

**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**  
**Gina E. Marino** ) Agency Case No.: OLCC-11-SPR-010

**HISTORY OF THE CASE**

On March 7, 2011, the Oregon Liquor Control Commission (the OLCC) received an application for a service permit from Gina E. Marino (Applicant). The OLCC proposed to deny Applicant's service permit pursuant to OAR 845-009-0020(4)(a)(A) because Applicant was convicted of possession of a controlled substance, a felony, within the past 12 months.

Applicant filed a timely request for hearing. The OLCC referred the request to the Office of Administrative Hearings on June 24, 2011. The Office of Administrative Hearings assigned the case to John R. Lohuis, Administrative Law Judge (ALJ). ALJ Lohuis held a contested case hearing by telephone at 9:30 a.m. on August 16, 2011. Gwenn McNeal appeared on behalf of the OLCC and testified. Applicant appeared on her own behalf and testified. ALJ Lohuis held the record open until 5:00 p.m. on August 16, 2011 in order to receive documents Applicant had submitted to the OLCC with her hearing request. Ms. McNeal provided a copy of Applicant's documents by the deadline.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed September 19, 2011.

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 she has a felony conviction for possession of a controlled substance within 12 months of the application. OAR 845-009-0020(4)(a)(A); 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.

## EVIDENTIARY RULINGS

Exhibits A1 through A3, offered by the OLCC, were admitted into the record without objection. Exhibit P1, offered by Applicant, was admitted into the record without objection.

## FINDINGS OF FACT

1. On or about July 26, 2010, Applicant Gina E. Marino committed the crime of unlawful possession of methamphetamine. (Ex. A3.)
2. On or about February 25, 2011, Applicant submitted an application for a service permit. (Test. of Applicant.) On March 7, 2011, the OLCC received Applicant's Service Permit Application. (Ex. A1; test. of McNeal.)
3. On March 30, 2011, Applicant was convicted of unlawful possession of methamphetamine, a Class C Felony, in Lincoln County Circuit Court, Lincoln County, Oregon. (Ex. A2; test. of McNeal.) The conviction was based on Applicant's guilty plea for the offense committed on July 26, 2010. The Circuit Court sentenced Applicant to bench probation for a period of 18 months. Applicant will remain on bench probation until approximately September 2012. (*Id.*)
4. On March 24, 2011, an alcohol and drug evaluation specialist conducted a substance abuse evaluation of Applicant. He concluded that Applicant did not have a substance abuse problem and did not recommend that Applicant enroll in a substance treatment program. (Test. of Applicant; Ex. P1.)
5. Applicant last consumed controlled substances in 2003. (Test. of Applicant.)

## CONCLUSIONS OF LAW

1. Applicant's application for a service permit should be denied because Applicant was convicted of felony possession of a controlled substance within 12 months of the date the OLCC received the application. ORS 471.385(1)(b), OAR 845-009-0020(4)(a)(A).
2. Applicant has not shown good cause to overcome the denial basis.

## 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)(A), which provides that the OLCC will deny a

service permit application if an applicant has had a felony conviction for possession of a controlled substance within 12 months of the date the OLCC received the application.<sup>1</sup>

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 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.<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).

At hearing, Applicant contended that she should not be subject to a denial because when she submitted her application for a service permit on February 25, 2011, she had not yet been convicted of felony possession of a controlled substance. However, when applying the denial criteria to applications, the OLCC will consider convictions that occur between the date of receipt of the application and the date the OLCC makes a determination on the application. *Lisa M. Pfeffer* (OLCC Final Order, OLCC-96-SPR-115, July 30, 1997). Here, the date of the felony conviction (March 30, 2011) is later than March 7, 2011, the date the OLCC received the application. However, the OLCC has considered this conviction to apply to the application criteria. Applicant engaged in activities in July 2010 that led to her felony conviction for possession of a controlled substance on March 30, 2011. The OLCC received Applicant’s service permit application on March 7, 2011. Under OAR 845-009-0020(4)(a)(A), and the policy set forth in *Lisa M. Pfeffer*, the OLCC will deny the application for a service permit unless Applicant can show good cause to overcome the denial.

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 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 felony drug conviction. 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

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<sup>1</sup> OAR 845-009-0020(4)(a)(A) provides:

(4) Felony Drug Conviction:

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

(A) A felony conviction within 12 months for possession of a controlled substance or any other drug related felony as described in ORS Chapter 475 or similar laws in other jurisdictions[.]

<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.

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>

Here, Applicant has not met all the criteria set forth in OAR 845-009-0020(4)(b) and therefore does not have good cause to overcome the denial. Applicant did not establish that she had a drug or alcohol addiction disability at the time of her conviction, nor did she establish that she has completed a drug treatment program. Additionally, Applicant is on bench probation and will remain on probation until approximately September 2012. Therefore, she has not completed her probation requirements. Because Applicant has not met all the criteria set forth in OAR 845-009-0020(4)(b), she cannot show good cause to overcome the denial. Applicant's service permit application must be denied.

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<sup>3</sup> OAR 845-009-0020(3) and (4)(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:  
\* \* \* \* \*  
(A) Felony drug conviction(s) (OAR 845-009-0020(4)); [or]  
(b) The applicant was diagnosed as drug or alcohol addicted at the time of or as a result of the incidents described above.  
\* \* \* \* \*  
(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 Gina E. Marino and received by the OLCC on March 7, 2011 be DENIED.

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

Dated this 13th day of October, 2011.

/s/ Stephen A. Pharo  
Stephen A. Pharo  
Executive Director  
OREGON LIQUOR CONTROL COMMISSION

Mailed this 13th day of October, 2011.

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.