

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 18-016

AMANDA R. BENEDICK
March 28, 2018

WHEREAS, Amanda R. Benedick ("Benedick"), requested a hearing to contest the proposed disciplinary action initiated against her on May 19, 2017, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-17-062; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Benedick'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 issues to Benedick a suspension her occupational license for thirty (30) days in the above-referenced case in the matter of DC-17-062; 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: Amanda R. Benedick

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Case No. 17-062

License Number: 301245

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 June 12, 2017 making a request for a hearing by Amanda R. Benedick (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated May 19, 2017. 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 February 10, 2017 and all times relevant hereto, Petitioner was employed by Pinnacle Entertainment, Inc. ("Company") as an Internal Communications Manager. The Company operates an excursion gambling boat known as the *River City Casino* ("Casino").
2. On February 10, 2017 Trooper Mary Forler ("Tpr. Forler") and Sergeant T.J. Hourihan ("Sgt. Hourihan") of the Missouri State Highway Patrol were contacted by surveillance at the Casino about an employee entering the back of the facility without displaying her casino access badge or her occupational gaming license badge.
3. On February 10, 2017, Tpr. Forler and Sgt. Hourihan were assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
4. Tpr. Forler's and Sgt. Hourihan' investigation and review of surveillance video recordings revealed the following:
 - a) On February 10, 2017 at 10:34 a.m., Internal Communications Specialist Jason Brendel ("Brendel") let Licensee into the back of the casino facility through the doors by the Main Bank even though she did not have her casino access badge or her occupational gaming license on her person;

- b) Security Officer Sandra Marcus ("Marcus") notified Casino Surveillance after she stopped Licensee in the back of the facility at approximately 12:02 p.m. because she was not displaying her casino access badge or occupational license;
 - c) Licensee told Marcus that she left her badges in her office, although subsequently neither one of the badges were located in the Licensee's office or in her vehicle;
 - d) Licensee claimed that she was not aware that she did not have her badge on until Marcus stopped her in the hallway, and thought the badges were in her bag;
 - e) Licensee called Brendel from her car before she entered the Casino at approximately 10:30 a.m. and told him that she did not have her badgers, and asked him to let her into the building anyway;
 - f) Licensee sent Brendel a text at 12:18 p.m., which stated, "if asked, you can say u just happened to be coming out when I came in. Don't want you to get in trouble for letting Me in";
 - g) Licensee admitted to asking Brendel to let her in the building even though she knew she did not have her badges with her;
 - h) Licensee admitted asking Brendel to lie on her behalf; and
 - i) Licensee failed to disclose pertinent and truthful information and made inconsistent and/or misleading statements to Tpr. Forler and Sgt. Hourihan during the investigation of the incident.
5. Petitioner testified at hearing that she admitted all of the factual allegations, and that what she did was wrong. Petitioner stated that she had already served a thirty-day suspension from her employer, and asked the Commission to reconsider its proposed ninety-day suspension.
6. Licensee's failure to have her casino access badge or occupational gaming license badge on when she entered the casino, failure to report to the MGC that she did not have her badges on, and her attempt to conceal the violations 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(4)(N); 11 CSR 45-4.410(1); and 11 CSR 45-10.030(1) & (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. 11 CSR 45-4.410(1) states "All employees and occupational licensees shall at all times while performing the functions of their positions display on their person in a clearly visible manner a valid, riverboat-issued casino access badge. . ."
7. 11 CSR 45-10.030(1) states "Licensees shall promptly report to the commission any facts which the licensee has reasonable grounds to believe indicate a violation of law (other than minor traffic violations), minimum internal control standard requirements or commission of rule committed by licensees, their employees or others..."

8. "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 an Internal Communications Manager at the Casino, and is aware of her obligations as a Level II licensee. Licensee admitted that she accessed the Casino without her identification badge or occupational gaming license, and that she knew it was wrong of her to do so.

Petitioner's failure to have her casino access badge or occupational gaming license badge on when she entered the casino, failure to report to the MGC that she did not have her badges on, and her attempt to conceal the violations 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 her high burden of proof of clear and convincing evidence in showing that no violation occurred.

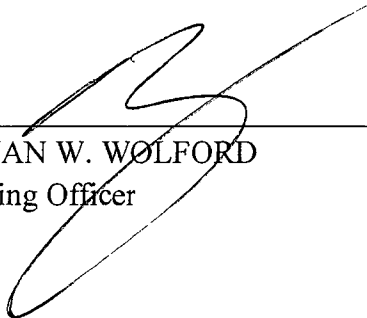
Petitioner requested a reconsideration of the Commission's preliminary order to suspend her license for ninety days. The Hearing Officer reviewed violation reports from similar situations and noted that licensees have received discipline ranging from compliance directives to revocation of their occupational gaming licenses. The Hearing Officer considers as an aggravating factor that the Petitioner initially attempted to conceal her wrongful conduct. The Hearing Officer considers as mitigating factors that the Petitioner has already served a thirty-day suspension without pay from her employer and was cooperative and truthful at hearing. In weighing the aggravating and mitigating factors, the Hearing Officer finds that the Petitioner's conduct was serious and warrants discipline, but finds that the ninety-day suspension initially imposed by the Commission in its preliminary order of discipline is not proper or appropriate in this circumstance.

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 May 19, 2017 to impose a ninety (90) calendar day suspension

against Petitioner is vacated, and the Hearing Officer imposes a thirty (30) calendar day suspension of Petitioner's license as a proper and appropriate discipline.

DATED: February 5, 2018



BRYAN W. WOLFORD
Hearing Officer