

EVIDENTIARY RULINGS

Exhibits A1 and A2, offered by the OLCC, were admitted into the record without objection.

FINDINGS OF FACT

1. On or about May 21, 2010, Applicant committed the crime of Unlawful Delivery of Marijuana for Consideration. (Ex. A2; test. of McNeal.)
2. On August 30, 2010, the OLCC received Applicant's Service Permit Application. (Ex. A1; test. of McNeal.)
3. On October 5, 2010, Applicant was convicted of Unlawful Delivery of Marijuana for Consideration, a Class B Felony, in Multnomah County Circuit Court, Multnomah County, Oregon. The conviction was based on Applicant's guilty plea. The Circuit Court sentenced Applicant to supervised probation for a period of 24 months. (Ex. A2; test. of McNeal.)
4. Following his conviction, Applicant began attending a substance treatment program through Lifeworks. (Test. of Applicant.) Applicant attends weekly treatment classes and provides urine samples for monthly drug screens. Applicant believes that he will successfully complete the substance treatment program by May 2011.

CONCLUSIONS OF LAW

1. Applicant's application for a service permit should be denied because Applicant has a felony conviction for delivery of a controlled substance within the past two years. ORS 471.380(1)(d), OAR 845-009-0020(4)(a)(B).
2. Applicant has not shown good cause to overcome the denial basis. OAR 845-009-0020(4)(b); OAR 845-009-0020(3).

OPINION

1. Whether Applicant's application for a service permit should be denied:

The OLCC has the authority to enforce Oregon's Liquor Control Act, including the right to refuse to grant a service permit if the Commission has reasonable grounds to believe that an applicant has been convicted at any time of a felony. *See* ORS 471.030, 471.380(1)(d).

The OLCC has adopted administrative rules pursuant to this statutory authority. In this matter, the OLCC seeks to deny Applicant's service permit application under the provisions of OAR 845-009-0020(4)(a)(B), which 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).

The two year period of time referred to in the administrative rule means within two years of the date the OLCC received the application. OAR 845-009-0020(2). The OLCC has also considered convictions occurring through the date the Commission had made a final determination on the application. *Lisa M. Pfeffer* (OLCC, Final Order, 96-SPR-115, July 1997).

On October 5, 2010, Applicant was convicted of a class B Felony, Unlawful Delivery of Marijuana for Consideration. Applicant's conviction occurred within two years of the OLCC's receipt of his service permit application. Thus, the OLCC has shown that it may deny Applicant's service permit under the provisions of OAR 845-009-0020(4)(a)(B).

The terms of ORS 670.280 provide that no professional or occupational license can be denied "solely for the reason that the applicant or licensee has been convicted of a crime[.]" The agency must show some connection between the conviction and the specific occupational standards required of the applicant.¹ Stated another way, the OLCC must show a connection relating Applicant's criminal conviction to his fitness to sell and serve liquor.

Here, the OLCC established that Applicant has at least some history of unlawfully selling controlled substances. Because alcohol, like marijuana, is also a controlled substance, Applicant's recent criminal history with respect to controlled substances provides a reasonable inference that he is currently unable to meet the occupational requirements necessary to sell and serve alcoholic beverages.

Lending additional support to this inference are prior OLCC orders which are factually similar to the present case. For example, in *John O. Myshak* (OLCC, Final Order, 99-V-002, May 1988), the OLCC determined that an individual's felony convictions for delivery of cocaine (a controlled substance) and conspiracy to deliver a controlled substance were related to his fitness to sell and serve alcoholic liquor because alcohol, like cocaine, is a controlled substance.

¹ 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.

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

OAR 845-009-0020(3) and (4)(b) provide that an applicant may show good cause to overcome a proposed service permit denial. OAR 845-009-0020(3) states 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 in order to show good cause to overcome a denial, an applicant must provide 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.²

Here, Applicant is enrolled in a treatment program, but he has not yet completed the program. Additionally, Applicant will remain on probation until approximately October 2012. Because Applicant cannot complete his probation requirements for another one and one-half years, he does not meet the criteria set forth in OAR 845-009-0020(4)(b). As such, Applicant does not have good cause to overcome the denial. Consequently, his application must be denied.

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² OAR 845-009-0020(3) and (4)(b) provide, 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.

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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 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 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.

FINAL ORDER

The Commission orders that the application for a service permit filed by Applicant Kenneth E. Goins II and received by the OLCC on August 30, 2010 be DENIED.

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

Dated this 9th day of May, 2011

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

Mailed this 9th day of May, 2011.

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.