

**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**  
)  
**SAVANNA KAPETANAKUS** ) Agency Case No.: OLCC-12-SPR-014

**HISTORY OF THE CASE**

On May 7, 2012, the Oregon Liquor Control Commission (the OLCC) issued a Service Permit Revocation Notice to Savanna Kapetanakus (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 September 7, 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 September 7, 2012.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed October 24, 2012.

Applicant filed Exceptions to the Proposed Order on October 29, 2012. Staff filed Comments on the Proposed Order on November 6, 2012. The Administrative Law Judge responded to Applicant's Exceptions and Staff’s Comments on November 27, 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 September 23, 2011, the OLCC received Permittee Savanna Kapetanakis's Service Permit Application. The OLCC issued Service Permit No. 395420 to Permittee on October 28, 2011. (Ex. A1, A2.)

2. On December 10, 2011, Permittee was arrested and cited for driving under the influence of intoxicants (DUII). (Ex. A4; test. of McNeal.)

3. On January 7, 2012, Permittee was arrested again and cited for DUII. (Ex. A3, A4; test. of McNeal.)

4. Permittee was convicted of two counts of DUII, a Class A Misdemeanor, on April 11, 2012 (Ex. A4, A5.) The Circuit Court judge sentenced Permittee to probation for a period of four years, to conclude in April 2016. (Test. of Permittee.)

5. As a result of her DUII arrests, Permittee entered Change Point, a state certified substance abuse treatment program, on January 26, 2012. She completed the outpatient treatment program, which involved twice-weekly classes, on June 20, 2012. Permittee attends AA meetings regularly. (Test. of Permittee.)

6. Permittee has not consumed alcohol since February 3, 2012. (Test. of Permittee.)

## **CONCLUSIONS OF LAW**

1. Permittee's service permit should be revoked because Permittee has had two DUII convictions 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 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 two 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 April 11, 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.<sup>1</sup> 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 twice convicted of a misdemeanor that involves 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)(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

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<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:

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 two DUII convictions dated April 11, 2012, arising out of her December 10, 2011 and January 7, 2012 arrests. The OLCC received Permittee’s application on September 23, 2011, which is within 12 months of the convictions. 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:*

The OLCC’s administrative rules provide that an applicant may show good cause to overcome the service permit revocation. 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.<sup>3</sup>

There is no direct evidence in the record that Permittee has been diagnosed with a drug or alcohol disability. Her participation in and successful completion of an outpatient substance abuse treatment program does not allow for an implied diagnosis, unlike participation and successful completion of an inpatient program. *See Gregory A. Unger* (OLCC Final Order, OLCC-002-SPR-064, April 2003) (holding that it is reasonable to conclude that a drug addiction disability exists if an applicant participates in and completes a residential drug treatment program). Because Permittee did not have an alcohol addiction disability at the time of the DUII convictions, she cannot show good cause to overcome the service permit revocation.

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.<sup>4</sup>

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(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[.]

<sup>3</sup> 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.

<sup>4</sup> OAR 845-009-0020(7)(b) provides:

In this case, Permittee last consumed alcohol on February 3, 2012, which is within 24 months of the proposed revocation. Additionally, Permittee was placed on probation following her April 11, 2012 convictions, and will remain on probation until April 2016. 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.

### FINAL ORDER

The Commission orders that service permit No. 395420, issued to Savanna Kapetanakis in October 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.

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(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.