

**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**
) **CONCLUSION OF LAW**
) **AND ORDER**
)

**Tony J. Vezina
2325 SE 154th Ave
Portland, OR 97233**

Agency Case No.: OLCC-14-SPR-007

HISTORY OF THE CASE

On January 27, 2014, the Oregon Liquor Control Commission (OLCC) received an application for a service permit from Tony J. Vezina (Applicant). On March 3 2014, the OLCC issued a Service Permit Denial Notice proposing to deny Applicant's service permit pursuant to ORS 471.380(1)(d) and OAR 845-009-0020(4)(a)(C), because Applicant had two controlled substance felony convictions, one of which was within three years. On April 21, 2014, the OLCC issued an Amended OLCC Service Permit Denial Notice.¹

Applicant filed a timely request for hearing on March 5, 2014. The OLCC referred the request to the Office of Administrative Hearings (OAH) on March 5, 2014. The OAH assigned the case to C. Hoyer, Administrative Law Judge (ALJ). ALJ Hoyer held a contested case hearing by telephone on July 2, 2014. Gwenn McNeal (McNeal) appeared on behalf of the OLCC and testified. Applicant appeared on his own behalf and testified. The hearing record closed at the end of the hearing.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed August 19, 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:

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¹ The OLCC amended the notice so as to advise Applicant that his permit would not be denied on April 25, 2014 as proposed, and that he could continue to serve and sell alcohol until he has received a Final Order, because he had requested a hearing.

ISSUES

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

2. If the application should be denied because of Applicant's convictions, 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 to A4, offered by the OLCC, were admitted into the record without objection.

FINDINGS OF FACT

1. On or about February 13, 2010, Applicant committed the crime of Unlawful Possession of Heroin. Applicant pled no contest and was convicted of this charge, a Class B Felony, on or about June 3, 2011, in Multnomah County Circuit Court. The Court sentenced Applicant to Supervised Probation for a period of 18 months. (Exhibit A2 at 1-2; testimony of McNeal.)

2. On or about July 19, 2012, Applicant committed the crime of Unlawful Possession of Heroin (PCS). Applicant pled guilty and was convicted of this charge, a Class B Felony, on or about August 1, 2012, in Multnomah County Circuit Court. The Court sentenced Applicant to Supervised Probation for a period of twelve months. (Exhibit A3 at 1-2; testimony of McNeal.)

3. On January 27, 2014, the OLCC received Applicant's Service Permit Application. (Ex. A1; testimony of McNeal.)

4. Applicant was introduced to heroin by his mother at age 15. After Applicant's most recent PCS arrest on July 19, 2012, Applicant entered into in-patient/out-patient drug treatment as referred by Multnomah County Corrections. Applicant believes that it was a state certified drug treatment program. Applicant has also enrolled at Portland Community College (PCC) and achieved a 3.9 grade point average (GPA). Applicant started a drug recovery club at PCC and volunteers at a non-profit as a youth mentor. Applicant has been gaining control over his controlled substance problem. (Ex. A101; test. of Applicant.)

5. Applicant does security work, checks identification (ID) badges, and monitors customer alcohol use for Oregon Theater Management, his employer. Applicant would get more work hours with an OLCC service permit. (Test. of Applicant.)

6. Applicant has not used or consumed controlled substances since July 19, 2012. (Test. of Applicant.)

7. Applicant understands that he completed all probation requirements approximately six months ago. (Test. of Applicant.)

CONCLUSIONS OF LAW

1. Applicant's application for a service permit should be denied because he has two controlled substance felony convictions, one of which was within three years of the application.

2. Applicant has not shown good cause to overcome the 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 OAR 845-009-0020(4)(a)(C), which provides that the OLCC will deny a service permit application if an Applicant has two controlled substance felony convictions, one of which was within three years of the application.² The phrase "within three years," as used in the administrative rule, means within three years of the date the OLCC received the application. *See* 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 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. John O. Myshak (OLCC Final Order, 88-V-002, May 1988); *see also Michelle Haynes* (OLCC Final Order, OLCC-06-SPR-022, December 2006).

Applicant has two PCS felony convictions, one on or about June 3, 2011, and the other on or about August 1, 2012. The OLCC received Applicant's Service Permit Application on

² 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:

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

³ 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.

January 27, 2014. Both of Applicant's convictions occurred within three years of the OLCC's receipt of his service permit application. Thus, the OLCC may deny Applicant's service permit under the provisions of OAR 845-009-0020(4)(a)(C).

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

OAR 845-009-0020(3) and (4)(b) provide that Applicant may show good cause to overcome a proposed service permit denial. OAR 845-009-0020(3) states that to be qualified to show good cause, 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) further provides that in order to show good cause to overcome a denial, Applicant must provide a sworn statement that 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.⁴

Applicant has made many positive changes in his life. After Applicant's most recent PCS arrest on July 19, 2012, Applicant entered into in-patient/out-patient alcohol and drug treatment as referred by Multnomah County Corrections. Applicant has also enrolled at PCC and achieved a 3.9 GPA. The record also shows that Applicant started a drug recovery club at PCC and volunteers at a non-profit as a youth mentor. Applicant has been gaining control over his controlled substance problem. Furthermore, Applicant does security work, checks ID badges, and monitors customer alcohol use for Oregon Theater Management, his employer.

Despite Applicant's excellent progress, he has not met all of the criteria required to establish good cause as set forth in OAR 845-009-0020(3) and (4)(b). Although Applicant has not used or consumed controlled substances for just under two years, at the time of the hearing, the administrative rule requires 24 months of abstinence to establish good cause. Applicant also presented no evidence that he was diagnosed with a drug addiction disability at the time of his PCS convictions as required by OAR 845-009-0020(3)(a). Moreover, there is no documentary evidence in

⁴ OAR 845-009-0020 states, in 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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(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.

the record (*e.g.*, sworn statements on OLCC-supplied forms or a certificate of completion) establishing that Applicant completed all of his probation requirements or completed a state certified drug treatment program.

For the above reasons, Applicant has not shown good cause to overcome the denial. Applicant's service permit application must, therefore, be denied.

FINAL ORDER

The Commission orders that the application for a service permit filed by Applicant Tony J. Vezina and received by the OLCC on January 27, 2014 be DENIED.

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

Dated this 2nd day of October, 2014

/s/ Merle Lindsey for

Steven Marks

Executive Director

OREGON LIQUOR CONTROL COMMISSION

Mailed this 3rd day of October, 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.