

**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
)	
Adam Frieze 1186 NE Grant St Hillsboro, OR 97124)	Agency Case No.: OLCC-14-SPR-016

HISTORY OF THE CASE

On April 3, 2014, the Oregon Liquor Control Commission (OLCC) received an application for a service permit from Adam Frieze (Applicant). On April 25, 2014, the OLCC issued a Service Permit Denial Notice proposing to deny Applicant's service permit pursuant to *former* OAR 845-009-0020(4)(a)(C),¹ effective June 27, 2014, because Applicant has two controlled substance felony convictions, one of which occurred within the past three years.

Applicant timely filed a request for hearing. The OLCC referred the request to the Office of Administrative Hearings (OAH) on June 26, 2014. The OAH assigned the case to Linda A. Lohr, Administrative Law Judge (ALJ). ALJ Lohr held a contested case hearing by telephone at 9:00 a.m. on August 26, 2014. Gwenn McNeal appeared on OLCC's behalf and testified. Applicant appeared without counsel and testified. The hearing record closed at the conclusion of the hearing on August 26, 2014.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed November 18, 2014.

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 Applicant's application for a service permit should be denied because he has two felony drug convictions within three years of the application. ORS 471.380(1)(d); *former* OAR 845-009-0020(4)(a)(C).

¹ The OLCC amended its service permit denial criteria rule, OAR 845-009-0020, effective September 1, 2014. The undersigned administrative law judge has applied the version of the rule in effect at the time of the Commission's April 25, 2014, denial in this matter.

2. If the application should be denied because of Applicant's convictions, whether Applicant has shown good cause to overcome the denial. *Former* OAR 845-009-0020(4)(b); *Former* OAR 845-009-0020(3).

EVIDENTIARY RULINGS

OLCC Exhibits A1 through A5 and Applicant's Exhibit P1 were admitted into evidence without objection.

FINDINGS OF FACT

1. On or about October 29, 2011, Applicant Adam Frieze committed the crime of unlawful possession of methamphetamine, a Class C felony. On or about December 2, 2011, Applicant committed the crime of unlawful possession of methamphetamine, a Class C felony. Applicant pled guilty and was convicted of both felony charges on December 29, 2011, in Washington County Circuit Court, Washington County, Oregon. The Court sentenced Applicant to two years supervised probation for both felonies. (Ex. A2, Ex. A3, A4)

2. On April 3, 2014, the OLCC received Applicant's service permit application. (Ex. A1; Test. of McNeal)

3. Applicant was diagnosed with a drug addiction disability in 1997 and has participated in several drug treatment programs. As a result of his felony convictions in December 2011, Applicant participated in drug treatment programs from January 3 until February 3, 2012, and from January 26 until April 2, 2013. On September 23, 2013, Applicant started a drug treatment program at the De Paul Treatment Centers. Applicant successfully completed the program on April 28, 2014. (Test. of Applicant; Ex. P1)

4. Applicant has not used or consumed controlled substances since September 14, 2013. (Test. of Applicant)

5. Applicant has worked at P.F. Chang's restaurant since February 23, 2014. (Test. of Applicant)

6. Applicant lives in a "clean and sober living house" and attends weekly meetings with certified drug and alcohol counselors. (Test. of Applicant)

7. Applicant is currently paying his supervision fees. (Test. of Applicant)

8. Applicant completed his probation requirements in or around December 2013. (Test. of Applicant)

CONCLUSIONS OF LAW

1. Applicant's application for a service permit should be denied because Applicant had two felony drug convictions which occurred within three years of the application. ORS 471.380(1)(d); *former* OAR 845-009-0020(4)(a)(C).

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

OPINION

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 a felony. The OLCC has adopted administrative rules to apply this statute. In this case, the OLCC seeks to deny Applicant's service permit application under the provisions of *former* OAR 845-009-0020(4)(a)(C), which provides that the OLCC will deny a service permit application if an applicant has had two felony drug convictions, one of which was within three years.²

The phrase "within three years" as used in the administrative rule means within three years of the date the OLCC received the application. *Former* OAR 845-009-0020(2). When a criminal conviction 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.³ The OLCC has previously concluded that convictions involving controlled substances are relevant to an individual's fitness to serve and sell alcoholic liquor. *Michelle Haynes* (OLCC Final Order, OLCC-06-SPR-022, December 2006).

On December 29, 2011, Applicant was twice convicted of methamphetamine possession, a controlled substance felony, for separate incidents that occurred in October and December 2011. Applicant's convictions occurred within three years of the OLCC's receipt of his April 3, 2014, service permit application. Thus, the OLCC has shown it may deny Applicant's service permit under the provisions of *former* OAR 845-009-0020(4)(a)(C).

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

Former OAR 845-009-0020(3) and (4)(b) provide that an applicant may show good cause to overcome a proposed service permit denial. *Former* OAR 845-009-0020(3) provides that to qualify 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, or as a result of the conviction. In this case, Applicant established that he had a drug addiction disability at the time of his felony convictions and, therefore, qualifies to show good cause to overcome the proposed service permit denial.

Former OAR 845-009-0020(4)(b) provides that in order to show good cause to overcome a denial, an applicant must show that the applicant has not used or consumed controlled

² OAR 845-009-0020(4)(a)(C) provides that "[t]he Commission will deny a service permit if the applicant has had * * two felony drug convictions, one of which was within three years * * * * *."

³ ORS 670.280(2) ("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").

substances within 24 months of the date the OLCC received the application, has successfully completed a state certified drug treatment program, and has completed all parole or probation requirements.⁴

Applicant has made significant positive changes in his life. He successfully completed a drug treatment program and completed his probation requirements. However, Applicant has not met all the criteria required to establish good cause. Although Applicant has not used or consumed controlled substances for more than 12 months, the rule requires 24 months of abstinence to establish good cause.

Because Applicant's last use of controlled substances was within 24 months of the date the OLCC received the application for service permit, he has not met all the criteria set forth in *former* OAR 845-009-0020(4)(b) and therefore cannot show good cause to overcome the denial. Applicant's April 3, 2014, service permit application must therefore be denied.

FINAL ORDER

The Commission orders that the application for a service permit filed by Applicant Adam Frieze and received by the OLCC on April 3, 2014, is DENIED.

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

Dated this 30 day of December 2014.

/s/ Steven Marks

Steven Marks

Executive Director

OREGON LIQUOR CONTROL COMMISSION

Mailed this 30 day of December 2014.

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.

⁴ 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").