

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 18-013

RAYMOND JEAN
March 28, 2018

WHEREAS, Raymond Jean ("Jean"), requested a hearing to contest the proposed disciplinary action initiated against him on November 10, 2016, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-16-164; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Jean's 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 vacates and sets aside the one (1) calendar day suspension of Jean's occupational license in the above-referenced case in the matter of DC-16-164; 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: Raymond Jean)

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Case No. 16-164

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License Number: 310194

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 an undated letter received November 28, 2016, making a request for a hearing by Raymond Jean (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated November 10, 2016. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on December 13, 2017 where the Petitioner and the Commission's attorney, Ms. Carolyn Kerr, appeared to present evidence and arguments of law.

FINDINGS OF FACT

1. On June 25, 2016 and at all times relevant hereto, Petitioner was employed by The Missouri Gaming Company ("Company") as a Security Lead Officer aboard the *Argosy Riverside Casino* ("Casino").
2. On June 25, 2016, Corporal Trayton Pitts ("Cpl. Pitts") of the Missouri State Highway Patrol initiated an investigation regarding a table games cash box containing two service locks left abandoned in an unsecured area on the casino floor.
3. On June 25, 2016, Cpl. Pitts was assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
4. Cpl. Pitts's investigation and review of surveillance footage revealed the following facts:
 - a) When Security Officer John Pettijohn ("Pettijohn") opened the count room door at 2:45 p.m. on June 25, 2016, to let the count team out of the room, Count Room Lead Cashier Anberber Tehone ("Tehone") shoved a broken table game cash box out of the count room with his foot and walked out of the count room into the man trap;
 - b) Licensee was in the man trap with Pettijohn and observed Tehone push the broken table game cash box of the count room. Licensee performed the final soft count inspection of the main bank area, and then left;

- c) Pettijohn picked up the broken cash box, showed surveillance that the door was unattached and that it was empty;
 - d) Pettijohn picked up the cash box along with the count room trash and carry them both out of the man trap and into the hallway by the Employee Bank;
 - e) Pettijohn set the cash box on the floor, placed the bag of trash on top of the cash box, and walked away, leaving the cash box in an unsecured area;
 - f) Pettijohn failed to notify anyone, including the MGC agent, of the cash box being left unsecured;
 - g) The cash box contained two service locks, one attached to the box and another attached to the door of the cash box, which was laying inside the box; and
 - h) The aforementioned cash box was left in the unsecured area for 11 hours and 26 minutes.
5. At hearing, Petitioner testified that he went to the man trap with Pettijohn after completing his daily briefings at the end of his shift. He saw the cash box and was told that it was broken. After performing the final inspection of the counting room, Licensee testified that he left and that Pettijohn remained in the man trap to inspect the trash. Licensee testified that he does not know how he is responsible for the locks being in the unsecured area.
6. Cpl. Pitts testified that the Licensee was responsible for the final sweep of the man trap and the main bank area, and that Licensee knew that the locks were on the broken box before he left the area. Had the locks on the box been taken off of the property, then every lock in the casino on a cash box would need to be replaced. Upon cross-examination by the Licensee, Cpl. Pitts testified that the Licensee would not have known that the cash box and locks went out of the man trap.

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. 2017.
- 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. 2015.

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. Under the Commission's Minimum Internal Control Standards ("MICS"), Chapter G, §1.03, "[l]ocks for drop devices shall be maintained in a locked compartment in a secure location as identified in the internal controls."
7. "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 is a Security Lead Officer at the Casino, and is aware of his obligations as a Level II licensee. Petitioner is familiar with count procedures, and is aware that locks on cash boxes must remain in secured locations within the casino. Petitioner

performed a final sweep of the main bank and then left, leaving Security Officer John Pettijohn with the broken cash box in the secure area of the man trap.

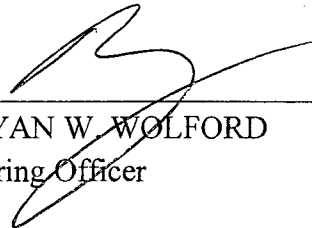
Petitioner's actions are not injurious to the public health, safety, morals, good order, and general welfare of the people of the State of Missouri and do not discredit the Missouri gaming industry. Petitioner has met his high burden of proof of clear and convincing evidence in showing that no violation occurred.

FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED that Petitioner has not violated Missouri law and is not subject to discipline at the discretion of the Commission. The decision of the Commission dated November 10, 2016 to impose a **one (1) calendar day suspension** is vacated and set aside.

DATED:

February 5, 2018



BRYAN W. WOLFORD
Hearing Officer