

**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**
)

Anthony Hampton
990 NE Savannah Apt 3
Bend OR 97701

Case No.: OLCC-13-SPR-004

HISTORY OF THE CASE

On January 28, 2013, the Oregon Liquor Control Commission (the OLCC) issued a Service Permit Denial Notice to Anthony Hampton. On April 16, 2013, the OLCC issued an Amended Service Permit Denial Notice. The OLCC proposed to deny Mr. Hampton's application for a service permit on the basis that Mr. Hampton has three or more controlled substance felony convictions, one of which was within six years of the date of his application.

Mr. Hampton made a timely request for hearing. The OLCC referred the request for hearing to the Office of Administrative Hearings (the OAH) on April 17, 2013. The OAH assigned the case to John R. Lohuis, Administrative Law Judge (ALJ). On Mr. Hampton's request, the hearing was postponed. ALJ Lohuis held a contested case hearing by telephone at 9:00 a.m. on July 10, 2013. Gwenn McNeal appeared for the OLCC and testified on its behalf. Mr. Hampton appeared, represented himself, and testified on his own behalf.

The record closed at the conclusion of the hearing on July 10, 2013.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed July 24, 2013.

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 Mr. Hampton's application for a service permit should be denied because he has three or more controlled substance felony convictions, one of which was within six years of the date of his application. ORS 471.380(1)(d), OAR 845-009-0020(4)(a)(D).

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

EVIDENTIARY RULING

Exhibits A1 through A3, offered by the OLCC, were admitted into the record without objection.

FINDINGS OF FACT

1. Between about December 29, 2008 and February 12, 2009, Mr. Hampton committed the crime of Unlawful Delivery of Cocaine. On March 31, 2009, Mr. Hampton was convicted of three felony charges of Unlawful Delivery of Cocaine, in Deschutes County, Oregon. Mr. Hampton was incarcerated for 30 months and sentenced to 36 months of post-prison supervision for the convictions. (Exs. A2, A3, test. of McNeal, Hampton.)

2. As a result of his convictions, Mr. Hampton will remain on parole until August 2014. He is compliant with his parole requirements. (Test. of Hampton.)

3. In July 2013, Mr. Hampton completed a drug and alcohol assessment, as required by his convictions. The assessment coordinator advised Mr. Hampton that he did not need to participate in a drug and alcohol treatment program. (Test. of Hampton.)

4. Mr. Hampton has worked at the D and D Bar and Grill for the past two years. Occasionally, Mr. Hampton fills in as a server, but he usually works as a bouncer. (Test. of Hampton.)

5. Mr. Hampton does not use controlled substances. (Test. of Hampton.)

6. On November 29, 2012, the OLCC received Mr. Hampton's service permit application. (Ex. A1, test. of McNeal.)

CONCLUSIONS OF LAW

1. Mr. Hampton's application for a service permit should be denied because he has three or more controlled substance felony convictions, one of which was within six years of his application.

2. Mr. Hampton has not demonstrated good cause to overcome the denial.

OPINION

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 of this state or has been convicted at any time of a felony. The OLCC has adopted administrative rules to apply this statutory provision. In this case, the OLCC proposes to deny Mr. Hampton's service permit application under OAR 845-009-0020(4)(a)(D), which provides that the OLCC will deny a service permit application if an applicant has three controlled substance felony convictions, one

of which was within six years. The phrase “within six years” as used in the administrative rule means within six years of the date the OLCC received the application. OAR 845-009-0020(2).

Where the conviction of a crime is the basis for agency action, ORS 670.280 applies and the OLCC must show the relationship between the conviction and the applicant’s fitness to sell or serve alcoholic liquor.¹ The OLCC has previously determined that convictions involving controlled substances are relevant to an individual’s fitness to dispense alcoholic liquor. *John O. Myshak* (OLCC Final Order, OLCC-88-V-002, May 1988).

In the present case, Mr. Hampton has three controlled substance felony convictions, all of which were within six years of the date the OLCC received his application for a service permit. Therefore, under OAR 845-009-0020(4)(a)(D), the OLCC will deny Mr. Hampton’s application for a service permit, unless he can show good cause to overcome the denial.

Good Cause

OAR 845-009-0020(4)(b) provides that an applicant may show good cause to overcome a 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 he or she 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

¹ ORS 670.280 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 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))[]

* * * * *

(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.

Mr. Hampton has not demonstrated good cause to overcome the denial. Although Mr. Hampton has not used controlled substances in the past 24 months, he has not completed an alcohol and drug treatment program, and has not completed his parole. Consequently, Mr. Hampton does not meet the criteria listed in OAR 845-009-0020(4)(b) to show good cause to overcome the denial. For these reasons, the OLCC's administrative rules require that Mr. Hampton's service permit application be denied.

FINAL ORDER

The Commission orders that the application for a service permit filed by Applicant Anthony Hampton and received by the OLCC on November 29, 2012 be DENIED.

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

Dated this 21st day of August 2013

/s/ Merle Lindsey

Merle Lindsey

Interim Executive Director

OREGON LIQUOR CONTROL COMMISSION

Mailed this 21st day of August 2013

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.