



State of Louisiana

Gaming Control Board

M. J. "MIKE" FOSTER, JR.
GOVERNOR

HILLARY J. CRAIN
CHAIRMAN

DECISION OF THE LOUISIANA GAMING CONTROL BOARD

IN RE: IN RE: JEFFERY FULLER
P040003292

RULING ON APPLICATION FOR REHEARING

The matter before the Louisiana Gaming Control Board ("Board") is whether a document filed with this Board by Mr. Jeffery Fuller stating that he is appealing the Board's decision of December 2002 should be considered an application for rehearing, whether it was timely and whether rehearing should be granted.

Mr. Fuller's appeal of the Hearing Officer's decision was considered by this Board on December 17, 2002. As a result, Mr. Fuller's non-key gaming employee permit renewal application was denied due to the existence of pending aggravated assault charges, which rendered Mr. Fuller statutorily disqualified pursuant to La. R.S. 27:28(B). The denial was without prejudice. Thus, should the charges be subsequently dismissed or nolle prossed Mr. Fuller would not be prohibited by L.A.C. 42:XIII.2157 from applying for a permit within 5 years of the denial. *In Re: Jeffery Fuller*, LGCB Decision, December 18, 2002.

Mr. Fuller subsequently sent written notice to this Board of his intent to appeal this Board's decision. Although Mr. Fuller states that he is appealing the Board's decision, he is actually seeking to have the Board's decision reconsidered or reopened. Article 865 of the Code of Civil Procedure and the

jurisprudence require that pleadings be reasonably construed to arrive at the truth and do substantial justice. La. C.C.P. art. 865; *Krebs v. Mull*, 97-2643 (La. App. 1st Cir. 12/28/98); 727 So.2d 564, *writ denied*, 99-0262 (La. 3/19/99); 740 So.2d 119. Accordingly, this matter should be construed as a rehearing application.

An application for rehearing or reopening a decision or order of the Board must be filed within 10 days from the date of entry of the decision or order. La. R.S. 49:959(A). A rehearing application is timely if mailed on or before the due date. La. R.S. 1:60(A). The Board's decision was entered on December 19th. Ten days from date of entry fell on Sunday, December 29th, extending the time delay to Monday, December 30th. La. R.S. 1:55; La. C.C.P. art. 5059. The rehearing application was postmarked December 30th and received on January 3rd, which was timely. Louisiana Revised Statute 49:959 provides for the rehearing, reopening, or reconsidering of an agency decision as follows in pertinent part:

A. A decision or order in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the agency, within ten days from the date of its entry. The grounds for such action shall be either that:

- (1) The decision or order is clearly contrary to the law and the evidence;
- (2) The party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;
- (3) There is a showing that issues not previously considered ought to be examined in order properly to dispose of the matter; or
- (4) There is other good ground for further consideration of the issues and the evidence in the public interest.

Subsequent to the motion for rehearing Mr. Fuller forwarded a certified copy of the minutes of the Shreveport City Court indicating that the case was nolle prossed by the City Prosecutor. The disposition

date listed in the minutes is 6/19/02. It is unclear whether the date of disposition is a typographical error because Mr. Fuller's appeal referred to dismissal of the charges on December 19, 2002. However, if the pending charges were nolle prossed, Mr. Fuller has presented grounds for reconsideration. The sole basis for denial of the renewal application was the existence of pending charges of aggravated assault. The charges have been dismissed by the City Prosecutor. Accordingly, Mr. Fuller is no longer statutorily disqualified. The Board's decision affirming the denial should be vacated and Mr. Fuller's permit should be renewed.

ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of January 21, 2003:

IT IS ORDERED THAT the request for rehearing is **GRANTED**. The decision of the Louisiana Gaming Control Board is **VACATED**. The non-key gaming employee permit is **RENEWED**.

THUS DONE AND SIGNED on this the 23rd day of January 2003.

LOUISIANA GAMING CONTROL BOARD

BY:



HILLARY J. CRAIN, CHAIRMAN

LOUISIANA GAMING CONTROL BOARD
I HEREBY CERTIFY THAT A CERTIFIED
COPY HAS BEEN MAILED OR SERVED ON
ALL PARTIES THIS 27th DAY
OF January, 2003

APPEAL DOCKET CLERK
