

**BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON**

**In the Matter of the Application for a
Service Permit Filed by :**

BARBRA M. GIBBS

) **FINAL FINDINGS OF FACT**
) **CONCLUSIONS OF LAW**
) **AND ORDER**
) **OLCC-08-SPR-057**

HISTORY OF THE CASE

On September 25, 2008, the Oregon Liquor Control Commission (OLCC or Commission) issued a Service Permit Denial letter to Barbra M. Gibbs (Applicant). The OLCC alleged Applicant's application for a service permit should be denied pursuant to OAR 845-009-0020(4)(a)(C) because she has two controlled substance felony convictions, at least one of which was within three years of the date the Commission received the application.

Applicant made a timely request for hearing. The Commission referred the request to the Office of Administrative Hearings on November 21, 2008. The case was assigned to Alison Greene Webster, Administrative Law Judge (ALJ). ALJ Webster held a contested case hearing by telephone at 9:00 a.m. on March 27, 2009. Gwenn McNeal appeared on behalf of the Commission. Applicant appeared without counsel, and testified on her own behalf. The record closed at the conclusion of the hearing on March 27, 2009.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed May 1, 2009.

No Exceptions to the Proposed Order were filed within the 15-day period specified in OAR 845-003-0590.

The Commission adopts the Proposed Order of the Administrative Law Judge as the Final Order of the Commission and enters the following based on the preponderance of the evidence:

ISSUES

1. Whether Applicant's application for a service permit should be denied because she has two controlled substance felony convictions, one of which was within three years of the Commission's receipt of the application. OAR 845-009-0020(4)(a)(C).

2. If the application should be denied, whether Applicant has good cause to overcome the denial basis.

OPINION

ORS 471.380(1)(a) and (d) allow the Commission to deny a service permit based on the applicant's habit of using alcohol or controlled substances to excess and on the applicant's law violation history. The Commission has adopted OAR 845-009-0020 to apply the statutory provisions. In this case, OLCC proposes to deny the application on the basis of OAR 845-009-0020(4)(a)(C), which states: "The Commission will deny a service permit if the applicant has had * * * [t]wo or more controlled substance felony convictions, one of which was within three years."

"Within three years" means within three years of the date the Commission receives the application. OAR 845-009-0020(2). Where conviction of a crime is the basis for agency action, ORS 670.280 applies and the Commission must show the relationship between the conviction and the person's fitness to sell or serve alcoholic liquor.¹ The Commission has previously determined that a conviction involving an illegal controlled substance is related to the fitness to serve alcoholic liquor because alcohol is also a controlled substance. *John O. Myshak* (Final Order, OLCC, 88-V-002, May 1988).

The record shows that Applicant was convicted of the felony crime of Possession of Marijuana in October 2006, and the felony crime of Possession of Methamphetamine in July 2008. The Commission received Applicant's application for a service permit on September 3, 2008, which is within three years of both conviction dates. Therefore, OLCC has a basis to deny the application, unless Applicant can overcome the denial.

OAR 845-009-0020(3) and (4)(b) provide that an applicant may show good cause to overcome the denial criteria by showing that: he or she has a drug addiction disability; has not used controlled substances within 24 months of the service permit application; has met drug treatment requirements as set out in the rule; and has completed all parole or probation requirements.²

¹ ORS 670.280 provides:

Denial, suspension or revocation of license prohibited solely because of criminal conviction; exception. Except as provided in ORS 342.143 or 342.175, no licensing board or agency shall deny, suspend or revoke an occupational or professional license or certification solely for the reason that the applicant or licensee has been convicted of a crime, but it may consider the relationship of the facts which support the conviction and all intervening circumstances to the specific occupational or professional standards in determining the fitness of the person to receive or hold such license or certificate.

² The good cause portion of the rule states, in relevant part:

- (3) To be qualified for good cause under this rule:
 - (a) An applicant must have had a drug addiction disability or alcohol addiction disability at the time of:
 - (A) Felony drug conviction(s) (OAR 845-009-0020(4));

....

To satisfy the good cause requirement that the applicant has completed all parole or probation requirements, the Commission has concluded that "completed" means released from all supervision. The requirement is strict and includes inactive supervision or bench probation. *Rita Vannatta* (OLCC, Final Order, 01-SPR-018, July 2001). An applicant must complete the length of time required by the terms of probation or be released early by the court. *Karen L. Ortiz* (OLCC, Final Order, 00-SPR-002, October 2000).

In this case, Applicant cannot show good cause because she has not been diagnosed with a drug addiction disability or alcohol addiction disability. She also cannot show that she has successfully completed a drug treatment program, that she has abstained from using controlled substances for at least 24 months or that she has completed her probation. For these reasons, her application must be denied.

FINAL ORDER

The Commission orders that the application for a Service Permit filed by Barbra M. Gibbs on September 3, 2008 be DENIED.

It is further ordered that notice of this action, including the reasons for it, be given.

Dated this _____ day of May, 2009.

Stephen A. Pharo
Executive Director
OREGON LIQUOR CONTROL COMMISSION

Mailed this _____ day of May, 2009.

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- (4)(b) The only good cause to overcome the criteria in this section is the applicant's sworn statement on a Commission-supplied form that:
- (A) He/she has not used or consumed controlled substance within 24 months; and
 - (B) He/she has successfully completed a state certified drug treatment program or is actively involved in a state certified drug treatment or recovery program, and is following treatment recommendations. If a completion certificate or other proof that the applicant successfully completed a treatment program is available, the applicant will provide a copy to the Commission; and
 - (C) He/she has completed all parole or probation requirements.

OAR 845-009-0020(3)(a)(A) and (4)(b).

**APPENDIX A
LIST OF EXHIBITS CITED**

- Ex. A1: Application
- Ex. A2: Judgment dated October 6, 2006
- Ex. A3: Judgment dated July 7, 2008