

**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**
)
)

CHRISTOPHER M. LINN

Agency Case No.: OLCC-11-SPR-024

HISTORY OF THE CASE

On September 22, 2011, the Oregon Liquor Control Commission (the OLCC) received an application for a service permit from Christopher M. Linn (Applicant). The OLCC proposed to deny Applicant's service permit because he had two convictions for driving under the influence of intoxicants (DUII) within three years, at least one of which was in the past 12 months.

Applicant filed a timely request for hearing. The OLCC referred the request to the Office of Administrative Hearings on January 3, 2012. The Office of Administrative Hearings assigned the case to Lynnette M. Turner, Administrative Law Judge (ALJ). ALJ Turner held a contested case hearing by telephone at 9:00 a.m. on March 14, 2012. Gwenn McNeal appeared on behalf of the OLCC and testified. Applicant appeared without counsel and testified on his own behalf. The record closed at the conclusion of the hearing on March 14, 2012.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed April 19, 2012.

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:

ISSUES

1. Whether Applicant's application for a service permit should be denied because Applicant has had two DUII diversions or convictions within three years, one of which was in the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(7)(a)(A).

2. If the service permit application should be denied, whether Applicant has shown good cause to overcome the denial. OAR 845-009-0020(3) and (7)(b).

EVIDENTIARY RULING

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

FINDINGS OF FACT

1. On September 22, 2011, the OLCC received Applicant Christopher M. Linn’s Service Permit Application. (Ex. A1; test. of McNeal.)

2. On February 19, 2010, Applicant was arrested and cited for driving under the influence of intoxicants (DUII). He entered a diversion program on March 30, 2010. (Ex. A2; test. of McNeal.)

3. On October 3, 2010, Applicant was arrested and cited for DUII. (*Id.*)

4. Applicant’s diversion agreement was revoked, and he was convicted of the February 19, 2010 DUII charge on April 29, 2011. Applicant was convicted of the October 3, 2010 charge on May 3, 2011. (*Id.*)

4. As part of the May 3, 2011 DUII conviction, the Circuit Court judge sentenced Applicant to bench probation for a period of one year, to conclude in May 2012. Applicant has paid his probation fees. (Test. of Applicant.)

5. Applicant was required to submit to urinalysis testing as part of his bench probation. In June 2011, Applicant’s urinalysis showed positive for alcohol, which violated the terms of his probation. As a result of this probation violation, Applicant entered treatment at Integrated Health Clinic, an addiction treatment program in the Portland area, on June 14, 2011. Applicant was diagnosed as alcohol addicted while in treatment. Applicant completed treatment November 22, 2011, and attends AA regularly as part of his aftercare program. (Test. of Applicant.)

6. Applicant last consumed alcohol in June 2011. (Test. of Applicant.)

CONCLUSIONS OF LAW

1. Applicant’s application for a service permit should be denied because Applicant has two DUII convictions within three years, both of which were within the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(7)(a)(A).

2. Applicant has not shown good cause to overcome the denial. OAR 845-009-0020(3) and (7)(b).

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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 violating any of the alcoholic liquor laws of this state or has been convicted of a felony. The OLCC has adopted administrative rules to apply this statutory provision. In this case, the OLCC proposes to deny Applicant's service permit application under the provisions of OAR 845-009-0020(7)(a)(A), which provides that the OLCC will deny a service permit application if 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" as used in the administrative rule means within 12 months of the date the OLCC received the application. OAR 845-009-0020(2). Where a 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.² The OLCC has previously concluded that DUII convictions are relevant to an individual's fitness to serve and sell alcoholic liquor. *Dorothy J. Hamblin* (OLCC Final Order, OLCC-03-SPR-036, December 2003).

In the present case, Applicant has two DUII convictions, one on April 29, 2011, arising out of his February 19, 2010 arrest, and one on May 3, 2011 arising out of his October 3, 2010 arrest. The OLCC received Applicant's application September 22, 2011, which is within 12 months of both DUII convictions. Therefore, under OAR 845-009-0020(7)(a)(A), the OLCC has the authority to deny Applicant's application for a service permit, unless Applicant can show good cause to overcome the denial.

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.

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

OAR 845-009-0020(7)(b) provides 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 DUII convictions or diversions. OAR 845-009-0020(7)(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.³

In the course of his treatment at Integrated Health Clinic, which Applicant entered following a probation violation on the DUII convictions at issue, Applicant was diagnosed with an alcohol addiction. Therefore, Applicant satisfied one of the good cause requirements listed in OAR 845-009-0020(3)(b). However, Applicant last consumed alcohol in June 2011, which is within 24 months of the proposed denial. Additionally, Applicant was placed on probation following his May 3, 2011 conviction, and will remain on probation until May 2012. Because Applicant has not abstained from using a controlled substance for 24 months and has not yet completed his probation, he cannot establish good cause to overcome the service permit application denial under 845-009-0020(7)(b). For these reasons, the OLCC may deny Applicant's service permit.

Applicant appears to have benefited from his substance abuse treatment and is doing well in his recovery. Unfortunately, the law does not consider these factors sufficient to establish good cause to overcome the denial of his service permit application.

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 Christopher M. Linn and received by the OLCC on September 22, 2011, be DENIED.

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

Dated this 10th day of May 2012.

/s/ Steve Pharo

Stephen A. Pharo

Executive Director

OREGON LIQUOR CONTROL COMMISSION

Mailed this 10th day of May 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.