

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

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| In the Matter of the Application for a Service Permit Filed by: |) | FINAL FINDINGS OF FACT |
| |) | CONCLUSIONS OF LAW |
| |) | AND ORDER |
| |) | |
| TROY R. KORSLUND |) | Agency Case No.: OLCC-14-SPR-027 |
| 935 Barnes Ave SE |) | |
| Salem, Oregon 97306 |) | |

HISTORY OF THE CASE

On June 4, 2014, the Oregon Liquor Control Commission (OLCC) issued a Service Permit Denial Notice to Troy R. Korslund (Mr. Korslund/Applicant). The OLCC proposed to deny Mr. Korslund's service permit application pursuant to *former* OAR 845-009-0020(7)(a)(A)¹ because he had one diversion and one conviction for driving under the influence of intoxicants (DUII) within three years, one of which was within 12 months.

Mr. Korslund filed a timely request for hearing. The OLCC referred the hearing request to the Office of Administrative Hearings (OAH) on September 12, 2014. OAH assigned the case to Matthew Wymer, Administrative Law Judge (ALJ).

ALJ Wymer held a contested case hearing by telephone at 9:00 a.m. on November 20, 2014. Gwenn McNeal appeared on behalf of the OLCC and testified. Mr. Korslund appeared and testified. The hearing record closed at 5:00 p.m. on December 1, 2014.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed December 3, 2014.

Mr. Korslund filed Exceptions to the Proposed Order on December 16, 2014. The Administrative Law Judge responded to Mr. Korslund's Exceptions on December 17, 2014.

On February 27, 2015, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Administrative Law Judge, Mr. Korslund's Exceptions to the Proposed Order and the Administrative Law Judge's Response to Mr. Korslund's Exceptions. Based on this review and the preponderance of the evidence, the Commission enters the following:

¹ The OLCC amended its Service Permit Denial Criteria rule effective September 1, 2014, subsequent to the denial action at issue. The former version of the rule is applicable in this case.

ISSUES

1. Whether Applicant's application for a service permit should be denied because he has one diversion and one conviction for DUII within three years, one of which was within 12 months. ORS 471.380(1)(d) and *former* OAR 845-009-0020(7)(a)(A).

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

EVIDENTIARY RULINGS

OLCC Exhibits A1 through A4 were admitted into the record without objection. OLCC submitted an additional document after the hearing on November 20, 2014, which has been marked as OLCC Exhibit A5. No objections were submitted by the deadline of 5:00 p.m., December 1, 2014, and OLCC Exhibit A5 is admitted into the record.

FINDINGS OF FACT

1. On December 3, 2011, Applicant Troy R. Korslund was arrested and cited for driving under the influence of intoxicants (DUII). Mr. Korslund entered a diversion program on February 2, 2012, and completed the program on February 2, 2013. (Ex. A2 at 1.)

2. On February 22, 2014, Mr. Korslund was arrested for DUII in Marion County, Oregon. Since February 23, 2014, he has not consumed alcohol. (Test. of Korslund; Ex. A2 at 1.)

3. On May 21, 2014, the OLCC received Mr. Korslund's service permit application. (Ex. A1 at 1.)

4. On May 22, 2014, Mr. Korslund was convicted on one count of DUII, a Class A Misdemeanor, in Marion County Circuit Court. (Exs. A2 at 1, A3 at 1.) After his conviction, Mr. Korslund was placed on probation, which is scheduled to end in November 2015. (Test. of Korslund.)

CONCLUSIONS OF LAW

1. Applicant's application for a service permit should be denied because he has one diversion and one conviction for DUII within three years, one of which was within 12 months. ORS 471.380(1)(d) and *former* OAR 845-009-0020(7)(a)(A).

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

OPINION

1. Whether Applicant's application for a service permit should be denied:

The OLCC proposes to deny Mr. Korslund’s application for a service permit on the basis of ORS 471.380(1)(d), which states:

(1) The [OLCC] may refuse to grant a service permit if it has reasonable grounds to believe any of the following to be true:

* * * * *

(d) 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(1)(d) provides that the OLCC may refuse to issue a service permit if an applicant has been convicted of violating any of the liquor laws of the state. The OLCC has consistently held in similar cases that DUII convictions are violations of alcoholic liquor laws. *Dorothy J. Hamblin* (OLCC Final Order, OLCC-03-SPR-036, December 2003), *citing Carolyn A. White* (OLCC Final Order, OLCC 98-SPR-005, August 1999). In this case, the OLCC seeks to deny Mr. Korslund’s service permit application under the provisions of *former* OAR 845-009-0020(7)(a)(A), which authorized the OLCC to deny a service permit application if an applicant has had one diversion and one conviction for DUII within three years, one of which was within 12 months.²

Former OAR 845-009-0020(2) provides that “references to a period of time mean a period of time ending on the date the Commission receives the application. For example, ‘within two years’ means within two years of the date the Commission receives the application.” The OLCC has held that the wording of that rule “does not limit the Commission to considering convictions occurring prior to the receipt of the application. The Commission may also consider any felony convictions occurring between the date the application is received and the date the Commission makes a determination on the application.” *Lisa M. Pfeffer* (OLCC Final Order, OLCC-96-SPR-115, July 1997). *See* Ex. A5.

Where the 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.³ The OLCC has previously concluded that convictions involving

² *Former* OAR 845-009-0020(7)(a)(A) provides:

(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[.]

³ 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

controlled substances are relevant to an individual's fitness to serve and sell alcoholic liquor. *John O. Myshak* (OLCC Final Order, 88-V-002, May 1988).

In this matter, Mr. Korslund completed diversion on February 2, 2013 and was convicted of DUI on May 22, 2014. Mr. Korslund's diversion and conviction occurred within three years of OLCC's receipt of his service permit application on May 21, 2014, his conviction occurring within 12 months. Thus, the OLCC has shown that it may deny Mr. Korslund's service permit under the provisions of *former* OAR 845-009-0020(7)(a)(A).

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

The OLCC's administrative rules provide that an applicant may show good cause to overcome a service permit denial. *Former* 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 DUI convictions or diversions.⁴ *Former* 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.⁵

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.

⁴ *Former* OAR 845-009-0020(3) provides, 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) DUI 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.

⁵ *Former* OAR 845-009-0020(7)(b) provides:

If applicant has DUI 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.

