

Decision No. R19-0853

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19V-0538TNC

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

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
GRANTING PETITION WITH CONDITIONS**

Mailed Date: October 23, 2019

I. STATEMENT

1. On October 4, 2019, Petitioner Charly Lee Amick filed a Petition for Waiver/Variance of Safety Regulations-Driver (Petition). In the Petition, Ms. Amick seeks a waiver of Commission Rule 6713(c) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6 (2019),¹ to allow Petitioner to drive for a Transportation Network Company (TNC).

2. On October 16, 2019, the Commission referred this proceeding to an Administrative Law Judge (ALJ) for disposition. The undersigned ALJ was subsequently assigned to preside over the adjudication of this Petition.

¹ Amendments to the Commission's Rules Regulating Transportation by Motor Vehicle, codified at 4 CCR 723-6, including Rule 6713 on medical fitness of drivers for Transportation Network Companies, became effective on May 15, 2019. See Proceeding No. 17R-0796TR and Annotated Rules Index, found at:

<https://www.colorado.gov/pacific/dora/transportation-rules>.

3. Pursuant to § 40-6-109, C.R.S., the ALJ hereby transmits to the Commission the record of this proceeding and a written recommended decision containing findings of fact and conclusions of law.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. Rule 6713(a), 4 CCR 723-6 (2019) states in relevant part: “No TNC shall permit any driver to log in to its digital network that is not medically examined and certified pursuant to 49 C.F.R. § 391.41, as revised on October 1, 2010 or pursuant to subsections (b)-(d) of this rule.”

5. Under Rule 6713(c)(I), a person is “physically qualified to drive if, upon physical examination, the medical examiner determines that the person does not exhibit any... defect ... or impairment which interferes with the ability to perform normal tasks associated with operating a motor vehicle....” Under Rule 6713(c)(IX), a person is “physically qualified to drive if, upon physical examination, the medical examiner determines that the person” does not have visual “acuity of worse than 20/40 (Snellen) in each eye without corrective lenses or corrected to 20/40 (Snellen) or better with corrective lenses [and] distant binocular acuity worse than 20/40 (Snellen) in both eyes with or without corrective lenses....”

6. According to the Petition, Ms. Amick does not meet this standard. As a result, she is not qualified medically to drive for a TNC without a waiver of Rule 6713(c).

7. However, Commission Rules also provide that a person may petition the Commission for a waiver or variance of any rule.² Rule 1003 of the Rules of Practice and Procedure provides, in part, that “[t]he Commission may, for good cause shown, grant waivers or variances from ... Commission rules.... In making its determination the Commission may take

² Rule 1003 of the Rules of Practice and Procedures, 4 CCR 723-1. *See also* Rule 6003(a)(I) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6 (2019).

into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.”³

8. In addition, the Commission may take evidence in uncontested or unopposed proceedings by affidavit or otherwise, without holding a formal hearing.⁴ Similarly, Rule 1403(a), 4 CCR 723-1, provides that the Commission may determine a petition without a hearing and without further notice if the application or petition is uncontested or unopposed, if a hearing is not requested or required by law, and if the application or petition is accompanied by a sworn statement verifying sufficient facts and supported by attachments and/or exhibits that adequately support the filing.

9. No one has sought to intervene in the proceeding, and therefore the Petition is unopposed. In addition, the Petition is verified by Ms. Amick, and she submitted the required documents. Accordingly, the Petition will be considered as unopposed and without a hearing.

10. In addition to her Petition, Ms. Amick submitted completed copies of a Medical Examiner’s Certificate, a TNC Medical Examination Report, and an Official Colorado Seven-year Driver Record. She also submitted a photocopy of her current Colorado Driver’s License. The ALJ finds that the Medical Examiner’s Certificate and TNC Medical Examination Report have been submitted pursuant to Rules 6713(b) through 6713(d), 4 CCR 723-6 (2019).

11. Based on this review of the Medical Examiner’s Certificate and TNC Medical Examination Report, the ALJ finds that Ms. Amick is medically fit to drive for a TNC only if she obtains a Vision/Hearing waiver. The Medical Examiner’s Certificate recommends a one-year waiver.

³ Rule 1003(a), 4 CCR 723-1.

⁴ See § 40-6-109(5), C.R.S.; Rule 1403, 4 CCR 723-1.

12. The ALJ finds and concludes that the Petition, the Medical Examiner's Certificate, and the TNC Medical Examination Report submitted with the Petition collectively establish that Ms. Amick can safely drive a motor vehicle in spite of her medical condition. Her driving record over the past three years, which was submitted with the Petition, corroborates this conclusion.⁵ Based upon the Petition, Medical Examiner's Certificate, and the TNC Medical Examination Report, the ALJ finds and concludes that Petitioner is qualified under Rule 6713 to operate a motor vehicle safely with a waiver of Rule 6713(c).

13. Based on the foregoing, the ALJ finds and concludes that: (a) Petitioner's medical condition is not likely to interfere with her ability to drive a motor vehicle safely in the future; (b) strict application of Rules 6713(c)(I) and 6713(c)(IX) would create a hardship on Petitioner; and (c) granting the requested waiver would not compromise the public safety or the public interest. Accordingly, the ALJ finds and concludes that Petitioner has met her burden of proof in this matter and that the Petition and waiver should be granted.

14. As noted above, Petitioner seeks a one-year waiver of Rule 6713(c) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6 (2019). Accordingly, the ALJ finds that the waiver and exemption will expire one year following the effective date of this Recommended Decision (*i.e.* on Friday, November 13, 2020). The one-year waiver will also be subject to the conditions stated in the Ordering Paragraphs.⁶

15. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

⁵ See Rule 6711(a) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6.

⁶ If Petitioner wishes to obtain another waiver of Rule 6713(c), she should submit a new petition for waiver accompanied by the required documentation at least eight weeks prior to the expiration of the one-year waiver (or no later than September 18, 2020).

III. ORDER

A. The Commission Orders That:

1. Subject to the conditions stated below, the Petition for Waiver of Safety Regulations - Driver filed by Charly Lee Amick (Petitioner) on October 4, 2019 for a waiver of Rule 6713(c) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6 (2019), is granted.

2. Subject to the conditions stated below, Petitioner is granted a waiver of, and an exemption from, Rule 6713(c), 4 *Code of Colorado Regulations* 723-6 (2019). If this Recommended Decision becomes a decision of the Commission, the waiver and exemption granted by this Decision shall remain in effect for one year following the effective date of this Recommended Decision, unless revoked before that date after notice to Petitioner.

3. The waiver and exemption granted in Ordering Paragraph No. 2 are subject to this condition: Petitioner shall notify the Commission, in writing and within seven calendar days of the occurrence, if she is involved in a motor vehicle accident. This reporting requirement applies only to a motor vehicle accident that occurs while Petitioner is driving as a Transportation Network Company driver for hire and applies irrespective of the party at fault in the accident. The written notice shall be in the form of a letter addressed to the Commission's Chief of Transportation.

4. The waiver and exemption granted in Ordering Paragraph No. 2 are subject to this condition: Petitioner shall not operate a motor vehicle as a Transportation Network Company driver, unless she is wearing corrective lenses or has had another form of vision correction (*e.g.*, Lasik surgery).

5. The waiver and exemption granted in Ordering Paragraph No. 2 are subject to this condition: Petitioner shall comply with the Rules Regulating Transportation by Motor Vehicle as they may be applicable to her and with the terms of this Decision.

6. Proceeding No. 19V-0538TNC is closed.

7. If this Recommended Decision becomes a decision of the Commission, the waiver and exemption granted by this Decision shall remain in effect for a period of one year from the effective date of this Decision, unless revoked before that date upon notice to Petitioner.

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.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director