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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the
Application for a
Service Permit by:

John T. Powers

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) FINAL
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND ORDER
)
) OLCC-85-SP-007
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A hearing in this matter was held on April 9, 1985, in Bend, Oregon, before Hearings Examiner Jill Thompson. The Applicant did not appear and was not represented by legal counsel. The Commission was not represented by legal counsel.

The Hearings Examiner considered the record of the hearing and the applicable law, and issued a Proposed Order dated April 9, 1985.

No Exceptions to the Proposed Order were filed within the fifteen (15) day period specified in OAR 845-03-050.

The Commission adopts the Proposed Order of the Hearings Examiner as the Final Order of the Commission, and enters the following:

FINDINGS OF FACT

1. John Powers has applied for a service permit.
2. Commission staff denied the application on the grounds that Applicant uses alcohol to excess (ORS 471.380(1)) and that he has been convicted of Oregon alcoholic liquor law violations or of a felony (ORS 471.380(4)).
3. Applicant was given written and oral notification of the date, time and place of the hearing concerning his application but did not appear.

4. Applicant was an alcoholic for about 15 years, until mid-December 1983. He has not had a drink since then. His current employer submitted a letter stating that Applicant has worked for him since July 1984 and is considered an above-average employee who is very dependable and successfully operates light and heavy machinery.

5. Applicant has not been convicted of violating any Oregon alcoholic liquor laws or of a felony. He was convicted of DUII in Utah in 1982; DUII in Utah is not a felony. UCA 41-6-44; 76-3-204; 76-3-301.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The commission may refuse to grant a service permit if it has reasonable grounds to believe any of the following to be true:

- (1) That the applicant is in the habit of using alcoholic beverages or controlled substances to excess ORS 471.380(1).

There is no evidence that Applicant has drunk any alcoholic beverage since the end of 1983, which establishes he is not currently in the habit of excessive use of alcohol. There is evidence he is a reliable employee, which further corroborates the fact that he does not now abuse alcohol. As the statute requires a finding that Applicant "is in" the habit of excessive use, and no such finding can be made, the Commission concludes that ORS 471.380(1) does not provide a basis for denying the application.

2. The commission may refuse to grant a service permit if it has reasonable grounds to believe any of the following to be true:

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- (4) 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(4).

Applicant has not been convicted of violating an Oregon alcoholic liquor law or of a felony. Although he has a DUII conviction in Utah, out-of-state non-felony liquor law violations are not a barrier to the application. The Commission concludes that ORS 471.380(4) does not provide a basis for denial of the application.

ULTIMATE CONCLUSIONS OF LAW

The application should be granted. There is no evidence that Applicant is in the habit of excessive alcohol use (ORS 471.380(1)), or that he has been convicted of violating an Oregon liquor law or of a felony.

FINAL ORDER

The Commission orders that the application for a service permit by John T. Powers be GRANTED.

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

Dated this 23rd day of May, 1985.


Jill Thompson
Hearings Examiner
Hearings Division


C. Dean Smith
Administrator
OREGON LIQUOR CONTROL COMMISSION

NOTICE: You are entitled to Judicial Review of this Order. Judicial Review may be obtained by filing a Petition for Review within 60 days from the service of this Order. Judicial Review is pursuant to the Provisions of ORS Chapter 183.