

**BEFORE THE LIQUOR CONTROL COMMISSION  
STATE OF OREGON**

**In the Matter of the Application for a Service Permit Filed by:** ) **FINAL FINDING OF FACT**  
 ) **CONCLUSION OF LAW**  
 ) **AND ORDER**  
**Melanie A. Harshman** )

Agency Case No.: OLCC-13-SPR-012

**HISTORY OF THE CASE**

On April 1, 2013, the Oregon Liquor Control Commission (OLCC) received an application for a service permit from Melanie A. Harshman (Applicant). On May 3, 2013, the OLCC issued a Service Permit Denial Notice proposing to deny Applicant’s service permit pursuant to OAR 845-009-0020(4)(a)(B), because Applicant was convicted of a felony drug delivery charge in the past two years.

Applicant filed a timely request for hearing. The OLCC referred the request to the Office of Administrative Hearings (OAH) on July 12, 2013. The OAH assigned the case to Lynnette M. Turner, Administrative Law Judge (ALJ). ALJ Turner held a contested case hearing by telephone at 9:00 p.m. on October 11, 2013. Gwenn McNeal appeared on behalf of the OLCC and testified. Applicant appeared and testified. The hearing record closed at the conclusion of the hearing on October 11, 2013.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed December 12, 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 Applicant’s application for a service permit should be denied because she was convicted of felony manufacture, delivery, or distribution of a controlled substance within two years of the application. OAR 845-009-0020(4)(a)(B); 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 and A2, offered by the OLCC, were admitted into the record without objection.

## FINDINGS OF FACT

1. On or about April 27, 2011, Applicant Melanie A. Harshman committed the crime of Unlawful Delivery of Marijuana Within 1000 Feet of a School. On January 4, 2012, Applicant pled guilty and was convicted of the charge, a Class A Felony, in Baker County Circuit Court, Baker County, Oregon. The Court sentenced Applicant to three years supervised probation. (Ex. A2; test. of McNeal.)

2. On April 1, 2013, the OLCC received Applicant's Service Permit Application. (Ex. A1; test. of McNeal.)

3. Applicant participated in a substance abuse evaluation and completed a 90-day outpatient treatment program through a subsidiary of New Directions, a state certified treatment program. Applicant has not been diagnosed as alcohol or drug dependent. She is in compliance with her probation, and expects to be released from probation before her scheduled release date of January 3, 2015. Applicant has not used or consumed controlled substances since August 2011. (Test. of Applicant.)

4. Applicant is employed as a cook, and has worked for her employer since May 2012. She opens the restaurant three mornings per week and is the only employee on site for approximately two hours. Because alcohol is served on the premises, although typically not during this shift, she is required to have a service permit. Her employer is aware of her conviction and treatment history. (Test. of Applicant.)

## CONCLUSIONS OF LAW

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

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

## OPINION

*1. Whether Applicant's application for a service permit should be denied:*

The OLCC proposes to deny Applicant's service permit application on the basis ORS 471.380(1)(d), which states:

1) The Oregon Liquor Control Commission may refuse to grant a service permit if it has reasonable grounds to believe any of the following to be true:

\* \* \* \* \*

(d) That the applicant has been convicted of violating any of the alcoholic liquor laws of this state, general or local, or has been convicted at any time of a felony.

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 the 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)(B), which provides that the OLCC will deny a service permit application if an applicant has had a felony conviction for manufacture, delivery or distribution of a controlled substance within two years.<sup>1</sup> 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).

In cases in which an agency proposes to deny an individual's application for a 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>2</sup> 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 the present case, Applicant was convicted of felony delivery of a controlled substance on January 4, 2012, which was within two years of the date the OLCC received her application for a service permit. Therefore, under OAR 845-009-0020(4)(a)(B), 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) provides that an applicant may show good cause to overcome the service permit denial. In order to show good cause, an applicant must have had a drug addiction

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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:

\* \* \* \* \*

(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).

<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.

disability or an alcohol addiction disability at the time of the felony drug conviction. Applicant has not been diagnosed with a drug or alcohol addiction and therefore cannot establish good cause to overcome the denial pursuant to OAR 845-009-0020(3).

Applicant's service permit application must therefore be denied.

**FINAL ORDER**

The Commission orders that the application for a service permit filed by Applicant Melanie A. Harshman and received by the OLCC on April 1, 2013 be DENIED.

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

Dated this 7th day of January, 2014

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/s/ Steve Marks

Steve Marks  
Executive Director  
OREGON LIQUOR CONTROL COMMISSION

Mailed this 8th day of January, 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.