

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21V-0019CP

IN THE MATTER OF THE PETITION OF ROBERT H. SHANKS FOR A WAIVER OF
RULE 6109(C) (PROOF OF MEDICAL FITNESS) OF THE RULES REGULATING
TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
GRANTING PETITION AND GRANTING
WAIVER, SUBJECT TO CONDITIONS**

Mailed Date: January 29, 2021

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On December 30, 2020, Robert H. Shanks (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 (Petition). The Petition includes the following documents: (a) a confidential Medical Examination Report and Medical Examiner’s Certificate; (b) a Certified Official Driving Record (driving record); (c) a copy of Petitioner’s Driver License; and (d) a signed and dated letter from Tess Jankovsky, MD, describing the medical condition requiring the waiver and expressing a medical opinion regarding Petitioner’s ability to safely manage this medical condition.

2. Petitioner seeks a waiver of Rule 6109(c)(II) of the Commission Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. Petitioner requests a waiver be granted to permit him to drive for a motor carrier because he can safely operate a motor vehicle.

3. This matter was referred to an Administrative Law Judge (ALJ) for disposition by minute entry during the Commission's Weekly Meeting held January 13, 2021.

4. Rule 6109(a) of the Commission Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, provides:

No Motor Carrier shall permit any Driver to drive who is not medically examined and certified.... Drivers of vehicles with a seating capacity of 15 Passengers or less, including the Driver, may be certified under the provisions of this rule [or 49] C.F.R. 391.41, as revised on January 1, 2017.

5. The Commission Rules, however, also provide that a person may petition the Commission for a waiver or variance of any rule in this Part 6. See Rules 6003 and 1003 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1. In part, Rule 1003 provides that "[t]he Commission may, for good cause shown, grant waivers or variances from . . . Commission rules 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." Rule 1003(a), 4 CCR 723-1.

6. The Commission may take evidence in uncontested or unopposed proceedings by affidavit or otherwise, without the necessity of a formal oral hearing. § 40-6-109(5), C.R.S.

7. Rule 1403(a) provides that the Commission may determine a petition without a hearing and without further notice if the application or petition is uncontested or unopposed, if a hearing is not requested or required by law, and if the application or petition is accompanied by a sworn statement verifying sufficient facts and supported by attachments and/or exhibits that adequately support the filing.

8. Here, no one sought to intervene in the proceeding. The Petition is unopposed. Additionally, the Petition is verified by Petitioner and the required documents have been submitted with the Petition. Thus, the Petition shall be considered without a hearing.

9. The Medical Examiner's Certificate filed with the Petition certifies that Petitioner is "medically fit to drive for a motor carrier of passengers, subject to . . . regular office visits (3-4 times yearly) and yearly eye exams."

10. Rule 49, *Code of Federal Regulations* (C.F.R.) § 391.41(a)(1)(i) states in relevant part: "A person subject to this part must not operate a commercial motor vehicle unless he or she is medically certified as physically qualified to do so" Section 391.41(b)(3) provides that "[a] person is physically qualified to drive a commercial motor vehicle if that person . . . [h]as no established medical history or clinical diagnosis of diabetes mellitus currently treated with insulin for control, unless the person meets the requirements in § 391.46."

11. Rule 6109(c), 4 CCR 723-6, similarly provides:

[a] Person is physically qualified to drive if, upon physical examination, the medical examiner determines that the Person does not exhibit any of the following conditions: ... (II) established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control likely to interfere with his/her ability to control and drive a Motor Vehicle safely.

12. The Petition requests a waiver of the Commission's diabetes standard, based upon grounds stated in the Petition and incorporated herein by reference.

13. A review of Petitioner's driving record gives no indication that his diabetes has affected the safety of his driving. Granting the waiver is in the public interest in that it keeps a knowledgeable and safe driver on the street for an authorized carrier.

14. The record establishes that: (a) Petitioner has diabetes; (b) Petitioner's diabetes is controlled with medication; (c) but for the well-managed diabetes, Petitioner would be found to be medically qualified to drive under the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49); (c) strict application of Rule 6109, 4 CCR 723-6, would create a hardship on Petitioner; and (d) granting the requested waiver would not compromise the public safety or the public interest.

15. Based on the record, the ALJ finds and concludes Petitioner has met his burden of proof in this matter and that, subject to conditions on the waiver and exemption, the Petition should be granted. The ALJ finds and concludes that granting the requested waiver subject to the conditions specified below provides reasonable assurances that the health, safety, and welfare of Petitioner's passengers and the public will be protected. Granting the waiver for a one-year period, subject to conditions, has no effect on other medical requirements (*e.g.*, medical examinations).

16. In accordance with § 40-6-109, C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. Subject to the conditions ordered herein, the Verified Petition for Waiver of Safety Regulations – Drivers of vehicles with a seating capacity of 15 passengers or less, including the driver, filed by Robert H. Shanks (Petitioner) on December 30, 2020, is granted.

2. Petitioner is granted a waiver of Rule 6109(c)(II), 4 *Code of Colorado Regulation* 723-6, and is permitted to drive for a motor carrier in intrastate operations only subject to the following conditions:

- a) Petitioner shall attend regular office visits as instructed by his physician, but in no event less frequently than once every 120 days during the term of the waiver;
- b) Petitioner shall have an eye examination performed by a qualified medical professional not less than one time during the term of this waiver;
- c) Petitioner shall continue to monitor his blood sugar and follow the medically-prescribed regimen for treatment of his diabetes. Petitioner shall carry a monitor and a source of instant glucose on him when driving a motor vehicle for hire to use if signs or symptoms of low blood sugar appear. In the event that Petitioner experiences any such symptoms, including, but not limited to, blurred vision, double vision, dizziness, faintness, extreme hunger, or headache, Petitioner must immediately park his vehicle in a safe and secure location and administer the instant glucose. Petitioner shall not proceed to drive a vehicle under the jurisdiction of this Commission until all symptoms have ceased;
- d) Petitioner shall notify the Commission, in writing and within seven calendar days of the occurrence, if Petitioner is involved in a motor vehicle accident. This reporting requirement applies only to a motor vehicle accident that occurs while Petitioner is driving as a transportation network company driver for hire and 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;
- e) Petitioner shall comply with the Rules Regulating Transportation by Motor Vehicle as they may be applicable to him and with the terms of this Decision; and
- f) Petitioner shall only drive a motor vehicle with a seating capacity of 15 passengers or less, including the driver, as a driver for hire pursuant to this waiver.

3. If this Recommended Decision becomes a decision of the Commission, the waiver and exemption granted by this Decision shall remain in effect for a period of **one year** from the effective date of this Decision, unless revoked before that date upon notice to Petitioner.

4. 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.

5. 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.

6. 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

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director