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July 2015

Jessica Hill vs. Alcoholic Beverage Commission

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State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

July 1, 2015

Joshua Stepp, Staff Attorney
Tennessee Alcoholic Beverage Commission
3rd Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243-0755

Jessica S. Hill
1025 Lorena Cove
Cordova, TN 38018

RE: In the Matter of: Jessica S. Hill

Docket No. 33.05-129784J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

BEFORE THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

IN THE MATTER OF:

JESSICA S. HILL

DOCKET NO. 33.05-129784J

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **July 16, 2015**.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR FAX 615/741-4472**. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

BEFORE THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

IN THE MATTER OF:

**TENNESSEE ALCOHOLIC BEVERAGE
COMMISSION,**
Petitioner,

v.

JESSICA HILL,
Respondent.

DOCKET NO: 33.05-129784J

INITIAL ORDER

This contested case was heard in Nashville, Tennessee on June 9, 2015, before Administrative Judge Kim Summers, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Alcoholic Beverage Commission (ABC). Joshua Stepp, Staff Attorney, represented the ABC in this matter. The Respondent participated in the hearing on her own behalf.

The Respondent has appealed the denial of her server permit pursuant to Tenn. Code Ann. § 57-3-704. After consideration of the entire record, it is determined that the Respondent's application for a server permit should be **APPROVED** and the permit **GRANTED**. This determination is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF EVIDENCE

Respondent and ABC Assistant Director, Ginna Winfree, testified at the hearing.

The following two exhibits were entered into evidence: EXHIBIT 1, Application for Employee's On Premise Permit; EXHIBIT 2, court documents from Shelby County.

FINDINGS OF FACT

1. The Respondent pled guilty to the felony of Aggravated Assault – Reckless on February 8, 2013, for a car accident that occurred on April 27, 2011, in Shelby County.

2. The Respondent was not found to be under the influence of either drugs or alcohol at the time of the accident.

3. On December 2, 2014, the Respondent applied for a server permit which was denied on account of the felony conviction which had been disclosed on her application. The Respondent properly appealed the denial.

4. The ABC does not oppose the approval of the Respondent's application for a server permit.

APPLICABLE LAW

1. RULE 1360-4-1-.02(3) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies states, in pertinent part:

The "petitioner" in a contested case proceeding is the "moving" party, i.e., the party who has initiated the proceedings. The petitioner usually bears the ultimate burden of proof.

2. Tenn. Code Ann. § 57-3-704 provides the following requirements for obtaining a server permit –

(a) Any individual may be eligible for a server permit by completing an application for such a permit on the forms provided by the commission. An applicant for a server permit must demonstrate to the commission that the applicant meets the following requirements:

(1) Within one (1) year prior to the submission of the application the applicant has successfully completed a program of alcohol awareness training for persons involved in the direct service of alcohol, wine or beer by an entity certified by the commission to have an adequate training curriculum for alcohol awareness. If, in the determination of the commission, a state other than Tennessee is deemed to have an adequate program of alcohol awareness training, then the successful completion of such training in that state within one (1) year prior to the submission of an application to the commission for a server permit shall satisfy the requirement of alcohol awareness training;

(2) The applicant is at least eighteen (18) years of age; and

(3) The applicant:

(A) Has not been convicted of a felony, other than for a crime described in subdivision (a)(3)(B), within the previous four (4) years;

- (B) Has not been convicted of any crime relating to the sale or dispensing of alcoholic beverages or beer, Schedules I and II controlled substances, or controlled substance analogues or any sex-related crime or embezzlement within the previous eight (8) years;
 - (C) Has not had a server permit or any similar permit issued by the state, any local jurisdiction, or any foreign jurisdiction revoked by any issuing authority within the previous five (5) years; and
 - (D) Has not had an ownership interest in any licensee or permittee, licensed or permitted pursuant to § 57-3-203, § 57-3-204, § 57-3-207, § 57-4-101 or § 57-5-103 which has had its license or permit revoked by the issuing authority within the previous eight (8) years.
- (b) If an applicant does not meet the requirements of subdivision (a)(3), but is otherwise eligible for a server permit, then the applicant's application shall be initially denied pursuant to this subsection (b). Within thirty (30) days of such initial denial, the applicant may request a hearing to be held pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. At such hearing, the administrative law judge or hearing officer may consider any evidence the administrative law judge or hearing officer deems relevant to the matter and may, if in the administrative law judge's or hearing officer's judgment the principles of equity require, approve the application and grant the employee permit, notwithstanding the requirements of subdivision (a)(3).
- (c)(1) If an applicant does not request a hearing pursuant to subsection (b) within the required period, then the application's denial will be final and the applicant may not reapply for a server permit until the relevant time period described in subdivision (a)(3) has expired. If a person applies for a server permit in violation of this subdivision (c)(1), then such application shall be denied and subsection (b) shall not apply.
- (2) If the administrative law judge, hearing officer, or commission denies an application pursuant to subsection (b), then the application's denial will be final and the applicant may not reapply for a server permit or apply for an employee permit pursuant to § 57-3-703 until the relevant time period described in subdivision (a)(3) has expired. If a person applies for an employee or server permit in violation of this subdivision (c)(2), then such application shall be denied and subsection (b) or § 57-3-703(b) shall not apply.
- (d) If a person is convicted of an offense described in subdivision (a)(3)(A) or (a)(3)(B) after being issued a server permit pursuant to this section, the commission may institute proceedings to revoke the person's server permit pursuant to § 57-3-214; provided, that the administrative law judge or hearing officer may, if in the administrative law judge's or hearing officer's judgment the principles of equity require, refuse to revoke the person's server permit, notwithstanding a finding that the person has been convicted of an offense described in subdivision (a)(3)(A) or (a)(3)(B). If the administrative law judge, hearing officer, or commission revokes a server permit pursuant to this subsection (d), then the applicant may not reapply for a server permit or apply for an employee permit pursuant to § 57-3-703 until the relevant time period described in subdivision (a)(3)(A) or (a)(3)(B) has expired. If a person applies for an employee or server permit in violation of this subsection (d), then such application shall be denied and subsection (b) or § 57-3-703(b) shall not apply.

(e) The commission may promulgate rules and regulations to enforce and administer the provisions of this section pursuant to the Uniform Administrative Procedures Act.

ANALYSIS and CONCLUSIONS OF LAW

1. Pursuant to Tenn. Code Ann. § 57-3-704(b), any felony conviction occurring within the four years prior to the date of the permit application will automatically prevent approval of the permit, which may be reconsidered on appeal.


2. Although the Respondent has been convicted of a felony within the four-year window, the nature of the offense does reflect on her fitness to hold a server permit or to be employed in this capacity.

3. The ABC does not object to the approval of the Respondent's permit application.

4. Based upon the foregoing, the Respondent's application for a server permit is hereby **APPROVED** and the permit **GRANTED**.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 1st day of JULY 2015.


KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 1st day of JULY 2015.



J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

APPENDIX A TO INITIAL ORDER

NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.