

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04M-015CP

IN THE MATTER OF THE PETITION OF CITY CAB COMPANY FOR AN ORDER OF THE COMMISSION EXEMPTING DRIVER JOHN MITCHELL VERNA FROM THE REQUIREMENT OF PART 391.41(B)(10) (EYESIGHT) OF THE COMMISSION'S RULES REGULATING SAFETY FOR MOTOR VEHICLE CARRIERS AND ESTABLISHING CIVIL PENALTIES, 4 CCR 723-15.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
GRANTING WAIVER**

Mailed Date: January 22, 2004

I. STATEMENT

1. By this petition, City Cab Company (City Cab) seeks a two-year waiver of Rule 391.41(b)(10) of the Commission's Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties found at 4 *Code of Colorado Regulations* (CCR) 723-15 in connection with driver-applicant John Mitchell Verna.

2. On January 9, 2004, the matter was set for a hearing to be held on January 22, 2004 at 9:00 a.m. in a Commission hearing room in Denver, Colorado. Subsequently, City Cab requested that the hearing be held via telephone conference call for the convenience of the parties.¹ That request was granted and the hearing was held via telephone conference call at the assigned time. During the course of the hearing testimony was received from George Kirby, City Cab's President; John Mitchell Verna (Verna), the City Cab driver-applicant for whom the

¹ City Cab is based in Pueblo, Colorado, and Mr. Verna resides there.

subject waiver is sought; and Paul Hoffman, a representative of the Commission's Safety and Enforcement Staff. Ted Barrett, another representative of the Commission's Safety and Enforcement Staff, also entered his appearance at the hearing. Exhibits 1 through 5 were identified, offered, and admitted into evidence.

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

II. FINDINGS OF FACT; CONCLUSIONS OF LAW

4. City Cab is a common carrier of passengers providing taxi service generally within the Pueblo, Colorado area pursuant to authority issued to it by this Commission.

5. Verna seeks employment with City Cab as a driver. Since 1991 he has suffered from a condition known as optic neuritis in his right eye. As a result of that condition he is essentially blind in that eye. This restricts the field of Verna's vision on his right side. Verna's left eye is normal and healthy and he has a full field of vision on his left side.² The Medical Examination Report for Commercial Driver Fitness Determination (Medical Report), the Recommendation of Examining Physician, and the January 5, 2004, correspondence from Robert K. Browder, O.D. submitted at the hearing as Exhibits 2, 3, and 4 respectively confirm Verna's monocular vision.

6. Rule 391.41(b)(10) provides that a person is not physically qualified to drive a motor vehicle unless he/she has distant visual acuity of at least 20/40 (Snellen) in each eye

² The Medical Report indicates that Verna's horizontal field of vision in his left eye is within acceptable limits and that he is able to recognize and distinguish among traffic control signals and devices showing standard red, green, and amber colors. *See*, Exhibit 2.

without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber. Therefore, monocular drivers such as Verna do not qualify to operate motor vehicles under this rule unless granted a waiver of the same pursuant to 4 CCR 723-15-11.

7. Verna has continuously operated motor vehicles and heavy equipment since suffering from the above-described condition. He compensates for the limited field of vision on his right side by using the normal vision afforded by his left eye. This is accomplished by turning his head more radically to the right side when executing right-hand turns or other driving maneuvers that require vision on that side. Verna's monocular vision has never inhibited his ability to successfully operate motor vehicles or been the cause of any traffic-related incident (*i.e.*, accident, traffic citation, etc.). He testified that none of the incidents shown on his Motor Vehicle Driving Record (Exhibit 5) resulted from his monocular vision. He currently holds a valid, unrestricted Colorado Drivers License.

8. Verna has successfully completed two recent road tests administered by Mr. Kirby of City Cab and by Mr. Hoffman of the Commission's Staff. In connection with the City Cab road test, Mr. Kirby has certified that, in his opinion, Verna possesses sufficient driving skill to safely operate the type of commercial motor vehicle typically operated by City Cab. *See*, Exhibit 1. Mr. Hoffman and Mr. Barrett testified that neither had any objection to this waiver petition. In addition, it is the opinion of Verna's optometrist, Dr. Browder, that he "...would be a capable and safe driver and that he would safely deliver his cab passengers to their destinations."

See, Exhibit 4. Thus, but for the vision impairment described above, Verna is qualified under the Commission's safety regulations to operate motor vehicles.

9. Verna's testimony indicates that he is acutely aware of his monocular vision condition and that he takes precautions to ensure that it does not negatively affect his ability to safely operate motor vehicles. Given this awareness, the fact that Verna has successfully operated motor vehicles for 13 years while suffering from this condition, the lack of any traffic-related incidents attributable to such condition during that time, and the opinions of City Cab, the Commission's Staff, and Verna's optometrist that he is and will be a safe driver, it is found and concluded that City Cab has demonstrated that Verna can safely operate its motor vehicles.

10. Strict enforcement of Rule 391.41(b)(10) would work a hardship on both City Cab and Verna and, therefore, the requested waiver will be granted. City Cab will be granted a waiver from the provisions of Rule 391.41(b)(10) for a period of two years. This waiver contains the standard reporting requirements imposed by the Commission in connection with waivers of this type.

III. ORDER

A. The Commission Orders That:

1. Docket No. 04M-015CP, being an application of City Cab Company, is granted.
2. City Cab Company is granted a two-year waiver from the provisions of Rule 391.41(b)(10) of the Commission's Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties found at 4 *Code of Colorado Regulations* 723-15 in connection with driver-applicant John Mitchell Verna.

3. City Cab Company shall promptly (within 30 days) notify and file with the Commission any documents and information concerning any accidents, arrests, license suspensions, revocations or withdrawals, or any traffic-related citations or convictions involving John Mitchell Verna during the period of the waiver granted herein.

4. 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.

5. 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.

6. 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.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge