

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 19V-0327TNC

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IN THE MATTER OF THE PETITION OF ELIUD MERCADO-CARRION FOR A WAIVER OF RULE 6713 (PROOF OF MEDICAL FITNESS) OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
REQUIRING PETITIONER TO  
PROVIDE ADDITIONAL INFORMATION**

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Mailed Date: July 9, 2019

**I. STATEMENT, FINDINGS, AND CONCLUSIONS**

**A. Summary.**

1. This Decision requires Mr. Eliud Mercado-Carrion to provide additional information that: (a) explains whether he uses any instruments that impact his hearing impairment, and if so, how the instruments impact his impairment and ability to operate a motor vehicle; (b) explains the circumstances surrounding his February 29, 2019 conviction for careless driving arising out of events occurring on September 21, 2018 (as reflected in his Driver's History), including whether his medical impairment influenced or caused the violation, and if so, how; and (c) provides any other information relevant to the above, and to considerations of hardship or equity.

2. This Decision also advises Mr. Mercado-Carrion that unless he provides the required information by July 23, 2019, Mr. Mercado-Carrion will be required to appear before the Commission and present evidence in support of the relief he seeks in this matter at a hearing.

**B. Procedural History and Findings.**

3. On June 10, 2019, Eliud Mercado-Carrion commenced this proceeding by filing a verified Petition for Waiver/Variance of Safety Regulations – Driver (Petition) with the Public Utilities Commission. The Petition seeks a waiver of Commission Rule 6109(c), concerning medical fitness of drivers for common carriers, limited regulation carriers and large market taxi carriers. Commission Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. Mr. Mercado-Carrion also confidentially filed medical records and his Official Colorado Seven-Year Driver Record (Driver’s History), with the Petition.

4. On June 11, 2019, Mr. Mercado-Carrion filed a verified Petition for Waiver/Variance of Safety Regulations – TNC Driver (Second Petition) with the Commission. This Second Petition seeks a waiver of Rule 6713(c), pertaining to Transportation Network Companies. *See* Rule 6713(c) and 6700, 4 CCR 723-6.

5. On June 19, 2019, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition by minute entry.

6. The ALJ construes the Second Petition as amending the first one, in order to seek a waiver of Rule 6713(c), 4 CCR 723-6, concerning medical fitness of drivers for transportation network companies.

7. Neither the Petition nor the Second Petition indicate the type of medical waiver that Mr. Mercado-Carrion seeks, or the impairment or condition which caused him to seek a waiver. But, the medical records filed with Mr. Mercado-Carrion’s Petition indicate that he has a hearing impairment. As a result, the ALJ construes Mr. Mercado-Carrion’s Second Petition as seeking a medical fitness waiver based on his hearing impairment and its interference with his ability to perform tasks associated with operating a motor vehicle. *See* Rule 6713(c)(I) (drivers

who have an impairment that interfere with their ability to perform normal tasks associated with operating a motor vehicle are not medically qualified to drive for a transportation network company), 4 CCR 723-6.

8. Although Mr. Mercado-Carrion's medical records include documentation indicating that he may have purchased hearing instruments like a hearing aid, they do not indicate whether Mr. Mercado-Carrion uses hearing instruments, and if so, whether those instruments correct or otherwise minimize his hearing impairment, or whether such instruments impact his ability to operate a motor vehicle.<sup>1</sup> Medical Records, at 8.

9. Mr. Mercado-Carrion's Driver's History indicates that on February 25, 2019, he was convicted of careless driving arising out of a violation that occurred on September 21, 2018. Driver's History at 3. Neither of the Petitions include information explaining the circumstances leading to this violation and conviction, including whether his hearing impairment influenced or caused the violation.

10. In considering whether to grant a request to waive a Commission rule, the Commission may take into account considerations of hardship or equity. Rule 1003(a), Rules of Practice and Procedure, 4 CCR 723-1. Mr. Mercado-Carrion's Petitions do not provide information relating to these considerations.

11. Mr. Mercado-Carrion is largely free to decide how to present his case. Based on the current record, it is difficult to determine whether granting Mr. Mercado-Carrion's request for a medical fitness waiver will serve the public interest. The ALJ will allow Mr. Mercado-Carrion the opportunity to provide additional information, as explained below.

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<sup>1</sup> Mr. Mercado-Carrion's medical records include a chart titled "audiometry," which may speak to whether his impairment is corrected or minimized through the use of a hearing instrument, but the document is not self-explanatory, and is not otherwise explained. Medical Records at 9.

12. *Mr. Mercado-Carrion is advised and on notice* that if he does not make a filing consistent with this Decision by July 23, 2019, the ALJ will schedule an evidentiary hearing in this matter. At the hearing, Mr. Mercado-Carrion will be required to appear before the Commission and present evidence in support of the relief he seeks in this matter.

13. *Mr. Mercado-Carrion is advised and on notice* that he may submit filings in this matter in multiple ways, including through the Commission's E-Filing System. Information on using the Commission's free E-Filing System is available on the Commission's website at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>. The Commission's E-Filing System allows parties to electronically file documents in a proceeding, without the need to mail a paper copy to the Commission; it also allows a party to register to be served with filings (including decisions) electronically through an email address the party provides upon registration. This serves to shorten the amount of time it takes for a party to receive filings in a case.

14. Finally, given the extent to which this Decision discusses Mr. Mercado-Carrion's medical condition, the ALJ finds that the Decision is confidential and should be maintained as such in Commission records. *See* § 24-72-204(3)(a)(I), C.R.S. (mandating that custodians of medical records deny public access to such records); Rule 1100(g), 4 CCR 723-1.

## II. ORDER

### A. **It Is Ordered That:**

1. On or before the **close of business on July 23, 2019**, Eluid Mercado-Carrion must submit a filing that includes this proceeding number, (19V-0327TNC), with the Commission that:

- a. indicates whether he uses any instruments that impact his hearing impairment, and if so, how the instruments impact his hearing impairment and ability to operate a motor vehicle;

b. explains the circumstances surrounding his February 29, 2019 conviction for careless driving arising out of events occurring on September 21, 2018 (as reflected in his Driver's History), including whether his hearing impairment influenced or caused the violation, and if so, how;

and

c. provides any other information relevant to the above and to considerations of hardship or equity.

2. Consistent with the above discussion, this Decision will be maintained as

confidential in Commission files.

3. This Decision is effective immediately.

( S E A L )



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director