

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
OREGON LIQUOR CONTROL COMMISSION**

## **HISTORY OF THE CASE**

On July 12, 2012, the Oregon Liquor Control Commission (OLCC) received an application for a service permit from Christy L. Phillips (Applicant). The OLCC proposed to deny Applicant's service permit pursuant to OAR 845-009-0020(4)(a)(A) because Applicant was convicted of a felony drug possession charge within 12 months of her application.

Applicant filed a timely request for hearing. The OLCC referred the request to the Office of Administrative Hearings on November 5, 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 January 10, 2013. Gwenn McNeal appeared on behalf of the OLCC and testified. Applicant did not appear. The record closed at the conclusion of the hearing on January 10, 2013.

## ISSUES

1. Whether Applicant's application for a service permit should be denied because she was convicted of felony possession of a controlled substance within 12 months of the application. OAR 845-009-0020(4)(a)(A); ORS 471.380(1)(d).
  2. If the application should be denied because of Applicant's conviction, whether Applicant has shown good cause to overcome the denial. OAR 845-009-0020(4)(b); OAR 845-009-0020(3).

## **EVIDENTIARY RULINGS**

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

## **FINDINGS OF FACT**

1. On or about June 10, 2010, Applicant Christy L. Phillips committed the crime of unlawful possession of methamphetamine. (Ex. A2.) On January 24, 2012, Applicant was found

guilty and convicted of unlawful possession of methamphetamine, a Class C Felony, in Umatilla County Circuit Court, Umatilla County, Oregon. The Court sentenced Applicant to 18 months supervised probation. (Ex. A2; test. of McNeal.)

2. On July 12, 2012, the OLCC received Applicant's Service Permit Application. (Ex. A1; test. of McNeal.)

## **CONCLUSIONS OF LAW**

1. Applicant's application for a service permit should be denied because Applicant has a possession of a controlled substance felony conviction within 12 months of the application. OAR 845-009-0020(4)(a)(A); ORS 471.380(1)(d).

2. Applicant has not shown good cause to overcome the denial basis.

## **OPINION**

OAR 137-003-0670 applies when, as in this case, the agency issues a notice of proposed action that does not become final in the absence of a request for hearing. Pursuant to subsection (1)(c) of this rule, the agency or, if authorized, the ALJ may issue a final order by default when the agency or ALJ has notified the party of the time and place of the hearing, and the party fails to appear at the hearing. Pursuant to OAR 137-003-0670(3)(a), the agency or ALJ may issue an order adverse to the party on default only upon a *prima facie* case made on the record. The agency file constituting the record must contain sufficient evidence of facts necessary to support the order. As explained below, the OLCC file supports the proposed action.

### *1. Whether Applicant'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 of this state 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 Applicant's service permit application under the provisions of OAR 845-009-0020(4)(a)(A), which provides that the OLCC will deny a service permit application if an applicant has had a felony conviction for possession of a controlled substance within 12 months.<sup>1</sup>

The phrase "within 12 months" as used in the administrative rule means within 12 months of the date the OLCC received the application. OAR 845-009-0020(2). Where a

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<sup>1</sup> 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:
    - (A) A felony conviction within 12 months for possession of a controlled substance or any other drug related felony as described in ORS Chapter 475 or similar laws in other jurisdictions[.]

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>2</sup> The OLCC has previously concluded that convictions involving controlled substances are relevant to an individual's fitness to serve and sell alcoholic liquor. *John O. Myshack* (OLCC Final Order, OLCC-88-V-002, May 1988).

In the present case, Applicant was convicted of felony possession of a controlled substance on January 24, 2012, which was within 12 months of the date the OLCC received her application for a service permit. Therefore, under OAR 845-009-0020(4)(a)(A), the OLCC has the authority to deny her application for a service permit, unless she can show good cause to overcome the denial.

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

OAR 845-009-0020(3) and (4)(b) provide 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 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 or is actively participating in a state certified drug treatment program, and has completed all parole or probation requirements.<sup>3</sup>

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<sup>2</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>3</sup> OAR 845-009-0020(3) and (4)(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:
  - (A) Felony drug conviction(s) (OAR 845-009-0020(4)); [or]
  - (b) The applicant was diagnosed as drug or alcohol addicted at the time of or as a result of the incidents described above.

\* \* \* \* \*

(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

Applicant did not appear for the hearing and did not establish she has not used or consumed controlled substances within 24 months, or that she has completed all parole or probation requirements. Because Applicant has not met all the criteria set forth in OAR 845-009-0020(4)(b), she failed to show good cause to overcome the denial. Applicant's service permit application must be denied.

### **FINAL ORDER**

It is ordered that the application for a service permit filed by Applicant Christy L. Phillips and received by the OLCC on July 12, 2012 be DENIED.

/s/ Lynnette M Turner

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Lynnette M. Turner  
Administrative Law Judge  
Office of Administrative Hearings

ISSUANCE AND MAILING DATE: January 11, 2013

THIS ORDER IS EFFECTIVE ON THE DATE MAILED. Any monetary fine or civil penalty set out in the order shall be due and payable 10 days after the date of mailing.

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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(C) He/she has completed all parole or probation requirements.

## CERTIFICATE OF SERVICE

I certify that on January 11, 2013, I served the attached Proposed Order by mailing certified and/or first class mail, in a sealed envelope, with first class postage prepaid, a copy thereof addressed as follows:

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/s/ Ryan Clark  
Ryan Clark  
Administrative Specialist  
Office of Administrative Hearings