

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
OREGON LIQUOR CONTROL COMMISSION**

**In the Matter of the Application for a Service Permit Filed by:** ) **FINAL ORDER BY DEFAULT**  
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 )  
**Heather D. Wiegele** ) Agency Case No.: OLCC-12-SPR-005

**HISTORY OF THE CASE**

On February 7, 2012, the Oregon Liquor Control Commission (OLCC) received an application for a service permit from Heather D. Wiegele (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 year.

Applicant filed a timely request for hearing. The OLCC referred the request to the Office of Administrative Hearings on April 12, 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 a.m. on June 5, 2012. Gwenn McNeal appeared on behalf of the OLCC and testified. Applicant did not appear. The record closed at the conclusion of the hearing on June 5, 2012.

**ISSUES**

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

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(4)(b); OAR 845-009-0020(3).

**EVIDENTIARY RULINGS**

Exhibits A1 through A5, offered by the OLCC, and P1 and P2, submitted by the Applicant prior to the hearing, were admitted into the record without objection.

**FINDINGS OF FACT**

1. On or about April 25, 2010, Applicant Heather D. Wiegele committed the crime of unlawful possession of methamphetamine. (Ex. A3.) On April 26, 2010, Applicant pled guilty

and was convicted of unlawful possession of methamphetamine, a Class C Felony, in Washington County Circuit Court, Washington County, Oregon. The Court sentenced Applicant to 18 months formal probation. (Ex. A2; test. of McNeal.)

2. On or about March 8, 2011, Applicant committed the crime of unlawful delivery of marijuana for consideration. (Ex. A5.) On July 27, 2011, Applicant pled guilty and was convicted of unlawful delivery of marijuana for consideration, a Class B Felony, in Washington County Circuit Court. The Court sentenced Applicant to 18 months formal probation. (Ex A4; test. of McNeal.)

3. On February 7, 2012, the OLCC received Applicant's Service Permit Application. (Ex. A1; test. of McNeal.)

4. Applicant started working at Morgy's Pub & Grill in November 2011, and on March 15, 2012, the employer wrote a letter in support of Applicant obtaining a service permit. (Ex. P2.) Prior to the June 5, 2012 hearing, the employer reported to the OLCC that it no longer employed Applicant and no longer supported Applicant's service permit application. (Test. of McNeal.)

### **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 application. OAR 845-009-0020(4)(a)(C); ORS 471.380(1)(d).

2. Applicant has not shown good cause to overcome the denial basis.

### **OPINION**

OAR 137-003-0670 applies when, as in this case, the agency issues a notice of proposed action that does not become final in the absence of a request for hearing. Pursuant to subsection (1)(c) of this rule, the agency or, if authorized, the ALJ may issue a final order by default when the agency or ALJ has notified the party of the time and place of the hearing, and the party fails to appear at the hearing. Pursuant to OAR 137-003-0670(3)(a), the agency or ALJ may issue an order adverse to the party on default only upon a prima face case made on the record. The agency file constituting the record must contain sufficient evidence of facts necessary to support the order. As explained below, the OLCC file supports the proposed action.

#### *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 provide that the OLCC will deny a service

permit application if an applicant has had two controlled substance felony convictions, one of which was within three years of the date the OLCC received the 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 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).

On April 26, 2010 and July 27, 2011, Applicant was convicted of controlled substance felonies. On February 7, 2012, the OLCC received Applicant's service permit application. Applicant's controlled substance felony convictions were within three years of her service permit application. Under OAR 845-009-0020(4)(a)(C), and the policy set forth in *Lisa M. Pfeffer* (OLCC Final Order, OLCC-96-SPR-115, July 30, 1997), 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 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 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>

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<sup>1</sup> OAR 845-009-0020 provides, in relevant part:

(2) For this rule, 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.

\* \* \* \* \*

(4) Felony Drug Conviction:

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

\* \* \* \* \*

(C) 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.

<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:

Applicant did not appear for the hearing and did not establish she has not used or consumed controlled substances within 24 months, or that she has completed all parole or probation requirements. Because Applicant has not met all the criteria set forth in OAR 845-009-0020(4)(b), she failed to show good cause to overcome the denial. Applicant's service permit application must be denied.

**FINAL ORDER**

It is ordered that the application for a service permit filed by Applicant Heather D. Wiegele and received by the OLCC on February 7, 2012 be DENIED.

/s/ Lynnette M. Turner  
\_\_\_\_\_  
Lynnette M. Turner  
Administrative Law Judge  
Office of Administrative Hearings

THIS ORDER IS EFFECTIVE ON THE DATE MAILED. Any monetary fine or civil penalty set out in the order shall be due and payable 10 days after the date of mailing.

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.

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(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.

## CERTIFICATE OF SERVICE

I certify that on July 18, 2012, I served the attached Final Order by Default by mailing certified and/or first class mail, in a sealed envelope, with first class postage prepaid, a copy thereof addressed as follows:

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**/s/ Carol Buntjer**

Carol Buntjer  
Administrative Specialist  
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