

Work Permit Hearings

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The gaming industry employs approximately 160,000 people who work in varied and diverse occupations throughout Nevada. Of those, approximately 60,000 must have a work permit to be employed in positions that deal most directly with the handling of gaming funds and integrity of the games. The reason for this is based on the public policy set forth within Nevada Revised Statutes (NRS) § 463.0129(1) (1993):

The continued growth and success of gaming is [sic] dependent upon public confidence and trust that licensed gaming is conducted honestly and competitively, . . . and that gaming is free from criminal and corruptive elements. Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments. . . .

The requirement for a work permit is contained within NRS 463.335(2). The vast majority of work permits are issued by city or county law enforcement agencies such as the Las Vegas Metropolitan Police Department and the Reno Police Department. It is only in rare instances, and only in rural areas, that the State Gaming Control Board (Board) acts as the issuing authority.

When an applicant applies for a work permit, the issuing agency has considerable discretion in denying it or conditioning it. Whether it is a new application or the renewal of an expired work permit, the agency is required under NRS 463.335(4) to forward a copy of the application to the Board within twenty-four hours of filing. The Board then has ninety days from receipt of the application to issue an objection. Consequently, gaming work permits are temporary for at least ninety days while the Enforcement Division investigates to decide whether to object.

While the Board has discretion to object to the issuance of a work permit or refuse to issue a work permit for any cause deemed reasonable, NRS 463.335(8) provides specific criteria for objection or refusal if the applicant has:

- (a) Failed to disclose or misstated information or otherwise attempted to mislead the board with respect to any material fact contained in the application for the issuance or renewal of a work permit;
- (b) Knowingly failed to comply with the provision of this chapter or chapter 463B, 464, or 465 or the regulations of the commission at a place of previous employment;
- (c) Committed, attempted or conspired to commit any crime of moral turpitude, embezzlement or larceny or any violation of any law pertaining to gaming, or any crime which is inimical to the declared policy of this state concerning gaming;
- (d) Committed, attempted or conspired to commit a crime which is a felony or gross misdemeanor in this state or an offense in another state or jurisdiction which would be a felony or gross misdemeanor if committed in this state;
- (e) Been identified in the published reports of any federal or state legislative or executive body as being a member or associate of organized crime, or as being of notorious and unsavory reputation;
- (f) Been placed and remains in the constructive custody of any federal, state or municipal law enforcement authority; or
- (g) Had a work permit revoked or committed any act which is grounds for the revocation of a work permit or would have been a ground for revoking his work permit if he had then held a work permit.

In the administration of this law, the Enforcement Division has further defined many of the terms used in the statutes by setting down more specific criteria for uniform and fair evalu-

ation of work permit applicants. The following general areas are used when objecting to or denying the issuance of a work permit:

- ♦ Having committed, conspired or attempted to cheat at gambling, to embezzle from a licensed gaming establishment, or to violate any law pertaining to gaming in any jurisdiction within the last ten years; or
- ♦ Having committed, conspired or attempted to commit any crime of theft which is a felony or gross misdemeanor, including robbery, burglary, embezzlement, larceny, within the last ten years or if a person has committed, conspired or attempted to commit any crime of theft which is a misdemeanor, including petit embezzlement, petit larceny, shoplifting, within the last three years.

Any crime of theft ranging from shoplifting to grand larceny is considered a serious offense. However, cheating or stealing in a gaming establishment are by far the most severe. Depending upon the act and an applicant's culpability, these offenses could conceivably preclude one from ever obtaining a work permit.

- ♦ Having committed, conspired or attempted to commit any violent crime within the last ten years.

To comply with the public policy of ensuring that the industry is free from criminal and corruptive elements and that the public trust and confidence are maintained, the Board is reluctant to approve a work permit for an applicant involved in crimes such as murder, rape, assault, and child abuse.

- ♦ Having committed, conspired or attempted to distribute or sell illegal narcotics within the last ten years.

Illegal narcotics are also a threat to the gaming industry and are treated as such by the Board. The illegal use of drugs can be an expensive activity. Because gaming employees are exposed to substantial amounts of cash, they must be treated as a potential risk if they are using drugs. Moreover, those involved in the sale of illegal drugs, particularly individuals selling to gaming employees, are considered a major threat to the industry.

- ♦ Being on parole or probation.

The Board is very concerned with those who are on parole or probation. Obviously, public trust and confidence would not be maintained if probationers and parolees were regularly employed in the industry.

It is important to note that the listed conditions are guidelines, and are only a portion of the factors considered. The Enforcement Division evaluates an applicant's entire background before making a final determination. For instance, mitigating circumstances such as fulfillment of court-imposed sanctions, compliance with parole and probation requirements and the frequency, severity, and recency of criminal activity are also assessed. Because there are so many variables, each applicant must be evaluated on a case-by-case basis. The final authority for lodging an objection lies with the Board, or the Board may delegate the function to the Enforcement Division Chief. The current policy gives the Chief the responsibility to ensure neutrality in the hearing process.

The applicant has the right to request a hearing concerning the denial of or objection to the issuance of a work permit. This must be accomplished within sixty days of the notice to the applicant of the objection.

The law gives individual Board members the option of conducting the hearing themselves, or appointing a hearing examiner to conduct the hearing in their place. The Board has elected to appoint a full-time hearing examiner to perform this function. The hearing examiner

conducts the hearing, reviews the testimony and evidence, and then makes a recommendation to the Board. The Board is not bound by the hearing examiner's recommendation, but takes it into consideration when making its decision. The Board may sustain or reverse the objection to the issuance of the work permit. Another fairly new option is to reverse the objection and allow for the issuance of a limited (conditioned) work permit. The limited period allows for restricting where and in what capacity an applicant may be employed as well as ordering random substance abuse testing.

Once a request for a hearing is received by the hearing examiner, every effort will be made to schedule a hearing within one month. Hearings are conducted throughout the state depending upon the location of the applicant. To accommodate the needs of applicants in remote areas, all or part of the hearings may be conducted by telephone.

There are two types of work permit hearings. The first is conducted pursuant to NRS 463.335(7) within sixty days of the objection. The second is a reconsideration hearing conducted pursuant to Nevada Gaming Commission Regulation 4.175. Both are conducted similarly. At the hearing, the hearing examiner will take any testimony deemed necessary. Specifically, the applicant's arrest history is reviewed in its entirety. Each arrest is discussed beginning with the first and ending with the most recent. An enforcement agent

provides the date, charge, disposition, and a brief summary of the circumstances surrounding the arrest. The applicant then has the opportunity to give their version of the incident. The arrests discussed in the hearing are not limited to only those used as grounds for the objection, but include all arrests regardless of their disposition.

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In addition to an in-

depth discussion of the applicant's criminal history, the hearing officer also takes testimony regarding the applicant's failure, or alleged failure, to properly fill out an application for a work permit. Due to the voluminous number of applications filed, the Board must rely heavily on the information provided by applicants. Therefore, the Board requires full disclosure — any omission or attempted deceit will result in an objection.

In many instances, a major contributing element to the applicant's criminal history is chemical dependency. If this is the case, the applicant will be required to detail the chronology of their involvement with drugs or alcohol, the severity of their addiction, and the measures they have taken to control their dependency. It is important to review these factors to determine whether the applicant continues to pose a threat to the industry. For instance, an applicant with an extensive arrest record directly attributable to a crack cocaine addiction will be questioned extensively concerning any treatment received and recency of drug use. If only six months have passed since the last usage, it would be difficult to conclude with confidence that the applicant would remain drug-free. However, if three years have passed and the applicant has attended drug counseling, then perhaps it could be concluded that the chance of relapse is more remote.

An overview of the applicant's work and family history is also addressed in the hearing. Often an applicant's stable employment record and responsible family history will mitigate a single indiscretion. In determining about whether an individual poses a threat to the gaming industry, it is imperative to look at their entire lifestyle.

It is the responsibility of the applicant to arrange for any witnesses testifying in their behalf. As a matter of policy, the Board does not issue subpoenas in work permit matters.

In hearings conducted pursuant to NRS 463.335(7), the Board is required to issue a decision within forty-five days of the hearing. As a result, all of the work permit cases are decided by the Board at the monthly meeting following the hearing. The hearing examiner submits a written recommendation and the entire record to the Board members for their review approximately one week before their meeting.

The Board meeting is an open, public meeting and anyone may attend. However, the Board's vote is generally based on the record established in the hearing without the need for further testimony, evidence, or argument at the Board meeting.

Following the meeting, the applicant will receive the Board's written decision. If the decision is to reverse the objection or reverse with a limited work permit, the applicant may obtain a work permit from the issuing authority. On the other hand, if the Board's decision is to sustain the objection, the applicant may, within fifteen days of the decision, appeal the Board's decision to the Nevada Gaming Commission (Commission). Under NRS 463.335(9), "review is limited to the record of the proceedings before the board," and the Commission may then sustain, reverse, or modify the Board's decision. The Commission encourages the applicant to attend the meeting and answer questions regarding the record.

In fiscal year 1993, the Enforcement Division processed approximately 60,000 work permit applications of which nearly 550 resulted in objections. Of the 550 objections, 91 of the applicants requested and received hearings pursuant to NRS 463.335(7). Of those, 77 objections were sustained, 12 were reversed, and 2 were reversed with the issuance of a limited work permit.

If the applicant does not request a hearing within sixty days of the objection, or if the Board and/or Commission sustains the objection, the applicant must wait for one year from the day of the last action to file an application with the Commission for reconsideration. These are reconsideration hearings conducted pursuant to Regulation 4.175.

Following a reconsideration hearing, the hearing examiner submits a recommendation to the Board for its vote. The Board's vote, in turn, is submitted to the Commission in the form of a recommendation. The Commission makes the final decision. If the decision is to sustain the objection, the applicant must wait five years before the Commission can entertain another request for a hearing. During that time, the applicant cannot work as a gaming employee in Nevada.

In fiscal year 1993, 78 hearings were held pursuant to Regulation 4.175. Of those, 56 objections were sustained, seventeen reversed, and 5 were reversed with the issuance of a limited work permit.

The work permit process helps to preserve the integrity of gaming in Nevada. At the same time, however, it is realized that the gaming industry is a primary employer for the State and that gaming employee positions are highly sought after and extremely important to the individuals employed in them. Consequently, the Board and Commission go to great lengths to evaluate each case judiciously and fairly.