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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

CGCC Case No. CGCC-2013-0221-7

In the Matter of the Application for Renewal of
Key Employee Portable Personal License for:

LAWSON SMITH


Applicant

DECISION AND ORDER

Hearing Date: March 24, 2014
Time: 10:00 a.m.

This matter was heard by the California Gambling Control Commission (Commission) pursuant to Business and Professions Code sections 19870 and 19871 and Title 4, California Code of Regulations (CCR) subdivision 12050(b)(2), in Sacramento, California, on March 24, 2014.

Wayne J. Quint, Jr., Chief of the Bureau of Gambling Control (Complainant) was represented by Ronald L. Diedrich, Deputy Attorney General, Department of Justice, State of California.

Lawson Smith was represented by John T. Nejedly, Esq.

The matter was submitted on March 24, 2014.

PROCEDURAL HISTORY

1. On or about October 15, 2012, Lawson Smith submitted an Application for Gambling Establishment Key Employee License, CGCC-031 (Rev. 05/1), (Application), with the Commission for renewal of his key employee portable personal license.

2. At its February 21, 2013 meeting, the Commission voted to preliminarily deny Mr. Smith's Application and Mr. Smith subsequently requested an administrative hearing.

3. On or about July 3, 2013, the Executive Director of the Commission set the matter for a *de novo* administrative hearing to be conducted according to the provisions of Business and Professions Code sections 19870 and 19871 and Title 4, CCR subdivision 12050(b)(1).

4. On Monday, September 20, 2013, Mr. Smith sent an email to the Bureau of

1 Gambling Control (Bureau) requesting to withdraw his application for licensure and forgo his
2 evidentiary hearing. For reasons unknown to the Commission, it appears the Bureau never acted
3 on this email.

4 5. On or about December 19, 2013, Complainant served a Statement of Particulars by
5 certified mail to Mr. Smith and ultimately filed it with the Commission on December 20, 2013.

6 6. On January 10, 2014, the Commission served upon Mr. Smith a Notice of Hearing
7 and Prehearing Conference, which included Title 4, CCR subdivision 12050(b)(1), Mr. Smith's
8 Application, the Bureau's Background Investigation Report, and Statement to Applicant. The
9 matter was set for hearing on March 24, 2014 and a pre-hearing conference on February 12, 2014.

10 7. On February 12, 2014, a prehearing conference was held before Presiding Officer
11 Jason Pope, Staff Counsel III of the Commission. Ronald Diedrich, Deputy Attorney General,
12 appeared on behalf of Complainant. Neither Mr. Smith nor his representative attended the
13 prehearing conference.

14 8. On March 5, 2014, Presiding Officer Pope was made aware of Mr. Smith's
15 September 20, 2013 email and he immediately contacted both Mr. Smith and Mr. Diedrich to
16 discuss the significance in regards to the forthcoming evidentiary hearing.

17 9. Also on March 5, 2014, the Bureau objected to Mr. Smith's request to withdraw
18 his application based on the Bureau's belief that withdrawal was precluded because the request
19 was made after the Bureau provided its report which constituted "final action" on the license
20 under Business and Professions Code section 19869. The Bureau also requested that the
21 Commission send out notice administratively that it affirmed its February 2013 decision denying
22 Mr. Smith's license based on Mr. Smith's email request that he no longer wanted an evidentiary
23 hearing.

24 10. On March 11, 2014, Presiding Officer Pope sustained the Bureau's objection to the
25 withdrawal request under Business and Professions Code section 19869 and Title 4, CCR
26 subdivision 12050(b)(1), but declined to re-affirm the Commission's denial unless and until Mr.
27 Smith gave an informed waiver of his right to an evidentiary hearing and that he understood all
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1 the potential consequences.

2 11. On March 13, 2014, Mr. Smith informed the Commission that he did in fact wish
3 to proceed with the evidentiary hearing with his counsel present.

4 12. The Commission heard Case No. CGCC-2013-0221-7 on March 24, 2014. On
5 March 24, 2014, the matter was submitted for Commission consideration. The following factual
6 findings are based on the documentary and testimonial evidence received during the
7 administrative hearing.

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9 FACTUAL FINDINGS

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11 13. Mr. Smith has worked for California Grand Casino for over ten and a half years,
12 from July 2003 to the present day. Before working at California Grand Casino he worked for a
13 banking corporation for seven years. In total, he had been working in the gambling industry for
14 over 17 years.

15 14. On the date of his Application, October 15, 2012, Mr. Smith was a "Poker
16 Floorman" at California Grand Casino. He provided an attachment with his Application which
17 described his duties as:

- 18 a. Greet and seat customers.
19 b. Ensure customers get the best possible service.
20 c. Relieve dealers, if necessary.
21 d. Run chips.
22 e. Play in games, if needed.
23 f. Monitor play and operation of games.
24 g. Check patrons for proper identification.
25 h. Approve complimentary non-alcohol drinks and some food for customers.
26 i. Fill-in as needed
27 j. Have non-discretionary authority to apply rules and policies of the California
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1 Grand Casino.

2 k. Refer any disputes or discretionary decisions to a key employee.

3 l. Key employees are required to perform Problem Gambling Duties.

4 15. Prior to his application for renewal of his key employee license, Mr. Smith was
5 convicted of violating Vehicle Code (VC) section 23103.5, reckless driving, a misdemeanor on
6 January 31, 2011 for conduct that occurred on January 9, 2011 in the case of *People of the State*
7 *of California v. Lawson Vernon Smith* (Super. Ct. Solano County, 2011, No. FCR282086). Mr.
8 Smith testified at the hearing that his blood alcohol level was .09.

9 16. Later that year, on August 1, 2011, Mr. Smith was convicted of violating VC
10 section 12500(A), driving without a license, a misdemeanor for conduct that occurred on April
11 24, 2011 in the case of *People of the State of California v. Lawson Vernon Smith* (Super. Ct.
12 Contra. Costa County, 2011 No. 1-154084-8)

13 17. Mr. Smith was convicted of violating VC section 14601.5, driving with a
14 suspended license, and Penal Code section 148(a)(1), obstruct/resisting public officer, both
15 misdemeanors on September 19, 2011 for conduct that occurred on July 2, 2011 in the case of
16 *People of the State of California v. Lawson Vernon Smith* (Super. Ct. Solano County, 2011, No.
17 FCR286301).

18 18. The circumstances underlying this last conviction were as follows. On or around
19 the morning of July 2, 2011, Mr. Smith worked the graveyard shift at the California Grand
20 Casino, from 2 am to 10 am. This was the one of up to three graveyard shifts he had worked that
21 week. He did not sleep after his shift.

22 19. At some point in time later that day, Mr. Smith consumed a few beers.

23 20. That evening, he went to a friend's house which was located a few blocks away
24 from his own home. He went there with Sasha and Decker, two of his children (aged 8 and 5 at
25 that time) who rode their bikes. The three went to the friend's house to take care of the friend's
26 pets and to allow the kids to swim. Mr. Smith's wife, Sonja Gates, stayed at their family home
27 with two other children. While there, Mr. Smith allowed the two kids to play in the friend's pool.
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1 21. After allowing them to swim, Mr. Smith removed the children from the pool,
2 toweled them off and placed them on a couch to watch TV, but told them not to swim. Mr. Smith
3 subsequently left the kids at the home as he intended to ride a small off road motorcycle to a
4 nearby gas station which was less than a half a mile from the home.

5 22. Mr. Smith's statements on what he was going to do at the gas station were
6 inconsistent. He told the police officers he was going to get gas, while he testified at the hearing
7 he was getting air in the tires. Regardless, leaving the 8 and 5 year old children alone near a pool,
8 demonstrated poor judgment and character.

9 23. At about 8:20 pm, Mr. Smith was observed by Officer Walker and Urlaub with the
10 Suisun City Police Department riding the motorcycle on the sidewalk without a helmet and
11 without a license plate.

12 24. Soon thereafter, Officers Walker and Urlaub performed a traffic enforcement stop
13 on Mr. Smith and asked him for his license and registration. Mr. Smith was sat on the curb. Mr.
14 Smith told the officers that he had left all of his paperwork at home. When asked for his name and
15 birthdate, Mr. Smith lied and gave an incorrect name, "Donald Vernon Koebel," and an incorrect
16 birthdate, 12/21/1964. The police officers attempted to verify this information but were unable to
17 as this was not Mr. Smith's correct name, but rather a name similar Mr. Smith's friend. This
18 demonstrated a lack of good character, honesty, and integrity.

19 25. When the Officers told Mr. Smith they could not locate this name, Mr. Smith lied
20 again giving the name "Donald Vernon Koeberhle" with his correct birthdate 12/21/1964. The
21 police officers again attempted to verify this information but were unable to as this also was not
22 Mr. Smith's correct name. This again demonstrated a lack of good character, honesty, and
23 integrity.

24 26. While he was detained by the police, Mr. Smith grew more agitated and nervous.
25 Mr. Smith informed the officers that he had left his 8 and 5 year old children at his friend's house
26 in the swimming pool and that the friends were out of town on vacation. He asked the officers to
27 please hurry.
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1 27. The officers ultimately were able to verify the registration of the motorcycle,
2 confirming it was licensed. They then decided to detain Mr. Smith in handcuffs as he was unable
3 to provided satisfactory evidence of his identification.

4 28. While asking Mr. Smith to stand from the curb and place his hands behind his
5 back so they could handcuff him, Mr. Smith panicked. He stood up and fled on foot away from
6 the officers in flip-flops. Mr. Smith ran in a direction that was not towards the house where his
7 children were located. This demonstrated a lack of good character and integrity

8 29. The officers made chase yelling repeatedly for Mr. Smith to stop. Mr. Smith heard
9 the police officers yelling but did not stop. This demonstrated a lack of good character and
10 integrity.

11 30. Mr. Smith knew he could not get away from the police.

12 31. Four additional police officers were called in to assist in detaining Mr. Smith and
13 eventually they found Mr. Smith hiding behind a large bush next to a fence not too far from
14 where he had been detained.

15 32. The officers ordered Mr. Smith on the ground, placed him in handcuffs and
16 transported him back to the location of the traffic stop. Mr. Smith did not resist the police
17 officers in detaining him the second time or in placing him in handcuffs.

18 33. Mr. Smith then gave his correct name to the police officers as Lawson Smith and
19 with the birthdate as 12/21/64. The officers then learned that Mr. Smith's driving privileges had
20 been suspended based on his prior convictions.

21 34. While transporting Mr. Smith, Officer Urlaub detected the smell of alcohol on Mr.
22 Smith's breath. Officer Urlaub asked Mr. Smith whether the officer would detect alcohol if Mr.
23 Smith blew into a preliminary alcohol screening (PAS). Mr. Smith indicated he would not take
24 the PAS breath test but would consent to a blood draw.

25 35. The off road motorcycle was towed from the scene.

26 36. While in the car Mr. Smith demanded the police officers take him to the friend's
27 house where his children were located. When the officers arrived, they found Mr. Smith's wife,
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1 Sonja Gates, with Dekker and Sasha Smith. Mrs. Gates had traveled to the house as it was getting
2 dark and she was concerned that Mr. Smith and the kids had not returned in a timely fashion.

3 37. Officer Walker asked the children about swimming and they indicated that they
4 had been swimming without their parents present. Mr. Smith believed that this was not true as he
5 stated his wife had run "interference" and the officers had never talked to the children without
6 Mrs. Gates present.

7 38. The officers left the two children in the care of Mrs. Gates, and transported Mr.
8 Smith for a blood draw which was booked into evidence. The record at the hearing did not
9 indicate the results of this blood draw.

10 39. Mr. Smith agreed to talk to the officers after he was given his Miranda warning.
11 He stated that the original names "Donald Vernon Koebel" and "Donald Vernon Koeberhle" were
12 similar to a friend he knew. He indicated that he had panicked and run.

13 40. Mr. Smith testified at the hearing that he had given the wrong names believing that
14 this would speed up the process of learning who he was. This explanation was not credible.

15 41. Subsequent to Mr. Smith's arrest on July 2, 2011, Mr. Smith was investigated for
16 suspected child abuse. Investigators came to Mr. Smith's house to interview him, his wife, and
17 the children Sasha and Decker who had been left at the friend's house. The report determined
18 that the allegations of child abuse were not unfounded. Nothing ever came of the child abuse
19 investigation and Mr. Smith was never prosecuted for child abuse.

20 42. Mr. Smith did not receive any jail time for the Penal Code 148 and VC 14601.5
21 convictions, but he did work 10 days in an animal shelter cleaning cat and dog cages. He also
22 attended and completed an alcohol driving school. Mr. Smith paid all fees and completed all
23 obligations of his probation.

24 43. Mr. Smith also attended AA as recommended, but not required, by probation. Mr.
25 Smith stated that he went to between 10 and 20 Alcoholics Anonymous meetings. He did not
26 provide any evidence to document this. He no longer attends AA. He admitted that he had a
27 problem with alcohol but believed he no longer does. He believed the meetings helped him as he
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1 has basically stopped drinking though he does not abstain from alcohol entirely.

2 44. On January 10, 2013, the Commission considered Mr. Smith's Application for
3 licensure for the first time. At that meeting, the Commissioners asked Mr. Smith various
4 questions about the July 2011 incident. When Chairman Lopes specifically inquired about the
5 circumstances of the Penal Code 148(a) violation, Mr. Smith indicated that he ran from the police
6 and that he was completely panicked.

7 45. At the January 10, 2013 Commission meeting, Mr. Smith did not disclose to the
8 Commissioners that he had given two incorrect names to the police officers, made no mention
9 about leaving his 8 and 5 year old children unattended at a house with access to a pool, and he
10 made no mention of having alcohol and being taken into custody for a blood draw. The failure to
11 disclose this information and to characterize his encounter with the police as just running in his
12 statements to the Commissioners and in his written statement to the Bureau was dishonest and
13 certainly not forthcoming with the Commission. It demonstrates poor character, honesty and
14 integrity.

15 46. Ultimately, the Commissioners extended Mr. Smith's license for 30 days so that
16 the Bureau could obtain additional information on the circumstances behind Mr. Smith's
17 convictions.

18 47. On February, 21 2013, the Commission again heard Mr. Smith's application for
19 licensure. At that hearing, the Commissioners asked Mr. Smith about the underlying
20 circumstances of the arrest. Mr. Smith admitted that he had lied to the police officers and that he
21 had not intended to lie to the Commissioners at the previous meeting.

22 48. The Commissioners on February 21, 2013 ultimately voted to preliminarily deny
23 Mr. Smith a key employee license. The vote was 3-1 and immediately upon the conclusion of the
24 vote Mr. Smith asked for an evidentiary hearing.

25 49. At the March 24, 2014 evidentiary hearing, Mr. Smith admitted that alcohol was
26 part of all of his problems in the prior three 2011 convictions. He believed that he has tried very
27 hard and successfully to deal with it.

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1 permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose
2 operations are conducted in a manner that is inimical to the public health, safety, or welfare.
3 Business and Professions Code subdivision 19823(a)(1).

4 57. An “unqualified person” means a person who is found to be unqualified pursuant
5 to the criteria set forth in Business and Professions Code section 19857. Business and
6 Professions Code subdivision 19823(b).

7 58. The Commission has the power to deny any application for a license, permit, or
8 approval for any cause deemed reasonable by the Commission. Business and Professions Code
9 subdivision 19824(b).

10 59. The Commission has the power to take actions deemed to be reasonable to ensure
11 that no ineligible, unqualified, disqualified, or unsuitable persons are associated with controlled
12 gambling activities. Business and Professions Code subdivision 19824(d).

13 60. The Commission shall not issue a gambling license unless, based on all of the
14 information and documents submitted, the Commission is satisfied that the applicant is all of the
15 following: (a) A person of good character, honesty and integrity; (b) A person whose prior
16 activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the
17 public interest of this state, or to the effective regulation and control of controlled gambling, or
18 create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in
19 the conduct of controlled gambling or in the carrying on of the business and financial
20 arrangements thereto; (c) A person that is in all other respects qualified to be licensed as provided
21 in this chapter. Business and Professions Code section 19857.

22 61. As set forth in the Factual Findings, Mr. Smith was convicted three times in 2011,
23 for crimes in some way related to alcohol, including:

- 24 a. A reckless driving conviction which otherwise is known as a “wet reckless”;
- 25 b. Driving on a suspended license; and
- 26 c. Resisting arrest and driving on a suspended license.

27 62. A person who commits crimes such as these in rapid succession demonstrates a
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1 lack of good character, honesty and integrity.

2 63. Mr. Smith was also dishonest and lied to the police officers who lawfully stopped
3 him on July 2, 2011, when he gave the wrong name multiple times.

4 64. Mr. Smith was also dishonest and less than forthcoming when he described his
5 July 2, 2011 encounter with the police to the Commission at the January 10, 2013, Commission
6 meeting and to the Bureau in his written statement.

7 65. A person who is dishonest and lies to the police, the Bureau, and the Commission
8 demonstrates a lack of good character, honesty and integrity and also threatens the integrity of
9 controlled gaming in California.

10 66. Mr. Smith does however have an impeccable work record as demonstrated by a
11 letter from David Fried, writing on behalf of the California Grand Casino's General Manager,
12 who would support Mr. Smith's licensure.

13 67. There was no evidence taken of any encounters with the Bureau during his 17
14 years of employment. There was no evidence taken of any encounters with the police before
15 2011 and no encounters after the September 19, 2011, conviction beyond a broken headlight.
16 These factors weigh in favor of good character and integrity.

17 68. In their totality however, Mr. Smith's statements and actions related to this matter
18 demonstrate that he lacks the good character, honesty and integrity required for licensure pursuant
19 to Business and Professions Code subdivision 19857(a).

20 69. Mr. Smith is unqualified for licensure as defined in Business and Professions Code
21 subdivision 19823(b) because he failed to demonstrate that he is person of good character,
22 honesty and integrity.

23 70. Based on the foregoing, Mr. Smith has failed to meet his burden of proving his
24 suitability for licensure as required by Business and Professions Code subdivision 19856(a).

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1 NOTICE OF APPLICANT'S APPEAL AND RECONSIDERATION RIGHTS

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3 The Applicant has the following appeal rights available under state law:

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5 Business and Professions Code subdivision 19870(e) provides:

6 A decision of the commission denying a license or approval, or imposing any
7 condition or restriction on the grant of a license or approval may be reviewed by
8 petition pursuant to Section 1085 of the Code of Civil Procedure. Section 1094.5
9 of the Code of Civil Procedure shall not apply to any judicial proceeding
10 described in the foregoing sentence, and the court may grant the petition only if
11 the court finds that the action of the commission was arbitrary and capricious, or
12 that the action exceeded the commission's jurisdiction.

13
14 Title 4, CCR subdivision 12050(d) provides:

15 An appeal of a denial or imposition of conditions by the Commission shall be
16 subject to judicial review under Code of Civil Procedure section 1085 (pursuant to
17 Business and Professions Code section 19870, subdivision (e)). Neither the right
18 to petition for judicial review nor the time for filing the petition shall be affected
19 by failure to seek reconsideration.

20
21 Title 4, CCR subdivision 12050(c)(6) provides, in part:

22 (6) An applicant denied a license, permit, registration, or finding of suitability,
23 or whose license, permit, registration, or finding of suitability has had conditions
24 imposed upon it may request reconsideration by the Commission within 30 days
25 of notice of the decision. The request shall be in writing and shall outline the
26 reasons for the request, which must be based upon either newly discovered
27 evidence or legal authorities that could not reasonably have been presented before
28 the Commission's issuance of the decision or at the hearing on the matter, or upon
other good cause for which the Commission in its discretion decides merits
reconsideration.

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ORDER

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2 1. Lawson Smith's Application for Renewal of Key Employee Portable Personal
3 License is DENIED.

4 2. The Commission however believes that Mr. Smith may still continue to work at
5 the discretion of the local jurisdiction should they deem Mr. Smith suitable for a work permit or
6 other authorization.

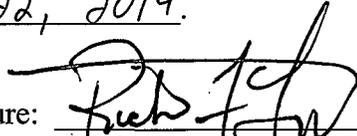
7 3. No costs are to be awarded.

8 4. Each side to pay its own attorneys' fees.

9 This Order is effective on May 22, 2014.

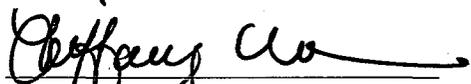
10 Dated: April 22, 2014

Signature:


Richard J. Lopes, Chairman

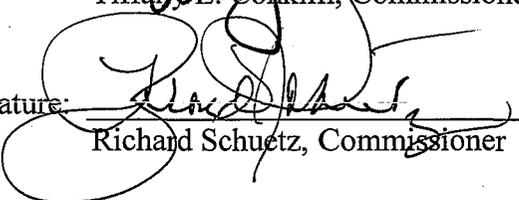
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12 Dated: April 22, 2014

Signature:


Tiffany E. Conklin, Commissioner

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14 Dated: April 22, 2014

Signature:


Richard Schuetz, Commissioner

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17 STATEMENT OF ALTERNATE FINDING AND CONCURRENCE

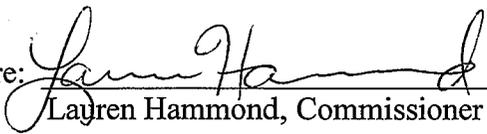
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19 1. I do not concur with paragraph 1 of the majorities order denying Mr. Smith's
20 application for Licensure. I do not believe that Mr. Smith's inability to communicate when he is
21 tired from working graveyard shifts, nervous and scared at police stops or appearing before the
22 Commission and the Bureau demonstrates Mr. Smith is a person of poor character, honesty, or
23 integrity.

24 2. None of Mr. Smith's three criminal convictions occurred at his work, nor involved
25 any acts of violence or theft. He also never had any encounters with the Bureau or Commission
26 in the past. He has also taken steps to correct his behavior including refraining from drinking
27 alcohol and cooperating with police including during a recent traffic stop. As a result, I believe
28 that Mr. Smith simply hit a rough patch in his life and has since gotten over it. I would vote to

1 approve his licensure.

2 3. I concur with the balance of the majorities order, specifically paragraphs 2, 3 and 4

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4 Dated: 4-22-14

Signature: 
Lauren Hammond, Commissioner

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