

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

In the Matter of the Application for a Service Permit Filed by:) **FINAL ORDER BY DEFAULT**
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)
MICHELLE L. ST. PIERRE) Agency Case No.: **OLCC-14-SPR-014**
)

HISTORY OF THE CASE

On April 25, 2014, the Oregon Liquor Control Commission (OLCC) issued a Service Permit Denial Notice to Michelle L. St. Pierre (Ms. St. Pierre/Applicant). The OLCC proposed to deny Ms. St. Pierre's service permit application pursuant to OAR 845-009-0020(4)(a)(C) because she had two controlled substance felony convictions, one of which was in the past three years.

Ms. St. Pierre filed a timely request for hearing. The OLCC referred the request to the Office of Administrative Hearings (OAH) on June 26, 2014. OAH assigned the case to Matthew Wymer, Administrative Law Judge (ALJ). ALJ Wymer held a contested case hearing by telephone at 9:00 a.m. on September 4, 2014. Gwenn McNeal appeared on behalf of the OLCC and testified. Ms. St. Pierre did not appear at hearing. The hearing record closed at the conclusion of the hearing on September 4, 2014.

ISSUES

1. Whether Applicant's application for a service permit should be denied because she has two controlled substance felony convictions, one of which was within the past three years. ORS 471.380(1)(d) and OAR 845-009-0020(4)(a)(C).

2. If the application for a service permit should be denied, whether Applicant has shown good cause to overcome the denial. OAR 845-009-0020(3) and (4)(b).

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 28, 2006, Applicant Michelle L. St. Pierre committed the crime of Possession of a Controlled Substance. Applicant pled guilty and was convicted of that charge,

a Class C Felony, on June 23, 2006, in Polk County Circuit Court, Polk County, Oregon. The Court sentenced Applicant to the custody of the Oregon Department of Corrections for six months. (Test. of McNeal; Ex. A2.)

2. On or about April 11, 2013, Applicant committed the crime of Possession of Methamphetamine. Applicant pled guilty and was convicted of that charge, a Class C Felony, on August 26, 2013, in Linn County Circuit Court, Linn County, Oregon. The Court sentenced Applicant to the custody of the Oregon Department of Corrections for five months, followed by 12 months post-prison supervision. Applicant's post-prison supervision was scheduled to begin on November 15, 2013. (Test. of McNeal; Ex. A3.)

3. On March 27, 2014, the OLCC received Applicant's service permit application. (Test. of McNeal; Ex. A1 at 1.)

CONCLUSIONS OF LAW

1. Applicant's service permit should be denied because she has two controlled substance felony convictions, one of which was within the past three years. ORS 471.380(1)(d) and OAR 845-009-0020(4)(a)(C).

2. Applicant has not shown good cause to overcome the denial basis. OAR 845-009-0020(3) and (4)(b).

OPINION

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

The OLCC proposes to deny Ms. St. Pierre's application for a service permit on the basis of ORS 471.380(1)(d), which states:

(1) The [OLCC] 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. In this case, the OLCC seeks to deny Ms. St. Pierre's service permit application under the provisions of OAR 845-009-0020(4)(a)(C), which provides that the OLCC will deny a service permit application if an applicant has had two controlled substance felony convictions, one of which was within three years.¹

¹ OAR 845-009-0020(4)(a)(C) provides:

(4) Felony Drug Conviction:

(a) The Commission will deny a service permit if the applicant has had:

(C) Two controlled substance felony convictions, one of which was within three years.

The phrase “within three years” as used in the administrative rules means within three years of the date the OLCC received the application. OAR 845-009-0020(2). Where the 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, 88-V-002, May 1988).

On June 23, 2006, Ms. St. Pierre was convicted for possession of a controlled substance, a Class C felony. On August 26, 2013, Ms. St. Pierre was convicted for possession of methamphetamine, a Class C felony. Methamphetamine is a controlled substance. Ms. St. Pierre’s conviction for possession of methamphetamine occurred within three years of OLCC’s receipt of her service permit application on March 27, 2014. Thus, the OLCC has shown that it may deny Ms. St. Pierre’s service permit under the provisions of OAR 845-009-0020(4)(a)(C).

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 a proposed service permit denial. OAR 845-009-0020(3) provides that to be qualified 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. 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 on a Commission-supplied form 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.³

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));

* * * * *

(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

Ms. St. Pierre failed to appear at hearing or otherwise provide evidence of a sworn statement on a Commission-supplied form showing that she has been diagnosed with an alcohol or drug addiction and that she has successfully completed a state certified substance abuse treatment program. Further, Ms. St. Pierre has not completed her post-prison supervision, scheduled to end on November 15, 2014. Therefore, she has not established good cause to overcome the denial under OAR 845-009-0020(3) and OAR 845-009-0020(4)(b). For these reasons, Ms. St. Pierre's service permit application must be denied.

FINAL ORDER

It is ordered that the application for a service permit filed by Applicant Michelle L. St. Pierre and received by the OLCC on March 27, 2014 be DENIED.

/s/ Matthew Wymer
Matthew Wymer
Administrative Law Judge
Office of Administrative Hearings

ISSUANCE AND MAILING DATE: _____ September 5, 2014

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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- (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.

CERTIFICATE OF SERVICE

I certify that on September 5, 2014, 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
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