

ISSUES

1. Whether Ms. Oas's application for a service permit should be denied because she has three or more controlled substance felony convictions, one of which was within six years of the date of her application. ORS 471.380(1)(d), OAR 845-009-0020(4)(a)(D).
2. If the application should be denied, whether Ms. Oas has good cause to overcome the denial. OAR 845-009-0020(3) and (4)(b).

EVIDENTIARY RULING

Exhibits A1 through A7, offered by the OLCC, were admitted into the record without objection.

FINDINGS OF FACT

1. On or about July 3, 2009, Ms. Oas committed the crime of Unlawful Possession of Heroin. On March 4, 2011, Ms. Oas was convicted of the charge of Unlawful Possession of Heroin, a Class B Felony, in Jackson County, Oregon. Ms. Oas was sentenced to 18 months of probation for the conviction.¹ (Exs. A2, A3, test. of Ms. McNeal, Oas.)
2. On or about March 29, 2011, Ms. Oas committed the crime of Unlawful Possession of Methamphetamine. On May 27, 2011, Ms. Oas was convicted of the charge of Unlawful Possession of Methamphetamine, a Class C Felony, in Jackson County, Oregon. Ms. Oas was subject to 18 months of probation as a result of this conviction. (Ex. A4, test. of McNeal, Oas.)
3. On or about June 6, 2011, Ms. Oas committed the crime of Unlawful Possession of Heroin. On August 2, 2011, Ms. Oas was convicted of the charge of Unlawful Possession of Heroin, a Class B Felony, in Jackson County, Oregon. Ms. Oas was subject to 18 months of probation as a result of this conviction. (Ex. A5; test. of McNeal, Oas.)
4. On or about June 23, 2011, Ms. Oas committed the crime of Unlawful Possession of Methamphetamine. On August 3, 2011, Ms. Oas was convicted of the charge of Unlawful Possession of Methamphetamine, a Class C Felony, in Jackson County, Oregon. Ms. Oas was sentenced to 18 months of probation for this conviction. (Ex. A6; test. of McNeal, Oas.)
5. On or about July 6, 2012, Ms. Oas committed the crime of Unlawful Possession of Methamphetamine. On July 20, 2012, Ms. Oas was convicted of Unlawful Possession of Methamphetamine, a Class C Felony, in Jackson County, Oregon. Ms. Oas was sentenced to jail for 60 days and subject to one year post-prison supervision for this conviction. (Ex. A7; test. of McNeal, Oas.)

¹ OLCC staff sought to amend this finding of fact in its Comments to the Proposed Order and the ALJ agreed in his Response to Staff Comments and Exceptions that the change was supported by the record.

6. As a result of her convictions, Ms. Oas will remain on probation until March 2014. She is compliant with the terms of her probation and is subject to random drug screens. For approximately the past 10 months, Ms. Oas's drug screens have been negative. (Test. of Oas.)

7. In 2010, Ms. Oas completed a drug treatment program, but later relapsed. In November 2012, Ms. Oas completed a second drug and alcohol treatment program. (Test. of Oas.)

8. On August 14, 2012, Ms. Oas began working at Elmer's Restaurant as a server. Elmer's Restaurant requires its servers, hostesses, and managers to have valid service permits. If Ms. Oas does not obtain a service permit, she may be able to work as a busser. Ms. Oas's supervisor, Nicholas Davis, considers Ms. Oas to be a valuable employee and one of the restaurant's top five servers. Ms. Oas is regularly willing to work extra shifts and stay late if needed. Mr. Davis believes that Ms. Oas's work is invaluable. (Test. of Oas, Davis.)

9. Ms. Oas has been abstinent from the use of drugs and alcohol since July 6, 2012. (Test. of Oas.)

10. On October 17, 2012, the OLCC received Ms. Oas's service permit application. (Ex. A1, test. of McNeal.)

CONCLUSIONS OF LAW

1. Ms. Oas's application for a service permit should be denied because she has three or more controlled substance felony convictions, one of which was within six years of her application.

2. Ms. Oas 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 Ms. Oas'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.² The OLCC has previously determined that convictions involving

² ORS 670.280 provides:

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, Ms. Oas has five controlled substance felony convictions, all of which were within six years of the date the OLCC received her application for a service permit. Therefore, under OAR 845-009-0020(4)(a)(D), the OLCC will deny Ms. Oas's application for a service permit, unless she 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.³

Ms. Oas has met some, but not all of the requirements to show good cause. Ms. Oas completed an alcohol and drug treatment program in November 2012. However, Ms. Oas last consumed drugs on July 6, 2012, and therefore does not yet have 24 months abstinence as required by rule. Additionally, Ms. Oas will remain on probation until March 2014. Ms. Oas has demonstrated that she is compliant with her parole requirements. She has remained abstinent

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 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.

from drugs and alcohol for almost one year and has quickly proven herself to be a valuable asset to a local restaurant. Ms. Oas is clearly making strides towards improving her life, and her efforts to place herself on a path to success deserve recognition. However, notwithstanding Ms. Oas's recent accomplishments, she has committed several drug felonies. Under the OLCC's administrative rules, Ms. Oas's criminal history subjects her to a denial of her service permit application. Because Ms. Oas has not abstained from using a controlled substance for 24 months, and because she has not yet completed her probation requirements, she 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 her service permit application be denied.

FINAL ORDER

The Commission orders that the application for a service permit filed by Applicant Kaitlyn R. Oas and received by the OLCC on October 17, 2012 be DENIED.

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

Dated this _____ day of August 2013

Merle Lindsey
Interim Executive Director
OREGON LIQUOR CONTROL COMMISSION

Mailed this _____ 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.