

BEFORE THE  
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for Approval  
of Initial Work Permit Regarding:

STEPHEN ERIC HERRERA

Respondent.

BGC Case No. BGC-HQ2017-0017SL  
CGCC Case No. CGCC-2017-1005-6

**DECISION AND ORDER**

Hearing Date: May 9, 2018  
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) section 12060, in Sacramento, California, on May 9, 2018.

Ron Diedrich (Diedrich), Deputy Attorney General, State of California, represented complainant Stephanie Shimazu, Director of the Bureau of Gambling Control (Bureau), Department of Justice, State of California.

Respondent Stephen Herrera (Herrera) appeared on his own behalf.

During the evidentiary hearing, Presiding Officer Jason Pope took official notice of the Notice of Hearing, with enclosures, sent by the Commission to Herrera and Diedrich, via certified mail, on January 16, 2018.

During the evidentiary hearing, Presiding Officer Jason Pope accepted into evidence the following exhibits offered by the Bureau:

- (1) Statement of Reasons; Statement to Respondent; copies of Bus. & Prof. Code, §§ 19870 & 19871; copy of Cal. Code. Regs., tit. 4, § 12060; January 23, 2018, Declaration of Service by Certified Mail Service, with signed Returned Receipt; and Notice of Defense, dated October 19, 2017, Bates Nos. 001-021;
- (2) California Gambling Control Commission Memorandum, Notices and Letters:

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- a. September 22, 2017, Licensing Division Memorandum, sans attachment, Bates Nos. 022-023;
- b. October 11, 2017, Referral of Work Permit Application to an Evidentiary Hearing – Stephen Herrera, sans enclosure, Bates Nos. 024-025;
- c. January 16, 2017, Notice of Hearing, with attachments and proof of service, Bates Nos. 026-042; and
- d. March 28, 2018, Conclusion of Prehearing Conference, Bates Nos. 043-047;

(3) Temporary Work Permit:

- a. February 1, 2017, Approval of Temporary Work Permit (GEWP-002554), Bates No. 048; and
- b. September 22, 2197<sup>1</sup> [sic], Notice of Cancellation of Temporary Work Permit, Bates No. 049;

(4) Redacted copies of Stephen Herrera’s Application for Initial Regular Work Permit/Temporary Work Permit and Work Permit Questionnaire (collectively, Application), Bates Nos. 050-059;

(5) A redacted copy of the Bureau’s August 22, 2017, Work Permit Employee Background Investigation Report regarding Stephen Eric Herrera, Bates Nos. 060-070;

(6) Redacted copy of the April 13, 2017, results of the DMV and criminal records data base search regarding Stephen Eric Herrera, with copies of the January 19, 2017, Authorization to Release Information, and the April 13, 2017, Request for Data Base Inquiries, Bates Nos. 071-079;

(7) Redacted, certified copies of the Merced County Superior Court records related to the case of *People v. Stephen Eric Herrera* (Super. Ct. Merced

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<sup>1</sup> This is a typographical error. The correct date is September 22, 2017.

1 County, 2009, No. CRM000833), Bates Nos. 080-101;

2 (8) Copy of the May 5, 2017, on-line records search of the Stanislaus County  
3 Superior Court's records related to the case of *People v. Stephen Eric*  
4 *Herrera* (Super. Ct. Stanislaus County, 2002, No. 104817), and a copy of  
5 the Division of Law Enforcement, Work Permit Licensing Section,  
6 Telephone Contact Sheet, regarding the May 5, 2017, call with Stanislaus  
7 County Superior Court Legal Clerk Adriana, Bates Nos. 102-105;

8 (9) Redacted, certified copies of the California Department of Motor Vehicles  
9 records regarding Stephen Eric Herrera, and a copy of the Division of Law  
10 Enforcement, Work Permit Licensing Section, Telephone Contact Sheet,  
11 regarding the April 25, 2017 call with DMV employee Irene, Bates Nos.  
12 106-110; and

13 (10) Copies of May 4 & 9, 2017, written statements from Stephen Herrera, with  
14 redacted attachments, Bates Nos. 111-132.

15 The matter was submitted on May 9, 2018.

#### 16 FINDINGS OF FACT

17 1. On or about January 24, 2017, Herrera submitted an Application for Initial Regular  
18 Work Permit/Temporary Work Permit and Work Permit Questionnaire (collectively, Application)  
19 to the Bureau.

20 2. On or about February 1, 2017, the Commission issued a Temporary Work Permit to  
21 Herrera.

22 3. Herrera was employed by Casino Merced as a host from February 2017 to September  
23 2017.

24 4. On or about August 22, 2017, the Bureau submitted a Work Permit Employee  
25 Background Investigation Report on Herrera to the Commission. In this report, the Bureau  
26 recommends that Herrera's Application be denied.

27 5. On or about September 22, 2017, the Executive Director of the Commission cancelled  
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1 Herrera's Temporary Work Permit pursuant to CCR section 12128(b)(2) on the basis that the  
2 Bureau recommends the denial of Herrera's Application.

3 6. At its October 5, 2017 meeting, the Commission voted to refer the consideration of  
4 Herrera's Application to a Gambling Control Act evidentiary hearing.

5 7. On or about October 19, 2017, Herrera submitted a signed Notice of Defense to the  
6 Commission requesting an evidentiary hearing on the consideration of his Application.

7 8. On or about January 16, 2018, the Commission sent a Notice of Hearing, via certified  
8 mail, to Herrera and Diedrich.

9 9. On or about January 23, 2018, the Bureau prepared a Statement of Reasons in  
10 which it recommends that the Commission deny Herrera's Application. The Bureau sent the  
11 Statement of Reasons via certified mail to Herrera and Jarhett Blonien, Designated Agent for  
12 Casino Merced.

13 10. On or about March 28, 2018, the noticed Prehearing Conference was held before  
14 Presiding Officer Jason Pope, Attorney III of the Commission. Diedrich, Deputy Attorney  
15 General, attended on behalf of the Bureau. Herrera did not attend the prehearing conference.

16 11. Also on or about March 28, 2018, the Commission sent a Conclusion of Prehearing  
17 Conference letter to Herrera and Diedrich.

18 12. The Commission heard CGCC Case No. CGCC-2017-1005-6 on May 9, 2018. The  
19 Bureau was represented throughout the hearing by Deputy Attorney General Diedrich.  
20 Respondent Herrera appeared on his own behalf.

21 13. On or about October 22, 2002, Herrera was convicted of violating California Vehicle  
22 Code section 23152(b), driving under the influence of alcohol/drugs, a misdemeanor, in the case  
23 of *People of the State of California v. Stephen Eric Herrera* (Super. Ct. Stanislaus County, 2002,  
24 Case No. 104817). Herrera was sentenced to 36 months of probation, two days of jail, and  
25 ordered to complete a first offender DUI program and pay a fine. Herrera successfully completed  
26 the first offender DUI program.

27 14. On or about January 23, 2009, Herrera was convicted of violating California Vehicle  
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1 Code section 23152(b), driving under the influence of alcohol/drugs, a misdemeanor, in the case  
2 of *People of the State of California v. Stephen Eric Herrera* (Super. Ct. Merced County, 2009,  
3 Case No. CRM000833). Herrera was sentenced to 60 months of probation, ordered to complete  
4 an 18-month DUI program, and pay a fine. Herrera successfully completed the 18-month DUI  
5 program on June 12, 2012.

6 15. Herrera filled out the Work Permit Questionnaire as part of his Application. Question  
7 4(b) on the Work Permit Questionnaire asks the applicant the following: “Have you been  
8 convicted of a misdemeanor within the past 10 years? (Convictions dismissed pursuant to Penal  
9 Code section 1203.4 must be disclosed).” Herrera checked the box marked “No” to Question 4(b)  
10 despite the fact that his 2009 DUI conviction, a misdemeanor, occurred within the past 10 years  
11 of the date he submitted his Application (January 24, 2017).

12 16. The questions asked on an application for licensure by the Commission have two  
13 primary purposes. The first purpose is to solicit information that is material to the qualification  
14 criteria of an applicant. Criminal history is material to the qualification criteria of an applicant  
15 because it may impact the determination of an applicant’s general character, integrity, and ability  
16 to participate in, engage in, or be associated with, controlled gambling. Criminal history may also  
17 impact whether the applicant poses a threat to the public interest of this state or the effective  
18 regulation and control of controlled gambling, or creates or enhances the danger of unsuitable,  
19 unfair, or illegal practices, methods, and activities in the conduct of controlled gambling or in the  
20 carrying on of the business and financial arrangements incidental thereto. The second purpose is  
21 to assess the applicant’s honesty, integrity, and candor by the truthfulness and thoroughness of the  
22 applicant’s responses.

23 17. On or about May 4, 2017, Herrera wrote an email to the Bureau regarding the  
24 circumstances surrounding his two DUI convictions and his failure to disclose the 2009 DUI  
25 conviction on his Application.

26 18. Regarding his failure to disclose the 2009 DUI conviction on his Application, Herrera  
27 wrote that he did not intend to withhold information related to the 2009 DUI conviction, but that  
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1 his failure to disclose was based on ignorance, uncertainty of the hiring process at Merced Poker  
2 Room (now Casino Merced), and confusion regarding what to disclose on the Application.  
3 Herrera also wrote that he felt he was partially advised not to worry about disclosing the  
4 conviction until the results of the fingerprint live scan report came back. He believed the live scan  
5 would find the exact dates of his convictions, and he did not want to put the wrong dates on the  
6 Application.

7 19. During the evidentiary hearing, Herrera testified that he knew about his 2009 DUI  
8 conviction at the time he filled out the Application. Herrera testified that his failure to disclose the  
9 2009 DUI conviction on his Application was based on the following: unfamiliarity with the  
10 application process; a lapse of judgment; wanting to work as soon as possible; believing that the  
11 fingerprint live scan report would find the conviction date for him; and laziness in not wanting to  
12 look up the specific dates of the DUI conviction. Herrera acknowledged that he made a mistake in  
13 failing to disclose the conviction and was sincerely apologetic.

14 20. Herrera failed to reveal facts that are material to his qualification for licensure and  
15 supplied information that is untrue and misleading as to a material fact pertaining to the  
16 qualification criteria by failing to disclose his 2009 DUI conviction on his Application and  
17 checking the box marked “No” to the question of whether he had been convicted of a  
18 misdemeanor within the past ten years. Herrera’s various explanations for failing to disclose the  
19 2009 DUI conviction on his Application are insufficient to excuse his failure to disclose,  
20 particularly in light of the fact that he testified that he knew about the 2009 DUI conviction at the  
21 time he filled out the Application. There was no evidence presented that Herrera did not  
22 understand Question 4(b) on the Work Permit Questionnaire. As a result, Herrera also  
23 demonstrated a lack of honesty by knowingly checking the box marked “No” to the question of  
24 whether he had been convicted of a misdemeanor within the past ten years.

25 21. Officer Rasmussen of the Merced Police Department was the police officer that pulled  
26 over Herrera’s vehicle on March 10, 2009, which ultimately led to Herrera’s second DUI  
27 conviction. In his narrative statement of the incident, Officer Rasmussen wrote that Herrera said  
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1 “no” when he asked Herrera if he had been drinking alcohol that night. Officer Rasmussen also  
2 wrote that Herrera appeared too impaired to drive a motor vehicle based on his performance of  
3 various field sobriety tests. Herrera’s blood alcohol content (BAC) was measured twice. The first  
4 time Herrera had a .11% BAC. The second time Herrera had a .10% BAC.

5 22. Regarding the circumstances surrounding his 2009 DUI conviction, Herrera wrote to  
6 the Bureau that he had consumed beer at a friend’s barbeque. He felt that he had spread out his  
7 drinks throughout the entire evening. Herrera wrote that in response to being questioned after his  
8 vehicle was pulled over by a police officer, Herrera “did not deny having a few drinks earlier.”  
9 He further wrote that he passed the field sobriety test, but his BAC was slightly over the legal  
10 limit. During the evidentiary hearing, Herrera testified that he told the police officer he had a  
11 couple of drinks over the last few hours. Herrera testified that he believes the police officer  
12 misunderstood him and that the police report contains a mistake.

13 23. Herrera’s testimony that he “did not deny having a few drinks earlier” conflicts with  
14 Officer Rasmussen’s narrative statement that Herrera denied having been drinking alcohol that  
15 night. The report of the Merced Police Department containing Officer Rasmussen’s narrative  
16 statement is the more reliable and credible record regarding the incident, especially in light of  
17 Herrera’s intoxication at the time of the incident, and Herrera’s statements that he passed the field  
18 sobriety test (Officer Rasmussen wrote that Herrera appeared too impaired to drive a motor  
19 vehicle based on his performance of various field sobriety tests) and that he was slightly over the  
20 legal limit (.11% and .10% BAC are not “slightly” over the legal limit). Herrera’s written  
21 statement to the Bureau and testimony during the evidentiary hearing regarding whether he  
22 informed the police officer that he had been drinking alcohol that night lacks credibility. As a  
23 result, Herrera demonstrated a lack of honesty when he told Officer Rasmussen that he had not  
24 been drinking and when he testified that he told the police officer that he had a couple of drinks  
25 over the last few hours.

26 24. Based on the foregoing, Herrera has failed to meet his burden of proving that he is a  
27 person of good character, honesty, and integrity.  
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1           33. The Commission has the power to deny any application for a license, permit, or  
2 approval for any cause deemed reasonable by the Commission. Business and Professions Code  
3 section 19824(b).

4           34. The Commission has the power to take actions deemed to be reasonable to ensure that  
5 no ineligible, unqualified, disqualified, or unsuitable persons are associated with controlled  
6 gambling activities. Business and Professions Code section 19824(d).

7           35. The burden of proving his or her qualifications to receive any license from the  
8 Commission is on the applicant. Business and Professions Code section 19856(a).

9           36. An application to receive a license constitutes a request for a determination of the  
10 applicant's general character, integrity, and ability to participate in, engage in, or be associated  
11 with, controlled gambling. Business and Professions Code section 19856(b).

12           37. At an evidentiary hearing pursuant to Business and Professions Code sections 19870  
13 and 19871 and CCR section 12060(b), the burden of proof rests with the applicant to prove his or  
14 her qualifications to receive any license under the Gambling Control Act. CCR section 12060(i).

15           38. No gambling license shall be issued unless, based on all of the information and  
16 documents submitted, the commission is satisfied that the applicant is a person of good character,  
17 honesty, and integrity. Business and Professions Code section 19857(a).

18           39. The commission shall deny a license to any applicant who is disqualified for the  
19 failure of the applicant to clearly establish eligibility and qualification in accordance with this  
20 chapter. Business and Professions Code section 19859(a).

21           40. The commission shall deny a license to any applicant who is disqualified for the  
22 failure of the applicant to provide information, documentation, and assurances required by this  
23 chapter or requested by the chief, or failure of the applicant to reveal any fact material to  
24 qualification, or the supplying of information that is untrue or misleading as to a material fact  
25 pertaining to the qualification criteria. Business and Professions Code section 19859(b).

26           41. An application for a work permit shall be denied by the Commission if the applicant  
27 meets any of the criteria for mandatory disqualification under Business and Professions Code  
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1 section 19859. CCR section 12105(a)(1).

2 42. An application for a work permit shall be denied by the Commission if the applicant is  
3 found unqualified pursuant to the criteria set forth in subdivisions (a) or (b) of Business and  
4 Professions Code section 19857. CCR section 12105(a)(2).

5 43. Herrera has not met his burden of proving that he is a person of good character,  
6 honesty, and integrity. Therefore, Herrera is unqualified for licensure pursuant to Business and  
7 Professions Code section 19857(a) and his Application must be denied pursuant to CCR section  
8 12105(a)(2).

9 44. Herrera has failed to reveal facts material to qualification, and has supplied  
10 information that is untrue or misleading as to material facts pertaining to the qualification criteria  
11 under the Gambling Control Act. Therefore, Herrera is disqualified from licensure pursuant to  
12 Business and Professions Code section 19859(b) and his Application must be denied pursuant to  
13 CCR section 12105(a)(1).

14 45. Given that Herrera is unqualified for licensure pursuant to Business and Professions  
15 Code section 19857(a) and disqualified from licensure pursuant to Business and Professions Code  
16 section 19859(b), Herrera has failed to clearly establish his eligibility and qualification for  
17 licensure in accordance with the Gambling Control Act. Therefore, Herrera is disqualified from  
18 licensure pursuant to Business and Professions Code section 19859(a) and his Application must  
19 be denied pursuant to CCR section 12105(a)(1).

#### 20 NOTICE OF APPLICANT'S APPEAL RIGHTS

21 Respondent Herrera has the following appeal rights available under state law:

22 CCR section 12064, subsections (a) and (b) provide, in part:

23 An applicant denied a license, permit, registration, or finding of suitability,  
24 or whose license, permit, registration, or finding of suitability has had  
25 conditions, restrictions, or limitations imposed upon it, may request  
26 reconsideration by the Commission within 30 calendar days of service of the  
27 decision, or before the effective date specified in the decision, whichever is  
28 later. The request shall be made in writing to the Commission, copied to the  
Bureau, and shall state the reasons for the request, which must be based  
upon either newly discovered evidence or legal authorities that could not  
reasonably have been presented before the Commission's issuance of the  
decision or at the hearing on the matter, or upon other good cause which the

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Commission may decide, in its sole discretion, merits reconsideration.

Business and Professions Code section 19870, subdivision (e) provides:

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

CCR section 12066, subsection (c) provides:

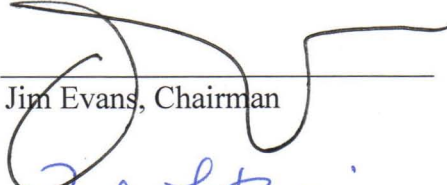
A decision of the Commission denying an application or imposing conditions on license shall be subject to judicial review as provided in Business and Professions Code section 19870, subdivision (e). Neither the right to petition for judicial review nor the time for filing the petition shall be affected by failure to seek reconsideration.

ORDER


1. Respondent Stephen Eric Herrera's Application for Initial Work Permit is DENIED.
2. No costs are to be awarded.
3. Each side to pay its own attorneys' fees.

This Order is effective on July 9, 2018.


Dated: 6/7/18

Signature:   
Jim Evans, Chairman

Dated: 6/7/18

Signature:   
Paula LaBrie, Commissioner

Dated: 6/7/18

Signature:   
Trang To, Commissioner