

**BEFORE THE OREGON 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**
)
SUSHA DORE Agency Case No.: OLCC-12-SPR-006

HISTORY OF THE CASE

On April 11, 2012, the Oregon Liquor Control Commission (the Commission or the OLCC) issued an Amended Service Permit Denial Notice to Sussha Dore. The OLCC proposed to deny Ms. Dore’s application for a service permit because of the allegation that Ms. Dore was convicted of felony drug delivery on February 7, 2011.

Ms. Dore made a timely request for hearing. The OLCC referred the request for hearing to the Office of Administrative Hearings (OAH) on April 12, 2012. The OAH assigned the case to John R. Lohuis, Administrative Law Judge (ALJ). ALJ Lohuis held a contested case hearing by telephone at 9:00 a.m. on June 19, 2012. Gwenn McNeal appeared for the OLCC and testified on its behalf. Ms. Dore appeared, represented herself, and testified on her own behalf.

The record closed at the conclusion of the hearing on June 19, 2012.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed July 26, 2012.

Applicant filed Exceptions to the Proposed Order on August 10, 2012. The Administrative Law Judge responded to Applicant's Exceptions on August 24, 2012.

On October 25, 2012 and March 1, 2013, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Administrative Law Judge, Applicant's Exceptions to the Proposed Order and the Administrative Law Judge’s Response to Applicant's Exceptions. Based on this review and the preponderance of the evidence, the Commission enters the following:

ISSUES

1. Whether Ms. Dore’s application for a service permit should be denied because she has a felony conviction for the manufacture, delivery, or distribution of a controlled substance within two years of the date of her application. ORS 471.380(1)(d), OAR 845-009-0020(4)(a)(B).

2. If the application should be denied, whether Ms. Dore has shown 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. On or about October 5, 2010, Ms. Dore committed the crime of Unlawful Delivery of Marijuana for Consideration. On January 7, 2011, Ms. Dore pled guilty to the charge of Unlawful Delivery of Marijuana for Consideration. (Ex. A2, test. of McNeal.)

2. On February 9, 2011, Ms. Dore was convicted of Unlawful Delivery of Marijuana, a Class B Felony, based on her January 2011 guilty plea. Ms. Dore was sentenced to 36 months supervised probation. However, Ms. Dore believes that, because she is subject to reduced supervision probation, her probation period will be reduced by one-half (i.e., 18 months) if she completes her community service and pays the fees and assessments associated with her conviction. Because Ms. Dore has completed her community service and is up to date on paying her fees and assessments, Ms. Dore believes that her probation period will be complete on August 7, 2012. (Ex. A2, test. of Dore.)

3. If Ms. Dore successfully completes her probation, her felony conviction will be reduced to a misdemeanor conviction. (Ex. A2, test. of Dore.)

4. Ms. Dore has not been diagnosed as having an alcohol or drug addiction. She was not required to complete a treatment program, and she has not enrolled in such a program. Ms. Dore last used controlled substances on January 7, 2011. (Test. of McNeal, test. of Dore.)

5. On January 6, 2012, the OLCC received Ms. Dore's service permit application. (Ex. A1; test. of McNeal.)

CONCLUSIONS OF LAW

1. Ms. Dore's application for a service permit should be denied because she has had a felony conviction for the manufacture, delivery, or distribution of a controlled substance within two years of the date of her application. ORS 471.380(1)(d), OAR 845-009-0020(4)(a)(B).

2. Ms. Dore has not established good cause to overcome the denial. OAR 845-009-0020(3) and (4)(b).

OPINION

1. Whether Ms. Dore'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 or has been convicted of a felony. The OLCC has adopted administrative rules to apply this statutory provision. In this

case, the OLCC proposes to deny Ms. Dore’s service permit application under the provisions of OAR 845-009-0020(4)(a)(B), which provides that the OLCC will deny a service permit application if an applicant has had a felony conviction within two years for manufacture, delivery or distribution of a controlled substance.¹

The phrase “within two years” as used in the administrative rule means within two 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 controlled substances are relevant to an individual’s fitness to dispense alcoholic liquor. *John O. Myshack* (OLCC Final Order, OLCC-88-V-002, May 1988).

In the present case, Ms. Dore has been convicted of Unlawful Delivery of Marijuana, a Class B felony. She was convicted of this crime on February 9, 2011, within two years of the date the Commission received her application for a service permit (January 6, 2012). Therefore, under OAR 845-009-0020(4)(a)(B), the OLCC will deny her application for a service permit, unless she can show good cause to overcome the denial.

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

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) 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 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:

* * * * *

(B) A felony conviction within two years for manufacture, delivery or distribution of a controlled substance or any other drug related felony as described in ORS Chapter 475 or similar laws in other jurisdictions (except possession of a controlled substance).

² 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.

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

In this matter, Ms. Dore will remain on probation until August 7, 2012. She last used a controlled substance on January 7, 2011, and therefore does not yet have 24 months abstinence as required by rule. Finally, Ms. Dore has not completed a treatment program.

Because Ms. Dore has not established good cause to overcome the denial, her service permit application must be denied.

FINAL ORDER

The Commission orders that the application for a service permit filed by Applicant Susha Dore and received by the OLCC on January 6, 2012 be DENIED.

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

Dated this 14th day of March, 2013

/s/ Merle Lindsey

Merle Lindsey

Interim Executive Director

OREGON LIQUOR CONTROL COMMISSION

Mailed this 14th 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.

(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.