

Decision No. R17-0133

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 17V-0040TNC

IN THE MATTER OF THE PETITION OF KENNETH A. BELLER FOR A WAIVER
OF RULE 6713 (PROOF OF MEDICAL FITNESS) 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
CONSIDERING PETITION UNDER MODIFIED
PROCEDURES; GRANTING PETITION,
IN PART; GRANTING WAIVER SUBJECT TO
CONDITIONS; AND CONTAINING ADVISEMENTS**

Mailed Date: February 14, 2017

I. STATEMENT¹

1. On January 17, 2017, Kenneth A. Beller (Beller or Petitioner), filed a verified Petition for Waiver/Variance of Safety Regulations - Driver. The filing commenced this Proceeding.

2. On January 23, 2017, Petitioner filed a supplement to the January 17, 2017 filing. Unless the context indicates otherwise, reference in this Decision to the Petition is to the January 17, 2017 filing as supplemented on January 23, 2017.

3. On January 25, 2017, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition.

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

4. The Petition is neither contested nor opposed.

5. Pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1403,² the uncontested and unopposed Petition may be considered under the Commission's modified procedure and without a formal hearing. The ALJ finds that the Petition is uncontested and unopposed and should be considered -- and will be considered -- under the Commission's modified procedure, without an evidentiary hearing.

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

II. FINDINGS AND CONCLUSIONS

7. The Petition requests a waiver of 49 *Code of Federal Regulations* (CFR) § 391.41(b)(3) (2010), as made applicable to a driver for a Transportation Network Company (TNC) in Colorado by Rules 4 CCR 723-6-6708(a) and 723-6-6713(a).³ Petitioner requests a two-year waiver: January 12, 2017 through and including January 12, 2019. (Petition at 1).

8. Petitioner submitted these documents⁴ to support the Petition: (a) Mr. Beller's Motor Vehicle Record for the past three years (driving record); (b) Medical Examination Report for Commercial Driver Medical Certification dated December 22, 2016 (Medical Examination Report); (c) a letter dated January 12, 2017 from Dr. [REDACTED], M.D. (Doctor Letter); and (d) a Medical Examiner's Certificate dated December 22, 2016.

² This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

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

⁴ Each of these documents contains Petitioner's social security number or date of birth, or both; contains his driver's license number; or is a confidential medical report. As a result, these documents are filed under seal with the Commission. Reference in this Decision to information contained in those documents is confidential.

medical history or clinical diagnosis of [REDACTED]

[REDACTED]

15. The record in this Proceeding establishes: (a) due to his [REDACTED], [REDACTED], Petitioner does not meet the requirements of 49 CFR § 391.41(b)(3); (b) Petitioner is able safely to operate a motor vehicle so long as he [REDACTED]; [REDACTED]; (c) Petitioner is restricted by his driver's license to wearing corrective lenses when driving a motor vehicle; (d) but for his [REDACTED], Petitioner is medically qualified to drive a commercial motor vehicle; (e) strict application of 49 CFR § 391.41(b)(3) would work a hardship on Petitioner as it would deprive him of a needed source of income; and (f) granting the requested waiver will not compromise the public safety or the public interest provided Petitioner wears corrective lenses when he drives a motor vehicle and provided Petitioner [REDACTED].

In addition, the Petition is uncontested and unopposed.

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

17. A waiver in this Proceeding rests, in part, on the Medical Examination Report. The Medical Examination Report at 5 states that the driver qualification has a duration of one year. The ALJ finds that a waiver granted in this Proceeding must be consistent with the Medical Examination Report and, consequently, should not extend past the one-year driver qualification. Thus, the ALJ will not grant the request for a waiver through January 12, 2019.

18. Based on the record of this Proceeding, the ALJ finds the Petitioner has met his burden of proof in this matter; that the Petition should be granted, in part; and that the requested waiver should expire on December 22, 2017, which is one year from the date of the Medical Examination Report. In addition, the ALJ finds that the waiver should be subject to the conditions contained in the Ordering Paragraphs of this Decision.

19. The ALJ concludes that, subject to the conditions contained in the Ordering Paragraphs, Mr. Beller should be granted a waiver of 49 CFR § 391.41.(b)(3) and that the waiver should expire on December 22, 2017.

20. **Mr. Beller is advised and is on notice:** In order to drive for a TNC *after* December 22, 2017, he must obtain another exemption from the Commission. To obtain the exemption, Mr. Beller must file another petition for waiver and must provide the required documentation. To give the Commission sufficient time to rule on the petition, the ALJ suggests that the new petition be filed not later than November 30, 2017.

21. **Mr. Beller is advised and is on notice:** The waiver granted by this Decision is valid and applies only when he is a driver for a TNC.

22. **Mr. Beller is advised and is on notice:** He must obtain a separate waiver in order to be a driver for a motor carrier that is subject to regulation pursuant to title 40, article 10.1, C.R.S., and that is a passenger carrier.

23. **Mr. Beller is advised and is on notice:** Upon notice to Mr. Beller and opportunity for hearing, the Commission may revoke the waiver granted by this Decision in the event that: (a) Mr. Beller fails to comply with the conditions contained in the Ordering Paragraphs of this Decision; or (b) without obtaining a separate waiver of 49 CFR

§ 391.41(b)(3), Mr. Beller is a driver for a motor carrier that is subject to regulation pursuant to title 40, article 10.1, C.R.S., and that is a passenger carrier.

24. 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. 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 17, 2017 by Kenneth A. Beller, is granted in part.

2. Subject to the conditions stated below, Kenneth A. Beller is granted a waiver of 49 *Code of Federal Regulations* § 391.41(b)(3) (2010), as made applicable to a driver for a Transportation Network Company (TNC) in Colorado by Rules 4 *Code of Colorado Regulations* 723-6-6708(a) and 723-6-6713(a).

3. Consistent with the discussion above, the waiver granted in Ordering Paragraph No. 2 shall remain in effect through and including December 22, 2017, unless the provisions of Ordering Paragraph No. 5 apply or unless the Commission, upon notice to Mr. Beller and opportunity for hearing, revokes the waiver for failure to comply with this Decision.

4. The waiver granted in Ordering Paragraph No. 2 is subject to this condition: The waiver granted in Ordering Paragraph No. 2 is valid only when Kenneth A. Beller is a driver for a TNC.

5. The waiver granted in Ordering Paragraph No. 2 is subject to this condition: Kenneth A. Beller shall follow [REDACTED]

████████████████████. If this condition is not met, the waiver granted in Ordering Paragraph No. 2 is rendered void without further order of the Commission.

6. The waiver granted in Ordering Paragraph No. 2 is subject to this condition: when he is driving for a TNC, Kenneth A. Beller shall comply with the restrictions stated on his Colorado driver's license.

7. The waiver granted in Ordering Paragraph No. 2 is subject to this condition: Kenneth A. Beller shall notify the Commission, in writing and within seven calendar days of the occurrence, if he is involved in a motor vehicle accident. This reporting requirement applies only to a motor vehicle accident that occurs while Mr. Beller is driving for a TNC. 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.

8. The waiver granted in Ordering Paragraph No. 2 is subject to this condition: Kenneth A. Beller shall comply with the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723, as they may apply to him.

9. The waiver granted in Ordering Paragraph No. 2 is subject to this condition: Kenneth A. Beller shall comply with the terms of this Recommended Decision.

10. The waiver granted in Ordering Paragraph No. 2 is subject to this condition: Kenneth A. Beller is held to the advisements in this Recommended Decision.

11. 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.

12. 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.

13. 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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge