

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 21-050

EMILY K. JOHNSON
October 27, 2021

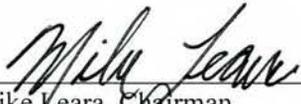
WHEREAS, Emily K. Johnson ("Johnson"), requested a hearing to contest the proposed disciplinary action initiated against her on April 6, 2021, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-21-009; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Johnson'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 approves and adopts the attached Final Order in the matter of DC-21-009 and orders Emily K. Johnson's occupational license to be suspended for thirty (30) consecutive calendar days, that Johnson be given partial credit for the time between when she was terminated by Ameristar Casino Kansas City and when she resumed employment with a licensed riverboat gaming operation in the amount of twenty-three (23) consecutive calendar days, and that she be required to serve the remaining seven (7) consecutive calendar days of the imposed suspension; and

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

SO ADOPTED.



Mike Leara, Chairman
Missouri Gaming Commission

BEFORE THE MISSOURI GAMING COMMISSION

In Re:)
)
Emily K. Johnson) CASE NO. DC 21-0009
)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER

This matter comes before the Missouri Gaming Commission (the “Commission”) upon receipt of a letter from Emily K. Johnson (the “Licensee”) dated April 26, 2021, requesting a hearing in response to Commission’s Preliminary Order for Disciplinary Action dated April 6, 2021. The designated Hearing Officer, Fawzy T. Simon, conducted a hearing on August 26, 2021 where Licensee and Ms. Carolyn Kerr, Counsel for Commission, appeared and presented evidence and arguments of law.

As a preliminary matter, the Hearing Officer again considers Licensee’s objection to Commission Exhibit 4, a DVD/Video. The basis of Licensee’s objection is that Exhibit 4 did not truly and accurately depict the events of October 14, 2020. That objection was taken under advisement until such time as Exhibit 4 could be viewed. That objection was never ruled upon on the record. That objection is now again considered after viewing Exhibit 4 and is overruled. Exhibit 4 is received into evidence.

FINDINGS OF FACT

1. On October 14, 2020, and all times relevant to this proceeding, Licensee was employed by Ameristar Casino Kansas City, LLC (the “Company”) as a dealer aboard *Ameristar Casino Kansas City* (the “Casino”).
2. On that date, Licensee accompanied another dealer, Eduardo Barron-Jasso, to his vehicle in the team-member parking lot.
3. Barron-Jasso, by his own admission, smoked marijuana from a makeshift smoking device made from an apple.
4. Upon being interviewed, Barron-Jasso told Trooper Gregory Tesch that Licensee also smoked marijuana from the same makeshift smoking device.
5. Licensee denied smoking marijuana. She testified that she was smoking a tobacco cigarette. Licensee further testified that she was four years clean from illegal drugs.

6. Licensee provided a five-panel drug test dated October 21, 2020 which showed no presence of THC metabolites in Licensees system.
7. Licensee admitted that she failed to immediately report Barron-Jasso's behavior to the Commission.
8. Licensee's employment with Casino was terminated effective October 20, 2020, and Licensee was not employed by a licensed casino again until March 4, 2021, a period in excess of four calendar months.

CONCLUSIONS OF LAW

1. "The Commission shall have full jurisdiction over and shall supervise all gaming operations governed by Section 313.800 to Section 313.850." **RSMo.**
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 RSMo.**
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..." **11 CSR 45-13.060(2).**
4. "Clear and convincing evidence...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 Dept. 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. Licensees shall have a continuing obligation to demonstrate suitability to hold a license by complying with all gaming laws and regulations. **11 CSR 45-4.190(2).**
7. Licensees shall promptly report to the Commission any facts which the licensee reasonably believes constitute a violation of law or Commission rules or standards. **11 CSR 45-10.30(1).**
8. At no time, under any circumstances shall any licensee fail to immediately prevent or suppress any improper or unlawful conduct. **11 CSR 45-10.30(2).**
9. In the event that a licensee knows or should have known that an illegal act has been committed on or about the licensed premises, they shall immediately report the occurrence to law enforcement authorities and shall cooperate with law enforcement authorities and agents of the commission during the course of any investigation into the occurrence. **11 CSR 45-10.30(3).**

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, Licensee denied using drugs, but admitted that her fellow dealer used drugs in her presence on or about the licensed premises, that she failed to immediately prevent or suppress said conduct, and that she then failed to report said conduct to law enforcement.

Reviewing Commissions Exhibit 4, the quality of the video makes it impossible to determine exactly what Licensee is smoking. Therefore, while admissible, Exhibit 4 shall be given very little weight in this determination. Further, Licensee's sworn testimony that she is four years clean, especially when coupled with evidence of a clean drug test, is compelling. Licensee has met her burden of showing by clear and convincing evidence that she did not consume illegal drugs on the night of October 14, 2020.

Licensee has admitted, however, that she did nothing to prevent Barron-Jasso from consuming illegal drugs and then returning to work, and she has admitted that she failed to immediately report this conduct to law enforcement upon returning to work. Her testimony that she did not realize that she could make a report to law enforcement based on the late hour is not credible and her assertion that she did not feel comfortable making a report based on the proximity of Barron-Jasso's table to her own is unpersuasive.

Licensure is both a privilege and a responsibility and Licensee did not live up to that responsibility.

Licensee's action in failing to prevent Barron-Jasso from using drugs on the premises and then failing to report the same to law enforcement is 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. Licensee did not meet her burden to show by clear and convincing evidence that this violation did not occur.

FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED:

1. That, as to the allegation that Licensee consumed illegal drugs on the premises of Casino, Licensee met her burden to show by clear and convincing evidence that she did not. Any discipline imposed as to this allegation is to be vacated.
2. That, as to the allegation that Licensee failed to prevent an unlawful act from occurring on licensed premises and then failed to report said act to law enforcement, Licensee did not meet her burden of proof to show by clear and convincing evidence that s/he should not be subject to discipline.
3. That, the Commission's discipline dated April 6, 2021 of a sixty (60) consecutive calendar day suspension be reduced to thirty (30) consecutive calendar days, that Licensee be given partial credit for the time between when her employment was terminated by Ameristar and when she resumed employment with a licensed riverboat gaming operation in the amount of twenty-three (23) consecutive calendar days, and that she be required to serve the remaining seven (7) consecutive calendar days of the imposed suspension.

Dated: September 24, 2021



Fawzy Simon