

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

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

**FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER**

GEORGE J. IVERSON

Agency Case No.: OLCC-11-SPR-019

HISTORY OF THE CASE

On September 7, 2011, the Oregon Liquor Control Commission (the OLCC) notified George J. Iverson that it intended to deny his application for a service permit because of allegations that Mr. Iverson had, within three years, one conviction and one diversion for driving under the influence of intoxicants (DUII), one of which was within 12 months.

Mr. Iverson filed a timely request for hearing. The OLCC referred the request to the Office of Administrative Hearings on October 21, 2011. The OAH assigned the case to John R. Lohuis, Administrative Law Judge (ALJ). ALJ Lohuis held a contested case hearing by telephone at 9:00 a.m. on December 13, 2011. Gwenn McNeal appeared on behalf of the OLCC and testified. Mr. Iverson appeared on his own behalf and testified. The record closed at the conclusion of the hearing on December 13, 2011.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed January 20, 2012.

Applicant filed Exceptions to the Proposed Order on February 6, 2012. The Administrative Law Judge responded to Applicant's Exceptions on February 14, 2012.

On March 16, 2012 and June 7, 2012, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Administrative Law Judge, Applicant's Exceptions to the Proposed Order, and the Administrative Law Judge's Response to Applicant's Exceptions. Based on this review and the preponderance of the evidence, the Commission enters the following:

ISSUES

1. Whether Mr. Iverson's service permit application should be denied because, within three years of the application, he had one DUII conviction and one DUII conversion, one of which was within 12 months. OAR 845-009-0020(7)(a)(A); ORS 471.380(1)(d).

2. If the application should be denied because of Mr. Iverson's DUII conviction and diversion, whether Mr. Iverson has good cause to overcome the denial. OAR 845-009-0020(3) and (7)(b).

EVIDENTIARY RULINGS

Exhibits A1 through A4, offered by the OLCC, were admitted into the record without objection.

Exhibit P1, offered by Mr. Iverson, was admitted into the record without objection.

FINDINGS OF FACT

1. On May 24, 2008, Mr. Iverson was arrested in Eugene, Oregon and cited for driving under the influence of intoxicants (DUII). On June 5, 2008, Mr. Iverson entered a diversion program. Mr. Iverson's diversion program ended on June 4, 2009. (Test. of McNeal; Ex. A2.)

2. On March 5, 2011, Mr. Iverson was arrested and cited for DUII in Eugene, Oregon. On May 23, 2011, Mr. Iverson was convicted for DUII in the Eugene Municipal Court based on his March 5 arrest. (*Id.*)

3. Mr. Iverson last consumed alcoholic beverages on March 6, 2011. (Test. of Iverson.)

4. Mr. Iverson remains on probation as a result of his May 2011 DUII conviction. (*Id.*)

5. Mr. Iverson plans to begin an alcohol treatment program on December 23, 2011. He works on a road crew to pay off his fines from his DUII conviction. He attends classes at the University of Oregon and works at Café Yumm!, where he is a valued employee. (Test. of Iverson; Ex. P1.)

6. On August 8, 2011, the OLCC received Mr. Iverson's service permit application. (Ex. A1; test. of McNeal.)

CONCLUSIONS OF LAW

1. Mr. Iverson's application for a service permit should be denied because, within three years of the application for a service permit, Mr. Iverson has had one DUII conviction and one diversion, at least one of which was within 12 months of the date of his application. OAR 845-009-0020(7)(a)(A); ORS 471.380(1)(d).

2. Mr. Iverson does not meet the requirements set forth in rule to show good cause to overcome the denial. OAR 845-009-0020(3) and (7)(b).

OPINION

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

ORS 471.380(1)(d) provides that the OLCC may refuse to issue a service permit if an applicant has been convicted of violating any of the alcoholic liquor laws or has been convicted of a felony. In this matter, the OLCC proposes to deny Mr. Iverson's service permit application

under the provisions of OAR 845-009-0020(7)(a)(A), which provides that the OLCC will refuse to issue a service permit if, within three years, an applicant has had two DUII convictions or one diversion and one conviction, either one of which was within 12 months.¹

The phrase “within 12 months” used in the administrative rule refers to the 12 month period of time beginning when the OLCC received the application. OAR 845-009-0020(2). The relevant date for a diversion program is the completion date. *Tamara L. Cardenas* (OLCC Final Order, OLCC-94-SPR-122, March 1995).

In matters in which the agency bases its action on the conviction of a crime, ORS 670.280 requires the agency to show the relationship between the conviction and the applicant’s fitness to sell or serve alcoholic liquor.²

In several previous cases, the OLCC has concluded that DUII convictions are related to an individual’s fitness to serve and sell alcoholic liquor because these convictions show that the individual has failed to comply with alcoholic liquor laws, which are integral to the privileges of selling and serving alcoholic beverages. *See Dorothy J. Hamblin* (OLCC Final Order, OLCC-03-SPR-036, December 2003); *Marlys McLauray* (OLCC Final Order, OLCC-90-SP-238, August 1991).

In the present case, Mr. Iverson was convicted of DUII on May 23, 2011. Additionally, he had a diversion ending on June 4, 2009. These two events both occurred within three years of the date the Commission received Mr. Iverson’s application for a service permit, August 8, 2011, and his DUII conviction occurred within one year of the application. Therefore, under OAR 845-009-0020(7)(a)(A), the OLCC will deny the application for a service permit, unless Mr. Iverson can show good cause to overcome the denial.

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¹ 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[.]

² 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 Mr. Iverson has good cause to overcome the denial:*

OAR 845-009-0020(7)(b) provides that an applicant may show good cause to overcome the denial of a service permit application. This rule provides that, in order to show good cause to overcome a service permit denial, the applicant must provide a sworn statement that he or she has not used or consumed controlled substances within 24 months, has successfully completed or is actively involved in a state certified drug treatment or recovery program, and has completed all parole or probation requirements. OAR 845-009-0020(3) provides that to be qualified for good cause, an applicant must have had a drug addiction disability or an alcohol addiction disability at the time of the DUII convictions or diversions.³

Mr. Iverson works in a road crew, takes classes at the university while working at a local restaurant and has the confidence of his employer. Additionally, Mr. Iverson began a three month treatment program in December 2011. All these factors demonstrate that Mr. Iverson is addressing his past actions.

Notwithstanding these facts, the OLCC's rules provide that good cause to overcome a denial is established when an applicant meets all the criteria in the rules. Here, Mr. Iverson remains on probation and he does not have 24 months abstinence from consumption of alcoholic beverages or controlled substances, and, as of the date of the hearing, has not yet begun his treatment program. Because Mr. Iverson has not established that he met all the criteria for good cause, his application for a service permit must be denied.

³ OAR 845-009-0020(3) and (7)(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:

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(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.

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(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 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 George J. Iverson and received by the OLCC on August 8, 2011 be DENIED.

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

Dated this 13th day of June 2012.

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

Mailed this 13th day of June 2012.

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.