

Decision No. R16-0381

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16M-0141TR

IN THE MATTER OF THE PETITION OF CHRISTIN STANLEY TO REVERSE AN INITIAL DRIVER DISQUALIFICATION DETERMINATION PURSUANT TO RULE 6105 OF 4 CCR 723-6.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING PETITION**

Mailed Date: May 4, 2016

I. STATEMENT

1. On February 29, 2016, Petitioner Christin Stanley (Petitioner) filed a Petition to reverse an initial determination of driver disqualification pursuant to Commission Rule 6105 of 4 *Code of Colorado Regulations* (CCR) 723-6, Rules Regulating Transportation by Motor Vehicle

2. On March 30, 2016, the matter was referred to an Administrative Law Judge (ALJ) for disposition by minute entry during the Commission's Weekly Meeting.

3. On March 31, 2016, pursuant to Decision No. R16-0275-I, a hearing was scheduled for April 28, 2016.

4. On April 21, 2016, Trial Staff of the Commission (Staff) filed its, Entry of Appearance through counsel.

5. The hearing in this matter was convened as scheduled on April 28, 2016. Petitioner appeared *pro se*. Staff appeared through its counsel. Petitioner testified on her own behalf. Staff presented the testimony of Mr. Gabe Dusenbury,¹ and. Staff offered Exhibits No. 1 and 3 and Confidential Exhibit 2 which were admitted. At the conclusion of the hearing, the ALJ took the matter under advisement.

6. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order

II. FINDINGS OF FACT

7. The Petitioner Christin Stanley is a 30 year-old single mother of a eight year-old daughter.

8. Ms. Stanley has previously worked at a Papa Johns restaurant and has also provided care to the terminally ill.

9. On May 2, 2012, [START CONFIDENTIAL] [REDACTED]
[REDACTED]

10. [REDACTED]
[REDACTED]

11. [REDACTED]
[REDACTED]

¹ Mr. Dusenbury is currently a Rate Financial Analyst employed by the Commission. Mr. Dusenbury was an Authorities Analyst with the Commission's Transportation section at the time of Ms. Stanley's disqualification.

12. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13. [REDACTED]

[REDACTED]

14. [REDACTED]

[REDACTED]

15. [REDACTED]

[REDACTED]

16. [REDACTED]

[REDACTED] [END CONFIDENTIAL]

17. Ms. Stanley started working for Longest Limos in late 2015. Part of her job at Longest Limos was working as a driver.

18. The owner of Longest Limos is Mr. Tad Buonamia.

19. Mr. Buonamia has been supportive of Ms. Stanley's effort to be allowed to resume her job as a driver.

² [REDACTED]

³ [REDACTED]

III. ISSUES

20. Should Staff's initial disqualification of Petitioner Christin Stanley, as a driver for a Commission certified motor carriers under § 40-10.1-110(3)(a) C.R.S., be reversed?

21. Should *Rule 6105(f)(II)(D) of the Rules of Practice and Procedure, 4 Code of Colorado Regulations (CCR) 723-6* be waived to allow the Petitioner, Christin Stanley, to be employed as a driver for a Commission certified motor carrier?

IV. APPLICABLE LAW

22. "An individual who wishes to drive either a taxicab for a motor carrier that is the holder of a certificate to provide taxicab service issued under part 2 of this article or a motor vehicle for a motor carrier that is the holder of a permit to operate as a charter bus, children's activity bus, luxury limousine, or off-road scenic charter under part 3 of this article shall submit a set of his or her fingerprints to the commission." § 40-10.1-110(1), C.R.S.

23. The individual:

whose criminal history record is checked pursuant to this section is disqualified and prohibited from driving motor vehicles for the motor carrier described in subsection (1) of this section if the criminal history record check reflects that:

(a) The individual is not of good moral character, as determined by the commission based on the results of the check;

§ 40-10.1-110(3), C.R.S

24. Pursuant to § 40-10.1-110(4), C.R.S., the Commission "shall consider the information resulting from the criminal history record check in its determination as to whether the individual has met the standards set forth in section 24-5-101 (2), C.R.S." That latter statute provides that

[w]henver any state or local agency is required to make a finding that an applicant for a license, certification, permit, or registration is a person of good moral character as a condition to the issuance thereof, the fact that such applicant has, at some prior thereto,

been convicted of a felony other offense involving moral turpitude, and pertinent circumstances connected with such conviction, shall be given consideration in determining whether, in fact, the applicant is a person of good moral character at the time of the application. The intent of this section is to expand employment opportunities for persons who, notwithstanding that fact of conviction of an offense, have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society. *Id*

25. A driver is not of good moral character and shall be disqualified and prohibited from driving, if the driver has a conviction in the state of Colorado, within the four years preceding the date the criminal history record check is completed, of any class 4 felony under Articles 2, 3, 3.5, 4, 5, 6, 6.5, 8, 9, 12, or 15 of Title 18, C.R.S. *Rule 6105(f)(II)(D) 4 CCR 723-6.*

26. The Commission has promulgated these rules to ensure orderly and fair treatment of all persons. The Commission may, for good cause shown, grant waivers or variances from tariffs, Commission rules, and substantive requirements contained in Commission decisions. In making its determination the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. The Commission may subject any waiver or variance granted to such terms and conditions as it may deem appropriate. *Rule 1003(a), 4 CCR 723-1.*

27. The Petitioner bears the burden of proof by a preponderance of the evidence as to claims stated in the Petition.⁴ The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Department of Revenue, 717 P.2d 507 (Colo. App. 1985).* A party has met this burden of proof when the evidence, on the whole, slightly tips in favor of that party.

⁴ Section 13-25-127(1), C.R.S.; Rule 1500 of the Rules of Practice and Procedure, 4 CCR 723-1.

V. DISCUSSION

28. The record clearly establishes that Staff's initial determination of ineligibility was warranted by Petitioner's conviction of a Class 4 felony.

29. Petitioner did not establish that the initial determination was not supported by fact or law. The extent to which Ms. Stanley remains ineligible to operate a commercial vehicle hinges therefore on the mandate to consider the Petition under the standards of § 24-5-101(2) C.R.S.

30. Ms. Stanley testified credibly about the offenses that led to her disqualification.

31. Ms. Stanley has taken responsibility for her actions which led to her conviction for a Class 4 felony.

32. The undersigned ALJ notes that, while Ms. Stanley has had many interactions with law enforcement in her life, none of these has occurred since 2011.

33. Ms. Stanley is the sole child care provider for her eight year old daughter.

34. The undersigned ALJ also notes that the offense which led to the disqualification of Ms. Stanley, is no longer a Class 4 felony. If Ms. Stanley would have committed the same offense after 2012, it would not have led to a disqualification.

35. The evidence presented by Ms. Stanley is substantial and under §24-5-101 (2), C.R.S. meets her burden to show by a preponderance of the evidence that Staff's initial disqualification under § 40-10.1-110 (3)(a) C.R.S. should be reversed.

36. In addition, based upon the evidence provided by Ms. Stanley, the undersigned ALJ finds good cause under *Rule 1003(a)*, 4 *CCR 723-1* to waive the disqualification as a driver of Commission certified motor carrier of Ms. Stanley under *Rule 6105(f)(II)(D)* 4 *CCR 723-6*⁵.

VI. CONCLUSION

37. The Petitioner, has shown by a preponderance of evidence that Staff's initial disqualification under § 40-10.1-110 (3)(a) C.R.S. should be reversed.

38. The Petitioner has shown good cause to allow a waiver of *Rule 6105(f)(II)(D)* 4 *CCR 723-6*, to be employed as a driver for a Commission certified motor carrier.

VII. ORDER

A. The Commission Orders That:

1. Christin Stanley's petition for to reverse an initial determination of driver disqualification pursuant to 6105 of 4 *Code of Colorado Regulations* (CCR) 723-6, Rules Regulating Transportation by Motor Vehicle is granted.

2. 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.

3. 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.

⁵ The undersigned ALJ also notes that the four year disqualification under *Rule 6105(f)(D)* 6 *CCR 723-1*, expires within five months of this Decision.

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.

4. 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean, Director