

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16M-0244TR

IN THE MATTER OF THE PETITION OF MICHAEL P. SHEEHAN TO REVERSE
AN INITIAL DRIVER DISQUALIFICATION DETERMINATION PURSUANT TO
RULE 6105 OF 4 CODE OF COLORADO REGULATIONS 723-6.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING PETITION, SUBJECT TO CONDITIONS,
AND ORDERING ISSUANCE OF LETTER**

Mailed Date: July 8, 2016

TABLE OF CONTENTS

I. STATEMENT.....	1
II. FINDINGS OF FACT	3
III. DISCUSSION AND CONCLUSION	8
A. Burden of Proof.....	8
B. Applicable Statutes and Rules.....	9
C. Discussion and Conclusion.....	12
IV. ORDER.....	17
A. The Commission Orders That:	17

I. STATEMENT

1. On April 4, 2016, Mr. Michael Patrick Sheehan (Mr. Sheehan or Petitioner) filed a letter with the Commission.¹ In that letter, Mr. Sheehan requested that the Commission

¹ The letter is dated March 28, 2016 and was received by the Commission on April 4, 2016.

reverse the Staff of the Commission's (Staff) initial determination, based on the results of a fingerprint-based criminal history background check, that disqualified Mr. Sheehan as a driver for a motor carrier that holds a Certificate of Public Convenience and Necessity (CPCN) to provide taxicab service and as a driver of a motor vehicle for a motor carrier that holds a permit to operate as a charter bus, children's activity bus, luxury limousine, or off-road scenic charter.

2. The Commission determined that the letter is a petition to reverse Staff's initial disqualification determination. As a result, on April 27, 2016, by Minute Order, the Commission opened this Proceeding.

3. On April 27, 2016, by Minute Order, the Commission referred this Proceeding to an Administrative Law Judge (ALJ) for disposition.

4. On April 26, 2016, counsel for testimonial (litigation) Staff entered his appearance in this matter. In that filing and pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1007(a),² Staff counsel identified the testimonial (litigation) Staff and the advisory Staff in this Proceeding.

5. Mr. Sheehan and Staff, collectively, are the Parties. Each individually is a Party.

6. Petitioner appears *pro se* (that is, without legal counsel) in this matter to represent his own interests.³ Staff is represented by legal counsel.

7. On May 26, 2016, by Decision No. R16-0452-I, the ALJ scheduled the evidentiary hearing in this matter for June 17, 2016.

² This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

³ On May 4, 2016, by Decision No. R16-0383-I, the ALJ informed Mr. Sheehan that, in this Proceeding and in accordance with applicable law, the ALJ will hold him to the same procedural and evidentiary rules as those to which an attorney licensed in Colorado is held.

8. The ALJ called the matter for hearing on the scheduled date, at the scheduled time, and in the assigned location.⁴ Both Parties were present and participated.

9. Mr. Sheehan and his witnesses live and work in the Durango, Colorado area. As a result, the ALJ permitted Mr. Sheehan to participate in the evidentiary hearing by telephone and permitted both Mr. Sheehan and his witnesses to testify in this matter by telephone.

10. During the course of the hearing, the ALJ heard the testimony of four witnesses. Hearing Exhibits No. 1, No. 1A, No. 2, No. 2A, No. 3, 3A, 4, 5, and 6 were marked, offered, and admitted into evidence.⁵

11. At the conclusion of the hearing, the ALJ closed the evidentiary record. The ALJ took the matter under advisement.

12. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this Proceeding along with a written recommended decision.

II. FINDINGS OF FACT

13. The facts are undisputed.

14. Staff is Litigation Staff of the Commission as identified pursuant to Rule 4 CCR 723-1-1007(a). Pursuant to Rule 4 CCR 723-6-6105(l)(I),⁶ Staff is an indispensable party.

15. Staff witness Larry Herold is the Manager of the Rates and Authorities Unit in the Commission's Transportation Section. He directly supervised Authorities Analyst Gabe Dusenbury,⁷ the individual who conducted the investigation that led to Staff's initial

⁴ A transcript of the evidentiary hearing has not been filed in this Proceeding.

⁵ Hearing Exhibits No. 1A, No. 2A, and No. 3A are Confidential Hearing Exhibits.

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

⁷ Mr. Dusenbury is no longer in the Rates and Authorities Unit.

disqualification determination dated February 22, 2016 (Staff's initial disqualification determination).⁸ Staff witness Herold is familiar with the investigation that led to Staff's initial disqualification determination. Staff witness Herold is familiar with the established procedures by which Staff conducts a fingerprint-based criminal history background check, and those procedures were followed in the investigation that led to Staff's initial disqualification determination.

16. Petitioner Sheehan is an individual. At the time he received Staff's initial disqualification determination, Mr. Sheehan was a full-time taxicab driver employed by San Juan Sentry, LLC, doing business as Durango Cab (Durango Cab), in Durango, Colorado. At the time he received Staff's initial disqualification determination, he had been a taxicab driver with Durango Cab for approximately seven months.

17. Petitioner witness Grant Buxton is the Driver Supervisor for Durango Cab. He supervised Mr. Sheehan during Mr. Sheehan's employment as a taxicab driver.

18. Petitioner witness Samantha Sheehan is Petitioner's wife. She has known Petitioner since before Petitioner's felony conviction in 2013.

19. At the time Durango Cab employed him, the Commission had not qualified Mr. Sheehan to drive for a taxicab company.

20. An individual who has not been qualified by the Commission must submit to the Commission a set of her/his fingerprints so that the Commission can conduct a fingerprint-based criminal history record check. Mr. Sheehan provided his fingerprints to Durango Cab, which submitted the fingerprints to Staff.

⁸ Staff's initial disqualification determination is Hearing Exhibit No. 4.

21. In accordance with § 40-10.1-110(1), C.R.S., and established procedures, Staff forwarded the fingerprints to the Colorado Bureau of Investigation (CBI) and requested the CBI to conduct a fingerprint-based criminal record search on Mr. Sheehan. In accordance with § 40-10.1-110(1), C.R.S., the CBI search included the records of the CBI and the records of the Federal Bureau of Investigation (FBI).

22. Staff received the results of the CBI and FBI fingerprint-based criminal record searches (CBI/FBI Rap Sheets) pertaining to Mr. Sheehan.⁹ As relevant here, the CBI/FBI Rap Sheets contained information about Case No. 2013CR348 (District Court for La Plata County, Colorado). The CBI/FBI Rap Sheets showed that, in that criminal case, Mr. Sheehan was convicted in 2013 of a felony.

23. Following receipt of the CBI/FBI Rap Sheets and in accordance with established procedure, Staff investigated Mr. Sheehan's felony conviction in Case No. 2013CR348. Following the established procedure, Staff searched a database of Colorado court records.

24. As a result of that search and as pertinent to this Proceeding, Staff obtained the following information about Case No. 2013CR348 from the court records available in the database:¹⁰ (a) on October 18, 2013, Mr. Sheehan was arrested on suspicion of related class 4, class 5, and class 6 felonies; (b) on December 6, 2013, Mr. Sheehan entered a plea of guilty to -- and on that basis, on December 6, 2013, the court found Mr. Sheehan guilty of -- violating §§ 18-4-401(1), (2)(h), C.R.S. (theft of a thing whose value is \$ 20,000 (or more) but less than

⁹ The CBI/FBI Rap Sheets are Hearing Exhibit No. 1 (redacted print-out of the CBI/FBI Rap Sheets about Mr. Sheehan) and Confidential Hearing Exhibit No. 1A (unredacted print-out of the CBI/FBI Rap Sheets about Mr. Sheehan).

¹⁰ The court records are Hearing Exhibit No. 3 (redacted print-out of La Plata County District Court information about Case No. 2013CR348) and Confidential Hearing Exhibit No. 3A (unredacted print-out of La Plata County District Court information about Case No. 2013CR348).

\$ 100,000); (c) for that conviction, the court sentenced Mr. Sheehan on April 23, 2014 and subsequently vacated that sentence; and (d) on January 29, 2016, the court resentenced Mr. Sheehan as follows: serve 18 months supervised probation; pay approximately \$ 5,000 in restitution; complete 75 hours of community service; and comply with other terms and conditions of probation as set out in Hearing Exhibit No. 3.

25. Based on the documents obtained and § 18-4-401(2)(h), C.R.S., Staff determined that, in 2013, Mr. Sheehan was convicted of a class 4 felony.

26. Based on the findings of the investigation and in accordance with Rule 4 CCR 723-6-6105(f)(II)(C), Staff sent to Mr. Sheehan Staff's initial disqualification determination. That initial disqualification determination informed Mr. Sheehan that,

[p]ursuant to § 40-10.1-110, C.R.S., and [Rule 4 CCR 723-6-6105], Staff ... has made an initial ... determination regarding your eligibility to drive for a limited regulation passenger carrier and/or taxi carrier.

You have been **disqualified** to drive.

Hearing Exhibit No. 4 at 1 (bolding in original). Staff's initial disqualification determination informed Mr. Sheehan of his right to petition the Commission for a decision reversing that initial disqualification determination.

27. Staff's initial disqualification determination rests solely on Mr. Sheehan's class 4 felony conviction in Case No. 2013CR348. Neither Staff nor Mr. Sheehan addressed the circumstances that led to his guilty plea and conviction for theft.

28. Following receipt of Staff's initial disqualification determination, Mr. Sheehan acted in accordance with the instructions and, on April 4, 2016, timely filed his Petition to reverse Staff's initial disqualification determination.

29. When he received Staff's initial disqualification determination, Mr. Sheehan immediately ceased driving as a taxicab driver for Durango Cab and informed the company of the reason.

30. Mr. Sheehan has not driven a taxicab since receiving Staff's initial disqualification determination in February 2016. This has had an adverse and continuing financial impact on his family, which depends on his income.

31. Mr. Sheehan is on probation and, currently, is in compliance with the terms and conditions of his probation.¹¹ Mr. Sheehan will complete his probation in January 2017.

32. Mr. Sheehan: (a) has successfully completed more than the required hours of community service; (b) has made, and continues to make, the scheduled payments toward satisfaction of the restitution requirement; (c) reports to his probation officer on a monthly basis, which is a reduction from his previously reporting on a weekly basis; (d) has married and has two children, one an infant; (e) takes full responsibility for the actions and behavior that led to his conviction in Case No. 2013CR348; (f) has not been arrested since October 2013; (g) has not had any interaction with police since his arrest in October 2013; and (h) has recently received his General Education Diploma (GED).

33. Mr. Sheehan has worked to change the thinking that led him to commit the 2013 felony. In his words, Mr. Sheehan has "changed [his] life and [his] thinking."

34. Mr. Sheehan worked as a taxicab driver for Durango Cab. As a taxicab driver, Mr. Sheehan understands, and strives to deliver, good customer service and takes steps to ensure

¹¹ Hearing Exhibit No. 5 (letter from Mr. Sheehan's probation officer).

that riders/customers are safe and feel comfortable with him. Mr. Sheehan enjoys being a taxicab driver.

35. Durango Cab found Mr. Sheehan to be a reliable and pleasant taxicab driver and employee: (a) his money was correct at the end of each shift; (b) his paperwork was correct; and (c) if a customer left an item in his taxicab, Mr. Sheehan either returned the item to the customer or placed the item in Durango Cab's lost-and-found area. Durango Cab received no customer complaints about Mr. Sheehan. Durango Cab received, and continues to receive, customer requests for Mr. Sheehan as a taxicab driver.

36. Durango Cab has a taxicab driver job available for Mr. Sheehan and would like to have Mr. Sheehan back as a taxicab driver as soon as possible.

37. Mr. Sheehan wants the chance to drive a taxicab, to provide for his family, and to be a productive member of society.

III. DISCUSSION AND CONCLUSION

38. The record establishes, and the ALJ finds, that the Commission has subject matter jurisdiction in this Proceeding and has personal jurisdiction over the Parties.

A. Burden of Proof.

39. As the Petitioner, Mr. Sheehan is the proponent of a Commission order because he commenced the Proceeding and asks the Commission to reverse Staff's initial disqualification determination. Mr. Sheehan bears the burden of proof by a preponderance of the evidence. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 4 CCR 723-1-1500. Mr. Sheehan has met this burden of proof when the evidence, on the whole, slightly tips in his favor.

40. Staff bears the burden of going forward to demonstrate the reasons for its initial disqualification determination. Rule 4 CCR 723-6-6105(l).

41. Staff bases its initial disqualification determination on Rule 4 CCR 723-6-6105(f)(II)(D) (*i.e.*, Mr. Sheehan's 2013 conviction for the class 4 felony of theft). Thus, pursuant to Rule 4 CCR 723-6-6105(l)(I)(A), Mr. Sheehan has "the burden of proving that he is of good moral character based upon all surrounding facts and circumstances or that disqualification is not supported by fact or law."

42. Pursuant to Rule 4 CCR 723-6-6105(l)(I)(D), the Commission will consider the standards in § 24-5-101(2), C.R.S., when deciding whether to grant a petition to reverse Staff's initial disqualification determination based on moral character.

B. Applicable Statutes and Rules.

43. As relevant here, § 40-10.1-110, C.R.S., provides:

(1) An individual who wishes to drive either a taxicab for a motor carrier that is the holder of a certificate [of public convenience and necessity] to provide taxicab service issued under part 2 [of article 10.1 of title 40, C.R.S.,] or a motor vehicle for a motor carrier that is the holder of a permit to operate as a charter bus, children's activity bus, luxury limousine, or off-road scenic charter under part 3 [of article 10.1 of title 40, C.R.S.,] shall submit a set of his or her fingerprints to the commission. The commission shall forward the fingerprints to the Colorado bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. Upon receipt of fingerprints and payment for the costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check using records of the Colorado bureau of investigation and the federal bureau of investigation. The commission is the authorized agency to receive information regarding the result of a national criminal history record check. ...

* * *

(3) An individual whose criminal history record is checked pursuant to this section is disqualified and prohibited from driving motor vehicles for the motor carrier described in [§ 40-10.1-110(1), C.R.S.,] if the criminal history record check reflects that:

(a) The individual is not of good moral character, as determined by the commission based on the results of the [fingerprint-based criminal history record] check;

* * *

(4) The commission shall consider the information resulting from the criminal history record check in its determination as to whether the individual has met the standards set forth in section 24-5-101(2), C.R.S.

* * *

(7) The commission shall, consistent with the requirements of this section, promulgate rules concerning the employment of, contracting with, and retention of an individual whose criminal history record is checked pursuant to this section, and the frequency and circumstances requiring resubmission of fingerprints.

44. Rule 4 CCR 723-6-6105(f) implements § 40-10.1-110, C.R.S., and contains the criteria to be used to determine whether a driver is of good moral character. The criterion applicable in this Proceeding is:

(II) A driver is not of good moral character[,] and shall be disqualified and prohibited from driving, if the driver has:

* * *

(D) a conviction in the state of Colorado, within the four years preceding the date the criminal history record check is completed, of any class 4 felony under Article[] ... 4 ... of Title 18, C.R.S.;

* * *

45. The automatic disqualification and prohibition against driving a taxicab imposed on an individual who has been convicted of a class 4 felony in the past four years evidences the Commission’s obligation to protect the health, safety, and welfare of the traveling public.

46. Section 40-10.1-110(4), C.R.S., provides: “The commission shall consider the information resulting from the criminal history record check in its determination as to whether the individual has met the standards set forth in” § 24-5-101(2), C.R.S.

47. Rule 4 CCR 723-6-6105(l)(I)(D) implements § 40-10.1-110(4), C.R.S. The Rule states that the Commission “*will* consider the petition [to reverse a Staff initial disqualification determination] using the standards set forth in § 24-5-101(2), C.R.S.” (Emphasis supplied.) In

conjunction with the statute, this Rule allows the Commission to exercise its discretion in determining whether a petitioning driver is of good moral character.

48. As pertinent here, the Commission must take into consideration -- and balance against its obligation to protect the traveling public -- the unequivocal public policy established in § 24-5-101(2), C.R.S., that the Commission must determine

whether, in fact, [a petitioning driver] is a person of good moral character at the time of the application. The intent of this section is to expand employment opportunities for persons who, notwithstanding that fact of conviction of an offense, have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society.

(Emphasis supplied.)

49. As explained by the Colorado Supreme Court (Court), § 24-5-101, C.R.S., “is an expression by the general assembly of a public concern that persons who have been convicted of felonies or crimes of moral turpitude should not be deprived of the right to gainful employment solely due to their past activities.” *Beathune v. Colorado Dealer Licensing Board*, 198 Colo. 483, 485, 601 P.2d 1386, 1387 (1979). The Court also stated that § 24-5-101, C.R.S., provides that, when determining whether to grant a license, the agency must take into consideration the prior conviction and the circumstances surrounding the conviction. Finally, the Court has instructed that the effect of a licensing statute and § 24-5-101, C.R.S.,

when read together, is that a prior felony conviction -- standing by itself -- is not sufficient to warrant the denial ... of a license. Rather, the pertinent circumstances must be considered to determine the moral character of the applicant.

Colorado State Board of Medical Examiners v. Jorgensen, 198 Colo. 275, 279, 599 P.2d 869, 872 (1979) (emphasis supplied). The administrative agency -- in this case, the Commission -- considers the pertinent circumstances based on the evidence presented in each individual case.

50. Section 24-5-101(2), C.R.S., § 40-10.1-110(4), C.R.S., and Rule 4 CCR 723-6-6105(l)(I)(D) require the Commission, in making its driver eligibility determination in this Proceeding (*i.e.*, in determining whether Petitioner is of good moral character), to look at the Petitioner at the time of the Petition *and* to consider the circumstances surrounding his 2013 class 4 felony conviction.

C. Discussion and Conclusion.

51. Pursuant to Rule 4 CCR 723-6-6105(l)(I)(A), Mr. Sheehan bears the burden of proof with respect to reversal of Staff's initial disqualification determination.

52. Staff's initial disqualification determination must be upheld unless: (a) there is sufficient evidence to support a finding that Staff's initial disqualification determination is not supported by law or fact; or (b) there is sufficient evidence, applying the § 24-5-101(2), C.R.S., standards, to overcome Staff's initial disqualification determination.

53. The evidence establishes that Mr. Sheehan was convicted of a class 4 felony within the four years immediately preceding the date on which the fingerprint-based criminal history record check was completed. This establishes that Staff's initial disqualification decision is supported by the facts and by the law. Thus, Petitioner failed to establish that Staff's initial disqualification determination is not support by law or fact.

54. Thus, to sustain his burden of proof in this Proceeding and to obtain a reversal of the Staff initial disqualification determination, Petitioner must establish "that he is of good moral character based upon all surrounding facts and circumstances" (Rule 4 CCR 723-6-6105(l)(I)(A)), which includes consideration of the standards in § 24-5-101(2), C.R.S.

55. Staff's initial disqualification determination rests on Mr. Sheehan's 2013 conviction for theft. Mr. Sheehan took full responsibility for his actions that led to that

conviction. His acknowledgement of, and contrition for, his actions tend to mitigate the impact of the conviction at issue here.

56. Since his conviction, Mr. Sheehan has worked to abide by the terms of his sentence, including complying with the conditions of his probation.

57. Mr. Sheehan worked for Durango Cab as a taxicab driver. There is no record of customer complaints or problems arising out of his performance of his duties as a taxicab driver. In fact, Petitioner witness Buxton testified that Durango Cab customers continue to ask for Mr. Sheehan's services as a taxicab driver.

58. Mr. Sheehan's inability to drive a taxicab since Staff's initial disqualification determination has caused his financial hardship to his family.

59. Durango Cab stands ready, willing, and able to hire Mr. Sheehan as a taxicab driver if the Staff initial disqualification determination is reversed.

60. Overall, Mr. Sheehan impressed the ALJ. When testifying in his own behalf, Mr. Sheehan gave convincing testimony as to his efforts to rehabilitate himself. His testimony demonstrates that he has taken steps to address his past behavior and that he continues his efforts to be a responsible member of the community. Mr. Sheehan's testimony was the testimony of a person who has experienced trouble in his life and has worked through the difficulties. The testimony was intelligent, credible, and from the heart.

61. The ALJ views Mr. Sheehan as a person who made critical mistakes and serious errors in judgment that led to his conviction; who has learned from his past mistakes; who has taken, and continues to take, steps to assure that he will not repeat his past mistakes; and who now strives to be a responsible and productive member of society.

62. In accordance with § 40-10-110(4), C.R.S., the ALJ must consider the underlying crime in determining whether it is appropriate to disqualify Petitioner. Without question, a felony is a serious crime. At least for purposes of sentencing, however, a class 4 felony, is in the mid-range of the classes of felonies (which are categorized from class 1, being the most egregious, to class 6). While the class 4 felony of theft is certainly egregious, it is not the most serious of felony offenses. Additionally, with respect to Mr. Sheehan in Case No. 2013CR348, there is no evidence that: (a) any extraordinary or aggravating circumstances were attached to the charge of theft; or (b) any other sentence-enhancing circumstances were present or surrounded the crime of theft for which Mr. Sheehan was convicted.

63. With due consideration for the policy of expanding employment opportunities for a person who, notwithstanding a felony conviction, demonstrates that s/he has been rehabilitated and is ready to accept responsibility as a law-abiding citizen, the ALJ is persuaded that Mr. Sheehan has demonstrated sufficient moral character to serve the traveling public in Colorado safely and competently. This conclusion rests on: (a) his having accepted responsibility for the conduct that led to his conviction; (b) his continued compliance with the terms of his probation; (c) his prior (albeit limited) history as a taxicab driver for Durango Cab; (d) his making amends with his family and others; (e) his life style changes (*e.g.*, marriage, parenthood, receiving his GED); (f) his not having been arrested since the October 2013 arrest; and (g) his not having had any interaction with police since the October 2013 arrest.

64. Based on the undisputed evidence, the ALJ finds that Mr. Sheehan has established his rehabilitation and his readiness and willingness to accept the responsibilities of a law-abiding and productive member of society.

65. Based on the undisputed facts, the ALJ finds that, at the time he filed the Petition and notwithstanding his 2013 conviction for a class 4 felony, Mr. Sheehan has sufficient moral character to serve the traveling public in Colorado safely and competently.

66. The ALJ finds that Mr. Sheehan has met his burden of proof to establish that the standards contained in § 24-5-101(2), C.R.S., have been met. The undisputed evidence is sufficient to overcome, and to support a reversal of, Staff's initial disqualification determination. As a result, the ALJ finds that Petitioner is qualified to drive for a motor carrier that holds a CPCN to provide taxicab service and to drive for a motor carrier that holds a permit to operate as a charter bus, children's activity bus, luxury limousine, or off-road scenic charter.

67. While it appears to the ALJ that Petitioner deserves the opportunity to drive for a motor carrier that holds a CPCN to provide taxicab service and to drive for a motor carrier that holds a permit to operate as a charter bus, children's activity bus, luxury limousine, or off-road scenic charter, the fact remains that he was convicted of a class 4 felony within the four-year period designated in Rule 4 CCR 723-6-6105(f)(II)(D). In addition, Mr. Sheehan is on probation. Taking these factors into account, the ALJ finds it appropriate to attach the following seven conditions to the grant of the Petition.

68. First, in the event that Petitioner is arrested for any felony, Petitioner must report to the Commission, in writing and within ten calendar days of the arrest, that he has been arrested. The written report must be in the form of a letter addressed to the Commission's Chief of Transportation.

69. Second, in the event that Petitioner is arrested for any felony, Petitioner must provide written notification of his arrest to every motor carrier that holds a CPCN to provide taxicab service for which he is driving *and* to every motor carrier that holds a permit to operate

as a charter bus, children's activity bus, luxury limousine, or off-road scenic charter for which he is driving. Petitioner must provide the written notification within ten calendar days of the arrest and must provide a copy of the notification to the Commission's Chief of Transportation.

70. Third, Petitioner's conviction of any crime that would result in disqualification pursuant to the relevant statutes or Commission Rules will result, without further notice and without opportunity for a Commission hearing, in the immediate vacating of this Decision. This means that Petitioner immediately will be disqualified from eligibility to drive for a motor carrier that holds a CPCN to provide taxicab service and to drive for a motor carrier that holds a permit to operate as a charter bus, children's activity bus, luxury limousine, or off-road scenic charter.

71. Fourth, Petitioner's violation of one or more conditions of his probation will result, without further notice and without opportunity for a Commission hearing, in the immediate vacating of this Decision. This means that Petitioner immediately will be disqualified from eligibility to drive for a motor carrier that holds a CPCN to provide taxicab service and to drive for a motor carrier that holds a permit to operate as a charter bus, children's activity bus, luxury limousine, or off-road scenic charter.

72. Fifth, if he is involved in a motor vehicle accident while driving a taxicab or while driving a charter bus, children's activity bus, luxury limousine, or off-road scenic charter, and irrespective of the party at fault, Petitioner must notify the Commission, in writing and within ten calendar days of the occurrence. The written notice must be in the form of a letter addressed to the Commission's Chief of Transportation.

73. Sixth, Petitioner must comply with the laws of this State and the Commission Rules governing transportation by motor vehicle as they may apply to him.

74. Seventh, Petitioner must comply with this Decision.

75. The ALJ concludes that, subject to the seven conditions stated above: (a) the Petition will be granted; (b) Staff's initial disqualification determination with respect to Mr. Sheehan will be reversed; and (c) Mr. Sheehan will be found to be qualified as a driver for a motor carrier that holds a CPCN to provide taxicab service and as a driver for a motor carrier that holds a permit to operate as a charter bus, children's activity bus, luxury limousine, or off-road scenic charter.

76. The ALJ will order Staff to issue to Mr. Sheehan a letter stating his status as "Qualified" and, in accordance with Rule 4 CCR 723-6-6105(d), stating the expiration date of his qualification. The ALJ will order Staff to issue the letter on the date that this Decision becomes the Decision of the Commission.

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

IV. ORDER

A. The Commission Orders That:

1. The Petition filed on April 4, 2016 by Michael Patrick Sheehan is granted.
2. The initial determination of driver disqualification as pertains to Michael Patrick Sheehan that was made by Staff of the Commission on February 22, 2016 is reversed.
3. Until such time as he is required to resubmit fingerprints to the Commission for a criminal history record check pursuant to Rule 4 *Code of Colorado Regulations* 723-6-6105(d), Michael Patrick Sheehan is qualified to drive for a motor carrier that holds a Certificate of Public Convenience and Necessity (CPCN) to provide taxicab service and to drive for a motor carrier that holds a permit to operate as a charter bus, children's activity bus, luxury limousine, or off-road scenic charter.

4. The driver qualification granted in Ordering Paragraph No. 3 is subject to this condition: in the event that he is arrested for any felony, Michael Patrick Sheehan must report to the Commission, in writing and within ten calendar days of the arrest, that he has been arrested. The written report shall be in the form of a letter addressed to the Commission's Chief of Transportation.

5. The driver qualification granted in Ordering Paragraph No. 3 is subject to this condition: in the event that he is arrested for any felony, Michael Patrick Sheehan must provide written notification of his arrest to every motor carrier that holds a CPCN to provide taxicab service for which he is driving and to every motor carrier that holds a permit to operate as a charter bus, children's activity bus, luxury limousine, or off-road scenic charter for which he is driving. Mr. Sheehan must provide this written notification within ten calendar days of the arrest and must provide a copy of the notification to the Commission's Chief of Transportation.

6. The driver qualification granted in Ordering Paragraph No. 3 is subject to this condition: Michael Patrick Sheehan's conviction of any crime that would result in his disqualification pursuant to the relevant statutes or Commission Rules shall result, without further notice and without opportunity for a Commission hearing, in the immediate vacating of this Decision and shall result in Michael Patrick Sheehan immediately being disqualified from eligibility to drive for a motor carrier that holds a CPCN to provide taxicab service and to drive for a motor carrier that holds a permit to operate as a charter bus, children's activity bus, luxury limousine, or off-road scenic charter.

7. The driver qualification granted in Ordering Paragraph No. 3 is subject to this condition: Michael Patrick Sheehan's violation of one or more conditions of his probation in Case No. 2013CR348 (District Court for La Plata County, Colorado) shall result, without further

notice and without opportunity for a Commission hearing, in the immediate vacating of this Decision and in Michael Patrick Sheehan immediately being disqualified from eligibility to drive for a motor carrier that holds a CPCN to provide taxicab service and to drive for a motor carrier that holds a permit to operate as a charter bus, children's activity bus, luxury limousine, or off-road scenic charter.

8. The driver qualification granted in Ordering Paragraph No. 3 is subject to this condition: Michael Patrick Sheehan 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 Mr. Sheehan is driving for a motor carrier that holds a CPCN to provide taxicab service or is driving for a motor carrier that holds a permit to operate as a charter bus, children's activity bus, luxury limousine, or off-road scenic charter. 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.

9. The driver qualification granted in Ordering Paragraph No. 3 is subject to this condition: Michael Patrick Sheehan shall comply with the statute and with the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723, as they may apply to him.

10. The driver qualification granted in Ordering Paragraph No. 3 is subject to this condition: Michael Patrick Sheehan shall comply with the terms of this Decision.

11. Staff of the Commission shall issue a letter as described in ¶ 76 of this Recommended Decision to Michael Patrick Sheehan on the date that this Recommended Decision becomes the Decision of the Commission.

12. 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.

13. 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.

14. 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.

(S E A L)



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