

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

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

Lendall E. Skovly

) **FINAL FINDINGS OF FACT**
) **CONCLUSIONS OF LAW**
) **AND ORDER**
) **OLCC-09-SPR-003**

HISTORY OF THE CASE

On December 3, 2008 the Oregon Liquor Control Commission (OLCC or Commission) sent a letter to Lendall E. Skovly (Applicant) informing him that the OLCC intended to deny his application for a service permit. OLCC proposed to deny the application because Applicant allegedly had a felony conviction for delivery of a controlled substance within two years of his application, contrary to OAR 845-009-0020(4)(a)(B). OLCC sent an amended letter to Applicant on January 22, 2009.

Applicant timely requested a hearing. The OLCC referred the request to the Office of Administrative Hearings on January 23, 2009. The case was assigned to John Mann, Senior Administrative Law Judge (ALJ). A contested case hearing was held by telephone on March 3, 2009 before ALJ Mann. Applicant appeared without counsel and testified on his own behalf. Gwenn McNeal, Hearings Coordinator, presented the case for OLCC and testified. The record closed at the end of the hearing.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed April 29, 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 pursuant to OAR 845-009-0020(4)(a)(B) because Applicant had a felony conviction for delivery of a controlled substance within two years of his application for a service permit.

2. If the application should be denied, whether Applicant has good cause to overcome the denial grounds. OAR 845-009-0020(3) and (4)(b).

EVIDENTIARY RULING

OLCC’s Exhibits A1 through A3 were admitted into the record without objection.

FINDINGS OF FACT

1. On October 7, 2008, the OLCC received an application for a service permit from Lendall E. Skovly (Applicant). (Ex. A1.)

2. On September 17, 2008, Applicant was convicted in Washington County Circuit Court for Delivery of a Controlled Substance (Marijuana), a Class B felony. (Ex. A2.) Mr. Skovly pled guilty to the charge as part of a plea bargain. (Test. of Applicant.) The conviction was based on an incident that occurred on July 11, 2008. (Ex. A3; test. of Applicant.)

3. As a result of his conviction, Applicant was sentenced to probation for two years. Applicant was still on probation as of the date of the hearing. (Ex. A2; test. of Applicant.)

4. Applicant last used a controlled substance (marijuana) on July 11, 2008. He has not consumed any controlled substance or alcohol since that date. As of the date of the hearing, Applicant was participating in an out-patient drug treatment program. (Test. of Applicant.)

5. Applicant works at a restaurant and cantina called On the Boarder in Washington County. Applicant currently works as a food server, but is occasionally required to serve drinks and check patron’s identification. (Test. of Applicant.)

CONCLUSIONS OF LAW

1. Applicant’s application for a service permit should be denied pursuant to OAR 845-009-0020(4)(a)(B) because Applicant had a felony conviction for delivery of a controlled substance within two years of his application for a service permit.

2. Applicant has not shown good cause to overcome the denial ground.

OPINION

In October of 2008, Applicant applied for a service permit. ORS 471.380(1) provides, in relevant part:

(1) The Oregon Liquor Control Commission may refuse to grant a service permit if it has reasonable grounds to believe any of the following to be true:

(a) That the applicant is in the habit of using alcoholic beverages or controlled substances to excess.

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(d) That the applicant has been convicted of violating any of the alcoholic liquor laws of this state, general or local, or has been convicted at any time of a felony.

The Commission has adopted an administrative rule to describe how it applies its authority under ORS 471.380(1)(a) and (d). OAR 845-009-0020(4) provides, in relevant part:

(4) Felony Drug Conviction:

(a) The Commission will deny a service permit if the applicant has had:

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(B) A felony conviction within two years for manufacture, delivery or distribution of a controlled substance or any other drug related felony as described in ORS Chapter 475 or similar laws in other jurisdictions (except possession of a controlled substance).

For purposes of applying the above rule, the Commission considers the two-year period ending as of the date the Commission received 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* (OLCC, Final Order, 88-V-002, May 1988).

The record shows that Applicant was convicted for Delivery of a Controlled Substance (Marijuana), a Class B felony, less than one month before the Commission received his application. Therefore, OAR 845-009-0020(4)(a)(B) provides a basis to deny the application for a service permit, unless Applicant can overcome the denial with good cause.

OAR 845-009-0020(4)(b) provides:

(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 substances within 24 months;
and

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.

(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.

Applicant did not produce evidence that he has been diagnosed as drug dependent. However, even if he had provided such evidence, to qualify for good cause, Applicant would also have to establish that he has not used controlled substances within 24 months and that he has completed all probation requirements. Applicant last used a controlled substance (marijuana) on July 11, 2008, less than three months before his application. As part of the resulting conviction for that incident, Applicant was placed on probation for two years beginning in September 2008. Applicant is currently on probation and will continue to be for some time. Because these two requirements have not been met, Applicant cannot establish good cause to overcome the denial and the application should be denied.

FINAL ORDER

The Commission orders that the application for a service permit filed by Lendall E. Skovly, received by the Commission on October 7, 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.

THIS ORDER IS EFFECTIVE ON THE DATE MAILED.

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for judicial review within 60 days from the service of this Order. Judicial review is pursuant to the provisions of ORS Chapter 183.

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APPENDIX A
LIST OF EXHIBITS CITED

- Ex. A1: Service Permit Application signed by Lendall E. Skovly, received by the Commission on October 7, 2008.
- Ex. A2: Judgment of Conviction and Sentence from Washington County Circuit Court dated September 17, 2008.
- Ex. A3: District Attorney's Information from Washington County Circuit Court dated July 22, 2008.