

**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**

ANDREW B. IZZETT

Agency Case No.: OLCC-12-SPR-022

HISTORY OF THE CASE

On October 30, 2012, the Oregon Liquor Control Commission (the OLCC) notified Andrew B. Izzett that it intended to deny his application for a service permit because of the allegation that Mr. Izzett had, within three years, two convictions for driving under the influence of intoxicants (DUII), one of which was within 12 months of the date of his application.

Mr. Izzett filed a request for hearing. On January 31, 2013, the OLCC referred the request to the Office of Administrative Hearings (the OAH). 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 March 5, 2013. Gwenn McNeal appeared on behalf of the OLCC and testified. Mr. Izzett appeared on his own behalf and testified. The record closed at the end of the hearing on March 5, 2013.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed March 26, 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 Mr. Izzett's service permit application should be denied because, within three years of the application, he had two DUII convictions, one of which was within 12 months of the date of his application. OAR 845-009-0020(7)(a)(A); ORS 471.380(1)(d).
2. If the application should be denied because of Mr. Izzett's DUII convictions, whether Mr. Izzett has good cause to overcome the denial. OAR 845-009-0020(3) and (7)(b).

EVIDENTIARY RULINGS

Exhibits A1 through A3, offered by the OLCC, were admitted into the record without objection.

FINDINGS OF FACT

1. On March 11, 2012, Mr. Izzett was arrested in Clackamas County, Oregon and cited for driving under the influence of intoxicants (DUII). (Test. of McNeal; Ex. A2.)
2. On March 18, 2012, Mr. Izzett was again arrested and cited for DUII in Clackamas County, Oregon. (Test. of McNeal; Ex. A2.)
3. On June 4, 2012, Mr. Izzett was convicted of two counts of DUII in Clackamas County, Oregon for his March 11 and 18, 2012 arrests. (*Id.*)
4. Mr. Izzett has not consumed alcoholic beverages since June 2012. (Test. of Izzett.)
5. Mr. Izzett is currently on probation resulting from his June 4, 2012 DUII convictions. He will remain on probation until approximately June 2014. (Test. of Izzett.)
6. Mr. Izzett participated in an alcohol treatment program at NW Treatment. However, approximately two-thirds of the way through the program, he lost his job and was unable to pay for and continue with the remaining components of the treatment program. He continues to attend weekly Alcoholics Anonymous meetings. (Test. of Izzett.)
7. On August 21, 2012, the OLCC received Mr. Izzett's service permit application. Mr. Izzett disclosed his DUII convictions on his application. (Ex. A1; test. of McNeal.)

CONCLUSIONS OF LAW

1. Mr. Izzett's application for a service permit should be denied because, within three years of the application for a service permit, Mr. Izzett has had two DUII convictions, at least one of which was within 12 months of the date of his application.
2. Mr. Izzett has not demonstrated good cause to overcome the denial.

OPINION

1. Whether Mr. Izzett'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. In this matter, the OLCC proposes to deny Mr. Izzett's service permit application under OAR 845-009-0020(7)(a)(A), which provides that the OLCC will refuse to issue a service permit if, within three years, an applicant has had two DUII convictions or one diversion and one conviction, either one of which was within 12 months of the date of the application.¹

¹ 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[.]

The phrase “within 12 months” used in the administrative rule refers to the 12-month period of time beginning when the OLCC received the application. OAR 845-009-0020(2). The relevant date for a diversion program is the completion date. *Tamara L. Cardenas* (OLCC Final Order, OLCC-94-SPR-122, March 1995).

Where an agency bases its action on the conviction of a crime, ORS 670.280 requires the agency to show the relationship between the conviction and the applicant’s fitness to sell or serve alcoholic liquor.²

In several previous cases, the OLCC has concluded that DUII convictions are related to an individual’s fitness to serve and sell alcoholic liquor because these convictions show that the individual has failed to comply with alcoholic liquor laws, which are integral to the privileges of selling and serving alcoholic beverages. *See Dorothy J. Hamblin* (OLCC Final Order, OLCC-03-SPR-036, December 2003); *Marlys McLauray* (OLCC Final Order, OLCC-90-SP-238, August 1991).

In the present case, Mr. Izzett was convicted of two counts of DUII on June 4, 2012. Both of these convictions are within twelve months of the date the Commission received Mr. Izzett’s application for a service permit, August 21, 2012. Therefore, under OAR 845-009-0020(7)(a)(A), the OLCC will deny the application for a service permit, unless Mr. Izzett can show good cause to overcome the denial.

2. Whether Mr. Izzett has good cause to overcome the denial

OAR 845-009-0020(7)(b) provides that an applicant may show good cause to overcome the denial of a service permit application. To show good cause, the applicant must provide a sworn statement that he or she has not used or consumed controlled substances within 24 months, has successfully completed or is actively involved in a state certified drug treatment or recovery program, and has completed all parole or probation requirements. OAR 845-009-0020(3) provides that to be qualified for 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.³

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 (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.

Here, Mr. Izzett last consumed alcoholic beverages in June 2012, less than 24 months ago, and he has not completed his probation requirements. Additionally, Mr. Izzett has not completed his treatment program. Because Mr. Izzett has not met all the criteria required by the Commission for good cause, his application for a service permit must be denied.

FINAL ORDER

The Commission orders that the application for a service permit filed by Applicant Andrew B. Izzett and received by the OLCC on August 21, 2012 be DENIED.

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

Dated this 18th day of April, 2013

/s/ Merle Lindsey

Merle Lindsey

Interim Executive Director

OREGON LIQUOR CONTROL COMMISSION

Mailed this 18th day of April 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.

* * * * *

(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.