

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

In the Matter of the Application for a	)	<b>FINAL FINDINGS OF FACT</b>
Service Permit Filed by:	)	<b>CONCLUSIONS OF LAW</b>
	)	<b>AND ORDER</b>
	)	
<b>Stephanie A. Green</b>	)	Agency Case No.: OLCC-14-SPR-002
18125 SW Alexander Street	)	
Aloha, OR 97006	)	

**HISTORY OF THE CASE**

On November 20, 2013, the Oregon Liquor Control Commission (OLCC) received an application for a service permit from Stephanie A. Green (Applicant). On December 26, 2013, the OLCC issued a Service Permit Denial Notice proposing to deny Applicant’s service permit pursuant to OAR 845-009-0020(4)(a)(B), because Applicant was convicted of a felony drug delivery charge within the past two years.

Applicant timely filed a request for hearing. The OLCC referred the request to the Office of Administrative Hearings (OAH) on February 5, 2014. The OAH assigned the case to Linda A. Lohr, Administrative Law Judge (ALJ). ALJ Lohr held a contested case hearing by telephone at 9:00 a.m. on April 4, 2014. Gwenn McNeal appeared on behalf of the OLCC and testified. Applicant appeared on her own behalf and testified. The hearing record closed at the conclusion of the hearing on April 4, 2014.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed June 12, 2014.

Applicant filed Exceptions to the Proposed Order on June 23, 2014. The Administrative Law Judge responded to Applicant’s Exceptions on June 24, 2014.

On August 21, 2014 and October 23, 2014, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Administrative Law Judge, Applicants Exceptions to the Proposed Order and the Administrative Law Judge’s Response to Applicants Exceptions. 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 she has a felony drug conviction within two years of the application. OAR 845-009-0020(4)(a)(B); ORS 471.380(1)(d).

2. If the application should be denied because of Applicant's conviction, whether Applicant has shown good cause to overcome the denial. OAR 845-009-0020(4)(b); OAR 845-009-0020(3).

### **EVIDENTIARY RULINGS**

OLCC Exhibits A1 through A4 were admitted into the record without objection. Applicant's Exhibit App1 was admitted into the record without objection.

### **FINDINGS OF FACT**

1. On or about November 14, 2012, Applicant Stephanie A. Green committed the crime of unlawful delivery of methamphetamine. Applicant pled guilty and was convicted of this charge, a Class B Felony, on February 11, 2013, in Washington County Circuit Court, Washington County, Oregon. The Court sentenced Applicant to 16 months imprisonment and 36 months supervised probation. (Ex. A2)

2. On November 20, 2013, the OLCC received Applicant's service permit application. (Ex. A1; Test. of McNeal.)

3. Prior to her February 11, 2013, conviction, Applicant was diagnosed with a drug addiction disability and completed a substance abuse treatment program in August 2012. (Test. of Applicant.)

4. Applicant has worked as a food server at Shari's restaurant since November 15, 2013. (Test. of Applicant.)

5. Applicant has not used or consumed controlled substances since her arrest on November 14, 2012.

6. Applicant regularly attends Alcoholics Anonymous and Narcotics Anonymous meetings and has a strong support system.

7. Applicant makes regular payments on her supervision fees and is paying her traffic fines.

8. Applicant will complete her parole requirements in October 2016.

### **CONCLUSIONS OF LAW**

1. Applicant's application for a service permit should be denied because Applicant has a felony drug conviction which occurred within two years of the application. ORS 471.380(1)(d); OAR 845-009-0020(4)(a)(B).

2. Applicant has not shown good cause to overcome the basis for 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)(B),<sup>1</sup> which provides that the OLCC will deny a service permit application if an applicant has had a felony conviction for delivering a controlled substance within two years.

The phrase "within two years" as used in the administrative rule means within two years of the date the OLCC received the application. OAR 845-009-0020(2). When a criminal conviction 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.<sup>2</sup> The OLCC has previously concluded that convictions involving controlled substances are relevant to an individual's fitness to serve and sell alcoholic liquor. *Michelle Haynes* (OLCC Final Order, OLCC-06-SPR-022, December 2006).

On February 11, 2013, Applicant was convicted of unlawful delivery of methamphetamine, a controlled substance felony. Applicant's conviction occurred within two years of the OLCC's receipt of her November 20, 2013, service permit application. Thus, the OLCC has shown it may deny Applicant's service permit under the provisions of OAR 845-009-0020(4)(a)(B).

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

OAR 845-009-0020(3) and (4)(b) provide that an applicant may show good cause to overcome a proposed service permit denial. OAR 845-009-0020(3) provides that to be qualified

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<sup>1</sup> OAR 845-009-0020(4)(a)(B) states as follows:

(4) Felony Drug Conviction:

(a) The Commission will deny a service permit if the applicant has had:

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(B) A felony conviction within two years for manufacture, delivery or distribution of a controlled substance or any other drug related felony as described in ORS Chapter 475 or similar laws in other jurisdictions (except possession of a controlled substance).

<sup>2</sup> ORS 670.280(2) ("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").

to show good cause, an 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. In this case, Applicant established that she was diagnosed with a drug addiction disability as a result of her conviction and, therefore, qualifies to show good cause to overcome the proposed service permit denial.

OAR 845-009-0020(4)(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.<sup>3</sup>

Applicant has made significant positive changes in her life. However, Applicant has not met all the criteria required to establish good cause. Although Applicant has not used or consumed controlled substances for more than 12 months, the rule requires 24 months of abstinence to establish good cause. Similarly, while Applicant testified she completed a drug counseling program in August 2012, Applicant will not complete her parole requirements until October 17, 2016.

Because Applicant's last use of controlled substances was within 24 months of the date the OLCC received the application for service permit, and because she has not completed her probation requirements, she has not met all the criteria set forth in OAR 845-009-0020(4)(b) and therefore cannot show good cause to overcome the denial. Applicant's service permit application must therefore be denied.

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<sup>3</sup> OAR 845-009-0020(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”).

**FINAL ORDER**

The Commission orders that the application for a service permit filed by Applicant Stephanie Green and received by the OLCC on November 20, 2013, is DENIED.

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

Dated this 7th day of November, 2014.

/s/ Steven Marks  
Steven Marks  
Executive Director  
OREGON LIQUOR CONTROL COMMISSION

Mailed this 10th day of November, 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.