

**BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON**

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

Corrine P. Mosher

) **FINAL FINDINGS OF FACT**
) **CONCLUSIONS OF LAW**
) **AND ORDER**
) **OLCC-09-SPR-001**

HISTORY OF THE CASE

On December 19, 2008 the Oregon Liquor Control Commission (OLCC or Commission) sent a letter to Corrine P. Mosher (Applicant) informing her that the OLCC intended to deny her application for a service permit. OLCC proposed to deny the application because Applicant allegedly has had two controlled substance felony convictions and one conviction was within three years of the application, contrary to OAR 845-009-0020(4)(a)(C). OLCC sent an amended letter to Applicant on January 14, 2009.

Applicant timely requested a hearing. The OLCC referred the request to the Office of Administrative Hearings on January 16, 2009. The case was assigned to Robert L. Goss, Administrative Law Judge (ALJ). A contested case hearing was held by telephone on February 20, 2009 before ALJ Goss. Applicant appeared, testified, and was not represented by an attorney. Gwenn McNeal, Hearings Coordinator, presented the case for OLCC and testified. The 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 February 24, 2009. Staff filed Comments on the Proposed Order on March 11, 2009.

On April 16, 2009, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Administrative Law Judge, Staff's Comments on the Proposed Order and the Administrative Law Judge's Response to Staff's Comments. Based on this review and the preponderance of the evidence, the Commission enters the following:

ISSUES

1. Whether Applicant's application for a service permit should be denied because Applicant has two felony convictions for controlled substances and one conviction was within three years of the application for a service permit. OAR 845-009-0020(4)(a)(C).
2. If the application should be denied, whether Applicant has good cause to overcome the denial ground. OAR 845-009-0020(3) and (4)(b).

EVIDENTIARY RULING

OLCC's Exhibits A1 through A4 were admitted into the record without objection.

FINDINGS OF FACT

1. Corrine P. Mosher (Applicant) applied for a service permit. The OLCC received the application on November 13, 2008. (Ex. A1.)

2. On August 18, 1997, Applicant was convicted in Deschutes County Circuit Court of Possession of a Schedule II controlled substance, a Class C felony. The conviction was based on an incident that occurred on May 14, 1995. (Ex. A2.)

3. On October 1, 2008, Applicant was convicted in Marion County Circuit Court of Unlawful Possession of a Controlled Substance (Methamphetamine), a Class C felony. The conviction was based on an incident that occurred on September 26, 2008. (Exs. A3 and A4.)¹

4. At the time of the Marion County conviction, Applicant was sentenced to 18 months probation. Applicant is still on probation as of the date of the hearing and believes she will convert to "mail in" probation in about five months. (Ex. A3; test.of Applicant.)

5. Applicant last used a controlled substance (methamphetamine) on September 26, 2008. Except for the 2008 relapse and one other, Applicant has been clean since 1996. Applicant attends both NA and AA meetings regularly. Applicant has been diagnosed with a drug addiction. (Test. of Applicant.)

6. Applicant works at Shari's Restaurant in Salem, Oregon. Applicant's employment is her support group and she relies on her employment for her stability and sobriety. She cannot retain her job without a service permit. (Test. of Applicant.)

CONCLUSIONS OF LAW

1. Applicant's application for a service permit should be denied pursuant to OAR 845-009-0020(4)(a)(C) because Applicant has two felony convictions for controlled substances and one conviction was within three years of the application for a service permit.

2. Applicant cannot show good cause to overcome the denial ground.

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¹ In the Proposed Order in this matter, the Administrative Law Judge cited September 30, 2008 as the date of conviction for this incident. The correct date of conviction is October 1, 2008. The Administrative Law Judge concurred with the Staff's Comments seeking to correct this date.

OPINION

ORS 471.380(1) (a) and (d) allow the Commission to deny a service permit based on the applicant's habit of using alcohol or controlled substances to excess and on the applicant's law violation history. The Commission has adopted OAR 845-009-0020 to apply the statutory provisions. In this case, OLCC proposes to deny the application on the basis of OAR 845-009-0020(4)(a)(C), which states: "The Commission will deny a service permit if the applicant has had * * * * two controlled substance felony convictions, one of which was within three years[.]" The phrase "within three years" as used in the rule means within three years of the date the Commission received the application. OAR 845-009-0020(2).

Where conviction of a crime is the basis for agency action, ORS 670.280 applies and the Commission must show the relationship between the conviction and the person's fitness to sell or serve alcoholic liquor.² The Commission has previously determined that a conviction involving an illegal controlled substance is related to the fitness to serve alcoholic liquor because alcohol is also a controlled substance. *John O. Myshak* (OLCC, Final Order, 88-V-002, May 1988).

The record shows that Applicant has two class C felony convictions for possession of controlled substances. The convictions were in August 1997 and October 2008. The OLCC received Applicant's application on November 13, 2008, which is less than three years from the last conviction in October 2008. Therefore, OAR 845-009-0020(4)(a)(C) provides a basis to deny the application for a service permit, unless Applicant can overcome the denial with good cause.

OAR 845-009-0020(3) and (4)(b) provide that an applicant may show good cause to overcome the denial criteria by showing that the applicant has a drug addiction disability; that the applicant has not used controlled substances within 24 months of the service permit application; that the applicant has met drug treatment requirements as set out in the rule; and that the applicant has completed all parole or probation requirements.³

² ORS 670.280 provides:

Denial, suspension or revocation of license prohibited solely because of criminal conviction; exception. Except as provided in ORS 342.143 or 342.175, no licensing board or agency shall deny, suspend or revoke an occupational or professional license or certification 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 such license or certificate.

³ The good cause portion of the rule states, 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));
* * * * *
 - (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 substance within 24 months; and

The record shows that Applicant has been diagnosed as drug dependent. However, to qualify for good cause, Applicant must also show that she has not consumed controlled substances within 24 months and that she has completed all probation requirements. Applicant last consumed a controlled substance (methamphetamine) on September 26, 2008, less than two months before her application. As part of the resulting conviction for that September 26, 2008 incident, Applicant was placed on 18 months probation in October 2008. Applicant is currently on probation and will continue to be for some time. Because these two requirements have not been met, the Commission concludes Applicant cannot establish good cause to overcome the denial basis and the application should be denied.

FINAL ORDER

The Commission orders that the application for a service permit filed by Corrine P. Mosher and received by the Commission on November 13, 2008 be DENIED.

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

Dated this 21st day of April, 2009.

/s/ Stephen A. Pharo
Stephen A. Pharo
Executive Director
OREGON LIQUOR CONTROL COMMISSION

Mailed this 21st day of April, 2009.

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.

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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.

OAR 845-009-0020(3)(a)(A) and (4)(b).

APPENDIX A
LIST OF EXHIBITS CITED

- Ex. A1: Application.
- Ex. A2: Judgment from Deschutes County Circuit Court dated August 18, 1997.
- Ex. A3: Judgment from Marion County Circuit Court dated October 1, 2008.
- Ex. A4: Information from Marion Count Circuit Court dated September 30, 2008.