

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

**In the Matter of the Proposed** ) **FINAL FINDINGS OF FACT**  
**Revocation of the Service Permit held** ) **CONCLUSIONS OF LAW**  
**by:** ) **AND ORDER**  
)  
**DANIELLE N. DENFELD** ) Agency Case No.: OLCC-12-SPR-015

**HISTORY OF THE CASE**

On May 7, 2012, the Oregon Liquor Control Commission (the OLCC) issued a Service Permit Revocation Notice to Danielle N. Denfeld (Permittee). The OLCC proposed to revoke Permittee’s service permit because she had two diversions or convictions for driving under the influence of intoxicants (DUII) within three years, at least one of which was in the past 12 months.

Permittee filed a timely request for hearing. The OLCC referred the request to the Office of Administrative Hearings on June 15, 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 1:00 p.m. on August 15, 2012. Gwenn McNeal appeared on behalf of the OLCC and testified. Permittee appeared without counsel and testified on her own behalf. The hearing record closed at the conclusion of the hearing on August 15, 2012.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed October 10, 2012.

Applicant filed Exceptions to the Proposed Order on October 22, 2012. The Administrative Law Judge responded to Applicant's Exceptions and Staff’s Comments on November 19, 2012.

On December 14, 2012 and April 25, 2013, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Administrative Law Judge, Licensee’s Exceptions to the Proposed Order, Staff’s Comments on the Proposed Order and the Administrative Law Judge’s Response to Licensee’s Exceptions and Staff’s Comments. 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 two DUII diversions or convictions within three years, one of which was in the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(7)(a)(A).

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 A6, offered by the OLCC, were admitted into the record without objection.

## **FINDINGS OF FACT**

1. On February 14, 2011, the OLCC received Permittee Danielle N. Denfeld's Service Permit Application. The OLCC issued Service Permit No. 376237 to Permittee on February 18, 2011. (Ex. A2.)

2. On September 4, 2010, Permittee was arrested and cited for driving under the influence of intoxicants (DUII). She entered a diversion program on October 6, 2010, and completed diversion on October 5, 2011. (Ex. A4; test. of McNeal.)

3. On March 10, 2012, Permittee was arrested again and cited for DUII, and was convicted of the charge on April 23, 2012. (Ex. A4; test. of McNeal.)

4. As part of the April 23, 2012 DUII conviction, the Circuit Court judge sentenced Permittee to bench probation for a period of two years, to conclude in April 2014. The judge did not require Permittee to quit her job as a condition of her probation. (Test. of Permittee.)

5. Permittee has not been diagnosed as alcohol or drug addicted. She participated in a counseling program related to alcohol abuse during her diversion period. Approximately one week prior to the hearing, Permittee started a six-month alcohol abuse counseling program as required by her probation. (Test. of Permittee.)

6. Permittee has not consumed alcohol since her March 10, 2012 DUII arrest. (Test. of Permittee.)

## **CONCLUSIONS OF LAW**

1. Permittee's service permit should be revoked because Permittee has one DUII diversion and one DUII conviction within three years, one of which was within the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(7)(a)(A).

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 of 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 a felony, or of violating any of the liquor laws of the state. In this case Permittee has been convicted of DUII, a misdemeanor involving alcohol abuse and hence a violation of Oregon liquor laws. At the time of her conviction, Permittee held a service permit. Therefore, under ORS 471.385(1)(b), the OLCC has the statutory authority to revoke her permit.

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.<sup>1</sup> Here, that relationship has been shown because, as noted above, Permittee's DUII conviction involved consuming alcoholic beverages, which is relevant to her fitness to sell and serve the same. *See Dorothy J. Hamblin* (OLCC Final Order, OLCC-03-SPR-036, December 2003) (holding that DUII convictions are relevant to an individual's fitness to sell and serve alcoholic liquor).

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-060-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)(A), which provides that the OLCC will deny a service permit application if an applicant has had two DUII convictions or one diversion and one conviction, any one of which was within 12 months.<sup>2</sup> The

---

<sup>1</sup> 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.

<sup>2</sup> 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[.]

phrase “within 12 months” as used in the administrative rule means within 12 months of the date the OLCC received the service permit application. OAR 845-009-0020(2).

In the present case, Permittee has one DUII diversion that began on October 6, 2010 and ended on October 5, 2011, and one DUII conviction, on April 23, 2012, arising out of her March 10, 2012 arrest. The OLCC received Permittee’s application on February 14, 2011, which is within 12 months of the diversion period. Therefore, under OAR 845-009-0020(7)(a)(A), the OLCC has the authority to revoke Permittee’s service permit, unless Permittee can show good cause to overcome the revocation.

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

OAR 845-009-0020(7)(b) provides 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 DUII convictions or diversions. OAR 845-009-0020(7)(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 a state certified drug treatment program, and has completed all parole or probation requirements.<sup>3</sup>

Permittee has not been diagnosed with a drug or alcohol addition disability. Also, Permittee last consumed alcohol on March 10, 2012, which is within 24 months of the proposed revocation. Additionally, Permittee was placed on probation following her April 23, 2012 conviction, and will remain on probation until April 2014. Because Permittee has not abstained from using a controlled substance for 24 months and has not yet completed her probation, she

---

<sup>3</sup> 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:

\* \* \* \* \*

(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.

\* \* \* \* \*

(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.

cannot establish good cause to overcome the revocation. For these reasons, the OLCC may revoke Permittee's service permit.

**FINAL ORDER**

The Commission orders that service permit No. 376237, issued to Danielle N. Denfeld in February 2011, be REVOKED.

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

Dated this 2nd day of May 2013.

/s/ Merle Lindsey

Merle Lindsey

Interim Executive Director

OREGON LIQUOR CONTROL COMMISSION

Mailed this 2nd day of May 2013.

THIS ORDER IS EFFECTIVE AT 7:00 AM ON THE 5th DAY OF May, 2013.

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.