

Decision No. R17-0997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 17V-0724TNC

IN THE MATTER OF THE PETITION OF TYLER COLEMAN 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 AND GRANTING
WAIVER WITH CONDITIONS**

Mailed Date: December 4, 2017

I. STATEMENT

1. On October 27, 2017, Tyler Coleman (Petitioner or Mr. Coleman) filed a Petition for a Waiver of Rule 6713 (Proof of Medical Fitness) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6 (2016). No one has sought to intervene in this proceeding, so the Petition is unopposed.

2. This matter was referred to an Administrative Law Judge (ALJ) for resolution by minute entry during the Commission's Weekly Meeting held on November 8, 2017.

3. On November 14, 2017, by Decision No. R17-0922-I, a hearing on the Petition was scheduled for November 30, 2017.

4. The Petition requests a waiver Rule 6713(c) of the Commission Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6.

5. At the scheduled time and place, the hearing was convened. Mr. Coleman appeared *pro se* and testified in support of the waiver. The ALJ took administrative notice of

Confidential Hearing Exhibits 1 and 2, which are confidential documents in the Commission's file for this proceeding.¹ Confidential Hearing Exhibits 1 and 2 were admitted into evidence. Mr. Coleman relied upon Confidential Hearing Exhibits 1 and 2 to support his Petition and the requested waiver. Mr. Coleman's testimony is also confidential.

6. At the conclusion of the hearing, the ALJ took the matter under advisement.

7. Pursuant to § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record of the hearing, the hearing exhibits, and a written recommended decision in this matter.

II. FINDINGS AND CONCLUSIONS

8. Rule 6713(a) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, provides that: "No TNC shall permit any driver to log in to its digital network that is not medically examined and certified ... pursuant to subsections (b)-(d) of this rule."

9. Specifically, Petitioner seeks a waiver of Rule 6713(c)(1) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, which provides that:

A person is physically qualified to drive if, upon physical examination, the medical examiner determines that the person does not exhibit any of the following conditions:

(I) defect, loss of limb or impairment which interferes with the ability to perform normal tasks associated with operating a motor vehicle. ...

10. Mr. Coleman has applied to drive for UberX, a Transportation Network Company holding a permit issued by the Commission. He is awaiting the results of this Petition for waiver before he can begin driving for UberX.

11. Mr. Coleman testified that he works in prosthetics and that he wishes to drive for UberX to supplement his income.

¹ See Rule 1501(c) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1 (2015).

12. Mr. Coleman testified that as a result of a work-related injury, [REDACTED] [REDACTED] Otherwise, he is generally healthy.

Mr. Coleman testified that he does not use his left foot when driving.²

13. Mr. Coleman introduced a letter from his physician reporting that [REDACTED] [REDACTED] (Confidential Hearing Exhibit 1.) His physician reported that Mr. Coleman [REDACTED] [REDACTED]

14. A review of Mr. Coleman's driving record reveals that Mr. Coleman [REDACTED] [REDACTED] There are no indications that Mr. Coleman's medical condition has affected his ability to drive a motor vehicle safely. (Confidential Hearing Exhibit 2.)

15. The Petitioner's testimony and exhibits demonstrate that he has experienced no accidents while driving that would have been related to his medical condition.

16. The Petitioner seeks a two-year waiver of Rule 6713(c)(I), 4 CCR 723-6.

17. Substantial evidence in the record establishes that: (a) Petitioner [REDACTED] [REDACTED] (b) Petitioner's medical condition has not affected his ability to drive a motor vehicle safely; and (c) granting the requested waiver will not compromise the public safety or the public interest [REDACTED] [REDACTED]

18. Based on substantial evidence in the record, the ALJ finds and concludes that Petitioner has satisfied his burden of proof in this matter and that, subject to the conditions on the

² The ALJ understands that Mr. Coleman drives only motor vehicles with automatic transmissions, which does not require him to use his left leg while driving.

waiver imposed by this Decision, the Petition and waiver will be granted. The ALJ finds and concludes that, subject to conditions, Tyler Coleman will be granted a waiver of Rule 6713(c)(I), 4 CCR 723-6, and that the waiver will expire two years following the effective date of this Recommended Decision.

19. Based on substantial evidence in the record, the ALJ finds and concludes that, pursuant to Rule 6713(a) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and with the waiver granted in this Decision, Petitioner has been medically examined and certified so that he can be allowed to log into the digital network of a Transportation Network Company in the State of Colorado.

20. Pursuant to § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record of the hearing, the hearing exhibits, and a written recommended decision in this matter.

III. ORDER

A. The Commission Orders That:

1. Subject to the conditions stated below, the Petition for a Waiver of Rule 6713 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6 (2016), filed by Mr. Tyler Coleman on October 27, 2017, is granted.

2. Subject to the conditions stated below, Mr. Tyler Coleman is granted a waiver of Rule 6713(c)(I) 4 CCR 723-6, for a period of two years following the effective date of this Recommended Decision.. If this Recommended Decision becomes a decision of the Commission, the waiver granted by this Decision shall remain in effect through December 24, 2019, unless revoked before that date upon notice to Mr. Coleman.

3. The waiver granted in Ordering Paragraph No. 2 shall be subject to this condition: Mr. Tyler Coleman shall [REDACTED] while driving a motor vehicle for a Transportation Network Company in the State of Colorado.

4. The waiver granted in Ordering Paragraph No. 2 is subject to this condition: Mr. Tyler Coleman shall comply with the Rules Regulating Transportation by Motor Vehicle as they may be applicable to him and with the terms of this Decision.

5. 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.

6. 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.

7. 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