

2. If the application should be denied because of Mr. Pearson's conviction, whether Mr. Pearson 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 February 15, 2013, Mr. Pearson committed the crime of Unlawful Delivery of Marijuana for Consideration. On July 22, 2013, Mr. Pearson was convicted of the charge, a class B felony, in the Deschutes County Circuit Court, Deschutes County, Oregon. The Court sentenced Mr. Pearson to 36 months supervised probation. (Ex. A2; test. of McNeal.)

2. Mr. Pearson has not undergone a substance abuse evaluation and has not been diagnosed with a drug or alcohol addiction disability. He last used medical marijuana in early 2013. Mr. Pearson is scheduled to complete his probation in May 2016. (Test. of Pearson.)

3. On June 12, 2013, the OLCC received Mr. Pearson's Service Permit Application. (Ex. A1; test. of McNeal.)

CONCLUSIONS OF LAW

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

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

OPINION

1. Whether Mr. Pearson'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 Mr. Pearson'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 delivery of a controlled substance within two years.¹

¹ 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:

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). Where a 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.² 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. Myshak* (OLCC Final Order, OLCC-88-V-002, May 1988).

In the present case, Mr. Pearson was convicted of felony delivery of a controlled substance on July 22, 2013, which was within two years of the date the OLCC received his application for a service permit. Therefore, under OAR 845-009-0020(4)(a)(B), the OLCC has the authority to deny his application for a service permit, unless he can show good cause to overcome the denial.

2. Whether Mr. Pearson 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.³

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(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).

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 (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.

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