

ORDER 2007-109

**AN ORDER OF THE
INDIANA GAMING COMMISSION
DISSOLVING THE RECOMMENDATION OF THE
ADMINISTRATIVE LAW JUDGE
IN THE MATTER OF KENNETH CALVIN
07-OL-FL-01**

The Indiana Gaming Commission ("Commission") adopts the following order pursuant to authority granted it under IC 4-33.

On or about April 20, 2007, Kenneth Calvin was issued a level 2 occupational license to work as an Accounts Payable Agent at French Lick Resort • Casino. On May 3, 2007, Mr. Calvin pled guilty to Operating a Vehicle While Intoxicated, a Class D felony. Upon obtaining court records from this conviction, Commission staff initiated a disciplinary action, # 07-OL-FL-01.

On June 27, 2007, Mr. Calvin changed jobs at French Lick Resort • Casino to a new position that does not involve occupational licensing. As a result, Mr. Calvin's occupational license terminated. Mr. Calvin did not make Commission staff aware of this fact, so the disciplinary action against him proceeded to a hearing.

Administrative Law Judge Gordon White issued Findings of Fact and a Recommendation on August 31, 2007, not knowing that Calvin's license was already terminated as a result of his new employment. Specifically, the Administrative Law Judge ("ALJ") suspended Mr. Calvin's license indefinitely. The ALJ ordered that Mr. Calvin may apply to have the suspension lifted five years after his criminal probation has ended or his conviction of May 3, 2007 is reduced to a misdemeanor.

Pursuant to IC 4-21.5, the Commission must issue a final order affirming, modifying, or dissolving the non-final order of the Administrative Law Judge. Furthermore, the Commission may remand the matter to the ALJ for further proceedings.

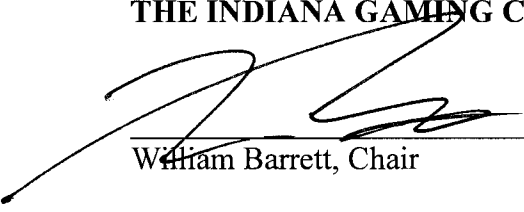
Commission staff issued notice to Mr. Calvin that the Commission intended to review the ALJ's Recommendation. The Commission hereby adopts the findings of fact and ultimate findings of fact of the Administrative Law Judge to the extent that the findings are not inconsistent with the findings provided herein. The Commission further finds that Kenneth Calvin's occupational license terminated on June 27, 2007.

For the reason that Mr. Calvin's license terminated prior to the ALJ's order being issued, the Commission hereby **DISSOLVES** the order of the Administrative Law Judge that the Commission suspend Mr. Calvin's license indefinitely. Since Mr. Calvin is no longer a licensee, the Commission takes no further action.

Pursuant to IC 4-21.5-3-6, this Order will become effective fifteen (15) days after it is served.

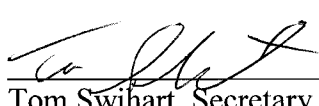
IT IS SO ORDERED THIS THE 8th DAY OF NOVEMBER, 2007.

THE INDIANA GAMING COMMISSION:



William Barrett, Chair

ATTEST:



Tom Swihart, Secretary

STATE OF INDIANA

THE INDIANA GAMING COMMISSION
DISCIPLINARY ACTION

IN RE DISCIPLINARY ACTION OF

KENNETH CALVIN
LICENSE NO. FL1155-L2

COMPLAINT NO.
07-OL-FL-01

RECOMMENDED FINDINGS OF FACT, ULTIMATE FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Gordon White., designated by the Indiana Gaming Commission ("Commission"), pursuant to IC 4-21.5-3-9 to act as an administrative law judge ("ALJ"), held an administrative hearing on August 30, 2007, in the Erwin Room of the French Lick Springs Hotel in French Lick, Indiana concerning the disciplinary charges brought against the license of Kenneth Calvin ("Respondent").

Respondent appeared in person and waived his right to be represented by counsel. Adam Packer, attorney for the Indiana Gaming Commission, represented the Commission Staff.

The ALJ, after considering the evidence presented and taking official notice of the file in this matter issues the following Recommended Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Respondent, whose mailing address is 1321 South Indiana Avenue, French Lick, Indiana 47432, holds a permanent level 2 occupational license from the Indiana Gaming Commission as an Accounts Payable Agent.
2. Respondent received timely and proper notice of the date, time and location of this hearing pursuant to Indiana Code 4-21.5-3-20.
3. The Commission is empowered to hold this administrative hearing pursuant to the authority of Indiana Code 4-33-4-1(a)(6) and Indiana Code 4-21.5-3.
4. The Commission Staff learned that, on May 5, 2007, Calvin pleaded guilty to Operating a Vehicle While Intoxicated.

5. Calvin was convicted of Operating a Vehicle While Intoxicated on a previous occasion within five years of this latest incident. As a consequence, the latest judgment entered against him is a Class D Felony.

6. As a result of his conviction, the Monroe County Circuit Court placed Calvin on probation until November 3, 2008. Calvin's probation officer reports that he is "complying well with his probation terms." Letter from Ruth Marshall, Deputy Probation Officer, Orange County Circuit Court, dated August 20, 2007.

7. The terms of the judgment of conviction provide that Calvin's "conviction shall be reduced to a Class A Misdemeanor upon application and successful completion of probation without violation . . .". Judgment of Conviction and Sentencing Order of Probation/Commitment, dated May 3, 2007.

8. Calvin has no criminal history other than the two convictions for Operating a Vehicle While Intoxicated.

9. Calvin is currently employed at the French Lick Springs Hotel as a Spa Desk Agent, which is an occupation that does not require a license from the Gaming Commission. At some point in the future he would like to return to a job that would call for an active license from the Commission.

10. Packer stated that the sole basis for the disciplinary charges brought against Calvin was the felony conviction. In other words, if there had been no felony conviction, there would have been no charge against Calvin's license.

11. Packer also maintained that although the "Complaint for Disciplinary Action" that Commission Staff filed in this matter requested that Calvin's license be revoked, Staff would be satisfied if Calvin's license were suspended until such time as the felony conviction against him is reduced to a misdemeanor.

12. Commission Staff proved the factual allegations contained in the "Complaint for Disciplinary Action" by a preponderance of the evidence.

ULTIMATE FINDINGS OF FACT

Kenneth Calvin's status as a convicted felon makes him unsuitable for an occupational license from the Indiana Gaming Commission.

CONCLUSIONS OF LAW

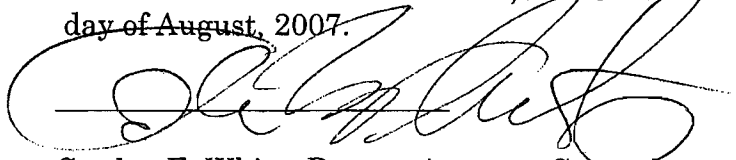
1. "The commission may suspend, revoke, or restrict an occupational licensee for . . . just cause." IC 4-33-8-8(4).
2. An occupational licensee must "maintain suitability for licensure." 68 IAC 2-3-9(a); 68 IAC 13-1-1(a).
4. The Commission's statutes and rules do not define the terms "just cause" or "suitability for licensure" but an *applicant* for licensure is not eligible for a license if that person has been convicted of a felony. IC 4-33-8-3.
5. Depending on the severity of the crime, an *applicant* for a license may apply for a waiver of the felony proscription no sooner than five years after the applicant has come off probation. IC 4-33-8-11.
6. Packer posits that the legal standard of conduct for an applicant is not necessarily the same as the legal standard of conduct for a licensee. Regardless, the ALJ concludes that under the circumstances of this case, the legal standard of conduct to which an applicant is held is an appropriate benchmark for assessing suitability for licensure.

ORDER

Kenneth Calvin's permanent occupational license is **SUSPENDED INDEFINITELY**. The suspension will not be lifted until Calvin takes the following affirmative steps.

He may apply to the Commission to have the suspension lifted after his conviction of May 3, 2007, is reduced to a misdemeanor, or, if that conviction is never reduced to a misdemeanor, he may apply to have the suspension lifted five years after his criminal probation is over.

All of which is **ORDERED, ADJUDGED AND DECREED**, this 31st day of August, 2007.



Gordon E. White, Deputy Attorney General
Administrative Law Judge
Indiana Gaming Commission
402 West Washington Street
Indiana Government Center South, 5th Floor
Indianapolis, Indiana 46204
(317) 232-6307

**NOTICE OF RIGHT TO OBJECT TO RECOMMENDED FINDINGS OF
FACT, ULTIMATE FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER**

Either party may object to the ALJ's Recommended Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order: but any objection must be filed with the Indiana Gaming Commission, identifying the basis of the objection with reasonable particularity, no later than **eighteen days** from the ISSUANCE of this order unless such date is a Saturday, a Sunday, a legal holiday under state statute or a day that the Indiana Gaming Commission's offices are closed during regular business hours in which case the deadline would be the first day which is not a Saturday, a Sunday, a legal holiday under state statute or a day that the Indiana Gaming Commission's offices are closed during regular business hours. The ALJ's Recommended Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order is not the final order of the Indiana Gaming Commission in this proceeding. In the absence of any objection, the Indiana Gaming Commission may affirm the ALJ's Recommended Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order as its final order or will serve notice of its intention to review any issue related to the ALJ's Recommended Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order.

Copies issued on August 31, 2007, as follows:

Kenneth Calvin
1321 South Indiana Avenue
French Lick, Indiana 47432
License Holder
CERTIFIED MAIL NUMBER: 7003 3110 0003 5636 7300
RETURN RECEIPT REQUESTED

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115 West Washington Street
Indianapolis, Indiana 46204-3408
Counsel for Commission Staff

Service by Interdepartmental Mail

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