

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 15V-0032CP

IN THE MATTER OF THE PETITION FOR WAIVER OF ALPINE TAXI/LIMO, INC.,
DOING BUSINESS AS ALPINE AND/OR GO ALPINE, FOR AN ORDER OF THE
COMMISSION AUTHORIZING A WAIVER OF RULE 6102 (DRIVER) OF THE
RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6.

**PUBLIC VERSION OF
RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
MODIFYING CAPTION OF THIS PROCEEDING;
ORDERING STAFF TO CHANGE CAPTION;
GRANTING PETITION, IN PART; GRANTING
WAIVER SUBJECT TO CONDITIONS;
AND CONTAINING ADVISEMENTS**

Mailed Date: January 27, 2015

I. STATEMENT¹

1. On January 15, 2015, Alpine Taxi/Limo, Inc., doing business as Alpine and/or Go Alpine (Alpine or Petitioner),² filed a verified Petition for Waiver/Variance of Safety Regulations - Driver (Petition) in which Alpine asks that the Commission grant a waiver of 49 *Code of Federal Regulations* (CFR) § 391.41(b)(3) (2010), as made applicable in Colorado by Rule 4 *Code of Colorado Regulations* (CCR) 723-6-6102(a)(I),³ for Mr. Dale Whitmore (Whitmore or driver). The filing commenced this Proceeding.

¹ Confidential information is highlighted in this version of the Recommended Decision.

² Alpine's name, as stated in the Petition, is not the name shown in Commission records. Thus, Alpine's name, as it appears in this Decision, is as it appears in Commission records.

³ This Rule is found in the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723.

2. At present, the caption of this Proceeding reads: *In the Matter of Petition for Waiver of Safety Regulations - Driver*. This caption identifies neither the petitioning party nor the Commission rule for which a waiver is sought. The ALJ will order the caption of this Proceeding amended to the caption shown above in this Decision and will order the Commission Administrative Staff to make the appropriate changes to the Commission's records.

3. On January 21, 2015, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

4. Pursuant to § 40-6-109(2), C.R.S., the ALJ now transmits to the Commission the record of this Proceeding together with a written recommended decision.

II. FINDINGS AND CONCLUSIONS

5. The Petition requests a waiver of 49 CFR § 391.41(b)(3) (2010), as made applicable in Colorado by Rule 4 CCR 723-6-6102(a)(I). Petitioner requests a one-year waiver "from decision date" (Petition at 1).

6. These documents are attached to the Petition: (a) Mr. Whitmore's Unscorable Driver's Record for the past three years (driving record); (b) Medical Examination Report for Commercial Driver Fitness Determination dated October 20, 2014 (Medical Examination Report); (c) a letter from Dr. [REDACTED], M.D., with a four-page attachment (doctor letter); (d) a Medical Examiner's Certificate dated October 20, 2014; and (e) a copy of Mr. Whitmore's Colorado driver's license.

7. Each document attached to the Petition pertains to Mr. Whitmore and contains his social security number or date of birth (or both) or contains his medical information. Each contains confidential information and is filed under seal with the Commission. Reference in this Decision to information contained in those documents is confidential.

8. Petitioner states that Mr. Whitmore “has been an employee of Go Alpine since November 2002. [Petitioner] requests [a] waiver to keep [Mr. Whitmore] gainfully employed as a driver.” Petition at 2. Driving is Mr. Whitmore’s livelihood.

9. The driver has [REDACTED]. As a result, the Medical Examination Report (at 3) states that Mr. Whitmore “[REDACTED]” Medical Examination Report at 4.

10. Dr. [REDACTED], M.D., performed the medical examination. In conjunction with that medical examination and the Medical Examination Report, Dr. [REDACTED] signed the Medical Examiner’s Certificate which states, in pertinent part, that Mr. Whitmore is qualified to drive a commercial vehicle “[REDACTED]” (Medical Examiner’s Certificate at 1). The medical certification expires on October 20, 2015.

11. The doctor letter at 5 states that, at present, Mr. Whitmore’s [REDACTED]
[REDACTED]
[REDACTED]. In the doctor letter, Dr. [REDACTED] states his medical opinion that Mr. Whitmore is able safely to operate a commercial motor vehicle.

12. Mr. Whitmore’s driving record establishes that, in the past three years, he has had one moving violation.⁴ It also establishes that, over that same period, Mr. Whitmore has not been involved in a traffic accident.

13. Petitioner seeks a one-year waiver of 49 CFR § 391.41(b)(3). That section reads: “A person is physically qualified to drive a commercial motor vehicle if [that person] -- ... [h]as

⁴ The moving violation occurred in 2013.

no established medical history or clinical diagnosis of [REDACTED]

[REDACTED]

14. The record in this Proceeding establishes: (a) Mr. Whitmore has [REDACTED]
[REDACTED]; (b) but for the [REDACTED],
Mr. Whitmore would be physically qualified to drive a commercial motor vehicle; (c) strict
application of 49 CFR § 391.41(b)(3) would work a hardship on Mr. Whitmore because it would
deprive him of the opportunity to continue in his occupation as a driver for Alpine; and
(d) granting the requested waiver will not compromise the public safety or the public interest, so
long as Mr. Whitmore [REDACTED]
[REDACTED].

15. In this Proceeding, Petitioner seeks a one-year waiver of 49 CFR § 391.41(b)(3).
If Petitioner's request is granted, the one year will begin on the date of the Commission's final
decision granting the waiver.

16. Based on the record of this Proceeding, the ALJ finds the Petitioner has met its
burden of proof in this matter; that the Petition should be granted, in part; and that, consistent
with the Medical Examiner's Certificate, the requested waiver should expire on October 20,
2015, which is the date on which the Medical Examiner's Certificate expires. In addition, the
ALJ finds that the waiver should be subject to the conditions contained in the Ordering
Paragraphs of this Decision. The ALJ concludes that, subject to the conditions contained in the
Ordering Paragraphs, Petitioner and its driver Dale Whitmore should be granted a waiver of
49 CFR § 391.41.(b)(3) and that the **waiver should expire on October 20, 2015.**

17. **Alpine and Mr. Whitmore are advised and are on notice that** in order to drive
for Alpine *after* October 20, 2015, either Alpine or Mr. Whitmore must obtain another exemption

from the Commission. To obtain the exemption, another petition for waiver must be filed and these documents must be included with that petition: (a) a new Medical Examination Report for Commercial Driver Fitness Determination; (b) a new statement that Mr. Whitmore is able safely to operate a motor vehicle and that there is no reason that his medical condition should prevent him from pursuing his occupation as a driver; and (c) a new copy of his driving record for the past three years. To give the Commission sufficient time to rule on the petition, the ALJ suggests that the new petition be filed not later than September 11, 2015.

18. In accordance with § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The caption of this Proceeding is amended to the caption set out in this Decision.
2. Administrative Staff of the Commission shall change Commission records to reflect the caption of this Proceeding as set out above.
3. Consistent with the discussion above and subject to the conditions set out below, the verified Petition for Waiver of Safety Regulations - Driver filed on January 15, 2015 by Alpine Taxi/Limo, Inc., doing business as Alpine and/or Go Alpine (Alpine), is granted in part.
4. Consistent with the discussion above and subject to the conditions set out below, Alpine is granted a waiver of 49 *Code of Federal Regulations* § 391.41(b)(3) (2010), as made applicable in Colorado by Rule 4 *Code of Colorado Regulations* 723-6-6102(a)(I), for its driver Mr. Dale Whitmore. The waiver granted by this Decision shall remain in effect through and including October 20, 2015, unless the provisions of Ordering Paragraph No. 5 apply or unless the Commission revokes the waiver upon notice to Alpine and to Mr. Whitmore.

5. The waiver granted in Ordering Paragraph No. 4 is subject to this condition: Dale Whitmore shall follow, and Alpine shall take reasonable and adequate steps to assure that Mr. Whitmore follows, [REDACTED]. If this condition is not met, the waiver granted in Ordering Paragraph No. 4 is rendered void without further order of the Commission.

6. The waiver granted in Ordering Paragraph No. 4 is subject to this condition: Dale Whitmore shall notify, and Alpine shall take reasonable and adequate steps to assure that Mr. Whitmore notifies, the Commission, in writing and within seven calendar days of the occurrence, if Mr. Whitmore is involved in a motor vehicle accident. This reporting requirement applies only to a motor vehicle accident that occurs while Dale Whitmore is driving for Alpine. This reporting requirement applies irrespective of the party at fault for the accident. The written notice shall be in the form of a letter addressed to the Commission's Chief of Transportation. If this condition is not met, the waiver granted in Ordering Paragraph No. 4 may be rendered void by subsequent order of the Commission.

7. The waiver granted in Ordering Paragraph No. 4 is subject to this condition: Dale Whitmore shall comply with the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723, as they may be applicable to him and shall comply with the terms of this Decision. If this condition is not met, the waiver granted in Ordering Paragraph No. 4 may be rendered void by subsequent order of the Commission.

8. The waiver granted in Ordering Paragraph No. 4 is subject to this condition: Alpine shall comply with the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723, as they may be applicable to it *vis-a-vis* its driver Dale Whitmore and shall comply with the terms of this Decision. If this condition is not met, the

waiver granted in Ordering Paragraph No. 4 may be rendered void by subsequent order of the Commission.

9. 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.

10. 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.

11. 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)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge