

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21V-0026TNC

IN THE MATTER OF THE PETITION OF SPENCER THOMAS WILCOCK FOR
A WAIVER OF RULE 6713(C) (PROOF OF MEDICAL FITNESS) OF THE RULES
REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
ORDERING PETITIONER TO SHOW CAUSE**

Mailed Date: January 26, 2021

I. STATEMENT

1. On January 6, 2021, Spencer Thomas Wilcock (Petitioner) filed a verified Petition for Waiver of Safety Regulations – Drivers of vehicles with a seating capacity of 15 passengers or less, including the driver (Form PFW-D-15-1, Revised 5/15/2019) (Petition). The Petition includes the following documents: (a) a Medical Examiner’s Certificate, (b) a Medical Examination Report Form, (c) a Certified Official Colorado Driver Record, and (d) a copy of Petitioner’s Colorado driver’s license.

2. The Petition seeks a waiver of Rule 6109(c)(I) of the Commission Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. Specifically, the Petition states: “The filed Medical Examiner’s Certificate states I am medically fit to drive only if accompanied by a waiver for . . . (I) - Defect, loss of limb or impairment, . . . loss of right eye.”¹

¹ Petition at 1.

The Petition further states: “For the time I’ve driven for Lyft and Uber, I’ve successfully completed over 6,973 trips without any issues.”²

3. This proceeding was referred to an Administrative Law Judge (ALJ) for disposition by minute entry during the Commission’s weekly meeting held on January 20, 2021.

4. Based upon a review of Petitioner’s filing, there are two issues that must be addressed before this Petition can proceed any further.

5. First, Commission records show that in Proceeding No. 20V-0032TNC, Petitioner has previously sought and received a one-year waiver of Rule 6713(c)(IX), 4 CCR 723-6, permitting him to drive for a transportation network company (TNC) because he has a visual impairment and can safely operate a personal vehicle in connection with providing TNC services.³ In that Proceeding, Petitioner filed a verified Petition for Waiver/Variance of Safety Regulations – TNC Driver (Form PFW-TNC-1).

6. Here in this Proceeding, however, Petitioner filed Form PFW-D-15-1, seeking a waiver of Rule 6109(c)(I), 4 CCR 723-6, permitting him to drive a vehicle with a seating capacity of 15 passengers or less, including the driver.

7. The ALJ notes that the instant Petition is a TNC proceeding identified as Proceeding No. 21V-0026TNC. It is unclear to the ALJ whether Petitioner in fact intended to seek a waiver of Rule 6109(c) to drive a vehicle with 15 passengers or less (including the driver), consistent with the Petition filed; **or** whether Petitioner intended to seek a waiver for Rule 6713(c) to drive for a TNC following the expiration of his one-year waiver granted in Proceeding No. 20V-0032TNC.

² Petition at 2.

³ Decision No. R20-0069 (Mailed Date: January 29, 2020) in Proceeding No. 20V-0032TNC.

8. On or before **close of business on February 16, 2021**, Petitioner will be ordered to:

- a) file a written statement confirming that Petitioner intended to file Form PFW-D-15-1, seeking a waiver of Rule 6109(c)(I), 4 CCR 723-6, permitting him to drive a vehicle with a seating capacity of 15 passengers or less, including the driver; **OR**
- b) file a Petition for Waiver/Variance of Safety Regulations – TNC Driver (Form PFW-TNC-1) **if** Petitioner intended to seek a waiver of Rule 6713(c)(IX), 4 CCR 723-6, permitting him to drive for a TNC; **OR**
- c) otherwise show cause why this matter should not be dismissed without prejudice.

9. Second, the filed Medical Examiner’s Certificate (Form: MER-15-1, Version Date: 5/15/2018) states: “This person is medically fit to drive for a motor carrier of passengers without condition.”⁴ However, the Medical Examiner’s Certificate does not establish that Petitioner “is medically fit to drive for a motor carrier of passengers (or TNC), only if accompanied by a [specified] waiver (i.e. PUC Vision Waiver, etc.).” Nor does it provide that in the Medical Examiner’s “medical opinion, based upon all circumstances known to [him or her] including the medical condition(s) requiring an accompanying waiver, the established medical history or clinical diagnosis is not likely to interfere with the [Petitioner’s] ability to control and drive a motor vehicle safely.”

10. Petitioner is largely free to select the manner of presenting his case and is not bound to use Commission-provided forms. However, the filed Medical Examiner’s Certificate does not certify that Petitioner is medically fit to drive only if accompanied by the waivers sought in the Petition – specifically, a waiver of subsection “(I) - Defect, loss of limb or impairment, . . . loss of right eye.”⁵ Further, the Medical Examiner’s Certificate appears to be inconsistent with the

⁴ Medical Examiner’s Certificate.

⁵ Petition at 1.

Petition, and it expresses no qualified medical opinion whatsoever in support of the requested relief as to Petitioner's ability to safely operate a motor vehicle.

11. On or before **close of business on February 16, 2021**, Petitioner will be ordered to:

- a) supplement the Petition by filing the correct corresponding Medical Examiner's Certificate certifying whether Petitioner is medically fit to drive for a motor carrier of passengers (or a TNC), only if accompanied by the waiver(s) specified, and expressing a qualified medical opinion as to whether the Medical Examiner feels the driver could safely operate a motor vehicle; **OR**
- b) supplement the Petition by filing a signed and dated letter from a medical professional/doctor expressing a qualified medical opinion as to whether the Medical Examiner feels the driver could safely operate a motor vehicle coupled with a short description of the physical disqualification requiring a waiver; **OR**
- c) otherwise show cause why this matter should not be dismissed without prejudice.

12. **Petitioner is advised that failure to make one of the filings described in paragraph 7 above and one of the filings described in ¶ 11 above on or before February 16, 2021, will result in dismissal of the Petition without prejudice.**

II. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above, Spencer Thomas Wilcock must supplement the Petition for Waiver/Variance of Safety Regulations to cure the deficiencies in the Petition

described above, **or** show cause why this matter should not be dismissed without prejudice (*e.g.*, it may be then be refiled later), on or before **close of business on February 16, 2021**.

2. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director