual’s self-report stating, “[m]y concern was that [the] instruments all relied on self-report, which is inappropriate for a forensic evaluation.” Tr. at 103. The DOE Psychiatrist continued “[s]o self-report in a forensic exam is . . . below standard, and that’s all she had.” *Id.* at 103-04. He concluded that “[t]here were no validity scales in . . . what she called standardized testing. . .” *Id.* at 105.

While the DOE Psychiatrist testified that the Individual was moving into sustained remission at the time of the hearing, he also indicated that some concerns remained. Tr. at 110. He continued that the Individual’s prognosis was only fair because he would not seek treatment because he does not believe that he has a gambling disorder. Tr. at 111.

The Adjudicative Guidelines indicate that an individual may mitigate Guideline I concerns if:

- a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

¹¹ In his report, the DOE Psychiatrist first stated that the Individual had a poor prognosis, but ultimately indicated the Individual had a fair prognosis at the conclusion of the report. Tr. at 111.

- b) The individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- c) Recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- d) The past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- e) There is no indication of a current problem.

Adjudicative Guidelines at ¶ 29(a)-(e). I cannot find that the Individual meets any of the conditions for mitigation. The Individual has not entered counseling or a treatment program for his gambling problem, and therefore he had not demonstrated ongoing and consistent compliance with a treatment plan. Although the Individual did present an opinion of a qualified mental health professional, the Licensed Therapist, the DOE Psychiatrist explained his concerns with her opinion. I find the DOE Psychiatrist's report and his testimony significantly more convincing concerning the state of the Individual's gambling issues. Finally, although the DOE Psychiatrist indicated that the Individual has an ongoing problem, the Individual's prognosis is only fair. Therefore, I cannot find that the Individual has mitigated the Guideline I concern raised by the DOE Psychiatrist's diagnosis that the Individual suffers from a Gambling Disorder.

Guideline F

Regarding the Guideline F concerns, I question whether the LSO had sufficient cause to raise a concern. Despite the evidence produced by the LSO, the record lacks any type of evidence that the Individual's gambling caused any type of financial distress. The Individual's credit reports do not indicate that he had outstanding or delinquent debts. Absent any type of evidence that the Individual has been experiencing financial distress, it does not appear that Guideline F security concerns are raised by the Individual's conduct. Consequently, none of the information cited under Guideline F itself raises a security concern that would bar the Individual from holding a security clearance.

Despite this finding, the Individual has not mitigated or resolved the Guideline I concern at issue in this case. Consequently, I cannot find that the Individual should be granted a security clearance.

VIII. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline I of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns under Guideline I set forth in the Summary of Security Concerns. Accordingly, the Individual has not demonstrated that granting his security clearance would not

endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be granted at this time. Either party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals