

**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
CONCLUSIONS OF LAW
AND ORDER**

AKILAH K. LANDRY

Agency Case No.: OLCC-12-SPR-003

HISTORY OF THE CASE

On December 29, 2011, the Oregon Liquor Control Commission (the OLCC) notified Akilah K. Landry that it intended to deny her application for a service permit because of the allegation that Ms. Landry had, within three years, two convictions for driving under the influence of intoxicants (DUII), one of which was within 12 months.

Ms. Landry filed a late request for hearing. The OLCC issued an order granting relief from default on February 22, 2012. On March 22, 2012, the OLCC referred the request to the Office of Administrative Hearings. The OAH assigned the case to John R. Lohuis, Administrative Law Judge (ALJ). ALJ Lohuis held a contested case hearing by telephone at 9:00 a.m. on May 8, 2012. Gwenn McNeal appeared on behalf of the OLCC and testified. Ms. Landry appeared on her own behalf and testified. I held the record open until 5:00 p.m. on May 15, 2012 for additional evidence from Ms. Landry.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed July 16, 2012.

Applicant filed Exceptions to the Proposed Order on July 30, 2012. The Administrative Law Judge responded to Applicant's Exceptions on August 8, 2012.

On October 25, 2012, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Administrative Law Judge, Applicant's Exceptions to the Proposed Order and the Administrative Law Judge's Response to Applicant's Exceptions. Based on this review and the preponderance of the evidence, the Commission enters the following:

ISSUES

1. Whether Ms. Landry's service permit application should be denied because, within three years of the application, she had two DUII convictions, one of which was within 12 months. OAR 845-009-0020(7)(a)(A); ORS 471.380(1)(d).

2. If the application should be denied because of Ms. Landry's DUII convictions, whether Ms. Landry has good cause to overcome the denial. OAR 845-009-0020(3) and (7)(b).

EVIDENTIARY RULINGS

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

Exhibit P1, offered by Ms. Landry, was admitted into the record.

FINDINGS OF FACT

1. On December 11, 2010, Ms. Landry was arrested in Washington County, Oregon and cited for driving under the influence of intoxicants (DUII). On January 3, 2011, Ms. Landry entered a diversion program. Ms. Landry's diversion program was scheduled to end on January 2, 2012. (Test. of McNeal; Ex. A2.)

2. On August 17, 2011, Ms. Landry was again arrested and cited for DUII in Washington County, Oregon. As a result of her August 2011 arrest for DUII, Ms. Landry was revoked from the diversion program, and on September 26, 2011, she was convicted of DUII based on her December 11, 2010 arrest and citation. (*Id.*)

3. Also on September 26, 2011, Ms. Landry was convicted of DUII in Washington County, Oregon for her August 17, 2011 arrest and citation. (*Id.*)

4. Ms. Landry has not consumed alcoholic beverages since August 17, 2011. (Test. of Landry.)

5. Ms. Landry is currently on probation resulting from her September 26, 2011 DUII convictions. She believes she will remain on probation for several months. (Test. of Landry.)

6. Ms. Landry completed an alcohol treatment program on February 29, 2012. She is a valued and long-time employee at The Cheesecake Factory. (Test. of Landry; Ex. P1.)

7. On November 29, 2011, the OLCC received Ms. Landry's service permit application. (Ex. A1; test. of McNeal.)

CONCLUSIONS OF LAW

1. Ms. Landry's application for a service permit should be denied because, within three years of the application for a service permit, Ms. Landry has had two DUII convictions, at least one of which was within 12 months of the date of her application. OAR 845-009-0020(7)(a)(A); ORS 471.380(1)(d).

2. Ms. Landry does not meet the requirements set forth in rule to show good cause to overcome the denial. OAR 845-009-0020(3) and (7)(b).

OPINION

1. Whether Ms. Landry'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 violating any of the alcoholic liquor laws or has been convicted of a felony. In this matter, the OLCC proposes to deny Ms. Landry's service permit application under the provisions of OAR 845-009-0020(7)(a)(A), which provide that the OLCC will refuse to issue a service permit if, within three years, an applicant has had two DUII convictions or one diversion and one conviction, either one of which was within 12 months.¹

The phrase "within 12 months" used in the administrative rule refers to the 12 month period of time beginning when the OLCC received the application. OAR 845-009-0020(2). The relevant date for a diversion program is the completion date. *Tamara L. Cardenas* (OLCC Final Order, OLCC-94-SPR-122, March 1995).

In matters in which the agency bases its action on the conviction of a crime, ORS 670.280 requires the agency to show the relationship between the conviction and the applicant's fitness to sell or serve alcoholic liquor.²

In several previous cases, the OLCC has concluded that DUII convictions are related to an individual's fitness to serve and sell alcoholic liquor because these convictions show that the individual has failed to comply with alcoholic liquor laws, which are integral to the privileges of selling and serving alcoholic beverages. *See Dorothy J. Hamblin* (OLCC Final Order, OLCC-03-SPR-036, December 2003); *Marlys McLaury* (OLCC Final Order, OLCC-90-SP-238, August 1991).

In the present case, Ms. Landry was convicted of two counts of DUII on September 26, 2011. Both these convictions are within twelve months of the date the Commission received Ms. Landry's application for a service permit, November 29, 2011. Therefore, under OAR 845-009-

¹ OAR 845-009-0020 provides, in relevant part:

(7) Driving Under the Influence of Intoxicants (DUII)/Furnishing Alcohol to Minors/Liquor Law Violations:

(a) The Commission will deny a service permit if:

(A) Within three years the applicant has had two DUII convictions or one diversion and one conviction, any one of which was within 12 months[.]

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.

0020(7)(a)(A), the OLCC will deny the application for a service permit, unless Ms. Landry can show good cause to overcome the denial.

2. *Whether Ms. Landry has good cause to overcome the denial:*

OAR 845-009-0020(7)(b) provides that an applicant may show good cause to overcome the denial of a service permit application. This rule provides that, in order to show good cause to overcome a service permit denial, the applicant must provide a sworn statement that he or she has not used or consumed controlled substances within 24 months, has successfully completed or is actively involved in a state certified drug treatment or recovery program, and has completed all parole or probation requirements. OAR 845-009-0020(3) provides that to be qualified for good cause, an applicant must have had a drug addiction disability or an alcohol addiction disability at the time of the DUII convictions or diversions.³

In this case, Ms. Landry last consumed alcoholic beverages on August 17, 2011, less than 24 months ago, and she has not completed her probation requirements. Because Ms. Landry has not met all the criteria required by the Commission for good cause, her application for a service permit must be denied.

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³ OAR 845-009-0020(3) and (7)(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:

* * * * *

(D) DUII convictions or diversions which form the denial basis under OAR 845-009-0020(7) and (8); or

(b) The applicant was diagnosed as drug or alcohol addicted at the time of or as a result of the incidents described above.

* * * * *

(7)(b) If applicant has DUII convictions or diversions, good cause may apply. Good cause to overcome the criteria in subsection (a)(A) through (C) above is the applicant's sworn statement on a Commission-supplied form that:

(A) He/she has not used or consumed alcohol or controlled substances within 24 months; and

(B) He/she has successfully completed a state certified alcohol or drug treatment program or is actively involved in a state certified 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.

FINAL ORDER

The Commission orders that the application for a service permit filed by Applicant Akilah K. Landry and received by the OLCC on November 29, 2011 be DENIED.

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

Dated this 30th day of October, 2012

Merle Lindsey
Interim Executive Director
OREGON LIQUOR CONTROL COMMISSION

Mailed this 30th day of October, 2012

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.