

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 19-005

DAVID W. ADAMS
February 27, 2019

WHEREAS, David W. Adams (“Adams”), requested a hearing to contest the proposed disciplinary action initiated against him on July 2, 2018, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-18-054; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Adams’ request, and the Hearing Officer has submitted the proposed Findings of Fact, Conclusions of Law and Final Order attached hereto (collectively the "Final Order") for approval by the Commission; and

NOW, THEREFORE, BE IT RESOLVED, that the Commission has reviewed the Final Order and hereby modifies the Hearing Officer’s recommendation and issues to Adams a thirty (30) calendar day suspension of his occupational license in the above-referenced case in the matter of DC-18-054; and

BE IT FURTHER RESOLVED, that this shall be considered a final decision of the Missouri Gaming Commission.

BEFORE THE MISSOURI GAMING COMMISSION

In Re: David W. Adams

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Case No. 18-054

License Number: 163175

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

The above-captioned matter comes before the Missouri Gaming Commission (hereinafter referred to as "Commission") upon receipt of a letter dated July 4, 2018 making a request for a hearing by David Adams (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated July 2, 2018. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on November 7, 2018 where the Petitioner and the Commission's attorney, Ms. Carolyn Kerr, appeared to present evidence and arguments of law.

FINDINGS OF FACT

1. On April 5, 2018, and all times relevant hereto, Petitioner was employed by IOC – Boonville Inc., ("Company") as a Maintenance Technician III aboard the *Isle of Capri Casino Hotel Boonville* ("Casino").
2. On April 5, 2018 Corporal Christine (McClaran) Brenton ("Cpl. Brenton") of the Missouri State Highway Patrol was contacted by MGC Licensing Investigator Brad Baker about a Level II licensee who had two guilty pleas in his criminal record that he had not previously disclosed.
3. On April 5, 2018, Cpl. Brenton was assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
4. Cpl. Brenton's investigation revealed the following:
 - a. On May 12, 2015, Licensee pled guilty to the Class A Misdemeanor of Second Degree Tampering with a Utility Meter, in violation of § 570.030, RSMo, in the Circuit Court of Howard County, Missouri. The court ordered Licensee to pay a fine;
 - b. On October 24, 2017, Licensee pled guilty to the Class A Misdemeanor of Passing a Bad Check, in violation of § 570.120, RSMo, in the Circuit Court of Howard County, Missouri. The court sentenced Licensee to 30 days in jail, but suspended the execution of sentence. He was placed on probation for one year and ordered to pay \$462.00 restitution; and

- c. Licensee failed to disclose either of the two above-mentioned guilty pleas to the Commission within 10 days after the date of entering each plea.
5. Petitioner testified at hearing that he thought he did report the misdemeanors to the Commission, but that he may not have. He stated that he did not believe it was that big of a deal because of the plea deals he negotiated with the Howard County Prosecutor.
6. Petitioner's actions in failing to report the two guilty pleas to the MGC are injurious to the public health, safety, morals, good order, and general welfare of the people of the State of Missouri and discredits the Missouri gaming industry and the State of Missouri, and violates 11 CSR 45-4.260(5), 11 CSR 45-10.020(2) and (3) and 11 CSR 45-10.030(7).

CONCLUSIONS OF LAW

1. "The Commission shall have full jurisdiction over and shall supervise all gaming operations governed by Section 313.800 to 313.850." Section 313.805 MO. REV. STAT. 2010.
2. "A holder of any license shall be subject to the imposition of penalties, suspension, or revocation of such license, or if the person is an applicant for licensure, the denial of the application, for any act or failure to act by himself or his agents or employees, that is injurious to the public health, safety, morals, good order, and general welfare of the people of the state of Missouri, or that would discredit or tend to discredit the Missouri gaming industry of the state of Missouri unless the licensee proves by clear and convincing evidence that it is not guilty of such action . . . the following acts may be grounds for such discipline: (1) Failing to comply with or make provision for compliance with Sections 313.800 to 313.850, the rules and regulations of the commission or any federal, state, or local law or regulation." Section 313.812.14 MO. REV. STAT. 2012.
3. "The burden of proof is at all times on the petitioner. The petitioner shall have the affirmative responsibility of establishing the facts of his/her case by clear and convincing evidence . . ." Regulation 11 CSR 45-13.060(2).
4. "Clear and convincing evidence" is evidence that "instantly tilts the scales in the affirmative when weighed against the opposing evidence, leaving the fact finder with an abiding conviction that the evidence is true." *State ex. rel. Department of Social Services v. Stone*, 71 S.W.3d 643, 646 (Mo. App. 2002).

5. "The state has a legitimate concern in strictly regulating and monitoring riverboat gaming operations. As such, any doubt as to the legislative objective or intent as to the Commission's power to regulate riverboat gaming operations in the state must be resolved in favor of strict regulation." *Pen-Yan Investment, Inc. v. Boyd Kansas City, Inc.*, 952 S.W.2d 299, 307 (Mo. App. 1997).

6. Section 569.090, RSMo. (2018), states, in pertinent part, as follows:

1. A person commits the crime of tampering in the second degree if he or she:

* * *

(3) Tampers or makes connection with property of a utility; or

(4) Tampers with, or causes to be tampered with, any meter or other property of an electric, gas, steam or water utility, the effect of which tampering is either:

(a) To prevent the proper measuring of electric, gas, steam or water service; or

(b) To permit the diversion of any electric, gas, steam or water service.

7. Section 570.120, RSMo. (2018), states, in pertinent part, as follows:

1. A person commits the offense of passing a bad check when he or she:

(1) With the purpose to defraud, makes, issues or passes a check or other similar sight order or any other form of presentment involving the transmission of account information for the payment of money, knowing that it will not be paid by the drawee, or that there is no such drawee.

8. 11 CSR 45-4.260(5) states ". . . while holding an occupational license, a conviction, plea of guilty or nolo contendere, or the entering of an Alford plea in any jurisdiction for the following types of misdemeanor or county or city violations to include ordinance violations, including such findings or pleas in a suspended imposition of sentence, shall make the applicant or licensee unsuitable to hold an occupational license: . . . 2) any offense an essential element of which is theft, fraud, or dishonesty . . ."

9. 11 CSR 45-10.020 states, in pertinent part, as follows:

(2) All Level II occupational licensees and applicants shall have a continuing duty to disclose in writing, within ten (10) calendar days, any material change in the information provided in the application forms and requested material submitted to the commission.

(3) The duty to disclose changes in information shall continue throughout any application period or period of licensure granted by the commission. This duty shall be in addition to any other reporting requirements.

(4) For the purpose of this rule, "material change" shall mean any change in personal identification or residence information ...; or other information that might affect an applicant or licensee's suitability to hold a gaming license, including, but not limited to, arrests, convictions, and guilty pleas[.]

10. "The commission may . . . revoke or suspend an occupational license of any person . . . who has failed to comply with or make provision for complying with Chapter 313, RSMo, the rules of this commission, or any federal, state, or local law or regulation." Regulation 11 CSR 45-4.260(4)(E).

DISCUSSION


The law provides broad authority to the Commission regarding the regulation of the gaming industry in order to assure that the public health, safety, morals, and good order are maintained and protected. In this case, Petitioner has worked in the gaming industry for over 11 years. He was an experienced technician, and he knows his obligations as a Level II licensee. Petitioner pled guilty to the misdemeanor crime of Second Degree Tampering with a Utility Meter on May 12, 2015 and Passing a Bad Check on October 24, 2017. Missouri's gaming regulations prevent a person from holding an occupational gaming license if they have been found guilty of or pled guilty to any misdemeanor where an essential element of the offense is theft, fraud, or dishonesty. Second Degree Tampering with a Utility Meter and Passing a Bad Check are the very type of the offenses to which the regulation applies. Both crimes contain as their essential elements the intent to defraud. Because of Petitioner's guilty pleas, he is prohibited from holding an occupational gaming license.

Petitioner's action in pleading guilty to the misdemeanor crimes of Second Degree Tampering with a Utility Meter and Passing a Bad Check are injurious to the public health, safety, morals, good order, and general welfare of the people of the State of Missouri and discredits the Missouri gaming industry. Petitioner did not meet his high burden of proof of clear and convincing evidence in showing that no violation occurred.

FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED that Petitioner is found to have violated Missouri law and is subject to discipline at the discretion of the Commission. The decision of the Commission dated July 2, 2018 to impose a Revocation against Petitioner is affirmed as a proper and appropriate discipline.

DATED: December 27, 2018


BRYAN W. WOLFORD
Hearing Officer