

Decision No. 60B [2017] 432

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012.

AND

IN THE MATTER

of an application by **Peceli Bulivakarua** for a Manager's Certificate pursuant to s. 221 of the Act.

DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: **Mr P R Rogers**

Members: **Messrs R Wilson and G Buchanan**

Hearing: Christchurch City Council offices on 15 February 2017.

[1] This is a decision concerning an application for a new Manager's Certificate by Peceli Bulivakarua. The application was received on about 1 December 2016 with the required documentation.

[2] The Police have opposed the application on the grounds of suitability, pursuant to s.222(a) of the Act, as a result of two convictions; one for driving with excess breath alcohol the other disqualified driving, both within the last 5 years.

[3] The excess breath alcohol offence was on 19 January 2013 when the applicant drove with a level of 611 micrograms per litre of breath, the legal limit being 400. The disqualified driving offence relates to an offence on 13 June 2013 when he was stopped at an alcohol check point.

[4] The police gave evidence of these convictions and also of a record of police attending an incident on the 1 June 2016 that was described as a family harm incident that required police intervention. At that time the applicant's sobriety was described as "significantly affected by alcohol".

[5] The applicant gave evidence and said he had no excuse for the drink driving offence and in relation to the driving whilst disqualified offence had just taken a chance and got caught. The alcohol harm incident concerned his wife and an ambulance had to be called, there was no suggestion that an assault had occurred.

[6] The applicant had brought his employer, Christopher Hurst, Operations Manager at the Clearwater Resort along to the Hearing in support of his application. Mr Hurst gave evidence and said that Mr Bulivakarua was a good employee and was being considered for a supervising manager's position and would therefore be required to hold a Manager's Certificate. When asked, Mr Hurst thought that the applicant would be capable of carrying out the duties of a duty manager and explained that there would always be other more senior managers with manager's certificates working around the resort.

[7] In submissions the Police pointed to the guiding case in this matter: *Osbourne* LLA PH2388/95 at page 5.

“Without fettering ourselves in this or other applications, it may be helpful if we indicate that we commonly look for a five year period free of any serious conviction or any conviction relating to or involving the abuse of alcohol, or arising in the course of an applicant’s duty on licensed premises”.

[8] The Police pointed out that the *Osbourne* case was considered to be a guideline and there were other factors to be taken into consideration where a person has been convicted of two offences within 5 years. The Police submitted that considering the evidence they had heard and the fact that the last offence was in June 2013 that a period shorter than 5 years may be appropriate in this case.

[9] The applicant had little to say in his defence stating he really had no excuse. He did appear genuinely contrite and said he had learnt a lesson. The Committee placed considerable weight on the evidence given by the applicant’s employer in respect to the regard in which they hold the applicant’s work performance and the comments by Mr Hurst relating to such things as assisting him to get a restricted driver’s licence.

[10] The Committee, when considering this matter has to look at all the factors and took note of the Police submission in relation to the *Osbourne* decision.

DECISION

[11] The Committee’s decision after hearing the evidence and considering all factors is to grant this application with the following conditions.

[12] The first condition being that the General Manager’s Certificate cannot be issued until the 13 June 2017, at that time the applicant will have been 4 years free from convictions.

[13] The second condition is that he shall only hold the certificate whilst working at the Clearwater Resort, at renewal this condition shall cease to apply.

DATED this 23 February 2017.

A handwritten signature in blue ink, appearing to read 'M. Rogers', is written over a light blue rectangular background.

Chairperson
Christchurch District Licensing Committee