



STATE OF WASHINGTON  
GAMBLING COMMISSION

*"Protect the Public by Ensuring that Gambling is Legal and Honest"*

November 24, 2021

Kathryn Johnson  
726 W Jackson  
Spokane, WA 99207

Subject: Final Order in CR 2020-01313

Dear Kathryn Johnson,

Administrative Law Judge Jane Cantor Shefler issued an Initial Order in CR 2020-01313 (Docket No. 03-2021-GMB-00176) on October 29, 2021 affirming the Gambling Commission's revocation of your gambling certification, certification no: 69-29616.

A Petition for Review needed to be received by the Gambling Commission within twenty days from the date the Initial Order was issued. No Petition for Review was received; therefore this Initial Order is now a Final Order and thus your gambling certification, certification no: 69-29616 is revoked as of November 18, 2021.

If you have any questions concerning this matter, you may contact Adam Teal, Staff Attorney at by phone at (360) 486-3475 or by email at [adam.teal@wsgc.wa.gov](mailto:adam.teal@wsgc.wa.gov).

Sincerely,

A handwritten signature in black ink, appearing to be "Ashlie Laydon".

Ashlie Laydon, Rules Coordinator  
Licensing, Regulation, and Enforcement

Enclosures

**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Kathryn Johnson,

Appellant.

Docket No. 03-2021-GMB-00176

**INITIAL ORDER**

Agency: Gambling Commission

Program: Washington State Gambling Commission

Agency No. 2020-01313

**1. ISSUES**

- 1.1. Did Kathryn Johnson engage in the conduct alleged in the Notice of Administrative Charges No. CR 2020-01313, issued February 25, 2021?
- 1.2. And if so, is revocation of Kathryn Johnson's Class III certification an appropriate penalty?

**2. ORDER SUMMARY**

- 2.1. The Notice of Administrative Charges No. CR 2020-01313 is **AFFIRMED**.
- 2.2. Kathryn Johnson engaged in the conduct alleged in the Notice of Administrative Charges No. CR 2020-01313, issued February 25, 2021.
- 2.3. Kathryn Johnson did not establish by clear and convincing evidence that she is qualified to maintain a Class III certification.
- 2.4. Revocation of Kathryn Johnson's Class III certification is appropriate under RCW 9.46.075(1) and (8) and WAC 230-03-086(1) and (9)(a).

**3. HEARING**

- 3.1. Hearing Dates: September 15 and 27, 2021
- 3.2. Administrative Law Judge: Jane Cantor Shefler
- 3.3. Appellant: Kathryn Johnson, *pro se* (Appellant)
- 3.4. Agency: Washington State Gambling Commission
  - 3.4.1. Representative: Doug Van de Brake, Assistant Attorney General
  - 3.4.2. Witnesses:
    - 3.4.2.1. Peedo Pituk, Special Agent, Regulatory Unit
    - 3.4.2.2. Julie Sullivan, Special Agent, Licensing Investigations Unit
- 3.5. Exhibits: Exhibits 1 through 7 were admitted.

3.6. Other:

- 3.6.1.1. On September 13, 2021, the Gambling Commission submitted a late-filed exhibit, consisting of video footage and photographs. The Administrative Law Judge did not admit the proposed exhibit at the hearing held on September 15, 2021. The Appellant had received a copy of the exhibit, but she was unable to view it because it was provided in a DVD format. The Gambling Commission's primary witness, Special Agent Peedo Pituk, could not provide a foundation for the exhibit because he did not have access to it at the hearing.
- 3.6.1.2. The Administrative Law Judge continued the hearing to September 27, 2021, to give the Gambling Commission an opportunity to provide a foundation for the proposed exhibit and to give the Appellant sufficient time to view the video footage. At the continued hearing, Special Agent Pituk provided testimony concerning the video and photographic content of the exhibit and the Appellant had the opportunity to cross-examine him about his testimony.
- 3.6.1.3. The video footage was admitted as Exhibit 7. The record closed at the conclusion of the hearing on September 27, 2021.

#### 4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

##### Jurisdiction

- 4.1. On February 26, 2021, the Gambling Commission served its Notice of Administrative Charges, No. CR 2020-01313, dated February 25, 2021, on Appellant Kathryn Johnson, by certified and United States mail. *Exhibit 6, page 10.*
- 4.2. The Appellant submitted a request for hearing on or about March 13, 2021.

##### Kathryn Johnson

- 4.3. The Appellant holds a Class III Certification, License No. 69-29616, authorizing her to engage in Class II Employee activity for the Kalispel Indian Tribe. The license expires on November 12, 2021. *Exhibit 3, page 1.*
- 4.4. The Appellant has over 12 years of experience as a card room dealer, including experience in dealing games such as "Spanish 21" and Blackjack. At the time of the incidents at issue, the Appellant was employed as a dealer at the Northern Quest Casino, operated by the Kalispel Indian Tribe. *Testimony of Kathryn Johnson; Exhibit 3, page 5.*

### Spanish 21 and Bet Capping

- 4.5. Spanish 21 is a game based on the principles of Blackjack. The object is for a player to have a higher point total than the dealer without exceeding a point total of 21, or for the player to have 21 or less and the dealer to have exceeded 21. After all players and the dealer are dealt two cards, players may either hit (receive an additional card), stand (keep the hand dealt as is), split (create two hands out of matching pair), or double down (double the bet on their current hand). Once all players have played their hand, the game is over and no additional bets are allowed. *Exhibit 3, page 4.*
- 4.6. “Bet capping” is when a player adds additional bets once a card game is over in order to win more money than was originally wagered. Bet capping is considered cheating in the gambling industry.

### Commission Investigation – Issuance of Notice of Administrative Charges

- 4.7. On July 13, 2020, Special Agent Peedo Pituk was notified by Lilac Lanes Casino in Spokane about a possible cheating incident that occurred on July 9, 2020. The next day, Special Agent Pituk went to the Casino and reviewed Lilac Lanes’ security surveillance footage of the incident. *Testimony of Peedo Pituk; Exhibit 3; Exhibit 7.*
- 4.8. Special Agent Pituk documented his review of the surveillance footage, which showed that at approximately 9:32 p.m. on July 9, 2020, an unknown woman entered Lilac Lanes, accompanied by an unknown man. They sat down at a table at approximately 9:34 p.m. The game being played at that table was “Spanish 21”. *Pituk Testimony; Exhibit 3, page 3; Exhibit 7.*
- 4.9. At approximately 10:33 p.m., the woman wins a hand. As the dealer was paying out the winner to his right, she adds another chip to her original bet still on the table. The dealer goes to pay the woman and noticed that her wager has increased. The dealer contacted his floor supervisor, and informed his supervisor that the woman told him she was putting chips on the table to wager on the next hand. The dealer removed the added chip, paid the original winning bet, and she was allowed to continue playing. *Id.*
- 4.10. At approximately 10:54 p.m., at the same table but with a different dealer, the same woman again wins a hand. While the dealer was paying out a player to his right, she again adds an additional chip to her bet. The dealer noticed the added chip, contacted his floor supervisor, and informed him that woman told him she was putting wagers on the table for the next hand, and that she accidentally added a chip to the original bet. The dealer removed the additional chip and paid her for the original bet. *Id.*

- 4.11. Special Agent Pituk was unable to ascertain the woman's identity. On August 25, 2020, he distributed a regional identity bulletin from the Commission's Criminal Intelligence section, using an image captured from Lilac Lanes' surveillance footage. That same day, he was contacted by Kaleb Allen of the Kalispel Tribe Police Department. Mr. Allen told him that he believed the woman in the image to be Kathryn Johnson, a dealer at Kalispel's Northern Quest Casino. *Pituk Testimony; Exhibit 3, page 5.*
- 4.12. Special Agent Pituk contacted the Appellant and met with her on September 2, 2020. She acknowledged that the interview was voluntary. She identified herself when shown the surveillance video. *Id.*
- 4.13. The Appellant acknowledged that, in the first instance, she had placed an extra chip on her initial bet, but that she had to set up her bet for the next round. She explained it was an accident and that she did not intend to cheat. *Id.*
- 4.14. The Appellant did not at first recall the second incident, but did so once she was shown the video footage. As with the first instance, she explained that her intent was to set up the bet for the next round and that it was an accident. *Pituk Testimony; Exhibit 3, page 6.*
- 4.15. The Appellant acknowledged that, based on her experience as a dealer, she would consider her actions as bet capping. She reiterated that she did not intend to cheat and noted that she would not risk her career in doing so. *Johnson Testimony; Exhibit 3, page 6.*
- 4.16. On or about October 22, 2020, the Kalispel Tribal Gaming Agency suspended the Appellant's license pending the outcome of the State legal actions. *Exhibit 4.*
- 4.17. Based on the investigation, on February 25, 2021, the Gambling Commission issued the Notice of Administrative Charges here under appeal.

## **5. CONCLUSIONS OF LAW**

Based upon the facts above, I make the following conclusions:

### Jurisdiction

- 5.1. The Office of Administrative Hearings (OAH) has jurisdiction over the persons and subject matter of this case under Revised Code of Washington (RCW) 9.46.140(2) and (4), Washington Administrative Code (WAC) 230-17-025 and Chapters 34.05 and 34.12 RCW.

### Burden of Proof

- 5.2. The Washington Gambling Act, Chapter 9.46 RCW, does not establish the burden of proof in matters such as this. However, this is a civil proceeding under

RCW 9.46.010, and the standard burden of proof in civil matters is by a preponderance of the evidence.

- 5.3. A preponderance of the evidence is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition thereto. *Yamamoto v. Puget Sound Lbr. Co.*, 84 Wash. 411, 146 Pac. 861 (1915).
- 5.4. Here, the Commission has the initial burden of showing by a preponderance of the evidence that the conduct alleged in the Notice of Administrative Charges occurred.
- 5.5. However, once the Commission has established that the alleged conduct occurred, the burden shifts to the licensee, who has an “affirmative responsibility ... to establish by clear and convincing evidence” that she has the necessary qualifications for licensure.” RCW 9.46.153(1). The “clear and convincing” evidence standard is a higher standard than the “preponderance of the evidence” standard of proof.

#### Authority of the Gambling Commission

- 5.6. RCW 9.46.010 establishes, in relevant part:

The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control.

- 5.7. RCW 9.46.040 also authorizes the Commission to enforce the rules and regulations relating to gambling activities in the State.

#### Gambling Commission Laws and Regulations

- 5.8. The Commission may revoke any license for any reason it deems to be in the public interest. RCW 9.46.075. Those reasons include cases in which the licensee:
  1. Fails or refuses to comply with the provisions, requirements, conditions, limitations, or duties imposed by Chapter 9.46 RCW or any rules adopted by the Gambling Commission. RCW 9.46.075(1).
  2. Fails to prove, by clear and convincing evidence, that the licensee is qualified to hold a gambling license in accordance with the Washington State laws and regulations governing gambling. RCW 9.46.075(8); RCW 9.46.153(1).

3. Commits any act that constitutes grounds for denying a license under RCW 9.46.075. WAC 230-03-085(1); or
  4. Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by prior activities. WAC 230-03-085(9)(a).
- 5.9. "Cheating", as defined in the Gambling Act, Chapter 9.46 RCW, means:
1. Employ or attempt to employ any device, scheme, or artifice to defraud any other participant or any operator;
  2. Engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any other participant or any operator;
  3. Engage in any act, practice, or course of operation while participating in a gambling activity with the intent of cheating any other participant or the operator to gain an advantage in the game over the other participant or operator; or
  4. Cause, aid, abet, or conspire with another person to cause any other person to violate subsections (1) through (3) of this section.

RCW 9.46.196.

- 5.10. A person who engages in cheating and holds a license issued by the State of Washington to "conduct, manage, or act as an employee in an authorized gambling activity" is guilty of cheating in the first degree. RCW 9.46.1961.

*Analysis and Conclusions*

- 5.11. Throughout these proceedings and during the investigation, the Appellant has acknowledged that the alleged incidents occurred, but that she had no intent of cheating, deceiving, or defrauding the Lilac Lanes Casino. The incidents, she asserts, were accidental. The Appellant emphasized that she had been a dependable and loyal employee at Northern Quest Casino for 12 years, and maintains she would not purposely risk her career nor compromise the integrity of another dealer by cheating.
- 5.12. In this matter, the Appellant's intentions are not at issue. The Commission need only prove that the incidents of bet capping occurred, and that is what they have done. The Commission has established that, on the evening of July 9, 2020, the Appellant twice engaged in bet capping. The incidents involved two dealers who each observed her actions. The Commission has established that the Appellant engaged in cheating, as defined by RCW 9.46.196.

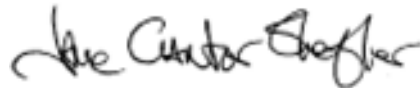
- 5.13. The Appellant has failed to prove by clear and convincing evidence that she is qualified for licensure, as required by RCW 9.46.075(8) and RCW 9.46.153(1).
- 5.14. The incidents of bet capping have impugned the Appellant's integrity. As such, pursuant to WAC 230-03-085(9)(a), she poses a threat to the effective regulation of gambling activities. Based upon her prior actions, the likelihood of her participation in "unfair or illegal practices, methods, and activities in the conduct of gambling activities" is increased.
- 5.15. The Commission is authorized to revoke the Appellant's Class III certification pursuant to RCW 9.46.075(1) and (8) and WAC 230-03-085(1) and (9)(a).

## 6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Notice of Administrative Charges No. CR 2020-01313 is **AFFIRMED**.
- 6.2. Kathryn Johnson engaged in the conduct alleged in the Notice of Administrative Charges No. CR 2020-01313, issued February 25, 2021.
- 6.3. Kathryn Johnson did not establish by clear and convincing evidence that she is qualified to maintain a Class III certification.
- 6.4. Revocation of Kathryn Johnson's Class III certification is appropriate under RCW 9.46.075(1) and (8) and WAC 230-03-086(1) and (9)(a).

Issued from Tacoma, Washington on the date of mailing.



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Jane Cantor Shefler  
Administrative Law Judge  
Office of Administrative Hearings

**CERTIFICATE OF SERVICE ATTACHED**



**YOU HAVE THE RIGHT TO APPEAL – READ CAREFULLY**

**PETITION FOR REVIEW**

Any party to this proceeding may file a Petition for Review of this initial order. The written petition for review must be mailed to the Washington State Gambling Commission at:

Washington State Gambling Commission  
PO Box 42400  
Olympia, WA 98504

The petition for review must be received by the Commission within **twenty (20) days** from the date this initial order was mailed to the parties.<sup>1</sup> A copy of the petition for review must be sent to all parties of record. The petition for review must specify the portions of the initial order with which the party disagrees, and must refer to the evidence in the record which supports the party's position. The other party's reply must be received at the address above, and served on all parties of record, within thirty (30) days from the date the petition for review was mailed.

Any party may file a cross appeal. Parties must file cross appeals with the Washington State Gambling Commission within ten days of the date the petition for review was filed with the Washington State Gambling Commission. Copies of the petition or cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed.

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<sup>1</sup> WAC 230-17-090.

**CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 03-2021-GMB-00176**

I certify that true copies of this document were served from Tacoma, Washington via Consolidated Mail Services upon the following as indicated:

<p>Kathryn Johnson 726 West Jackson Ave. Spokane, WA 99205 <b><i>Appellant</i></b></p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail: <a href="mailto:kathrynjohnson99207@yahoo.com">kathrynjohnson99207@yahoo.com</a></p>
<p>Doug Van de Brake, AAG Office of the Attorney General MS:40100 PO Box 40100 Olympia, WA 9504 <b><i>Agency Representative</i></b></p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail: <a href="mailto:Doug.VandeBrake@atg.wa.gov">Doug.VandeBrake@atg.wa.gov</a> <a href="mailto:Jordan.nimon@atg.wa.gov">Jordan.nimon@atg.wa.gov</a> <a href="mailto:GCEEF@atg.wa.gov">GCEEF@atg.wa.gov</a></p>
<p>Ashlie Laydon Washington Gambling Commission MS:42400 PO Box 42400 Olympia, WA 98504 <b><i>Agency Contact</i></b></p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail: <a href="mailto:ashlie.laydon@wsgc.wa.gov">ashlie.laydon@wsgc.wa.gov</a></p>

Date: Friday, October 29, 2021

OFFICE OF ADMINISTRATIVE HEARINGS



Shawntá Williams  
Legal Assistant 2