

**STATE OF OHIO
CASINO CONTROL COMMISSION**

In re:

**WALLACE JOHNSON,
CASINO GAMING EMPLOYEE LICENSE
APPLICANT**

Case No. 2012-0016

Respondent.

ORDER DENYING CASINO GAMING EMPLOYEE LICENSE APPLICATION

On February 27, 2012, Respondent Wallace Johnson filed an application for a casino gaming employee license with the Ohio Casino Control Commission (“Commission”). (Hr’g Ex. G.) Thereafter, the Commission conducted a suitability investigation of Johnson to determine his eligibility for such a license.

During the suitability investigation, the Commission discovered sufficient derogatory information to warrant issuance of a Notice of Intent to Deny and Opportunity for Hearing (“Notice”), dated April 20, 2012. (Hr’g Ex. A.) Johnson received the Notice, sent via certified mail, on April 21, 2012. (Hr’g Ex. B.) Pursuant to R.C. 119.07 and 3772.04, Johnson had the right to a hearing if requested within 30 days of the Notice’s mailing. Johnson so requested and the Commission scheduled a hearing for May 22, 2012; and upon its own motion, the Commission continued the hearing until June 12, 2012. (Hr’g Ex. C.)

Through a letter, dated May 17, 2012, the Commission provided Johnson with supplemental information regarding the allegations contained in the Notice. (Hr’g Ex. D.) Johnson appeared at the hearing without counsel. Accordingly, the Commission held the hearing as scheduled before Hearing Examiner Thomas Montgomery (“Examiner”).

After presentation and submission of the evidence at the hearing, the Examiner closed the record to prepare a Report and Recommendation (“R&R”), (Tr. 16), which he submitted on July 23, 2012. Therein, the Examiner found with respect to Notice Allegations #2 and #3 that Johnson has been convicted of, or pleaded guilty or no contest to, one more disqualifying offenses and that Johnson failed to prove his suitability by clear and convincing evidence. (R&R 5.) The Examiner, however, did not expressly address Allegation #1 in the Commission’s Notice of Intent to Deny and Opportunity for Hearing (“Notice”)—i.e., Johnson’s failure to disclose a 1992 charge for larceny of private property while in the military, (see generally R&R 4-5); instead, the Examiner recommended denial based on his findings regarding Notice Allegations #2 and #3.

On July 23, 2012, the Commission sent Johnson, via certified mail, a copy of the R&R. (App. #1; App. #2.) Johnson received the R&R on or before July 25, 2012, (see App. #2), giving him until August 24, 2012, to file objections, see R.C. 3772.04(A)(2) and 1.14; Johnson did not do so, however.

In accordance with R.C. 119.07 and 3772.04, the matter was submitted to the Commission on September 12, 2012, for final adjudication.

WHEREFORE, in consideration of the foregoing and upon a quorum and majority vote of the members, the Commission, as explained below, **ADOPTS IN PART AND MODIFIES IN PART** the Examiner's Report and Recommendation.

In his R&R, the Examiner recommended that the Commission deny Johnson's Application because Johnson has been convicted of, or pleaded guilty or no contest to, one or more disqualifying offenses (i.e., Allegation #2), in violation of R.C. 3772.07 and 3772.10(C)(1) and failed to prove his suitability for licensure by clear and convincing evidence (i.e., Allegation #3), as required by R.C. 3772.10(B) and (C)(7). (R&R 5.) The Examiner, however, did not expressly address Notice Allegation #1—i.e., Johnson's failure to disclose a 1992 charge for larceny of private property while in the military; instead, the Examiner recommended denial based on his findings regarding Notice Allegations #2 and #3. (See generally R&R 4-5.) Accordingly, for the reasons that follow, the Commission adopts the Examiner's findings pertaining to Notice Allegations #2 and #3 and his recommendation denying Johnson's Application, and hereby modifies the R&R to include a finding that Johnson submitted an Application containing false information in violation of R.C. 3772.10(C)(2) and incorporates that finding as a reason for ordering denial of Johnson's Application.

As the Examiner found and the record supports, Johnson was discharged from the United States Army under other than honorable conditions (April 8, 1992). (R&R 3-4; Hr'g Ex. G.) His discharge resulted from charges filed against him for larceny of private property, being away without leave, and being intoxicated while on duty; in lieu of a court-martial hearing, Johnson went through the AR 635-200, Chapter 10 process, whereby he received a reduction in rank and discharge under other than honorable conditions. (Hr'g Ex. G.) Thereafter, Johnson was convicted of driving under the influence (January 31, 1993); disorderly conduct (August 21, 2011); and physical control while under the influence, a reduced charge stemming from a driving under the influence charge (January 8, 2012). (Id.) Johnson was also arrested for domestic violence, but no charges were filed against him (November 11, 2010). (Id.) Thus, the Examiner's findings that Johnson has been convicted of, or pled guilty or no contest to, one or more offenses having an element of moral turpitude, in violation of R.C. 3772.07 and 3772.10(C)(1), and that Johnson failed to prove his suitability by clearing and convincing evidence, as required by R.C. 3772.10(B), and the Examiner's recommendation to deny on these bases remain undisturbed.

The point of modification here concerns Notice Allegation #1. The Examiner recognized the presence of the allegation, that evidence concerning the allegation was presented at the hearing, and that providing a license application that contains false information prohibits the Commission from granting the license; however, he failed to include an express finding as to whether the Commission presented sufficient evidence to prove the allegation. (See R&R 4-5.) A review of the record supports a finding that the Commission proved by a preponderance of the evidence that Johnson failed to disclose the larceny charge; and therefore, he submitted an Application containing false information, thereby proscribing the Commission from issuing him a license.

Under Ohio law, the term "false" has "two distinct and well-recognized meanings: (1) intentionally or knowingly or negligently untrue; (2) untrue by mistake, accident or honestly after the exercise of reasonable care." *Fouts v. State*, 113 Ohio St. 450, 462 (1925). In prohibiting the Commission from issuing a license to an applicant who submits an application containing false information, the General Assembly did not limit the prohibition to those who intentionally, knowingly, or negligently do so. See R.C. 3772.10(C)(2). As a result, both meanings of the term apply to license applications submitted under R.C. Chapter 3772. Thus, the Commission must deny licensure to an applicant if they submit an application that includes untruthful information, regardless of the applicant's reason for doing so.

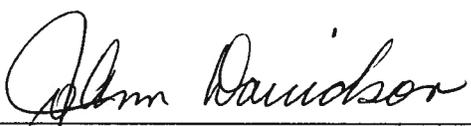
Here, Johnson stated in his Application that in 1992, while in the military, he was charged with, among other things, misappropriation of private property. (Hr'g Ex. G.) This description, however, is false. Johnson was actually charged with larceny of private property; the misappropriation of private property offense was the end result of Johnson's agreement to forego a court-martial hearing by accepting a reduction in rank and discharge from the Army. (Hr'g Ex. E; Tr. 5-6.) Consequently, Johnson submitted an Application containing false information. And because he did so, the Commission cannot grant him a license.

Therefore, the Commission modifies the Examiner's R&R to include a finding that Johnson submitted an Application containing false information in violation of R.C. 3772.10(C)(2). In so doing, the Commission includes this finding as a third reason supporting denial of Johnson's Application—the first two being that Johnson has been convicted of, or pleaded guilty or no contest to, one or more disqualifying offenses, in violation of R.C. 3772.07 and 3772.10(C)(1), and that Johnson failed to prove his suitability by clear and convincing evidence, as required by R.C. 3772.10(B) and (C)(7).

WHEREFORE, in consideration of the foregoing and upon a quorum and majority vote of the members, the Commission **ORDERS** as follows:

- 1) Johnson's Application is **DENIED**;
- 2) Johnson is **PROHIBITED** from working or otherwise serving in any capacity that requires a license under R.C. Chapter 3772;
- 3) Johnson is **PROHIBITED** from reapplying for licensure under R.C. Chapter 3772 for three years from the date this Order is served upon him, absent a waiver granted by the Commission commensurate with Ohio Adm. Code 3772-1-04; and
- 4) A certified copy of this Order shall be served upon Johnson, via certified mail, return receipt requested, and his counsel of record, if any, via ordinary mail.

IT IS SO ORDERED.



Jo Ann Davidson, Chair
Ohio Casino Control Commission

NOTICE OF APPEAL RIGHTS

Respondent is hereby notified that pursuant to R.C. 119.12, this Commission Order may be appealed by filing a Notice of Appeal with the Commission setting forth the Order that Respondent is appealing from and stating that the Commission's Order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The Notice of Appeal may also include, but is not required to include, the specific grounds for the appeal. The Notice of Appeal must also be filed with the appropriate court of common pleas in accordance with R.C. 119.12. In filing the Notice of Appeal with the Commission or court, the notice that is filed may be either the original Notice of Appeal or a copy thereof. The Notice of Appeal must be filed within 15 days after the date of mailing of this Commission Order.