

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

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

MELVYN DOUGLAS MCGOWAN

Applicant.

CGCC Case No. CGCC-2021-0624-12C
BGC Case No. BGC-HQ2021-00026SL

DECISION AND ORDER

Hearing Date: January 25, 2022
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, and held via Zoom video conference, on January 25, 2021.

Colin A. Wood (DAG Wood), Deputy Attorney General, State of California, represented complainant Yolanda Morrow, Acting Director of the Bureau of Gambling Control (Bureau), Department of Justice, State of California.

Melvyn McGowan (McGowan) appeared on his own behalf without representation.

During the evidentiary hearing, Presiding Officer Russell Johnson took official notice of the following: Notice and Agenda of Commission Hearing; the Commission’s Conclusion of Prehearing Conference letter; the Commission’s Notice of Hearing with two attachments: (1) Application for Finding of Suitability Tribal Key Employee and (2) the Bureau’s Tribal Key Employee Background Investigation Report; the Bureau’s Statement of Reasons; and McGowan’s signed Notice of Defense.

During the evidentiary hearing, Presiding Officer Russell Johnson accepted into evidence the following exhibits offered by the Bureau pursuant to a stipulation between the parties:

- 1) Statement of Reasons; Statement to Respondent; Excerpts of the California Business and Professions Code and the California Code of Regulations; and December 6, 2021, Certificate of Service by Certified Mail, Bates Nos. 001-

- 1 023;
- 2 2) Notice of Defense, Bates Nos. 024-025;
- 3 3) Notices from the Commission:
 - 4 a) June 28, 2021, Referral of Initial Tribal Key Employee Finding of
 - 5 Suitability Application to an Evidentiary Hearing-Melvyn McGowan,
 - 6 Bates Nos. 026-027;
 - 7 b) August 20, 2021, Notice of Hearing and Prehearing Conference, with
 - 8 Attachments A & B, Bates Nos. 028-048;
 - 9 c) December 14, 2021, Conclusion of Pre-Hearing Conference letter, Bates
 - 10 Nos. 049-059;
- 11 4) January 31, 2021, Application for Finding of Suitability of Tribal Key
- 12 Employee, with Tribal Key Employee Supplemental Background Investigation
- 13 Information, for Melvyn Douglas McGowan, Bates Nos. 060-068;
- 14 5) May 2021 Tribal Key Employee Background Investigation Report for Melvyn
- 15 Douglas McGowan, Bates Nos. 069-081;
- 16 6) License History and Certification of Official Records, Bates Nos. 082-083;
- 17 7) Employment Verification Documents, Bates Nos. 084-090;
- 18 8) Bankruptcy Documents, Bates Nos. 091-109;
- 19 9) Bureau Correspondence, Bates Nos. 110-141:
 - 20 a) March 19, 2021 Letter from Misty Trejo to Melvyn McGowan regarding
 - 21 Recommendation for Denial of Application for Finding of Suitability,
 - 22 Bates Nos. 110-111;
 - 23 b) Email dated March 30, 2022 between Melissa Avent and Neil Keller, Bates
 - 24 Nos. 112-115;
 - 25 c) March 29, 2021 Jamul Casino Team Member Action Notification, Bates
 - 26 No. 116;
 - 27 d) March 30, 2021, Letter from Misty Trejo to Dolores Olivarez/CGCC
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- 1 regarding Request for Withdrawal of Application for Finding of Suitability
2 for Tribal Key Employee Melvyn McGowan (TRKE-020770), Bates Nos.
3 117-124;
- 4 e) April 29, 2020 Letter from Melissa Avent to Melvyn Hines regarding
5 Additional Information and/or Documentation Required, Bates Nos. 125-
6 127;
- 7 f) Email Correspondence dated April 27, 2020 through May 12, 2020, Bates
8 Nos. 128-133;
- 9 g) June 24, 2020 Letter from Melissa Avent to Melvyn Hines regarding
10 Additional Information and/or Documentation Required, Bates Nos. 134-
11 135;
- 12 h) Email Correspondence dated June 25, 2020 through July 3, 2020, Bates
13 Nos. 136-140;
- 14 i) Email dated July 15, 2021 from Melissa Avent to Johnny Ballon, Bates No.
15 141;
- 16 10) CGCC Memos/Correspondence, Bates Nos. 142-151:
- 17 a) April 21, 2021 Letter from Shana Marquez to Melvyn McGowan regarding
18 Notification of Scheduled Commission Meeting (TRKE-020770), Bates
19 No. 142;
- 20 b) May 6, 2021 CGCC Licensing Division Memorandum, Bates Nos. 143-
21 145;
- 22 c) May 12, 2021 Letter from Shana Marquez to Melvyn McGowan regarding
23 Finding of Suitability for Melvyn McGowan (TRKE-020770), Bates No.
24 146;
- 25 d) June 14, 2021 Letter from Amy Arndt to Melvyn McGowan regarding
26 Notification of Scheduled Commission Meeting (TRKE-020770), Bates
27 No. 147; and
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1 e) June 24, 2021 CGCC Licensing Division Memorandum, Bates Nos. 148-
2 151.

3 During the evidentiary hearing, Presiding Officer Russell Johnson accepted into evidence
4 the following exhibit offered by McGowan pursuant to a stipulation between the parties:

5 A) December 23, 2021, character reference by John Hayward for McGowan.

6 The record was closed and the matter was submitted on January 25, 2022.

7 FINDINGS OF FACT

8 **Procedural History**

9 1. McGowan has been employed by the Jamul Casino since February 2019.
10 McGowan was issued a Tribal Key Employee License, TRKE-020770 by the Jamal Indian
11 Village of California (“Tribe”) on or about November 2, 2017, which allowed McGowan to work
12 as a poker dealer at the Jamul Casino.

13 2. As required by the Tribal-State Gaming Compact between the State of California
14 and the Tribe, McGowan submitted an Application for Finding of Suitability Tribal Key
15 Employee and a Tribal Key Employee Supplemental Background Investigation Information form
16 (collectively referred to as “Application”) to the Bureau on or about April 24, 2019. The
17 Application was signed on January 25, 2019.

18 3. On March 26, 2021, Bureau staff met with McGowan by phone to inform him
19 generally of the basis of the Bureau’s recommendation to deny his Application.

20 4. On March 30, 2021, after transferring McGowan to a non-key position, the Jamul
21 Tribal Gaming Commission submitted a request to the Bureau to abandon the Application. On
22 March 30, 2021, the Bureau submitted a request to the Commission to withdraw McGowan’s
23 Application.

24 5. On May 6, 2021, the Commission denied the request to withdraw McGowan’s
25 Application and directed the Bureau to complete McGowan’s background investigation.

26 6. On or about May 25, 2021, the Bureau issued its Tribal Key Employee
27 Background Investigation Report, Level III, in which it recommended that the Commission deny
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1 the Application.

2 7. On June 24, 2021, the Commission referred consideration of the Application to an
3 evidentiary hearing to be conducted as a Gambling Control Act hearing pursuant to California
4 Code of Regulations, Title 4, Division 18, Chapter 1, section 12060.

5 8. On or about July 6, 2021, Applicant submitted a Notice of Defense form to the
6 Commission requesting an evidentiary hearing on the consideration of his Application.

7 9. On August 20, 2021, a Notice of Hearing was sent to DAG Wood and McGowan
8 stating that an evidentiary hearing would be held before the Commission by means of video
9 conferencing using Zoom on January 25, 2021 and a prehearing conference would be held on
10 December 13, 2021.

11 10. On or about December 7, 2021, The Commission received the Bureau's Statement
12 of Reasons. In the Statement of Reasons, the Bureau requests that the Commission deny the
13 Application based on the allegation that McGowan provided untrue or misleading information on
14 the Application regarding his reasons for leaving employment at Seven Mile Casino.

15 11. On December 13, 2020, the noticed Prehearing Conference was held before
16 Presiding Officer Russell Johnson, Attorney III of the Commission. DAG Wood attended on
17 behalf of the Bureau. McGowan attended on his own behalf without representation.

18 12. The Commission held the Gambling Control Act evidentiary hearing on this matter
19 via Zoom video conference on January 25, 2021. The Bureau was represented by DAG Wood and
20 McGowan appeared on his own behalf without representation.

21 **Applicant's Employment History in Controlled Gambling**

22 13. McGowan has been working in the controlled gambling industry since
23 approximately 2007. McGowan worked at casinos and cardrooms in Nevada, Maryland, and
24 California in a variety of positions, including as a dealer and a supervisor.

25 14. McGowan worked at the Seven Mile Casino in California as a poker dealer from
26 May 5, 2018, until January 11, 2019.

27 15. On the Application, McGowan stated that his reason for leaving employment at
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1 Seven Mile Casino was “job at new casino.”

2 16. McGowan began working at the Jamul Casino in February 2019. He started as a
3 poker supervisor and was then transferred to a poker dealer position as of March 30, 2021.

4 17. During the course of the Bureau’s background investigation, it was determined
5 that McGowan was terminated from Seven Mile Casino. On his application for a license with the
6 Tribal Gaming Commission, McGowan stated that he left his employment with Seven Mile
7 Casino because he “accepted position at Jamul.” On the Jamul Casino employment application,
8 McGowan wrote that his reason for leaving Seven Mile Casino was “unhappy with work
9 conditions.”

10 18. The Bureau Report disclosed no derogatory employment history for McGowan
11 other than his termination from Seven Mile Casino.

12 **Termination from Seven Mile Casino**

13 19. As part of the Bureau’s background investigation, a request for employment
14 verification was submitted to Seven Mile Casino. The Human Resource Manager at Seven Mile
15 Casino filled out and returned the form stating that McGowan was terminated for “violation of
16 company policy, industry standards, and guest services standards by creating a loud disruption
17 and leaving a deck of cards unprotected during a live hand while having a dispute with a player
18 over the result of a hand that had been dealt.”

19 20. On June 24, 2020, during the course of the Bureau’s background investigation,
20 McGowan was asked to provide a written statement explaining the circumstances that led to his
21 termination from Seven Mile Casino and the reason that he did not disclose the termination on his
22 Application.

23 21. On July 3, 2020, McGowan provided a lengthy and detailed written statement to
24 the Bureau explaining the circumstances leading to his termination from Seven Mile Casino. The
25 statement provides that on McGowan’s Monday night shift, he was the dealer at a poker table
26 when an argument erupted between two players, requiring McGowan to deal around the players
27 as they argued. In the commotion, a new player sat down in a position that required him to make a
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1 mandatory payment in order to get dealt into the game. McGowan accidentally dealt the new
2 player in without requiring him to make the payment. On the next hand, the player who lost the
3 pot in the previous hand stopped the action and asked if McGowan had required the new player to
4 post the required payment. McGowan admitted that he had made a mistaken and not collected
5 payment from the new player prior to dealing him into the game. McGowan asked the player to
6 wait until the hand was over so that McGowan could call the floor supervisor to handle the
7 situation. The player began to put his finger in McGowan's face and yell at him. McGowan called
8 for the floor supervisor, Kathy, to come to the table to assist him as the player became more
9 aggressive. Kathy had already been to the table several times that day and waved McGowan off
10 and said she wasn't going to deal with these patrons again. McGowan became afraid that the
11 player was going to hit him. Eventually, a security guard saw the commotion and came to the
12 table to assist. The rest of the shift finished without any further incident.

13 22. According to McGowan's written statement, the next day, poker manager Dale
14 Wolfe told McGowan that it was unacceptable for him to set the deck down and stop the game
15 while he waited for assistance from Kathy. Mr. Wolfe told McGowan that he was suspended until
16 further notice. On Friday, McGowan called the Human Resource office to see if he should report
17 to work for his scheduled shift. McGowan was told to report for a meeting and to bring his
18 uniform. When McGowan arrived, security was waiting for him and gave him a final paycheck
19 and told him that he was terminated. McGowan wrote that this was his first disciplinary action at
20 Seven Mile Casino. McGowan also wrote that although the stated reason for his termination was
21 that he set the deck down unprotected, McGowan believed that he set the deck down in the
22 normal location to place it when a hand is finished and the deck was never out of his reach or
23 control.

24 23. Jeff Osgood, a former Dual Rate Supervisor at Seven Mile Casino, testified at the
25 hearing on McGowan's behalf. Mr. Osgood testified that he has known McGowan for
26 approximately 16 years, and they worked together at Jamul Casino, Seven Mile Casino, and
27 Caesar's Palace.

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1 24. Mr. Osgood worked at Seven Mile Casino when McGowan was terminated.
2 Although Mr. Osgood did not personally see the incident leading to McGowan's termination
3 occur, he spoke to approximately twenty people who witnessed the incident, including other
4 supervisors. Mr. Osgood testified that based on his discussions with witnesses to the incident, he
5 was in complete disagreement with McGowan's termination.

6 25. Mr. Osgood testified that in his opinion, the floor manager, Kathy, should have
7 been disciplined, but not McGowan. Mr. Osgood further testified that there were unusual
8 circumstances involved in McGowan's termination because Kathy was the Chief Financial
9 Officer's (CFO) mother; and the CFO, rather than Human Resources, made the decision to
10 terminate McGowan. Mr. Osgood also testified that McGowan's termination was also unusual in
11 that progressive discipline was not used and McGowan was terminated after one incident despite
12 having no prior reprimands.

13 26. Mr. Osgood explained that under normal circumstances, when a dealer has a
14 conflict with a patron, the floor supervisor is called to the table to help the dealer. The supervisor
15 should come right away and deescalate the situation and if needed call security. The dealer is
16 required to stay in his seat for procedural reasons. Mr. Osgood testified that multiple people told
17 him that McGowan's table was out of control all day, which should have been addressed by
18 security or the supervisor earlier in the day.

19 **Failure to Disclose Termination from Seven Mile Casino**

20 27. McGowan's July 3, 2020, written statement to the Bureau also explained his
21 reason for not disclosing the termination on the Application. McGowan stated that he believed he
22 was wrongfully terminated and tried to set up a meeting with the Human Resource Department
23 for Seven Mile Casino. However, his calls were not returned. McGowan stated that he disclosed
24 the termination during his employment interview at Jamul Casino. After passing his initial
25 employment verification and background, McGowan was called back to Jamul Casino to fill out
26 forms as a key employee. McGowan did not think that he needed to state that he was terminated
27 from Seven Mile Casino because he had already explained the circumstances to his supervisor.
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1 28. At the evidentiary hearing, McGowan provided further testimony regarding his
2 belief that he was wrongfully terminated and that he might be able to get his job back at Seven
3 Mile Casino. McGowan testified that he felt his termination was extremely unfair and due to
4 favoritism shown towards the CFO's mother, Kathy. McGowan testified that after he was
5 terminated, he contacted Human Resources to determine whether he could appeal the termination
6 decision. McGowan also met with an attorney to discuss the possibility of filing a wrongful
7 termination lawsuit. While McGowan's efforts to regain his employment at Seven Mile Casino
8 were ultimately unsuccessful, he was initially hopeful that he could get his job back if he was
9 given an opportunity to explain his side of the story.

10 29. McGowan testified that he had a very short time period in which to complete the
11 necessary applications to work at Jamul Casino and during that time, he was also exploring
12 options to get his job back at Seven Mile Casino. When McGowan filled out the Application,
13 Jamul Casino's poker room was within a week of opening and he was in a rush to complete the
14 paperwork by the given deadline.

15 30. McGowan admitted that he did not indicate on the Jamul Casino employment
16 application that he was terminated from Seven Mile Casino. However, he told the hiring
17 supervisor during his employment interview what had occurred. McGowan did not think that he
18 was hiding the Seven Mile Casino termination from the Jamul Casino hiring authorities. He felt
19 that he had told his supervisor at Jamul and would have a further opportunity to explain during
20 the Tribe's background investigation process.

21 31. McGowan testified that he did not understand that the background investigation
22 done by the Bureau and Tribe were completely separate. McGowan believed he would be able to
23 explain the circumstances of his termination and efforts to challenge the termination during the
24 background investigation process. Since McGowan had shared the information regarding his
25 termination from Seven Mile Casino with his supervisor at Jamul Casino during the interview
26 process, he believed the Bureau would have the same information.

27 32. McGowan's supervisor, John Rochfort, Poker Manager, provided a statement to
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1 the Bureau dated May 12, 2021, stating that during the interview process in January 2019,
2 McGowan disclosed to him the circumstances regarding his termination from Seven Mile Casino.
3 Mr. Rochfort did not consider the termination to be a disqualifying factor and moved forward in
4 the hiring process with McGowan.

5 **Assessment of McGowan's Suitability for Licensure**

6 33. McGowan submitted a character reference letter from John Hayward. Mr.
7 Hayward wrote that he hired McGowan in December of 2015 as a poker dealer at the Caesar's
8 Palace in Las Vegas. At that time, Mr. Hayward was a shift manager and McGowan quickly
9 caught his attention as a knowledgeable and capable dealer. McGowan was given the opportunity
10 to supervise and quickly proved able to run a shift. McGowan demonstrated a dedication to
11 learning and growing in his position and proved to be both responsible and reliable in all of his
12 job duties. McGowan required little supervision, yet promptly reported issues to management.
13 Mr. Hayward wrote that if given the opportunity to hire McGowan for a future endeavor,
14 McGowan would be at the top of Mr. Hayward's list because he values McGowan's ability and
15 character.

16 34. Mr. Osgood also testified regarding McGowan's character and work ethic. Mr.
17 Osgood testified that he and McGowan have been each other's supervisors and have also been
18 colleagues in different positions. Mr. Osgood testified that McGowan is reliable, a hard worker,
19 and an excellent employee. Mr. Osgood has enjoyed working with McGowan and would hire him
20 if he ran a business.

21 35. The character reference letter by Mr. Hayward and the testimony of Mr. Osgood
22 are collectively persuasive that McGowan is a reliable and hardworking employee with many
23 positive attributes. Additionally, Mr. Osgood and McGowan's testimony regarding the unusual
24 circumstances surrounding McGowan's termination, including likely favoritism towards Kathy
25 based on nepotism, was also credible. Therefore, McGowan's termination does not reflect
26 negatively on his character. Based on the foregoing, McGowan has met his burden of proving that
27 he is a person of good character, honesty, and integrity.
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1 be governed entirely by State law, and the State Gaming Agency shall determine whether the
2 applicant would be found suitable for licensure in a gambling establishment subject to the State
3 Gaming Agency's jurisdiction. (Tribal State Compact between the State of California and the
4 Jamul Indian Village of California section 6.5.6, subdivision (c).)

5 40. Division 1.5 of the Business and Professions Code, the provisions of which govern
6 the denial of licenses on various grounds, does not apply to licensure decisions made by the
7 Commission under the Gambling Control Act. (Business and Professions Code section 476,
8 subdivision (a).)

9 41. Public trust and confidence can only be maintained by strict and comprehensive
10 regulation of all persons, locations, practices, associations, and activities related to the operation
11 of lawful gambling establishments and the manufacture and distribution of permissible gambling
12 equipment. (Business and Professions Code section 19801, subdivision (h).)

13 42. A "finding of suitability" means a finding that a person meets the qualification
14 criteria described in subdivisions (a) and (b) of Section² 19857, and that the person would not be
15 disqualified from holding a state gambling license on any of the grounds specified in Section
16 19859. (Business and Professions Code section 19805, subdivision (j).)

17 43. The Commission has the responsibility of assuring that licenses, approvals, and
18 permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose
19 operations are conducted in a manner that is inimical to the public health, safety, or welfare.
20 (Business and Professions Code section 19823, subdivision (a)(1).)

21 44. An "unqualified person" means a person who is found to be unqualified pursuant
22 to the criteria set forth in Section 19857, and "disqualified person" means a person who is found
23 to be disqualified pursuant to the criteria set forth in Section 19859. (Business and Professions
24 Code section 19823, subdivision (b).)

25 45. The burden of proof is always on the applicant to prove his, her, or its
26 qualifications to receive any license or other approval under the Gambling Control Act. (Business

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28 ² All references to statute herein refer to the California Business and Professions Code unless
otherwise stated.

1 and Professions Code section 19856; CCR section 12060, subdivision (i).)

2 46. McGowan has met his burden of proving that he is a person of good character,
3 honesty, and integrity. As a result, McGowan is qualified to receive a finding of suitability under
4 Section 19857, subdivision (a).

5 47. McGowan has met his burden of proving that he is a person whose prior activities,
6 criminal record, if any, reputation, habits, and associations do not pose a threat to the public
7 interest of this state, or to the effective regulation and control of controlled gambling, or create or
8 enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the
9 conduct of controlled gambling or in the carrying on of the business and financial arrangements
10 incidental thereto. As a result, McGowan is qualified to receive a finding of suitability under
11 Section 19857, subdivision (b).

12 48. McGowan has also met his burden of proving that his failure to disclose the fact
13 that he was terminated from Seven Mile Casino on the Application was not based on an intent to
14 conceal information, or provide untrue or misleading information to the Bureau. As a result,
15 McGowan is not disqualified from licensure pursuant to Section 19859, subdivision (b).
16 McGowan has further met his burden of proving that he is not disqualified from holding a state
17 gambling license on any of the additional grounds specified in Section 19859.

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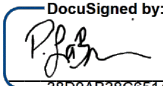
ORDER

1. Melvyn Douglas McGowan’s Application for a Tribal Key Employee Finding of Suitability is APPROVED.

2. No costs are awarded.

3. Each side to pay its own attorneys’ fees.

This Order is effective on March 22, 2022.

Dated: 3/22/2022 Signature: 
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Paula LaBrie, Chair

Dated: 3/22/2022 Signature: 
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Cathleen Galgiani, Commissioner

Dated: 3/22/2022 Signature: 
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Eric Heins, Commissioner

Dated: 3/22/2022 Signature: 
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William Liu, Commissioner

Dated: 3/22/2022 Signature: 
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Edward Yee, Commissioner