

Decision No. R14-1344

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14V-1033TNC

IN THE MATTER OF THE PETITION OF GREGORY L NEWTON, FOR AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF RULE 6703(C) OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR-723-6.

**PUBLIC VERSION OF
RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING PETITION IN PART; GRANTING
WAIVERS, IN PART AND SUBJECT TO
CONDITIONS; AND CONTAINING ADVISEMENT**

Mailed Date: November 7, 2014

I. STATEMENT

1. On October 21, 2014, Mr. Gregory L. Newton (Petitioner) filed a verified Petition for Waiver/Variance of Safety Regulations - Driver. The filing commenced this Proceeding.

2. On October 29, 2014, Petitioner supplemented the October 21, 2014 filing. In this Decision, unless the context indicates otherwise, Petition refers to the October 21, 2014 filing as supplemented on October 29, 2014.

3. These documents are attached to the Petition: (a) Petitioner's Motor Vehicle Records for the past three years (driving record); (b) Medical Examination Report for Commercial Driver Fitness Determination dated September 2, 2014 (Medical Examination Report); and (c) letters, evaluations, or reports from five physicians (physician statements).

4. The driving record, Medical Examination Report, and physician statements contain Petitioner's social security number, Petitioner's date of birth, or confidential medical

information about Petitioner. As a result, these documents contain information that is confidential; and they are filed under seal with the Commission. Reference in this Decision to information contained in those documents is confidential.¹

5. On November 5, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

6. Pursuant to § 40-6-109(2), C.R.S., the ALJ now transmits to the Commission the record of this Proceeding together with a written recommended decision.

II. FINDINGS AND CONCLUSIONS

7. The Petition requests a waiver of 49 *Code of Federal Regulations* (CFR) § 391.41(b)(3) (2010) and 49 CFR § 391.41(b)(6) (2010), as made applicable by Rules 4 *Code of Colorado Regulations* (CCR) 723-6-6102(a)(I)² and 723-6-6703(c). Petitioner requests either a one-year waiver, beginning December 1, 2014 and ending December 1, 2015, or a two-year waiver, beginning December 1, 2014 and ending December 1, 2016.

8. Petitioner is a driver for Lyft, which is a Transportation Network Company (TNC), as that term is defined in § 40-10.1-602(3), C.R.S. Driving is Petitioner's livelihood.

9. Petitioner [REDACTED]. As a result, the Medical Examination Report (at 2) states that Petitioner "meets standards, but periodic evaluation [is] required. Due to [REDACTED], driver [is] qualified only for 3 months[.]" The Medical Examination Report at *id.* also states that Petitioner must obtain [REDACTED].

¹ The confidential information is redacted from this version of the Recommended Decision.

² This Rule is found in the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723.

10. One of the physician statements is signed by a physician who is board-certified in [REDACTED].³ That physician statement states: (a) [REDACTED] [REDACTED] (at 3); and (b) [REDACTED] [REDACTED] (at 4). *See also* August 26, 2014 statement from Dr. Panzer, M.D. (same).⁴ Finally, the board-certified physician certifies [REDACTED] [REDACTED] Statement in Medical Examination Report at 4.

11. Petitioner also [REDACTED] [REDACTED]. As a result, the Medical Examination Report (at 3) states that Petitioner “meets standards, but periodic evaluation [is] required. Due to [REDACTED] [REDACTED] [,] driver [is] qualified only for 3 months[.]”

12. One of the physician statements is dated August 29, 2014 and addresses [REDACTED].⁵ That statement at 1 states that [REDACTED] [REDACTED].

13. Petitioner [REDACTED] [REDACTED]. The Medical Examination Report establishes that Petitioner meets all other physical requirements and qualifications for certification as a commercial driver.

³ This statement was submitted on October 29, 2014 as part of the Medical Examination Report.

⁴ This statement was submitted on October 21, 2014 as part of the Petition.

⁵ This statement was submitted on October 21, 2014 as part of the Petition.

14. Petitioner's driving record establishes that, in the past three years, he has had no moving violations. It also establishes that, over that same period, Petitioner has not been involved in a traffic accident.

15. Petitioner seeks either a one-year waiver or a two-year waiver of 4 CCR 723-6-6703(c), which (among other things) requires a driver to meet the requirements of 49 CFR § 391.41(b)(3). That federal regulation reads: "A person is physically qualified to drive a commercial motor vehicle if that person -- ... [REDACTED] [REDACTED]"

16. Petitioner also seeks either a one-year waiver or a two-year waiver of 4 CCR 723-6-6703(c), which (among other things) requires a driver to meet the requirements of 49 CFR § 391.41(b)(6). That federal regulation reads: "A person is physically qualified to drive a commercial motor vehicle if that person -- ... [REDACTED] [REDACTED]"

17. The record in this Proceeding establishes: (a) Petitioner [REDACTED] [REDACTED]; (b) Petitioner [REDACTED] [REDACTED]; (c) but for [REDACTED] [REDACTED], Petitioner would be physically qualified to drive a motor vehicle for a TNC; (d) strict application of 49 CFR § 391.41(b)(3) and of 49 CFR § 391.41(b)(6) would work a hardship on Petitioner because it would deprive him of the opportunity to continue his livelihood as a driver for a TNC; and (e) granting the requested waivers will not compromise the public safety or the public interest, so long as Petitioner follows the prescribed medical regimen for [REDACTED].

18. Based on the record of this Proceeding, the ALJ finds the Petitioner has met his burden of proof in this matter; that the Petition should be granted, in part; and that, consistent with the Medical Examination Report, the requested waivers should be granted for a period of three months (*i.e.*, expire on February 28, 2015⁶). In addition, the ALJ finds that the waivers should be subject to the conditions contained in the Ordering Paragraphs of this Decision. The ALJ concludes that, subject to the conditions contained in the Ordering Paragraphs, Petitioner Gregory L. Newton should be granted a waiver of 49 CFR § 391.41.(b)(3) and of 49 CFR § 391.41(b)(6), as made applicable to drivers for TNCs by Rule 4 CCR 723-6-6703(c), and that **the waivers should expire on February 28, 2015.**

19. **Gregory L. Newton is advised and is on notice that** in order to drive for a TNC *after* February 28, 2015, he must obtain another waiver from the Commission. To obtain the waiver, Mr. Newton must file another petition for waiver and must file with that petition: (a) a new Medical Examination Report for Commercial Driver Fitness Determination; (b) a new statement that he is able safely to operate a motor vehicle and that there is no reason that his medical conditions should prevent him from pursuing his occupation as a driver; and (c) a new copy of his driving record for the past three years. To give the Commission sufficient time to rule on the petition, the ALJ suggests that Mr. Newton file the petition for waiver not later than January 15, 2015.

20. In accordance with § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

⁶ The waivers granted by this Recommended Decision are not effective until this Recommended Decision becomes a decision of the Commission. This will not occur until November 27, 2014 at the earliest.

████████████████████. If this condition is not met, the waiver granted in Ordering Paragraph No. 4 is rendered void without further order of the Commission.

6. The waivers granted in Ordering Paragraphs No. 2 and No. 4 are subject to this condition: Gregory L. Newton shall notify the Commission, in writing and within seven calendar days of the occurrence, if he is involved in a motor vehicle accident. This reporting requirement applies only to a motor vehicle accident that occurs while Gregory L. Newton is driving as a driver for a Transportation Network Company, as that term is defined in § 40-10.1-602(3), C.R.S. This reporting requirement applies irrespective of the party at fault for the accident. The written notice shall be in the form of a letter addressed to the Commission's Chief of Transportation. If this condition is not met, the waivers granted by this Decision may be rendered void by subsequent order of the Commission.

7. The waivers granted in Ordering Paragraphs No. 2 and No. 4 are subject to this condition: Gregory L. Newton shall comply with the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations 723*, as they may be applicable to him as a driver for a Transportation Network Company and shall comply with the terms of this Decision. If this condition is not met, the waivers granted by this Decision may be rendered void by subsequent order of the Commission.

8. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

9. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own

motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

10. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(SEAL)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director