

ORDER 2007-12

**AN ORDER OF THE INDIANA GAMING COMMISSION
CONCERNING THE REQUEST FOR WAIVER OF
FELONY DISQUALIFICATION OF DONALD LEE HEPP
FW-07-03**

The Indiana Gaming Commission having reviewed this matter and the attached Findings of Fact hereby **ADOPTS THE RECOMMENDATION** of the review officer granting Mr. Hepp's request for a waiver of his felony disqualification.


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

THE INDIANA GAMING COMMISSION:



Timothy L. Murphy, Vice-Chair

ATTEST:



Donald R. Vowels, Secretary

**INDIANA GAMING COMMISSION
REQUEST FOR WAIVER OF FELONY CONVICTION DISQUALIFICATION
OF DONALD LEE HEPP
FW-07-03**

FINDINGS OF FACT AND RECOMMENDATION

Adam F. Packer, Staff Attorney for the Indiana Gaming Commission (“Commission”) and review officer for the request for a felony waiver of Mr. Donald Lee Hepp hereby makes the following report:

LEGAL AND PROCEDURAL BACKGROUND

1. On or about November 13, 2006, the Petitioner, Donald Hepp, submitted to the Commission an application for a level 2 occupational license to work as a cage cashier at French Lick Resort • Casino.
2. Mr. Hepp disclosed in his application that, in 1982, he pled guilty to felony incest in Clark County, Indiana.
3. Mr. Hepp submitted a court Order regarding his guilty plea. This Order shows that he was sentenced to two (2) years imprisonment and six (6) months of probation. He served six (6) months of his prison sentence in Westville Correctional Center and attended counseling before, during, and after his prison sentence.
4. Pursuant to Indiana Code 4-33-8-3, the Commission may not issue a license to an individual who has been convicted of a felony. On that basis, Commission staff denied Mr. Hepp’s application on November 13, 2006.
5. On or about November 20, 2006, the Commission received Mr. Hepp’s request for a waiver of his felony disqualification pursuant to Indiana Code 4-33-8-11.
6. Executive Director Ernest Yelton appointed the undersigned, an attorney on the staff of the Commission, to serve as a review officer in this matter.
7. On November 17, 2006, Commission staff received a letter from Angela Eastridge, Recruiter for French Lick Resort • Casino, in satisfaction of 68 IAC 2-4-1. The letter is not specific enough to fully satisfy Indiana Code 4-33-8-11(c)(10), but the Indiana Code provision is only one of ten factors that the Commission must consider so this failure does not doom Mr. Hepp’s request.
8. On March 1, 2007, the undersigned held a hearing on Mr. Hepp’s request.

9. At the hearing, Mr. Hepp appeared *pro se*, offered testimony, and presented his wife, Carmon Hepp, as a witness in support of his request.
10. The undersigned recorded the hearing. The resulting digital file is part of the record in this matter.
11. The undersigned learned the identity of Mr. Hepp's victim at the hearing. Following the hearing, the undersigned contacted the victim to ask questions probative only of rehabilitation. A verified memorandum of that conversation is part of the record in this matter.
12. Pursuant to Indiana Code 4-33-8-11 (b), the Commission may waive a felony disqualification if the individual qualifies for a waiver based on 1) the type of offense, 2) the length of time since the discharge of his sentence, and 3) if the requestor has demonstrated by clear and convincing evidence his rehabilitation. Mr. Hepp meets the first two criteria based on IC 4-33-8-11 (f).
13. In analyzing whether the requesting individual has demonstrated rehabilitation by clear and convincing evidence, the commission shall consider the following factors listed in IC 4-33-8-11 (c):
 - a. The nature and duties of the position applied for by the individual.
 - b. The nature and seriousness of the offense or conduct.
 - c. The circumstances under which the offense or conduct occurred.
 - d. The date of the offense or conduct.
 - e. The age of the individual when the offense or conduct was committed.
 - f. Whether the offense or conduct was an isolated or a repeated incident.
 - g. A social condition that may have contributed to the offense or conduct.
 - h. Evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational education, successful participation in a correctional work release program, or the recommendation of a person who has or has had the individual under the person's supervision.
 - i. The complete criminal record of the individual.
 - j. The prospective employer's written statement that:
 - i. the employer has been advised of all of the facts and circumstances of the individual's criminal record; and
 - ii. after having considered the facts and circumstances, the prospective employer will hire the individual if the commission grants a waiver.

FINDINGS OF FACT

1. French Lick Resort • Casino has been advised of the facts regarding Mr. Hepp's criminal history and states that he "has secured a position as a Cage Cashier... upon successful granting of a felony waiver request."

2. Mr. Hepp is currently self-employed as a computer service and repairman. He has been self-employed since 2000. From 1991 until he started his own business, he worked in the Bloomington office of Columbia House as a data entry specialist, during which time he acquired his computer repair skills.
3. Mr. Hepp is currently fifty-three years old. He was born in Louisville, Kentucky in 1954. He resides in Bloomington, Indiana with his wife of eight years. He has resided in Indiana since the early 1960s. He attended Jeffersonville High School and worked in Clark County until his prison time in Westville and briefly after completing his sentence. He moved to Bloomington in 1984 and has remained since.
4. Mr. Hepp became interested in his current position because he was looking for a stable job with good benefits and he passed the skills test that cage staff gave him. He has not held any prior employment in the gaming industry. He has visited Indiana casinos in the past with friends, and is interested in the industry. He would have cage access, but not pit access.
5. Mr. Hepp was convicted of incest in 1982. He was twenty-eight years old at the time. He testified that the incident leading to his conviction involved a close member of his family, who was a minor at the time, and that the behavior occurred over a short period of time. He explained that he was in an abusive relationship with his then-wife, and that her verbal abuse and aggressiveness led him to his poor condition during the time of his behavior.
6. Mr. Hepp's public defender recommended to Mr. Hepp that he begin counseling before the plea hearing and plead guilty, in order to minimize his sentence. Mr. Hepp pled guilty and was sentenced to two (2) years in prison, six (6) months of probation, and was ordered to complete counseling.
7. Mr. Hepp admitted that his offense was serious and explained that he has turned his life around and has not had any relapses into this type of behavior. He also expressed that he understands that what he did was wrong. He gave credit to the doctors at Westville, his time in prison spent thinking about his mistakes and the need for change, and the extensive counseling during that time for turning his life around. He stated he has a normal relationship with the victim and the rest of his family, many of whom live nearby. In a later conversation, the victim, who now has a family, including children, expressed a belief that Mr. Hepp is rehabilitated, that they are in regular contact, that Mr. Hepp and the victim have a normal relationship, and that the victim has no reservations about having Mr. Hepp around family on a regular basis.
8. This was an isolated incident in Mr. Hepp's life. He has had only minor offenses in the years since the 1982 arrest. He has had five (5) traffic tickets since 1985 and one (1) arrest for failure to appear in a civil lawsuit.

9. Mr. Hepp testified that he has changed his life for the better. He speaks extensively about life being short, about making things right while he is still able to do so, and the need to have positive relationships with his friends, family, and co-workers. His counseling has made him understand the value of good relationships and he shows no signs of the behavior that caused his 1982 arrest and conviction.
10. Nothing indicates that Mr. Hepp is likely to commit incest again. Also, the characteristics of his offense, while shocking to the conscience, do not make him a regulatory risk within the jurisdiction of the Commission. He took responsibility for the 1982 incident, completed counseling, and has changed his life for the better.

RECOMMENDATION

Based on the foregoing, Mr. Hepp has demonstrated by clear and convincing evidence that he has been rehabilitated and should be granted a felony waiver. The statutory guidelines are useful in evaluating this case, and analysis of those guidelines shows that he is a strong candidate for waiver.

1. Mr. Hepp's position at French Lick is of a sensitive nature and includes access to large sums of money.
2. The nature of his offense is unrelated to financial corruption, deceit, or any other concern within the jurisdiction of the Commission.
3. The offense occurred with a close member of Mr. Hepp's family, who was a minor at the time of the offense. Mr. Hepp was in a marriage he described as abusive and bad.
4. The offense occurred in 1982.
5. Mr. Hepp was 28 years old at the time of the offense.
6. Mr. Hepp has never had any charges of incest or any sexual crimes in the years prior to or since the 1982 charge.
7. At the time of his offense, Mr. Hepp was in an abusive marriage and a negative family situation, which he believes contributed to his actions.
8. The evidence on the record is that Mr. Hepp attended counseling before going to prison, while in prison, and after his release. This counseling has had the effect, at least, of preventing Mr. Hepp from repeating his 1982 mistakes. He also ended the abusive marriage and is now in a much better family situation. His victim also expressed confidence in Mr. Hepp's rehabilitation and is in regular contact with him.
9. Mr. Hepp's complete criminal record includes this incest crime, five traffic tickets, and a charge on failure to appear in a collection matter.
10. French Lick Resort • Casino has indicated that they will hire Mr. Hepp if the Commission grants this waiver.

Mr. Hepp understands the gravity of his offense. He has been through counseling and has reformed. Additionally, his offense is not one that would impugn the integrity of

gaming. Therefore, I recommend that the Commission grant a waiver of felony disqualification to Donald Lee Hepp.

Respectfully Submitted,

Adam F. Packer
Staff Attorney

DATE: _____

**EXECUTIVE SUMMARY
OF THE REQUEST FOR WAIVER OF
FELONY DISQUALIFICATION OF DONALD LEE HEPP
FW-07-03**

This executive summary will brief you on the felony waiver application of Donald Hepp, who has applied to be a cage cashier at French Lick Resort • Casino.

Mr. Hepp disclosed in his level 2 occupational license application that he had a felony conviction for incest in 1982.

Pursuant to Indiana Code 4-33-8-3, the Commission may not issue a license to an individual who has been convicted of a felony. On that basis, Mr. Hepp's application was denied. Within ten (10) days, he petitioned for a waiver of the felony disqualification pursuant to Indiana Code 4-33-8-11.

Adam Packer, staff attorney, served as review officer and held a review hearing on March 1, 2007. Mr. Hepp appeared on his own behalf and testified as to the circumstances of his conviction and his rehabilitation. His wife, Carmon, was also present and gave brief testimony. Following the review hearing, the review officer contacted the victim, who related that Mr. Hepp has reformed and that they have a normal relationship and are in regular contact. In accordance with 68 IAC 2-4-9(c), the review officer issued Findings of Fact and a Recommendation that the Commission **approve** Mr. Hepp's request.

The primary factors in this recommendation are that Mr. Hepp's crime was twenty-five years ago, that he has changed his life since release from prison, that he has not had any similar behavior or any serious criminal activity since, that his victim is confident in his reformation, and that his position at French Lick Resort • Casino is not compromised by his offense.

The Indiana Gaming Commission has three options relating to this matter. (1) The Commission may adopt the Findings of Fact of the review officer and grant the waiver. (2) The Commission may also choose to review the entire record of this matter and, following that review, render a written order or adopt the Findings of Fact of the review officer. (3) Finally, the Commission may choose to reject the Findings of Fact and review the request de novo.

Commission staff will request adoption of the review officer's Findings of Fact.