

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

<b>In the Matter of the Application for a</b>	)	<b>FINAL FINDINGS OF FACT</b>
<b>Service Permit Filed by:</b>	)	<b>CONCLUSIONS OF LAW</b>
	)	<b>ORDER</b>
	)	
<b>SEAN MANLEY</b>	)	<b>OLCC-14-SPR-048</b>
8641 BRIGHTFIELD CIRCLE	)	
PORTLAND, OR 97223	)	

**HISTORY OF THE CASE**

On November 26, 2014, the Oregon Liquor Control Commission (OLCC) issued a Service Permit Denial Notice to Sean Manley (Mr. Manley/Applicant). The OLCC proposed to deny Applicant’s service permit application pursuant to OAR 845-009-0020(3)(b) based upon a felony drug possession incident leading to a conviction and the incident leading to the conviction occurred within two years of the date the OLCC received his service permit application.

Applicant filed a timely request for hearing. The OLCC referred the hearing request to the Office of Administrative Hearings (OAH) on February 3, 2015. OAH assigned the case to Matthew Wymer, Administrative Law Judge (ALJ).

On February 9, 2015, the OLCC issued an Amended Service Permit Denial Notice to Applicant, additionally denying Applicant’s service permit application pursuant to Oregon Revised Statute (ORS) 471.380(1)(b) based upon Applicant’s submission of a signed statement falsely swearing that he had not taken alcohol or drugs in the past 12 months; that he was currently in an alcohol or drug treatment or recovery program and was complying with treatment recommendations; and that he had complied with or was continuing to comply with post-prison supervision or probation requirements.

ALJ Wymer held a contested case hearing by telephone at 9:00 a.m. on March 13, 2015. Anna Davis represented the OLCC. Gwenn McNeal and Becky Voelkel testified on behalf of the OLCC. Applicant did not appear at the hearing. 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 March 25, 2015.

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 he has one felony drug conviction and the incident leading to the conviction occurred within two years of the date the OLCC received his service permit application. ORS 471.380(1)(d); OAR 845-009-0020(3)(b).

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

3. Whether Applicant's application for a service permit should be denied because he made a false statement to the OLCC. ORS 471.380(1)(b).

## **EVIDENTIARY RULINGS**

OLCC Exhibits A1 through A10 were admitted into the record without objection.

## **FINDINGS OF FACT**

1. On or about July 19, 2013, in Washington County, Oregon, Applicant, age 29, committed the crime of Unlawful Possession of Methamphetamine, a Class C Felony. (Test. of McNeal; Exs. A1 and A2.)

2. On February 13, 2014, Applicant pled guilty to the crime of Possession of a Controlled Substance-Methamphetamine in Washington County Circuit Court, Washington County, Oregon. The Court sentenced Applicant to one year probation and a \$200 fine. (Ex. A3.) In June 2014, Applicant's parole was revoked. (Ex. A5 at 1.)

3. On October 29, 2014, the OLCC received Applicant's service permit application. (Ex. A1.)

4. On December 22, 2014, Applicant used methamphetamines. On December 24, 2014, Applicant contacted his parole officer, Jason Jones, and admitted that he used methamphetamines on December 22, 2014. (Ex. A5 at 1, 3.)

5. On December 24, 2014, at the recommendation of Mr. Jones, Applicant was sanctioned to serve 30 days at the Washington County Community Corrections Center (WCCCC). (Test. of Voelkel; Ex. A5 at 3, 5.)

6. On December 31, 2014, Applicant was given a pass to check out of the WCCCC, and was scheduled to return no later than 11:30 p.m. on December 31, 2014. Applicant did not return at the scheduled time and was listed in the Washington County Jail system as on escape status. (Ex. A6 at 2.)

7. On January 9, 2015, an arrest warrant was issued in Washington County Circuit Court for the arrest of Applicant on the charge of Unauthorized Departure. (Ex. A8.)

8. On January 11, 2015, Applicant submitted a statement to the OLCC swearing that he had not taken drugs within the past 12 months; that he was currently in a recovery program with Bridges to Change; and that he had complied with and continued to comply with his probation requirements. (Ex. A4 at 1.)

9. As of January 11, 2015, Applicant had not completed a state-certified alcohol or drug treatment program and was not in an alcohol or drug treatment or recovery program. (Ex. A5 at 1.)

10. On January 12, 2015, the arrest warrant was executed on Applicant, and on January 13, 2015, Applicant pled guilty and was convicted in Washington County Circuit Court of Unauthorized Departure, a misdemeanor. (Test. of Voelkel; Exs. A7, A9, A10.)

11. Applicant was sentenced to 10 days confinement. (Ex. A10 at 2.) On January 31, 2015, Applicant was released from the WCCCC. (Test. of Voelkel.)

### CONCLUSIONS OF LAW

1. Applicant's application for a service permit should be denied because he has one felony drug conviction and the incident leading to the conviction occurred within two years of the date the OLCC received his service permit application. ORS 471.380(1)(d); OAR 845-009-0020(3)(b).

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

3. Applicant's application for a service permit should be denied because he made a false statement to the OLCC. ORS 471.380(1)(b).

### OPINION

*1. Whether Applicant's application for a service permit should be denied because he has one felony drug conviction and the incident leading to the conviction occurred within two years of the date the OLCC received his service permit application:*

The OLCC proposes to deny Mr. Manley'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 at any time of a felony. In this case, the OLCC also seeks to deny Applicant's service permit application under the provisions of OAR 845-009-0020(3), which authorizes the OLCC to deny a service permit application if an applicant has had one felony drug conviction and the incident leading to the conviction occurred within two years of the date the OLCC received his service permit application.<sup>1</sup>

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 for commission of a crime involving a controlled substance 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. *John O. Myshak* (OLCC Final Order, 88-V-002, May 1988).

Applicant committed the crime of Unlawful Possession of Methamphetamine on or about July 19, 2013, and was convicted of that crime, a Class C Felony, on February 13, 2014. Applicant's commission of that crime was within two years of OLCC's receipt of his service permit application on October 29, 2014. Thus, the OLCC has shown that it may deny Applicant's service permit under the provisions of ORS 471.380(1)(d) and OAR 845-009-0020(3)(b).

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

The OLCC's administrative rules provide that, under certain specific circumstances, an applicant may show good cause to overcome a service permit denial. Pursuant to OAR 845-009-0020(7), if an applicant demonstrates that the following circumstances exist, a denial based on felony convictions or liquor law violations will be set aside:

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<sup>1</sup> OAR 845-009-0020(3) provides in relevant part:

Felony Convictions.

(a) Definitions. As used in this rule:

\* \* \* \* \*

(A) A "felony drug conviction" means a felony conviction for possession, manufacture, delivery or distribution of a controlled substance, or any other drug-related felony as described in ORS 475 or similar laws in other jurisdictions.

(b) The Commission will deny a service permit if the applicant has one felony conviction of the types listed above and the incident leading to this conviction occurred within two years of the date the Commission received the application \* \* \* [.]

<sup>2</sup> 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.

(a) The applicant or permittee provides written proof that a licensed medical professional diagnosed the applicant with a drug or alcohol addiction prior to, or as a result of, the incident(s) leading to at least one of the relevant convictions or diversions;

(b) The applicant or permittee provides a sworn statement that he or she has not used or consumed any alcohol or controlled substances, as appropriate to the denial basis, for a minimum of 12 consecutive months prior to the date the Commission received his or her application;

(c) The applicant or permittee provides written proof that after the relevant incident(s) he or she has successfully completed an alcohol or drug treatment or recovery program, as appropriate to the refusal basis, and is following treatment recommendations; is participating in an ongoing alcohol or drug treatment or recovery program, as appropriate to the refusal basis, and is following treatment recommendations; or, has otherwise been successfully rehabilitated, AND

(d) The applicant or permittee has substantially complied and continues to comply with all post-prison supervision or probation requirements, if any, imposed as a result of the underlying incident(s).

In this case, there is no evidence in the record establishing that Applicant has been diagnosed with a drug or alcohol addiction. Further, Applicant has not completed an alcohol or drug treatment or recovery program.<sup>3</sup> Finally, Applicant has not complied with his probation requirements, as evidenced by the revocation of his probation in June 2014 and the sanction against him after he committed the crime of Unauthorized Departure when he failed to return to the WCCCC on December 31, 2014. Therefore, Applicant has not established good cause to overcome the denial under OAR 845-009-0020(7).

*3. Whether Applicant's application for a service permit should be denied because he made a false statement to the OLCC.*

The OLCC also proposes to deny Mr. Manley's application for a service permit on the basis of ORS 471.380(1)(b), 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:

\* \* \* \* \*

(b) That the applicant has made false statements to the commission.

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<sup>3</sup> In the Proposed Order the ALJ referenced the fact that Applicant admitted using methamphetamines on December 22, 2014 to support the finding that Applicant had not established good cause. Because this admitted use was after the date of Applicant's application, however, it is not a relevant fact in the good cause analysis pursuant to OAR 845-009-0020(7)(b).

ORS 471.380(1)(b) provides that the OLCC may refuse to issue a service permit if an applicant has made a false statement to the OLCC. In this case, the OLCC seeks to deny Applicant's service permit application for the additional reason that on January 11, 2015, while committing the crime of Unauthorized Departure, Applicant submitted a sworn statement to the OLCC falsely swearing that he had not taken drugs within the past 12 months; that he was currently in a recovery program with Bridges to Change; and that he had complied and continued to comply with his probation requirements.

Applicant admitted to his parole officer on December 24, 2014 that on December 22, 2014, he used methamphetamines. Further, Applicant did not complete his alcohol or drug treatment or rehabilitation program with Bridges to Change. Finally, Applicant has not complied with his probation requirements. Specifically, his probation was revoked in June 2014. Thus, Applicant made false statements in his sworn statement to the OLCC. The OLCC has shown that it may deny Applicant a service permit under the provisions of ORS 471.380(1)(b). For these reasons, Mr. Manley's service permit application must be denied.

### **FINAL ORDER**

The Commission orders that the application for a service permit filed by Applicant Sean Manley and received by the OLCC on October 29, 2014 be DENIED.

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

Dated this 17th day of April, 2015

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

Mailed this 20th day of April, 2015

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.