

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

<b>In the Matter of the Revocation of the Service Permit held by:  TRESSA EDWARDS</b>	) ) ) ) ) )	<b>FINAL FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER</b> Agency Case No.: OLCC-10-SPR-001
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**HISTORY OF THE CASE**

On December 8, 2009, the Oregon Liquor Control Commission (the OLCC) issued a Service Permit Revocation Notice to Tressa Edwards (Permittee). The OLCC alleged that Permittee’s service permit be revoked because she had a felony conviction for possession of a controlled substance.

Permittee made a timely request for hearing. The OLCC referred the request for hearing to the Office of Administrative Hearings on February 12, 2010. The case was assigned to John R. Lohuis, Administrative Law Judge (ALJ). ALJ Lohuis held a contested case hearing by telephone at 9:00 AM on March 17, 2010. Gwenn McNeal appeared on behalf of the OLCC and testified on its behalf. Permittee appeared, represented herself, and testified on her own behalf. Dottie McDowell appeared as a witness for Permittee, but did not testify.

The record closed at the conclusion of the hearing on March 17, 2010.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed April 28, 2010.

Permittee filed Exceptions to the Proposed Order on May 12, 2010.

On June 17, 2010, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Administrative Law Judge, Permittee’s Exceptions to the Proposed Order and the Administrative Law Judge’s Response to Permittee’s Exceptions. Based on this review and the preponderance of the evidence, the Commission enters the following:

**ISSUES**

1. Whether Permittee’s service permit should be revoked because she has had a felony conviction for possession of a controlled substance within the past 12 months. ORS 471.385(1)(b), ORS 670.280, OAR 845-009-0020(4)(a)(A).
  
2. If the service permit should be revoked, whether Permittee has good cause to overcome the revocation. OAR 845-009-0020(3) and (4)(b).

## **EVIDENTIARY RULING**

Exhibits A1 and A2, offered by the OLCC, were admitted into the record without objection. Exhibit P1, offered by Permittee, was admitted into the record over the OLCC's objections.

## **FINDINGS OF FACT**

1. On April 14, 2006, the OLCC received Permittee Tressa Edwards's Service Permit Renewal Application. (Ex. A1; test. of McNeal.) Permittee Edwards's service permit was subsequently renewed. (Test. of McNeal.)<sup>1</sup>

2. On May 26, 2009, Permittee was arrested and cited for driving under the influence of intoxicants (DUII). (Ex. A2; test. of Permittee.) Following her arrest, the arresting officer found methamphetamine inside Permittee's vehicle. (Ex. P1.)

3. On November 23, 2009, Permittee was convicted of one count of possession of methamphetamine, a Class C Felony, in Lincoln County Circuit Court, Lincoln County, Oregon after entering a guilty plea. (Ex. A2.) The Circuit Court sentenced Permittee to supervised probation for a period of 36 months. (*Id.*)

4. On her own accord, Permittee began treatment for substance abuse. (Test. of Permittee.) Permittee attended substance abuse treatment counseling from Re-Connections Counseling in Newport, Oregon beginning November 4, 2009 through January 18, 2010. (*Id.*; Ex. P1.)

5. On December 8, 2009, the OLCC issued a Service Permit Revocation Notice to Permittee because of her November 2009 felony conviction. (Test. of McNeal.)

6. Permittee has not consumed alcohol or drugs since May 26, 2009. (Test. of Permittee.) Permittee has had clean urinalyses throughout her probation. Permittee's parole officer and Judge Bachart, who signed the judgment, told Permittee that they did not believe she should quit her job as a bartender/server. (*Id.*)

7. Permittee has not been diagnosed as alcohol or drug addicted. (*Id.*)

## **CONCLUSIONS OF LAW**

1. Permittee's application for a service permit should be revoked because Permittee has had a controlled substance felony conviction within the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(4)(a)(A).

2. Permittee has not shown good cause to overcome the denial basis.

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<sup>1</sup> In her Exceptions, Permittee objected to an incorrect permit number (which was actually the application number) entered into this finding by the Administrative Law Judge (ALJ). The permit number is not necessary and the ALJ had no objection to correcting this clerical error.

## OPINION

### *1. Whether Permittee's service permit should be revoked:*

The OLCC proposes to revoke Permittee's service permit on the basis ORS 471.385(1)(b), which states:

(1) The Oregon Liquor Control Commission may revoke or suspend a service permit, or impose a civil penalty in lieu of or in addition to suspension as provided by ORS 471.322, if it finds or has reasonable grounds to believe any of the following to be true:

\* \* \* \* \*

(b) That the permittee has been convicted of a felony, of violating any of the liquor laws of the state, general or local, or any misdemeanor or violation of any municipal ordinance committed on the licensed premises.

In the present case, Permittee has a felony conviction for possession of methamphetamine. At the time of the November 2009 conviction, Permittee held a service permit. Under ORS 471.385(1)(b), the OLCC has the statutory authority to revoke Permittee's service permit for her drug-related felony conviction.

In cases in which an agency proposes to revoke an individual's license based on a conviction of a crime, ORS 670.280 requires that the agency show a relationship between the conviction and the individual's fitness to sell and serve alcoholic liquor.<sup>2</sup> The OLCC has previously determined that convictions involving controlled substances are related to the fitness to dispense alcoholic liquor. *In the Matter of John O. Myshack* (OLCC Final Order, OLCC-88-V-002, May 1988).

ORS 670.280 also requires the OLCC to consider the intervening circumstances that have occurred since the conviction of a crime. Here, Permittee began substance abuse treatment counseling following her conviction. To her credit, Permittee began this treatment on her own initiative. The OLCC issued its notice of revocation in December 2009, less than three weeks after Permittee's conviction. While Permittee's decision to begin substance abuse counseling weighs in her favor, relatively little time has passed since the commission of the crime. Permittee remains on probation and is scheduled to remain on probation until 2012. Additionally, the good cause criteria set forth in OAR 845-009-0020(3) and (4)(b) demonstrate that the OLCC does consider other intervening factors and will not revoke a service permit when

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<sup>2</sup> ORS 670.280(2) provides:

Except as provided in ORS 342.143 (3) or 342.175 (3), a licensing board, commission or agency may not deny, suspend or revoke an occupational or professional license 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 the license.

an applicant can demonstrate, among other factors, successful completion of all parole and probation requirements. Here, the OLCC considered such factors and determined that revocation of Permittee's service permit was appropriate. In the present case, the OLCC's proposed revocation is consistent with ORS 670.280.

The OLCC also relies on OAR 845-009-0020(4)(a)(A) in support of its proposed action.<sup>3</sup> This rule allows the OLCC to deny an application for a service permit if an applicant has had a drug-related felony conviction.<sup>4</sup> On May 26, 2009, Permittee engaged in conduct that subsequently led to her conviction for possession of a controlled substance. Because Permittee would have been ineligible for a permit based on her recent felony conviction, revocation is the appropriate sanction now.

2. *Whether Permittee has good cause to overcome the denial:*

OAR 845-009-0020(3) and (4)(b) provides that an applicant may show good cause to overcome the service permit denial. OAR 845-009-0020(3) provides that in order to show good cause, an applicant must have had a drug addiction disability or an alcohol addiction disability at the time of the felony drug conviction. OAR 845-009-0020(4)(b) provides that the only good cause to overcome a denial is a sworn statement that the applicant has not used or consumed controlled substances within 24 months, has successfully completed a state certified drug treatment program, and has completed all parole or probation requirements.<sup>5</sup>

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<sup>3</sup> The OLCC has previously held that it is reasonable to apply the service permit criteria to determine whether revocation of the permit is the appropriate sanction. *In the Matter of Michelle L. Haynes* (OLCC Final Order, OLCC-06-SPR-022, December 6, 2006).

<sup>4</sup> OAR 845-009-0020(4)(a)(A) provides:

- (a) The Commission will deny a service permit if the applicant has had:
  - (A) A felony conviction within 12 months for possession of a controlled substance or any other drug related felony as described in ORS Chapter 475 or similar laws in other jurisdictions.

<sup>5</sup> 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))  
\* \* \*
    - or
    - (b) The applicant was diagnosed as drug or alcohol addicted at the time of or as a result of the incidents described above.  
\* \* \*
  - (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
    - (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

In this case, Permittee has not been diagnosed as drug or alcohol addicted. Although Permittee has not consumed alcohol or drugs for several months, she has not yet completed her probation. As such, she does not meet the good cause criteria under the rule.

The OLCC may revoke Permittee's service permit.

**FINAL ORDER**

The Commission orders that Tressa Edwards's current service permit be REVOKED.

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

Dated this 24<sup>th</sup> day of June, 2010.

/s/ Stephen A. Pharo  
Stephen A. Pharo  
Executive Director  
OREGON LIQUOR CONTROL COMMISSION

Mailed this 24<sup>th</sup> day of June, 2010.

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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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.