

Decision No. R17-0366

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 17V-0240TNC

IN THE MATTER OF THE PETITION OF JEFF DEHAVEN FOR A WAIVER/VARIANCE
OF RULE 6713 OF THE COMMISSION 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,
GRANTING WAIVER SUBJECT TO CONDITIONS,
AND CONTAINING ADVISEMENTS**

Mailed Date: May 8, 2017

I. STATEMENT¹

1. On April 17, 2017, Mr. Jeff DeHaven (Petitioner) filed a verified Petition for Waiver of Safety Regulations - Driver (Petition). The filing commenced this Proceeding.

2. On April 26 2017, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition.

3. Petitioner is the sole Party in this Proceeding.

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

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

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

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: April 14, 2017 through and including April 14, 2019. (Petition at 1).

8. Petitioner submitted these documents⁴ to support the Petition: (a) Mr. DeHaven's Motor Vehicle Record for the past seven years (driving record); (b) a Medical Examination Report for Commercial Driver Medical Certification dated March 15, 2017 (Medical Examination Report); (c) a letter dated April 13, 2017 from Dr. [REDACTED] (Doctor Letter); and (d) a Medical Examiner Determination (State) dated March 15, 2017.⁵

9. Petitioner requests a waiver in order to drive for a TNC. Driving for a TNC will be or will supplement Mr. DeHaven's livelihood.

10. Petitioner has [REDACTED]. As a result, the Medical Examination Report (at 5) states that he meets the standards in 49 CFR 391.41 provided he wears

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.

⁵ This is page 5 of the Medical Examination Report.

corrective lenses and obtains a waiver for [REDACTED]. Medical Examination Report at 5.

11. Dr. [REDACTED], D.C., 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. DeHaven is qualified to drive a commercial vehicle when he is wearing corrective lenses and is "[REDACTED]" (Medical Examination Report at 5 (*i.e.*, the Medical Examiner Determination)).

12. Dr. [REDACTED] is Mr. DeHaven's primary care provider. In the Doctor Letter at 1, Dr. [REDACTED] states that Mr. DeHaven [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Dr. [REDACTED] states her opinion that Mr. DeHaven [REDACTED]
[REDACTED] (*id.*).

13. Mr. DeHaven's Driving Record establishes that his driver's license is restricted: he must wear corrective lenses when he drives a motor vehicle. In addition, Mr. DeHaven's driving record establishes that, in the past three years, he has had no moving violations. Finally, it also establishes that, over that same period, Mr. DeHaven has not been involved in a reported traffic accident.

14. As a driver for a TNC, Petitioner must meet the requirements of 49 CFR § 391.41. Petitioner seeks a two-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 no established

medical history or clinical diagnosis of [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]; (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 waiver of 49 CFR § 391.41(b)(3) from April 14, 2017 through and including April 14, 2019. If the Petition is granted, the waiver period will begin on the date of the Commission's final decision granting the waiver and not on April 14, 2017.

17. 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; and that the requested waiver should expire on April 14, 2019. In addition, the ALJ finds that the waiver should be subject to the conditions contained in the Ordering Paragraphs of this Decision.

18. The ALJ concludes that, subject to the conditions contained in the Ordering Paragraphs, Mr. DeHaven will be granted a waiver of 49 CFR § 391.41.(b)(3) and that the waiver granted by this Decision will expire on April 14, 2019.

19. **Mr. DeHaven 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.

20. **Mr. DeHaven 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.

21. **Mr. DeHaven is advised and is on notice:** Upon notice to Mr. DeHaven and opportunity for hearing, the Commission may revoke the waiver granted by this Decision in the event that: (a) Mr. DeHaven 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. DeHaven 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.

22. **Mr. DeHaven is advised and is on notice:** If he has any questions concerning the waiver granted by this Decision, Mr. DeHaven should contact Michael Gullatte of the Commission Transportation Staff (telephone: 303.894.2860).

23. 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 April 17, 2017 by Jeff DeHaven, is granted.

2. Subject to the conditions stated below, Jeff DeHaven 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 April 14, 2019, unless the provisions of Ordering Paragraph No. 5 apply or unless the Commission, upon notice to Mr. DeHaven 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 Jeff DeHaven is a driver for a TNC.

5. The waiver granted in Ordering Paragraph No. 2 is subject to this condition: Jeff DeHaven 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, Jeff DeHaven 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: Jeff DeHaven 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. DeHaven is driving for a TNC. This reporting requirement applies irrespective of the person 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: Jeff DeHaven 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: Jeff DeHaven shall comply with the terms of this Recommended Decision.

10. The waiver granted in Ordering Paragraph No. 2 is subject to this condition: Jeff DeHaven 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