

**BEFORE THE OREGON 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**  
)

**Casey L. Rosenberry**

Agency Case No.: OLCC-12-SPR-013

**HISTORY OF THE CASE**

On April 12, 2012, the Oregon Liquor Control Commission (OLCC) received an application for a service permit from Casey L. Rosenberry (Applicant). The OLCC proposed to deny Applicant's service permit pursuant to OAR 845-009-0020(4)(a)(C) because Applicant was convicted of two felony drug charges, one of which was within the past three years.

Applicant filed a timely request for hearing. The OLCC referred the request to the Office of Administrative Hearings on June 22, 2012. The Office of Administrative Hearings assigned the case to Lynnette M. Turner, Administrative Law Judge (ALJ). ALJ Turner held a contested case hearing by telephone at 9:00 a.m. on August 24, 2012. Gwenn McNeal appeared on behalf of the OLCC and testified. Applicant appeared on his own behalf and testified. The hearing record closed at the conclusion of the hearing on August 24, 2012.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed October 10, 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 Applicant's application for a service permit should be denied because he has two controlled substance felony convictions, one of which was within three years of the application. ORS 471.380(1)(d); OAR 845-009-0020(4)(a)(C).

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

## **EVIDENTIARY RULINGS**

Exhibits A1 through A6, offered by the OLCC, were admitted into the record without objection.

## **FINDINGS OF FACT**

1. On or about November 22, 2006, Applicant Casey L. Rosenberry committed the crime of Delivery of Marijuana for Consideration. Applicant was convicted of this charge, a Class B Felony, on June 25, 2007, in Marion County Circuit Court, Marion County, Oregon. The Court sentenced Applicant to 36 months Formal Probation. (Ex. A2, A3.)

2. On or about November 22, 2010, Applicant again committed the crime of Delivery of Marijuana for Consideration. Applicant was convicted of this Class B Felony charge on March 3, 2011, in Clackamas County Circuit Court, Clackamas County, Oregon. The Court sentenced Applicant to 24 months Supervised Probation, which he expects to complete on March 2, 2013. (Ex. A5.)

3. On April 12, 2012, the OLCC received Applicant's service permit application. (Ex. A1; test. of McNeal.)

4. As a result of his June 25, 2007 conviction, Applicant was diagnosed as alcohol and drug addicted and completed a six-month substance abuse treatment program with Seasons Counseling Services in Salem, Oregon. Also in 2007, he also completed the Bridge to Change treatment program through Clackamas County Corrections. He repeated this program in the summer of 2011. Both programs are certified by the State of Oregon. (Test. of Applicant.)

5. Applicant currently participates in the Change Point substance abuse and domestic violence treatment program. This is a 13-month program in which participants attend a two and one-half hour class every week, complete assignments and participate in group activities. Applicant attends AA twice per week. He is in compliance with the terms of his probation. (Test. of Applicant.)

6. Applicant has not used or consumed controlled substances since December 8, 2011. (Test. of Applicant.)

## **CONCLUSIONS OF LAW**

1. Applicant's application for a service permit should be denied because Applicant has two controlled substance felony convictions, one of which was within three years of the date the OLCC received the application. ORS 471.380(1)(d); OAR 845-009-0020(4)(a)(C).

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)(C), which provides that the OLCC will deny a service permit application if an applicant has two controlled substance felony convictions, one of which was within three years.<sup>1</sup>

The phrase "within three years" as used in the administrative rule means within three years 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. *John Myshak* (OLCC Final Order, OLCC-88-V-002, May 1988).

On June 25, 2007, Applicant was convicted of Delivery of Marijuana for Consideration, a Class B Felony. On March 3, 2011, Applicant was again convicted of Delivery of Marijuana for Consideration. Applicant's second controlled substance conviction occurred within three years of the OLCC's receipt of his service permit application on April 12, 2012. Thus, the OLCC has shown that it may deny Applicant's service permit under the provisions of OAR 845-009-0020(4)(a)(C).

### *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 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, or as a result of the conviction. OAR 845-

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

(4) Felony Drug Conviction:

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

(D) Two controlled substance felony convictions, one of which was within three years.

<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.

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 many positive changes in his life, and is very close to meeting the criteria set forth in OAR 845-009-0020(4)(b). He established that he was diagnosed with a drug addiction disability as a result of his convictions. Applicant has completed drug treatment with Seasons Counseling Services and the Bridge to Change program, and is currently active in AA and an outpatient program through Change Point. Applicant is still on probation, but will complete his probation requirements on March 2, 2013. He has not used or consumed controlled substances since December 8, 2011.

However, the administrative rules require that specific criteria be met in order to establish good cause to overcome the denial, and Applicant did not meet all of the criteria set forth in OAR 845-009-0020(4)(b) at the time of the hearing. Because Applicant is still on probation and has not been abstinent from controlled substances for 24 months, he cannot show good cause to overcome the denial at this time. Applicant's service permit application must therefore 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 Casey L. Rosenberry and received by the OLCC on April 12, 2012 be DENIED.

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

Dated this 7th day of November, 2012.

/s/ Merle Lindsey  
Merle Lindsey  
Interim Executive Director  
OREGON LIQUOR CONTROL COMMISSION

Mailed this 7th day of November 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.