

PUBLIC VERSION

Decision No. R17-0800

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 17M-0518TR

IN THE MATTER OF THE PETITION OF JOSE ANTONIO ACEVEDO 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: October 2, 2017

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I. STATEMENT

1. On July 31, 2017, Petitioner Jose Antonio Acevedo (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 August 18, 2017, Trial Staff of the Commission (Staff) filed its, Entry of Appearance through counsel.

3. On August 23, 2017, the matter was referred to an Administrative Law Judge (ALJ) for disposition by minute entry during the Commission's Weekly Meeting.

4. On August 29, 2017, pursuant to Decision No. R17-0713-I, a hearing was scheduled for September 28, 2017.

5. The hearing in this matter was convened as scheduled on September 28, 2017. Petitioner appeared *pro se*. Staff appeared through its counsel. Petitioner testified on his own behalf. Staff presented the testimony of Ms. Allison Torvik,¹ and administrative notice was taken of all documents filed by both parties prior to the hearing. 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, Jose Antonio Acevedo is a 52-year-old father of two adult children.

[REDACTED]

[REDACTED]

¹ Ms. Torvik is employed by the Commission as a Data Analyst.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. Mr. Acevedo worked for Gray Line bus services from 2011 until June of 2017. Mr. Acevedo was hired at Gray Line to wash buses. He advanced to being a mechanic's assistant and with education became a mechanic.

13. Mr. Acevedo has been employed as a mechanic for the last four months by Ramblin' Express, Inc. (Ramblin' Express), a Commission authorized transportation service.

14. Mr. Acevedo does not currently work as a driver for Ramblin' Express, but on occasion is called on to drive a bus, with passengers, that has experienced mechanical problems if the normal driver is unable to drive due to hours of service regulations. The inability to drive a bus at these infrequent times could lead to Mr. Acevedo losing his job.

15. Mr. Acevedo has developed strong ties to the community in Colorado Springs since his release.

16. Mr. Acevedo has attended college since his release and is a few hours short of an Associate's degree in diesel mechanics. He currently has a GPA of 3.81.

17. Failure to maintain employment would be a violation of his ISP terms.

III. ISSUES

18. Should Staff's initial disqualification of Petitioner Jose Antonio Acevedo, as a driver for a Commission certified motor carrier under § 40-10.1-110(3)(a), C.R.S., be reversed?

19. Should *Rule 6105(f)(II)(D) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6* be waived to allow the Petitioner, Jose Antonio Acevedo, to be employed as a driver for a Commission certified motor carrier?

IV. APPLICABLE LAW

20. "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, medicaid client transport, 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.

21. 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.

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]hensoever 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 or 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.*

22. 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.*

23. 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* of the Commission's Rules of Practice and Procedure.

24. The Petitioner bears the burden of proof by a preponderance of the evidence as to claims stated in the Petition.² 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.

² Section 13-25-127(1), C.R.S.; Rule 1500 of the Rules of Practice and Procedure, 4 CCR 723-1.

V. DISCUSSION

25. The record clearly establishes that Staff's initial determination of ineligibility was warranted by Petitioner's conviction of a Class 2 felony.

26. Petitioner did not establish that the initial determination was not supported by fact or law. The extent to which Mr. Acevedo 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.

27. Mr. Acevedo testified credibly about the offenses that led to his disqualification.

28. Mr. Acevedo has taken responsibility for his actions which led to his conviction for a Class 2 felony.

29. The undersigned ALJ notes that no evidence was presented that Mr. Acevedo has any previous convictions for any offenses.

30. Mr. Acevedo has worked hard after his release from the Department of Corrections to make a better life for himself and to be a positive part of the Colorado Springs community. Mr. Acevedo has gone to school, worked his way up from bus washer to mechanic. He is to be commended for his behavior after his release.

31. He has met all of the very stringent requirements for ISP for six years and will be under them for an additional eight years. Denial of this petition could lead to Mr. Acevedo's unemployment and be a violation of his ISP.

32. Mr. Acevedo presented 12 letters of support from, employers, friends, and clergy. All speak to the transformation of Mr. Acevedo and the quality of his character.

33. It is noted that Mr. Acevedo's request is only to be allowed to drive under infrequent occasions. Although he did not rule out the possibility of driving more in the future, currently he does intend on being a full-time driver.

34. Mr. Acevedo has worked very hard to make himself a positive force in the community. He is an example to others in similar situations that it is possible, through hard work, to better yourself and your community. The undersigned ALJ personally feels it would be an enormous miscarriage of justice to deny this petition.³

35. The evidence presented by Mr. Acevedo is substantial and under § 24-5-101(2), C.R.S., meets his 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 Mr. Acevedo, the undersigned ALJ finds good cause under Rule 1003(a), 4 CCR 723-1 to waive the disqualification as a driver for a Commission certified motor carrier of Mr. Acevedo under *Rule 6105(f)(II)(D) 4 CCR 723-6*.

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)(A) 4 CCR 723-6*, to be employed as a driver for a Commission certified motor carrier.

³ The undersigned ALJ also wishes Mr. Acevedo good luck and continued success.

VII. ORDER**A. The Commission Orders That:**

1. Juan Antonio Acevedo's petition to reverse an initial determination of driver disqualification pursuant to Rule 6105 of 4 *Code of Colorado Regulations* 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.

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

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

Doug Dean,
Director