

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

<b>In the Matter of the Proposed</b>	)	<b>FINAL FINDINGS OF FACT</b>
<b>Revocation of the Service Permit held</b>	)	<b>CONCLUSIONS OF LAW</b>
<b>by:</b>	)	<b>AND ORDER</b>
	)	
<b>JUSTIN W. WILLIAMS</b>	)	Agency Case No.: OLCC-10-SPR-023

**HISTORY OF THE CASE**

On June 8, 2010, the Oregon Liquor Control Commission (the OLCC) issued a Service Permit Revocation Notice to Justin W. Williams (Permittee). The OLCC alleged that Permittee's service permit should be revoked because he has two driving under the influence of intoxicants (DUII) convictions or diversions within three years, at least one of which was within the past 12 months.

Permittee made a timely request for hearing. The OLCC referred the request for hearing to the Office of Administrative Hearings on July 1, 2010. The OAH assigned the case to Administrative Law Judge (ALJ) John R. Lohuis. ALJ Lohuis held a contested case hearing by telephone on October 1, 2010. Gwenn McNeal appeared on behalf of the OLCC and testified on its behalf. Permittee appeared, represented himself, and testified on his own behalf.

The record closed at the conclusion of the hearing on October 1, 2010.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed November 15, 2010.

Permittee filed Exceptions to the Proposed Order on November 29, 2010.

On April 20, 2011 and June 23, 2011, 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 he has two DUII convictions or diversions within three years, at least one of which was within the past 12 months. ORS 471.385(1)(b), ORS 670.280, OAR 845-009-0020(7)(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 (7)(b).

## **EVIDENTIARY RULING**

Exhibits A1 through A6, offered by the OLCC, were admitted into the record without objection.

## **FINDINGS OF FACT**

1. On April 8, 2010, the OLCC received Permittee Justin W. Williams's Service Permit Application. (Ex. A1; test. of McNeal.) The OLCC granted Permittee's application for a service permit and issued service permit No. 356058 to Permittee on May 11, 2010. (Ex. A3; test. of McNeal.)
2. On July 21, 2007, Permittee was arrested and cited for DUII. (Ex. A4; test. of McNeal.) Permittee entered a diversion program on August 15, 2007. (*Id.*) Permittee completed the diversion program on August 14, 2008. (*Id.*)
3. On March 11, 2010, Permittee was arrested and cited for DUII. (*Id.*) On May 17, 2010, Permittee was convicted for DUII based on his March 11, 2010 arrest. (*Id.*) Permittee was sentenced to 24 months of probation for his May 2010 DUII conviction. (Test. of Permittee.)
4. As a condition of his DUII conviction, Permittee began a DUII rehabilitation class. (*Id.*) The rehabilitation class consists of two programs of six weeks each. (*Id.*) At the time of the hearing, Permittee had completed all but one of the classes, and planned on completing the last rehabilitation class soon. (*Id.*)
5. Permittee has not consumed alcohol or other controlled substances since March 11, 2010. (Test. of Permittee).

## **CONCLUSIONS OF LAW**

1. Permittee's service permit should be revoked because he has two driving under the influence of intoxicants (DUII) convictions or diversions within three years, at least one of which was within the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(7)(a)(A).
2. Permittee has not shown good cause to overcome the revocation.

## **OPINION**

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

The OLCC proposes to revoke Permittee's service permit pursuant to ORS 471.385(1), which states, in relevant part:

- (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 DUII conviction, a crime that necessarily requires a determination that the individual drove a vehicle while under the influence of intoxicating liquor or a controlled substance. ORS 813.010(1). The OLCC has consistently held in similar cases that DUII convictions are convictions of alcoholic liquor laws and are relevant to that individual's fitness to sell and serve alcoholic liquor. *Dorothy J. Hamblin* (OLCC Final Order, OLCC-03-SPR-036, December 2003), *citing Carolyn A. White* (OLCC Final Order, OLCC 98-SPR-005, August 1999). Therefore, under ORS 471.385(1)(b), the OLCC has the statutory authority to revoke Permittee's service permit for his May 2010 DUII 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 the agency to show a relationship between the conviction and the individual's fitness to hold the license.<sup>1</sup> In a similar case, the OLCC held that a conviction involving abuse of a controlled substance was related to an individual's fitness to sell and serve alcoholic beverages because it indicated poor judgment with respect to the controlled substance. *John O. Myshak* (OLCC Final Order, OLCC-88-V-002, May 1988). In this matter, Permittee was convicted of a misdemeanor that involves the abuse of an intoxicant. Similar to the *Myshak* case, Permittee's conviction involving the abuse of an intoxicant is related to his fitness and judgment to sell and serve alcoholic beverages, and provides a basis for the proposed revocation of his license.

ORS 670.280 also requires the OLCC to consider the intervening circumstances that have occurred since the conviction of a crime. Here, Permittee began DUII rehabilitation classes following his conviction. While Permittee's attendance in the rehabilitation classes weigh in his favor, relatively little time has passed since the commission of the crime. Additionally, the good cause criteria set forth in OAR 845-009-0020(3) and (7)(b) demonstrate that the OLCC does consider other intervening circumstances and will not revoke a service permit when 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.

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<sup>1</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.

The OLCC also relies on service permit denial rules in support of its proposed action.<sup>2</sup> These rules allow the OLCC to deny an application for a service permit if an applicant has had two DUII convictions or one DUII conviction and one diversion, either one of which was within 12 months.<sup>3</sup> In the present case, Permittee was convicted of DUII on May 17, 2010. Permittee also has a diversion that ended on August 14, 2008, which is the relevant date for the purposes of OAR 845-009-0020(7)(a). See *Tamara L. Cardenas* (OLCC Final Order, OLCC-94-SPR-122, March 1995). Because Permittee would have been ineligible for a permit based on his DUII conviction and diversion, revocation is the appropriate sanction now.

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

OAR 845-009-0020(3) and (7)(b) provides that an applicant may show good cause to overcome a 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(7)(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>4</sup>

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<sup>2</sup> The OLCC has previously held that it is reasonable to apply the service permit rules to determine whether revocation of the permit is an appropriate sanction. *Michelle L. Haynes* (OLCC Final Order, OLCC-06-SPR-022, December 2006).

<sup>3</sup> OAR 845-009-0020 provides, in relevant part:

(7) Driving Under the Influence of Intoxicants (DUII)/Furnishing Alcohol to Minors/Liquor Law Violations:

(a) The Commission will deny a service permit if:

(A) Within three years the applicant has had two DUII convictions or one diversion and one conviction, any one of which was within 12 months[.]

<sup>4</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:

\* \* \* \* \*

(D) DUII convictions or diversions which form the denial basis under OAR 845-009-0020(7) and (8); or

(b) The applicant was diagnosed as drug or alcohol addicted at the time of or as a result of the incidents described above.

\* \* \* \* \*

(7)(b) If applicant has DUII convictions or diversions, good cause may apply. Good cause to overcome the criteria in subsection (a)(A) through (C) above is the applicant's sworn statement on a Commission-supplied form that:

(A) He/she has not used or consumed alcohol or controlled substances within 24 months; and

(B) He/she has successfully completed a state certified alcohol or drug treatment program or is actively involved in a state certified treatment or recovery program, and is following treatment recommendations. If a completion certificate or other proof that the applicant

In this matter, it is notable that Permittee is participating in a DUII rehabilitation class. However, Permittee is currently on probation and will remain on probation until May 2012. Nor does Permittee have 24 months of abstinence from the use of alcohol or controlled substances as required by rule. Because of the foregoing facts, Permittee does not meet the good cause criteria under the rule.

The OLCC may revoke Permittee's service permit.

### **FINAL ORDER**

The Commission orders that service permit No. 356058, issued to Justin W. Williams on May 11, 2010 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, 2011.

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

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

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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.