

ORDER 2007-76

**AN ORDER OF THE INDIANA GAMING COMMISSION
CONCERNING THE REQUEST FOR WAIVER OF
FELONY DISQUALIFICATION OF LUCETTE MARIE ABELL
FW-07-06**

The Indiana Gaming Commission having reviewed this matter and the attached Findings of Fact hereby **ADOPTS THE RECOMMENDATION** of the review officer granting Ms. Abell's request for a waiver of her felony disqualification.

IT IS SO ORDERED THIS THE 13TH DAY OF SEPTEMBER, 2007.

THE INDIANA GAMING COMMISSION:


William W. Barrett, Chair

ATTEST:


Tim Murphy, Vice Chair

**INDIANA GAMING COMMISSION
REQUEST FOR WAIVER OF FELONY CONVICTION DISQUALIFICATION
OF LUCETTE M. ABELL
FW-07-06**

FINDINGS OF FACT AND RECOMMENDATION

Adam F. Packer, Staff Attorney for the Indiana Gaming Commission (“Commission”) and review officer for the request for a felony waiver of Ms. Lucette M. Abell makes the following report:

LEGAL AND PROCEDURAL BACKGROUND

1. Petitioner, Lucette M. Abell, currently works as a telephone systems operator at French Lick Resort • Casino. On or about May 23, 2007, Ms. Abell applied for a level 3 occupational license as a front desk operator. Front desk operators must be licensed if they handle room, food, or other comps for awards club-type patrons.
2. Ms. Abell disclosed in her application that, on December 4, 2000, she was arrested for felony DUI (repeat offense) in Harrison County, Indiana. She disclosed two other DUI arrests (February 26, 2000 and July 13, 1999) and a public intoxication arrest (June 15, 2000) that all resulted in guilty pleas.
3. Pursuant to ~~Indiana Code 4-33-8-3~~, the Commission may not issue a license to an individual who has been convicted of a felony. On that basis, Commission staff denied Ms. Abell’s application.
4. On or about May 31, 2007, Ms. Abell submitted a felony waiver application to the Commission staff.
5. On June 11, 2007, Keith Schnulle, Vice President of Human Resources for French Lick Resort • Casino, wrote a letter to Commission staff in satisfaction of 68 IAC 2-4-1 and Indiana Code 4-33-8-11(c)(10).
6. Executive Director Ernest Yelton appointed the undersigned, an attorney on the Commission’s staff, to serve as the review officer in this matter.
7. On June 28, 2007, the undersigned conducted a hearing regarding Ms. Abell’s petition.
8. At the hearing, Ms. Abell appeared *pro se*. She offered her testimony and the testimony of a witness, a certain Susan Deaton, in support of her request.

9. The undersigned recorded the hearing. The resulting digital file is part of the record in this matter.
10. The Commission may only waive a felony disqualification if the individual qualifies for a waiver in accordance with Indiana Code 4-33-8-11. Ms. Abell qualifies for a waiver under subsection (f) of that section in that her felony is not among those listed for either a lifetime or ten (10) year ban, and it has been at least five (5) years since the discharge of her sentence.
11. Pursuant to Indiana Code 4-33-8-11 (b), the Commission may only waive a felony disqualification if the individual has demonstrated by clear and convincing evidence the individual's rehabilitation.
12. In accordance with Indiana Code 4-33-8-11 (c), in determining whether the Petitioner has demonstrated rehabilitation, the commission shall consider the following factors:
 - a. The nature and duties of the position applied for by the individual.
 - b. The nature and seriousness of the offense or conduct.
 - c. The circumstances under which the offense or conduct occurred.
 - d. The date of the offense or conduct.
 - e. The age of the individual when the offense or conduct was committed.
 - f. Whether the offense or conduct was an isolated or a repeated incident.
 - g. A social condition that may have contributed to the offense or conduct.
 - h. Evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational education, successful participation in a correctional work release program, or the recommendation of a person who has or has had the individual under the person's supervision.
 - i. The complete criminal record of the individual.
 - j. The prospective employer's written statement that:
 - i. the employer has been advised of all of the facts and circumstances of the individual's criminal record; and
 - ii. after having considered the facts and circumstances, the prospective employer will hire the individual if the commission grants a waiver.

FINDINGS OF FACT

1. Ms. Abell is forty-seven years old. She was born in Danville, Illinois, on July 14, 1959. She has lived in her current home in Paoli since moving from Marengo, Indiana in 2001. Ms. Abell made this move in the course of a divorce. Her ex-husband lives in New Albany, where he has custody of their two minor children. Her third child, who is over the age of majority, lives in New Albany. Ms. Abell sees the children regularly and has maintained a speaking relationship with her ex-husband.

2. Ms. Abell currently works at French Lick Resort • Casino as a PBX operator. Her primary duties include answering telephones, customer service, and telephone operator services. She enjoys her job very much and became interested in it as soon as she found out the resort was hiring new employees.
3. Ms. Abell will continue in her position as a PBX operator for French Lick Resort • Casino pending this waiver. If the waiver is granted, her responsibilities will increase to include the processing and distribution of player comps, a regulated matter.
4. On June 11, 2007, Keith Schnulle, Vice President of Human Resources at French Lick Resort • Casino, wrote a letter to Commission staff indicating that French Lick Resort • Casino will employ Ms. Abell if the commission grants a waiver of the felony disqualification.
5. Ms. Abell was convicted of felony OWI in Harrison County, Indiana, in 2001. At the time of her arrest, she had two prior OWI convictions and a public intoxication charge within the previous seventeen months. One of the OWI convictions was in Harrison County; the other OWI and a public intoxication conviction were in Crawford County. She has no other criminal record, either before or after this seventeen month period.
6. Ms. Abell pled guilty to the felony OWI and was sentenced to one (1) year of probation and forty (40) hours of community service. She was sentenced to counseling with a psychiatrist in Louisville, Kentucky, Alcoholics Anonymous meetings, and counseling at Southern Hills, a counseling center in English, Indiana. She has completed all relevant counseling and no longer attends counseling or meetings. She states that she does not drink alcohol anymore.
7. Ms. Abell was forty-one (41) years old when she committed the offense.

RECOMMENDATION

Based on the foregoing, Ms. Abell has demonstrated by clear and convincing evidence that she has been rehabilitated and should be granted a waiver of her felony disqualification. The statutory guidelines provide a useful framework for evaluating the facts of Ms. Abell's case.

1. The nature and duties of her position will require her to interact with a variety of resort customers, including gamblers. This interaction will be via telephone. She will have the ability to view and award comps to patrons. She will not have cage or surveillance access. Additionally, her job does not involve operating any heavy machinery.

2. The nature of her conviction was serious especially considering her brief but significant alcohol-related history. However, since this particular felony OWI, Ms. Abell has not had any criminal activity of any nature.
3. Ms. Abell was going through a divorce at the time of her alcohol-related offenses and was in a poor condition, but she has a much better life at this time and appears to have a positive outlook on her life and her job.
4. The offense was in 2000.
5. Ms. Abell was 41 years old at the time of the offense.
6. Ms. Abell had similar offenses and behavior in the time recently prior to the subject felony OWI, but has not had any similar offenses since.
7. Ms. Abell was going through a difficult divorce at the time of her alcohol problems.
8. Ms. Abell provided testimony about her rehabilitation. She underwent counseling with a psychiatrist as well as at a rehabilitation facility. She attended Alcoholics Anonymous meetings. She has also finished the divorce and removed herself from the family strife that was occurring at the time. While searching for employment, Ms. Abell retained the services of First Chance Center, a social service organization that is also known as Orange County Rehabilitative & Development Services, Inc. First Chance provides employment counseling and assistance to people with backgrounds that would ordinarily make them poor candidates for employment. She exhibited seriousness about her employment and her desire to address her past but not allow it to be a hindrance to her.
9. Her criminal record is clear except for the approximately seventeen months during which the alcohol-related arrests occurred.
10. French Lick Resort • Casino's letter states that they are aware of the facts and circumstances of Ms. Abell's record and that they will hire her if she is granted her felony waiver.

Therefore, I recommend that the Commission grant a waiver of felony disqualification to Lucette Marie Abell.

Respectfully Submitted,



Adam F. Packer
Staff Attorney

DATE: 9/13/07