

1
2
3
4
5
6
7
8

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for a Finding
of Suitability, Tribal Key Employee
Regarding:

JOSHUA METCALFE

Respondent.

BGC Case No. BGC-HQ2017-0022SL
CGCC Case No. CGCC-2017-1005-10D

DECISION AND ORDER

Hearing Date: June 20, 2018
Time: 10:00 a.m.

9 This matter was heard by the California Gambling Control Commission (Commission)
10 pursuant to Business and Professions Code sections 19870 and 19871 and Title 4, California
11 Code of Regulations (CCR) section 12060, in Sacramento, California, on March 13, 2018.

12 Collin Wood (Wood), Deputy Attorney General, State of California, represented
13 complainant Stephanie Shimazu, Director of the Bureau of Gambling Control (Bureau),
14 Department of Justice, State of California.

15 Joshua Metcalfe (Respondent) represented himself at the hearing.

16 During the evidentiary hearing, Presiding Officer Russell Johnson took official notice of
17 the following: (1) Notice and Agenda of Commission Hearing; (2) Notice of Hearing with
18 attachments; (3) the Commission's Conclusion of Prehearing Conference letter; (4) Respondent's
19 Application for Finding of Suitability Tribal Key Employee and Level I Supplemental
20 Information; (5) the Bureau's Tribal Key Employee Background Investigation Report; (6) the
21 Bureau's Statement of Particulars; and (7) Respondent's signed Notice of Defense.

22 During the evidentiary hearing, Presiding Officer Russell Johnson accepted into evidence
23 the following exhibits offered by the Bureau:

24 (1) Statement of Particulars; Statement to Applicant; Excerpts of the California Business
25 and Professions Code and the California Code of Regulations; Certificate of Service by Certified
26 Mail, Bates Nos. 001-022;

27 (2) Notice of Defense, signed and dated October 24, 2017, Bates Nos. 023-024;
28

1 (3) Commission Memorandum, Notices and Letters: (a) October 11, 2017 Referral of
2 Tribal Key Finding of Suitability Application to an Evidentiary Hearing, Bates Nos. 025-026; (b)
3 December 28, 2017 Notice of Hearing and Prehearing Conference, Bates Nos. 027-041; (c) May
4 1, 2018, Conclusion of Prehearing Conference, Bates Nos. 042-049;

5 (4) Redacted copies of Respondent's Application for Finding of Suitability Tribal Key
6 Employee and Level I Supplemental Information (Application), Bates Nos. 050-060;

7 (5) Redacted copy of the Bureau of Gambling Control Tribal Key Employee Background
8 Investigation Report, Level II, July 2017, Bates Nos. 061-069;

9 (6) Redacted copy of Respondent's Equifax credit report dated November 5, 2015, Bates
10 Nos. 070-075;

11 (7) Redacted copy of the court records for the 2009 case of *People v. Joshua Metcalfe*,
12 including September 17, 2012 Order for Dismissal (Super. Ct. Tulare County, 2009, No.
13 PCM223977), Bates Nos. 076-081;

14 (8) Certified copies of the court records for the 2009 case of *People v. Joshua Metcalfe*,
15 including September 17, 2012 Order for Dismissal (Super Ct. Tulare County, 2009, No.
16 PCM223977), Bates Nos. 082-087;

17 (9) Redacted copies of the Porterville Police Department and California Highway Patrol
18 reports regarding the circumstances that led to the 2010 conviction in the case of *People v. Joshua*
19 *Metcalfe* (Super. Ct. Tulare County, 2009, No. PCM223977), Bates Nos. 088-126;

20 (10) Redacted copy of the court records for the 2006 case of *People v. Joshua Metcalfe*
21 (Super Ct. Tulare County, 2006, No. PCM155640), Bates Nos. 127;

22 (11) Certified copies of the court records for the 2006 case of *People v. Joshua Metcalfe*
23 (Super Ct. Tulare County, 2006, No. PCM155640), Bates Nos. 128-134;

24 (12) Redacted copies of the Tule River Tribe Gaming Commission background
25 investigation records, Bates Nos. 135-250.

26 During the evidentiary hearing, Presiding Officer Russell Johnson accepted into evidence
27 the following exhibits offered by Respondent:
28

- 1 A) Letter of reference by Matthew Mingrone, Bates Nos. 000001;
2 B) Letter of reference by Clint Gibson, Bates Nos. 000002;
3 C) Letter of reference by Brian Norrod, Bates Nos. 000003;
4 D) Letter of reference by Vivian Bernal, Bates Nos. 000004;
5 E) Letter of reference by Tyson Gibson, Bates Nos. 000005;
6 F) Letter of reference by Ronald Washington, Jr., Bates Nos. 000006;
7 G) Eagle Mountain Casino, Team Member Appraisal, 10/17/2017, Bates Nos. 000006-
8 000008;
9 H) Eagle Mountain Casino, Team Member Appraisal 4/28/2017, Bates Nos. 000009-
10 000010;
11 I) Eagle Mountain Casino, Employee Appraisal 10/31/2016, Bates Nos. 000011-000012;
12 J) Eagle Mountain Casino, Employee Appraisal, 3/25/2016, Bates Nos. 000013-000014;
13 K) Eagle Mountain Casino, Employee Appraisal, 4/13/2015, Bates Nos. 000015-000016;
14 L) Eagle Mountain Casino, Employee Appraisal, 9/16/2015, Bates Nos. 000017-000018;
15 M) Eagle Mountain Casino, Hourly Employee Appraisal Form, 03/05/07, 000019-000020.

16 FINDINGS OF FACT

- 17 1. Respondent is a Pit Boss at Eagle Mountain Casino, a key employee position that requires
18 him to submit a Finding of Suitability application to the Commission pursuant to the Tribal-State
19 Gaming Compact between the State of California and the Tule River Indian Tribe of the Tule
20 River Reservation (“Tribe”).
- 21 2. On May 12, 2006, Respondent was convicted of violating Vehicle Code section 23152,
22 subdivision (a), driving under the influence (DUI) of alcohol/drugs, Vehicle Code section 23152,
23 subdivision (b) driving with a blood alcohol content of .08 percent or higher, and Vehicle Code
24 section 12500, subdivision (a), driving without a valid license.
- 25 3. Respondent was hired by the Tribe in 2007 as a card dealer. The Tribe conducted a
26 background investigation to determine if Respondent was suitable for licensure. On March 22,
27 2007, the Chairman of the Tule River Tribe Gaming Association signed a background
28

1 investigation report concluding that based on the information reviewed, and the investigative
2 findings, and the applicants prior activities, criminal records, reputation, and associates, the Tribe
3 determined that Respondent was suitable and should be granted a license.

4 4. On July 21, 2009, Respondent was convicted of violating Vehicle Code section 20002,
5 subdivision (a), hit and run-property damage, a misdemeanor involving moral turpitude (“2009
6 Property Damage Misdemeanor).

7 5. In October 2010, Applicant was promoted to floor person. In May 2011, Applicant was
8 promoted again to pit boss, a key employee position. At that time, Respondent submitted an
9 application for finding of suitability as a tribal key employee.

10 6. According to the Bureau’s Statement of Particulars, on May 12, 2012, the Bureau sent
11 Respondent a pre-denial notification letter, advising him that the Bureau was recommending that
12 his 2011 application be denied because in 2009 he was convicted of a crime of moral turpitude. In
13 response, Applicant abandoned his Application and he was removed from his key employee
14 position.

15 7. In August 2012, Respondent filed a Motion to Dismiss pursuant to California Penal Code
16 section 1203.4, requesting that his 2009 Property Damage Misdemeanor conviction be dismissed.
17 The motion was granted on September, 17 2012 and Respondent’s plea of guilty or no contest
18 was ordered withdrawn and set aside and all charges were dismissed. Thereafter, Respondent
19 resumed working as a key employee.

20 8. According to the Bureau’s Statement of Particulars, the Tribe realized that Respondent did
21 not submit a new key employee application after his misdemeanor conviction was expunged and
22 he returned to key employee duties. Thus, Respondent submitted a new Key Employee
23 Application in July 2015.

24 9. On or about July 31, 2015, the Bureau received Respondent’s Application for Finding of
25 Suitability Tribal Key Employee dated July 13, 2015. On January 27, 2016 the Bureau received a
26 second Application for Finding of Suitability Tribal Key Employee and a Tribal Key Employee
27 Supplemental Background Investigation form from Respondent dated January 12, 2016,
28

1 (collectively, “Application”), to allow his employment as a Tribal Key Employee for the Tule
2 River Indian Tribe.

3 10. Respondent disclosed his convictions on his Application, except for the 2006 Vehicle
4 Code section 12500, subdivision (a), for driving without a license.

5 11. On or about July 2017, the Bureau issued its Tribal Key Employee Background
6 Investigation Report in which it recommended that Respondent be found suitable to be licensed
7 as a key employee.

8 12. At its October 5, 2017 meeting, the Commission voted to refer the consideration of
9 Respondent’s Application to a Gambling Control Act evidentiary hearing.

10 13. On or about October 24, 2017, Respondent submitted a Notice of Defense to the
11 Commission requesting an evidentiary hearing on the consideration of his Application.

12 14. On or about January 3, 2018, the Bureau filed a Statement of Particulars with the
13 Commission. The Statement provides that the Bureau is unaware of any facts or circumstances
14 that would indicate that Respondent currently poses a threat to either the safety of the gambling
15 public or the integrity of the controlled gambling industry.

16 15. The Commission heard CGCC Case No. CGCC-2017-1005-10D on June 20, 2018. The
17 Bureau was represented throughout the hearing by Deputy Attorney General Collin Wood.
18 Respondent represented himself at the hearing.

19 16. Respondent testified that he did not disclose the 2006 conviction for driving without a
20 license because he was not aware that he was convicted of that specific violation. Respondent did
21 disclose two other convictions that arose from the same incident of him driving under the
22 influence of alcohol.

23 17. Respondent testified that in 2009 he was approximately 21 years old and he lived with his
24 father and friend, Michael Velasquez (Velasquez). Velasquez, and Respondent worked the
25 graveyard shift at Eagle Mountain Casino. On April 26, 2009, Respondent borrowed Velasquez’s
26 truck to drive to Magic Mountain. Respondent had worked the graveyard shift on April 25 and
27 did not sleep before leaving for Magic Mountain.
28

1 18. Respondent testified that after spending the day at Magic Mountain, he went to an
2 acquaintance of a friend's house, and then drove back to Porterville. Respondent was very tired
3 and fell asleep while driving home. Respondent rolled Velasquez's truck into an open field and
4 damaged the vehicle.

5 19. Respondent testified that he was not drinking at the time that the accident occurred, but he
6 was scared, tired, and confused about his exact whereabouts. Respondent called his father and
7 Velasquez to tell them what occurred and ask for help.

8 20. Respondent's father and Velasquez came to pick him up. They left Velasquez's truck in
9 the field and drove home. Immediately upon arriving at home, Respondent went to bed and fell
10 asleep.

11 21. Respondent testified that when he woke up, his father and Velasquez told him that they
12 went to the police station that morning and reported the truck as stolen for "insurance purposes."
13 Respondent testified that he was not involved in the decision to report the vehicle stolen.

14 22. According to the Porterville Police Department Crime Report, Officer Aguilar was
15 dispatched to the front lobby of the Police Department to meet with Velasquez and Respondent's
16 father when they arrived to file a stolen vehicle report.

17 23. Officer Aguilar was advised by Porterville Police Department Communications that the
18 vehicle had been impounded by Bakersfield area California Highway Patrol because it had been
19 involved in a hit-and-run traffic accident.

20 24. According to the Porterville Police Department Supplemental Report, the case was
21 referred to Officer McGuire for investigation. On May 9, 2009, Officer McGuire went to
22 Velasquez and Respondent's residence.

23 25. When Officer McGuire arrived, he saw Respondent sitting on the porch outside of the
24 residence. Officer McGuire told Respondent that he needed to get a statement from Velasquez.
25 According to the Supplemental Report, Respondent appeared nervous and without being asked,
26 stated that he had nothing to do with Velasquez's stolen vehicle and he was at a party in Visalia
27 the entire night that the vehicle was stolen.

28

1 26. Respondent testified that he was not initially honest with Officer McGuire because he was
2 afraid of getting in trouble.

3 27. According to the supplemental report, after meeting with Respondent, the officer obtained
4 a warrant to obtain Respondent and Velasquez's cell phone records from April 26. The records
5 verified that Respondent was not in Visalia the entire evening. The records also contradicted
6 statements made by Velasquez when he reported the vehicle stolen.

7 28. According to Officer McGuire's Supplemental Report, on June 10, 2009, he advised
8 Respondent's father of his investigation. The report is not specific as to what information was
9 provided to Respondent's father. However, two days later, Respondent's father contacted Officer
10 McGuire and said that Respondent and Velasquez would meet him to provide a statement.

11 29. Respondent testified that the police came over and talked to him and his dad and
12 Respondent "came clean" and told the officer the truth about Velasquez's vehicle being involved
13 in an accident rather than being stolen.

14 30. Respondent testified that he has several regrets about this incident: (1) going to Magic
15 Mountain without sleeping the night before; (2) driving home from Magic Mountain when he was
16 very tired; (3) continuing to drive when he realized how tired he was when there were places he
17 could have pulled over to rest; (4) not calling the police to report the accident; (5) and his initial
18 dishonesty about the situation to Officer McGuire.

19 31. Respondent testified that he was charged and convicted with a hit-and-run for leaving the
20 scene of the accident. Respondent was required to pay Velasquez for the damage caused to the
21 vehicle. No other charges were filed against Respondent in relation to this incident.

22 32. Respondent testified that as far as he is aware, no charges were filed against Velasquez in
23 relation to his false report that the vehicle was stolen.

24 33. Respondent's testimony that he did not realize that he was charged with driving without a
25 license in 2006 was credible. Respondent disclosed two convictions relating to the same DUI
26 incident on his Application, so there was no intent to mislead or conceal information from the
27 Commission.

28

1 34. Respondent’s exhibits containing character references are persuasive that Respondent is
2 hard-working, dependable and a valuable employee and that he is generally honest and
3 trustworthy.

4 35. Respondent began working in the gaming industry in early 2007 and has been continually
5 employed in the industry ever since. Respondent has never been disciplined by his employers or
6 by gambling regulators. Respondent’s performance appraisals all rate him as “excellent” or
7 “exceeding expectations.”

8 36. Respondent’s conduct relating to the 2009 Property Damage Misdemeanor is very
9 concerning. However, the following mitigating circumstances were also considered by the
10 Commission in reaching this decision: Respondent’s young age at the time of the incident; the
11 absence of any arrests or convictions on Respondent’s record proceeding the 2009 conviction; the
12 fact that Respondent was not involved in making the false report; and the understandable
13 difficulty that a young adult, still living at home, would have in reporting the potential criminal
14 actions of a parent and roommate to law enforcement.

15 37. Respondent was candid and forthcoming while testifying at the hearing, including
16 regarding the circumstances surrounding his convictions. Respondent accepted responsibility for
17 his past actions and appeared remorseful.

18 38. Based on the foregoing, Respondent’s prior activities, criminal record, reputation, habits
19 and associations do not pose a threat to the public interest of this state, or to the effective
20 regulation and control of controlled gambling, or create or enhance the dangers of unsuitable,
21 unfair, or illegal practices, methods, and activities in the conduct of controlled gambling or in the
22 carrying on of the business and financial arrangements incidental thereto.

23 39. Respondent met his burden of proving that he is a person of good character, honesty, and
24 integrity. As a result, Respondent is qualified to receive a finding of suitability under Business
25 and Professions Code section 19857(a).

26 40. Respondent met his burden of proving that he is qualified for licensure pursuant to
27 Business and Professions Code section 19859.
28

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

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

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

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

12 11. No gambling license shall be issued unless, based on all of the information and
13 documents submitted, the commission is satisfied that the applicant is a person whose prior
14 activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the
15 public interest of this state, or to the effective regulation and control of controlled gambling, or
16 create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in
17 the conduct of controlled gambling or in the carrying on of the business and financial
18 arrangements incidental thereto. Business and Professions Code section 19857(b).

19 12. The commission shall deny a license to any applicant who is disqualified for licensure.
20 Business and Professions Code section 19859.

21 13. Every Gaming Employee shall obtain, and thereafter maintain current, a valid tribal
22 gaming license, and except as provided in subdivision (b), shall obtain, and thereafter maintain
23 current, a State Gaming Agency determination of suitability, which license and determination
24 shall be subject to biennial renewal. Tribal State Compact between the State of California and the
25 Tule River Indian Tribe of California section 6.4.3(a).

26 14. Investigation and disposition of applications for a determination of suitability shall be
27 governed entirely by State law, and the State Gaming Agency shall determine whether the
28

1 Applicant would be found suitable for licensure in a gambling establishment subject to the State
2 Gaming Agency's jurisdiction. Tribal State Compact between the State of California and the Tule
3 River Indian Tribe of California section 6.5.6(d).

4 15. Respondent met his burden of proving that he is a person of good character, honesty,
5 and integrity. As a result, Respondent is qualified to receive a finding of suitability under
6 Business and Professions Code section 19857(a).

7 NOTICE OF APPLICANT'S APPEAL RIGHTS

8 Respondent Joshua Metcalfe has the following appeal rights available under state law:
9 Title 4, CCR section 12064, subsections (a) and (b) provide, in part:

10 An applicant denied a license, permit, registration, or finding of suitability, or whose
11 license, permit, registration, or finding of suitability has had conditions, restrictions,
12 or limitations imposed upon it, may request reconsideration by the Commission
13 within 30 calendar days of service of the decision, or before the effective date
14 specified in the decision, whichever is later. The request shall be made in writing to
15 the Commission, copied to the Bureau, and shall state the reasons for the request,
16 which must be based upon either newly discovered evidence or legal authorities that
17 could not reasonably have been presented before the Commission's issuance of the
18 decision or at the hearing on the matter, or upon other good cause which the
19 Commission may decide, in its sole discretion, merits reconsideration.

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

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

21 Title 4, CCR section 12066, subsection (c) provides:

22 A decision of the Commission denying an application or imposing conditions on license
23 shall be subject to judicial review as provided in Business and Professions Code section
24 19870, subdivision (e). Neither the right to petition for judicial review nor the time for
25 filing the petition shall be affected by failure to seek reconsideration.
26
27
28

ORDER

1
2 1. Respondent Joshua Metcalfe's Application for a Finding of Suitability, Tribal Key
3 Employee is GRANTED.

4 2. No costs are to be awarded.

5 3. Each side to pay its own attorneys' fees.

6 This Order is effective on August 23, 2018.

7 Dated: 8/23/18

8 Signature: 
Jim Evans, Chairman

9
10 Dated: 8/23/18

11 Signature: 
12 Paula LaBrie, Commissioner

13 Dated: 8/23/18

14 Signature: 
15 Trang To, Commissioner

