

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-007CP

IN THE MATTER OF THE APPLICATION OF CARROLL GENE EADY, DOING
BUSINESS AS CHECKER TAXI, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

DECISION DENYING EXCEPTIONS

Mailed Date: May 25, 2004
Adopted Date: May 12, 2004

I. BY THE COMMISSION

A. Background

1. This matter comes before the Commission for consideration of a “Letter of Demand” filed by Mr. Eady on April 1, 2004. This letter was filed prior to the issuance of Recommended Decision No. R04-0376 (April 12, 2004). For purposes of considering the Letter of Demand, the Commission shall construe the letter as exceptions to the recommended decision.

2. The captioned application of Carroll Gene Eady, doing business as Checker Taxi (Checker Taxi) was filed on January 5, 2004. Tazco, Inc., doing business as Sunshine Taxi (Sunshine Taxi) intervened in a timely fashion on January 27, 2004. Agnes Weir, doing business as Care Cars (Weir) intervened on February 2, 2004, but the Administrative Law Judge (ALJ) accepted a stipulation filed by Sunshine Taxi and Weir on March 8, 2004, and dismissed Weir’s intervention. By order issued February 2, 2004, the ALJ set the matter for hearing on March 17, 2004, in Fruita, Colorado.

3. On March 2, 2004, Sunshine Taxi filed a Motion to Dismiss or Alternative Motion *in Limine* and a Motion to Change Hearing Location. On March 12, 2004, the ALJ issued

Decision No. R04-0261-I in which the ALJ denied the motions but limited the witnesses and exhibits which Checker Taxi could offer at the hearing.

4. At the hearing on March 17, 2004, Checker Taxi presented evidence and testimony was received from two witnesses, Mr. Eady, the applicant, and Mr. Beghan, a public witness. No exhibits were offered. At the conclusion of Checker Taxi's case, Sunshine Taxi moved to dismiss the application on the grounds that the applicant had failed to present a *prima facie* case. The ALJ granted this motion orally, and the application was dismissed. Checker Taxi then filed its Letter of Demand on April 1, 2004. Although this letter was filed prior to the issuance of written recommended decision, it was filed after the application was dismissed orally by the ALJ. We construe the Letter of Demand as exceptions to the recommended decision.

B. Discussion

5. As noted by the ALJ, the Applicant for a certificate of public convenience and necessity (CPCN) bears the burden of proof. *See* Rule 4 *Code of Colorado Regulations* (CCR) 723-1-82(a)(1). Mesa County, in which Checker Taxi seeks to operate, contains more than 60,000 residents according to the latest federal census. Pursuant to § 40-10-105, C.R.S., the Commission may grant more than one CPCN to operate motor vehicles as taxicabs "if the commission finds that the present or future public convenience and necessity requires or will require such operation." § 40-10-105(2)(b), C.R.S.

6. The ALJ found that Checker Taxi failed to establish that granting a CPCN would be in the present or future public convenience and necessity. Nothing in the Letter of Demand challenges that conclusion. In fact, Mr. Eady states, "I did not show proof as needed in your court room that a taxi service was needed, and Sunshine taxi did not show proof that a taxi

service in Fruita was not needed.” The point of the hearing, however, was for Checker Taxi to demonstrate that a taxi service in Fruita is, in fact, needed.

7. We emphasize that because Checker Taxi proposes to operate in a county with more than 60,000 inhabitants, Colorado Law does allow for Checker Taxi to be issued a CPCN, provided that it demonstrates the need for Checker Taxi’s services and Checker Taxi’s fitness to provide taxi service. The ALJ dismissed Checker Taxi’s application with prejudice, stating: “The plaintiff [applicant] is barred from future litigation of the same issues to the same extent as would be the case if he had proceeded to adverse judgment.” *Groundwater Appropriators of South Platte River Basin, Inc. v. City of Boulder*, 73 P.3d 22, 25 (Colo. 2003).

8. In this instance, we believe that dismissal with prejudice does not bar Checker Taxi from reapplying with additional proof of the need for Checker Taxi’s services, and Checker Taxi’s fitness to provide those services. The dismissal with prejudice was based on the record before the ALJ, and a different record might yield a different result. As we noted during our weekly meeting on May 12, 2004, first-time applicants, particularly *pro se* applicants, are often unfamiliar with practice before the Commission, and what is required to obtain authority to provide transportation service in Colorado. Subsequent applications are usually more comprehensive.

9. Mr. Eady states in his Letter of Demand that he is willing to hire an attorney in order to obtain the authority to operate. We would suggest that, based upon the current record,

Mr. Eady would do well to have an attorney assist him with a new application rather than pursue an appeal of the decision.¹ We do not guarantee any future issuance of a CPCN to Checker Taxi.

10. Because Checker Taxi's exceptions do not show that Checker met its burden of proof during the hearing, they provide us with no reason to reverse the ALJ's recommended decision. We thus deny the Letter of Demand which we have construed as exceptions.

II. ORDER.

A. The Commission Orders That:

1. The Exceptions filed by Carroll Gene Eady, doing business as Checker Taxi are denied.

2. The application of Carroll Gene Eady, doing business as Checker Taxi for a certificate of public convenience and necessity is denied consistent with this opinion.

3. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails or serves this Order.

4. This Order is effective on its Mailed Date.

¹ This is not to say that Mr. Eady is in any way precluded from pursuing an appeal, or reapplying to the Commission on a *pro se* basis. We merely suggest that an attorney may be able to help Mr. Eady in attempting to meet the statutory standard for grant of an application for CPCN.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 12, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners