

**BEFORE THE 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**
Rachel B. Strom)

Agency Case No.: OLCC-13-SPR-039

HISTORY OF THE CASE

On September 5, 2013, the Oregon Liquor Control Commission (the OLCC) received an application for a service permit from Rachel B. Strom (Applicant).¹ The OLCC proposed to deny Applicant’s service permit pursuant to OAR 845-009-0020(4)(a)(C) because Applicant has two felony drug convictions, with at least one occurring in the last three years. The OLCC issued a Service Permit Denial Notice to Applicant on September 30, 2013.²

Applicant filed a timely request for hearing. The OLCC referred the request to the Office of Administrative Hearings on November 20, 2013. The Office of Administrative Hearings assigned the case to Andrew J. Holmes-Swanson, Administrative Law Judge (ALJ). ALJ Holmes-Swanson held a contested case hearing by telephone at 9:00 a.m. on January 30, 2014. Gwenn McNeal appeared on behalf of the OLCC and testified. Applicant appeared on her own behalf and testified. The record closed at the conclusion of the hearing.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed February 26, 2014.

Applicant filed Exceptions to the Proposed Order on March 13, 2014. Staff filed Comments on the Proposed Order on March 12, 2014. The Administrative Law Judge responded to Applicant’s Exceptions and Staff’s Comments on March 20, 2014.

On April 24, 2014, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Administrative Law Judge, Licensee’s Exceptions to the Proposed Order, Staff’s Comments on the Proposed Order and the Administrative Law Judge’s Response to Licensee’s Exceptions and Staff’s Comments. Based on this review and the preponderance of the evidence, the Commission enters the following:

¹ OLCC Staff Comments requested that all references to the receipt of the application be changed from August 31, 2013, the date Applicant signed the application, to September 5, 2013. Staff Comments identify the applicable time period pursuant to OAR 845-009-0020(2) as the date OLCC received the application and clarify that the application was received on September 5, 2013. The ALJ agreed to the requested change in his Response to Exceptions and Staff Comments.

² OLCC Staff Comments requested additional language regarding the notice and the ALJ agreed to the change in his Response to Exceptions and Staff Comments.

ISSUES

1. Whether Applicant's application for a service permit should be denied because she has two felony drug convictions, with at least one conviction occurring in the last three years. OAR 845-009-0020(4)(a)(C); ORS 471.380(1)(d).
2. If the application should be denied because of Applicant's convictions, whether Applicant has shown good cause to overcome the denial.

EVIDENTIARY RULINGS

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

FINDINGS OF FACT

1. On or about January 4, 2011, Applicant committed the crime of Unlawful Possession of Heroin. On August 4, 2011, Applicant pled guilty and was convicted of Unlawful Possession of Heroin, a Class B Felony, in Clackamas County Circuit Court. The Court sentenced Applicant to 18 months supervised probation. (Ex. A2.)
2. In March 2012, Applicant began drug treatment through Coda, a methadone program. Applicant ended that treatment in December 2012. (Test. of Applicant.)
3. Meanwhile, on or about April 7, 2012, Applicant committed the crime of Unlawful Possession of Heroin. On June 28, 2012, Applicant pled guilty and was convicted of Unlawful Possession of Heroin, a Class B Felony, in Clackamas County Circuit Court. The Court sentenced Applicant to 18 months supervised probation. (Ex. A3.) Applicant's probation was scheduled to end in February 2014, but it was extended through February 2015 because she has not paid required fines and fees. (Test. of Applicant.)
4. In January 2013, Applicant began receiving in-patient drug treatment through Correctional Substance Abuse Program (CSAP). Applicant completed in-patient treatment after nine months. Applicant is presently engaged in out-patient treatment through CSAP and anticipates her completion of that program in February 2014. (Test. of Applicant.)
5. Marie Cacao, a therapist with CSAP, evaluated Applicant and diagnosed her as drug dependent. (Test. of Applicant.)
6. Applicant last used heroin in January 2013. (Test. of Applicant.)

7. On or about September 5, 2013, Applicant submitted an application for a service permit.³ (Ex. A1.)

CONCLUSIONS OF LAW

1. Applicant's application for a service permit should be denied because Applicant has two felony drug convictions, with at least one conviction within three years of the date the OLCC received the application. ORS 471.380(1)(d), OAR 845-009-0020(4)(a)(C).

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:

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 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, with at least one conviction within three years.⁴ The phrase "within three years" as used in the administrative rule 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.⁵ The OLCC has previously concluded that convictions involving

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⁴ 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[.]

⁵ 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.

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).

Applicant was convicted of Unlawful Possession of Heroin, a Class B Felony, on August 2, 2011, and June 28, 2012. Thus, Applicant has two prior felony drug convictions. Both of these convictions occurred after September 5, 2010 (three years prior to the application).⁶ Specifically, Applicant's controlled substance felony conviction on June 28, 2012, falls within three years of the date the Commission received her service permit application.⁷ Therefore, the OLCC may deny Applicant's service permit under the provisions of OAR 845-009-0020(4)(a)(C).

Under OAR 845-009-0020(4)(a)(C) the OLCC may deny the application for a service permit unless Applicant 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 a state certified drug treatment program, and has completed all parole or probation requirements.⁸

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⁷ OLCC Staff Comments requested clarifying language regarding Applicant's June 28, 2012 conviction and the ALJ agreed to insert the additional language in his Response to Exceptions and Staff Comments.

⁸ 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

Here, Applicant does not meet all the criteria set forth in OAR 845-009-0020(3) and (4)(b) and therefore does not have good cause to overcome the denial. Although Appellant has been diagnosed as drug dependent, she has not established 24 months of abstinence and has not completed all of her parole or probation requirements. Because Applicant does not meet all the criteria set forth in OAR 845-009-0020(3) and (4)(b), she cannot show good cause to overcome the denial. As such, the OLCC may deny Applicant's service permit application.

FINAL ORDER

The Commission orders that the application for a service permit filed by Applicant, Rachel B. Strom, and received by the OLCC on or about September 5, 2013, be DENIED.⁹

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

Dated this 1st day of May 2014

/s/ Steven Marks

Steven Marks
Executive Director
OREGON LIQUOR CONTROL COMMISSION

Mailed this 2nd day of May 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.

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.

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