

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

In the Matter of the Proposed Revocation of the Service Permit held by: LIBERTY J. ADAMS) FINAL FINDINGS OF FACT) CONCLUSIONS OF LAW) AND ORDER)) Agency Case No.: OLCC-12-SPR-018
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HISTORY OF THE CASE

On July 11, 2012, the Oregon Liquor Control Commission (the OLCC) issued a Service Permit Revocation Notice to Liberty J. Adams (Permittee). The OLCC proposed to revoke Permittee's service permit because she had three diversions or convictions for driving under the influence of intoxicants (DUII) within seven years, at least one of which was in the past 18 months.

Permittee filed a timely request for hearing. The OLCC referred the request to the Office of Administrative Hearings on August 31, 2012. The Office of Administrative Hearings assigned the case to Lynnette M. Turner, Administrative Law Judge (ALJ). ALJ Turner held a contested case hearing by telephone at 9:00 a.m. on October 31, 2012. Gwenn McNeal appeared on behalf of the OLCC and testified. Permittee appeared without counsel and testified on her own behalf. The hearing record remained open for the receipt of additional evidence until 5:00 p.m. October 31, 2012. The ALJ received and admitted additional evidence into the hearing record on October 31, 2012, at which time the hearing record closed.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed December 4, 2012.

Permittee filed Exceptions to the Proposed Order on December 19, 2012. The Administrative Law Judge responded to Permittee's Exceptions on January 14, 2013.

On March 1, 2013, 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 Permittee has had three DUII diversions or convictions within seven years, one of which was in the past 18 months. ORS 471.385(1)(b), OAR 845-009-0020(7)(a)(B).

2. If the service permit should be revoked, whether Permittee has shown good cause to overcome the revocation. OAR 845-009-0020(3) and (7)(b).

EVIDENTIARY RULING

Exhibits A1 through A4, offered by the OLCC, were admitted into the record without objection. Exhibit P1, offered by Permittee, was admitted into the record without objection. The record remained open until 5:00 p.m. on October 31, 2012 to allow Permittee to submit a letter from her employer. Ms. McNeal did not object to admission of this pending document. On October 31, 2012, Permittee submitted a letter from her employer to the OLCC and the OAH. The ALJ marked this document as Exhibit P2 and admitted it into the record.

FINDINGS OF FACT

1. On June 11, 2009, the OLCC received Permittee Liberty J. Adams's Service Permit Application. The OLCC issued Service Permit No. 334214 to Permittee on June 17, 2009. (Ex. A2.)

2. On April 22, 2005, Permittee was arrested and cited for driving under the influence of intoxicants (DUII) in Marion County, Oregon. She entered a diversion program on May 25, 2005. (Ex. A3; test. of McNeal.)

3. On November 1, 2005, Permittee was arrested and cited for DUII in Lincoln County, Oregon. (*Id.*)

4. Permittee's diversion agreement was revoked, and she was convicted of the April 22, 2005 DUII charge on March 7, 2006. Permittee was convicted of the November 1, 2005 charge on July 3, 2006. Both charges are Class A misdemeanors. (*Id.*)

5. Permittee successfully completed probation on both DUII convictions. She completed a substance abuse treatment program in 2009. (Test. of Permittee.)

6. Permittee was arrested and cited for DUII in Clackamas County, Oregon on February 13, 2012. She was convicted of this charge, a Class C felony, on July 3, 2012.¹ (*Id.*)

7. The Circuit Court judge sentenced Permittee to probation for a period of two years, to conclude on July 2, 2014. If she completes substance abuse treatment and pays her court fines and fees, Permittee can apply for early release from probation in July 2013. (Test. of Permittee.)

8. As a result of her 2012 DUII arrest, Permittee entered Lifeworks Northwest, a state certified mental health and addiction treatment program, on September 12, 2012. For the first two months of the program, Permittee attended group therapy sessions twice per week. She successfully completed that portion of the program. Permittee will attend weekly group therapy sessions, bi-monthly individual therapy sessions, and will comply with random urinalysis testing

¹ A third conviction for DUII in a ten year period is automatically classified as a Class C felony rather than a Class A misdemeanor. (Test. of McNeal.)

for the next four and one-half months. She voluntarily attends AA once per week and is very involved in church activities. Permittee has not been diagnosed with an alcohol or drug addiction. (Ex. P1, Test. of Permittee.)

9. Permittee has worked for the same employer for five years, and is a valued and trusted employee. (Ex. P2.) Her driver's license has been permanently suspended, and she is able to ride her bike to work, which is two miles from her home. (Test. of Permittee.)

10. Permittee must pay probation supervision fees of \$35 per month, court fees of \$50 per month, and co-payments of \$15 to \$30 per session for her addiction treatment. (Test. of Permittee.)

11. Permittee has not consumed alcohol since March 3, 2012. (Test. of Permittee.)

CONCLUSIONS OF LAW

1. Permittee's service permit should be revoked because Permittee has three DUII convictions within seven years, one of which was within the past 18 months. ORS 471.385(1)(b), OAR 845-009-0020(7)(a)(B).

2. Permittee has not shown good cause to overcome the denial basis. OAR 845-009-0020(3) and (7)(b).

OPINION

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

The OLCC proposes to revoke Permittee's service permit on the basis ORS 471.385(1)(b), which states:

(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.

ORS 471.380(1)(b) provides that the OLCC may revoke a service permit if a permittee has been convicted of violating any of the liquor laws of the state. In this case Permittee has been convicted of three counts of DUII, 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 her 2006 and 2012 DUII convictions.

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.² In addition to the *Hamblin* case noted above, the OLCC has previously 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 three times convicted of misdemeanor and felony charges that involve the abuse of an intoxicant. Similar to the *Hamblin* and *Myshak* cases, Permittee's convictions involving the abuse of an intoxicant are related to her fitness and judgment to sell and serve alcoholic beverages, and provide a basis for the proposed revocation of her license.

The OLCC also relies on its service permit denial rules to support the proposed revocation of Permittee's permit. *See Michelle L. Haynes* (OLCC Final Order, OLCC-006-SPR-022, December 2006) (holding that it is reasonable to apply service permit rules to determine whether revocation of a service permit is warranted). In this case, the OLCC seeks to revoke Permittee's service permit under the provisions of OAR 845-009-0020(7)(a)(B), which provides that the OLCC will deny a service permit application if an applicant has had three DUII convictions or diversions within seven years, any one of which was within 18 months.³

In the present case, Permittee has three DUII convictions dated March 7, 2006, July 3, 2006 and July 3, 2012. The convictions occurred within the last seven years, and the final conviction was within the last 18 months. Therefore, under OAR 845-009-0020(7)(a)(B), the OLCC has the authority to revoke Permittee's service permit, unless Permittee can show good cause to overcome the revocation.

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 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:

* * * * *

(B) Within seven years the applicant has had a combination of three diversions and convictions for DUII or Furnishing Alcohol to Minors, any one of which was within 18 months[.]

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

The OLCC's administrative rules provide that an applicant may show good cause to overcome a service permit denial. The OLCC has also relied on these rules to determine whether there is good cause to overcome a proposed revocation. *Michelle L. Haynes*, Final Order. 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 DUII convictions or diversions.⁴ OAR 845-009-0020(7)(b) provides that in order to show good cause to overcome a denial (or as in this case, a revocation), an applicant must provide 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.⁵

In this case, although Permittee is currently participating in a state certified substance abuse treatment program, she has not been diagnosed with an alcohol addiction either before or as a result of her DUII convictions. Also, Permittee last consumed alcoholic beverages on March 3, 2012, which is within 24 months of the proposed revocation. Additionally, she was placed on probation following her July 3, 2012 conviction, and will remain on probation until July 3, 2013, at the earliest. Because Permittee has not abstained from using a controlled substance for 24 months and has not yet completed her probation, she cannot establish good cause to overcome the revocation. For these reasons, the OLCC may revoke Permittee's service permit.

⁴ OAR 845-009-0020(3) provides, 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.

⁵ OAR 845-009-0020(7)(b) provides:

- (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.

It should be noted that Permittee's March 7, 2006 DUII conviction will no longer disqualify her for a service permit under OAR 845-009-0020(7)(a)(B) effective March 7, 2013. Permittee is active in her recovery and is taking positive steps to improve her life. Her employer supports her in her recovery and hopes Permittee can continue to work in her current position. Unfortunately, the law does not consider these factors sufficient to establish good cause to overcome the revocation of her service permit.

FINAL ORDER

The Commission orders that service permit No. 334214, issued to Liberty J. Adams in June 2009, be REVOKED.

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

Dated this 18th day of March, 2013

/s/ Merle Lindsey

Merle Lindsey

Interim Executive Director

OREGON LIQUOR CONTROL COMMISSION

Mailed this 18th day of March, 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.