

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

In the Matter of the Application for a Service Permit Filed by:) **FINAL FINDING OF FACT**
) **CONCLUSION OF LAW**
) **AND ORDER**
Stephanie M. Maneatis)

Agency Case No.: OLCC-13-SPR-017

HISTORY OF THE CASE

On April 18, 2013, the Oregon Liquor Control Commission (OLCC) received an application for a service permit from Stephanie M. Maneatis (Applicant). On May 28, 2013, the OLCC issued a Service Permit Denial Notice proposing to deny Applicant’s service permit pursuant to OAR 845-009-0020(4)(a)(A), because Applicant was convicted of a felony drug possession charge in the past 12 months.

Applicant filed a timely request for hearing. The OLCC referred the request to the Office of Administrative Hearings (OAH) on July 12, 2013. The OAH assigned the case to Lynnette M. Turner, Administrative Law Judge (ALJ). ALJ Turner held a contested case hearing by telephone at 9:00 p.m. on September 26, 2013. Gwenn McNeal appeared on behalf of the OLCC and testified. Applicant appeared on her own behalf and testified. The hearing record closed at the conclusion of the hearing on September 26, 2013.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed November 5, 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 Applicant’s application for a service permit should be denied because she was convicted of felony possession of a controlled substance within 12 months of the application. OAR 845-009-0020(4)(a)(A); ORS 471.380(1)(d).

2. If the application should be denied because of Applicant’s conviction, whether Applicant has shown good cause to overcome the denial. OAR 845-009-0020(4)(b); OAR 845-009-0020(3).

EVIDENTIARY RULINGS

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

FINDINGS OF FACT

1. On or about November 1, 2011, Applicant Stephanie M. Maneatis committed the crime of Unlawful Possession of Methamphetamine. On July 12, 2012, Applicant entered a plea of No Contest to the charge. On October 18, 2012, Applicant was convicted of Unlawful Possession of Methamphetamine, a Class C Felony, in Linn County Circuit Court, Linn County, Oregon. The Court sentenced Applicant to 60 months supervised probation. (Ex. A2; test. of Applicant.)

2. In January 2012, Applicant participated in a substance abuse evaluation through the state certified Linn County Alcohol and Drug Treatment Program (Linn County Program) and was diagnosed with a drug addiction disability. She immediately entered an intensive outpatient treatment program through the Linn County Program, which consisted of group therapy sessions four days per week. Applicant successfully completed the treatment program in September 2012. She is in compliance with the terms of her probation. Applicant has not used or consumed controlled substances since November 29, 2011. (Test. of Applicant.)

3. On April 18, 2013, the OLCC received Applicant's Service Permit Application. (Ex. A1; test. of McNeal.)

4. Applicant is employed as a server at an Applebee's restaurant. Her employer is aware of her conviction and treatment history. Applicant must have a service permit to continue her employment with Applebee's. (Test. of Applicant.)

CONCLUSIONS OF LAW

1. Applicant's application for a service permit should be denied because Applicant has a possession of a controlled substance felony conviction within 12 months of the application. OAR 845-009-0020(4)(a)(A); ORS 471.380(1)(d).

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

OPINION

1. Whether Applicant'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 of the state or has been convicted of a felony. The OLCC has adopted administrative rules to apply the statutory provision. In this case, the OLCC proposes to deny Applicant's service permit application under the provisions of OAR 845-009-0020(4)(a)(A), which provides that the OLCC will deny a

service permit application if an applicant has had a felony conviction for possession of a controlled substance within 12 months.¹

The phrase “within 12 months” as used in the administrative rule means within 12 months of the date the OLCC received the application. OAR 845-009-0020(2). Where a 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.² The OLCC has previously concluded that convictions involving controlled substances are relevant to an individual’s fitness to serve and sell alcoholic liquor. *Michelle Haynes* (OLCC Final Order, OLCC-06-SPR-022, December 2006).

In the present case, Applicant was convicted of felony possession of a controlled substance on October 18, 2012, which was within 12 months of the date the OLCC received her application for a service permit. Therefore, under OAR 845-009-0020(4)(a)(A), the OLCC has the authority to deny her application for a service permit, unless she can show good cause to overcome the denial.

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 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 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 or is actively participating in a state certified drug treatment program, and has completed all parole or probation requirements.³

¹ OAR 845-009-0020 provides, in relevant part:

(4) Felony Drug Conviction:

(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[.]

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.

³ OAR 845-009-0020(3) and (4)(b) provide, in relevant part:

(3) To be qualified for good cause under the rule:

