

**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**  
)

**JESSIE R. KENSINGER**

Agency Case No.: OLCC-11-SPR-023

**HISTORY OF THE CASE**

On November 18, 2011, the Oregon Liquor Control Commission (the OLCC) notified Jessie R. Kensinger that it intended to deny her application for a service permit because of the allegations that Ms. Kensinger had, within seven years, one conviction for driving under the influence of intoxicants (DUII), one diversion, and one conviction for furnishing alcohol to a minor, one of which was within 18 months.

Ms. Kensinger filed a timely request for hearing. The OLCC referred the request to the Office of Administrative Hearings on December 15, 2011. The OAH assigned the case to John R. Lohuis, Administrative Law Judge (ALJ). ALJ Lohuis held a contested case hearing by telephone at 9:00 a.m. on April 9, 2012. Gwenn McNeal appeared on behalf of the OLCC and testified. Ms. Kensinger appeared on her own behalf and testified. The record closed at the conclusion of the hearing on April 9, 2012.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed May 24, 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 Ms. Kensinger's service permit application should be denied because, within seven years of the application, she has had a combination of three DUII diversions and convictions for DUII or Furnishing Alcohol to Minors, any one of which was within 18 months. OAR 845-009-0020(7)(a)(B); ORS 471.380(1)(d).

2. If the application should be denied because of Ms. Kensinger's DUII and Furnishing Alcohol to Minors convictions and diversion, whether Ms. Kensinger has good cause to overcome the denial. OAR 845-009-0020(3) and (7)(b).

## EVIDENTIARY RULINGS

Exhibits A1 through A5, offered by the OLCC, were admitted into the record without objection.

## FINDINGS OF FACT

1. On April 28, 2007, Ms. Kensinger was arrested and cited for driving under the influence of intoxicants (DUII) in Jackson County, Oregon. On July 2, 2007, she entered a diversion program. She completed the diversion program on July 2, 2008. (Ex. A2; test. of McNeal.)

2. On January 23, 2011, Ms. Kensinger was again arrested and cited for driving under the influence of intoxicants in Jackson County. On March 3, 2011, Ms. Kensinger was convicted for driving under the influence of intoxicants based on her January 23, 2011 arrest. (*Id.*)

3. On July 28, 2011, Ms. Kensinger pled guilty to the crime of Furnishing Alcohol to a Minor. Based on her guilty plea, Ms. Kensinger was convicted of Furnishing Alcohol to a Minor on July 28, 2011. (Ex. A5; test. of McNeal.)

4. Ms. Kensinger will remain on probation until January 2014 as a result of her July 2011 conviction for Furnishing Alcohol to a Minor. (Test. of Kensinger.)

5. Ms. Kensinger completed a drug and alcohol treatment program in February 2012. She attends weekly Alcoholic Anonymous meetings. She last consumed alcohol and drugs on July 18, 2011. (*Id.*)

6. On October 17, 2011, the OLCC received Ms. Kensinger's service permit application. (Ex. A1; test. of McNeal.)

7. Ms. Kensinger's parole officer and employer encourage her efforts to address her past conduct. (Test. of Kensinger.)

## CONCLUSIONS OF LAW

1. Ms. Kensinger's application for a service permit should be denied because, within seven years of the application for a service permit, Ms. Kensinger has had a combination of three DUII convictions, diversions, or convictions for Furnishing Alcohol to a Minor, at least one of which was within 18 months of the date of her application. OAR 845-009-0020(7)(a)(B); ORS 471.380(1)(d).

2. Ms. Kensinger does not meet the requirements set forth in rule to show good cause to overcome the denial. OAR 845-009-0020(3) and (7)(b).

## OPINION

### *1. Whether Ms. Kensinger'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 or has been convicted of a felony. In this matter, the OLCC proposes to deny Ms. Kensinger's service permit application under the provisions of OAR 845-009-0020(7)(a)(B), which provides that the OLCC will refuse to issue a service permit if, within seven years, an applicant has had a combination of three diversions and convictions for DUII or furnishing alcohol to minors, any one of which was within 18 months.<sup>1</sup>

The phrase "within 18 months" used in the administrative rule refers to the 18 month period of time beginning when the OLCC received the application. OAR 845-009-0020(2). The relevant date for a diversion program is the completion date. *Tamara L. Cardenas* (OLCC Final Order, OLCC-94-SPR-122, March 1995).

In matters in which the agency bases its action on the conviction of a crime, ORS 670.280 requires the agency to show the relationship between the conviction and the applicant's fitness to sell or serve alcoholic liquor.<sup>2</sup>

In several previous cases, the OLCC has concluded that DUII convictions are related to an individual's fitness to serve and sell alcoholic liquor because these convictions show that the individual has failed to comply with alcoholic liquor laws, which are integral to the privileges of selling and serving alcoholic beverages. *See Dorothy J. Hamblin* (OLCC Final Order, OLCC-03-SPR-036, December 2003); *Marlys McLaury* (OLCC Final Order, OLCC-90-SPR-238, August 1991).

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<sup>1</sup> 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:

(B) Within seven years the applicant has had a combination of three diversions and convictions for DUII or Furnishing Alcohol to Minors, any one of which was within 18 months[.]

<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.

In the present case, Ms. Kensinger completed a diversion program on July 2, 2008. She was convicted of DUII on March 3, 2011. She was convicted of Furnishing Alcohol to a Minor on July 28, 2011. All of these incidents occurred within seven years of the date the Commission received Ms. Kensinger's application for a service permit, October 17, 2011, and her convictions for Furnishing Alcohol to a Minor and DUII occurred within 18 months of the application. Therefore, under OAR 845-009-0020(7)(a)(B), the OLCC will deny her application for a service permit, unless Ms. Kensinger can show good cause to overcome the denial.

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

OAR 845-009-0020(7)(b) provides that an applicant may show good cause to overcome the denial of a service permit application. This rule provides that, in order to show good cause to overcome a service permit denial, the applicant must provide a sworn statement that he or she has not used or consumed controlled substances within 24 months, has successfully completed or is actively involved in a state certified drug treatment or recovery program, and has completed all parole or probation requirements. OAR 845-009-0020(3) provides that to be qualified for 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.<sup>3</sup>

Ms. Kensinger has completed a treatment program and attends Alcoholics Anonymous classes on a weekly basis. She testified at the hearing that both her parole officer and her employer are supportive of her efforts to address her earlier conduct. Ms. Kensinger's efforts weigh in her favor.

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<sup>3</sup> 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.

Notwithstanding these facts, the OLCC's rules provide that good cause to overcome a denial is established when an applicant meets all the criteria in the rules. Here, Ms. Kensinger has not completed her probation requirements, nor does she have the required 24 months abstinence. Because Ms. Kensinger has not established that she meets all the criteria for good cause, her application for a service permit must be denied.

### **FINAL ORDER**

The Commission orders that the application for a service permit filed by Applicant Jessie R. Kensinger and received by the OLCC on October 17, 2011 be DENIED.

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

Dated this 20th day of June, 2012.

/s/ Steve Pharo

Stephen A. Pharo

Executive Director

OREGON LIQUOR CONTROL COMMISSION

Mailed this 20th day of June, 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.