

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
GRANTING PETITION WITH CONDITIONS**

Mailed Date: February 2, 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) (First Petition). The Petition included the following documents: (a) a Medical Examiner’s Certificate, (b) a Medical Examination Report Form, (c) an Official Colorado Driver Record, and (d) a copy of Petitioner’s Colorado driver’s license.

2. 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. The undersigned ALJ was subsequently assigned to preside over this proceeding.

3. Based upon a review of Petitioner’s filing, the ALJ found that two issues must be addressed before this Petition can proceed any further. First, in Proceeding No. 20V-0032TNC, Petitioner previously sought and received a one-year waiver of Rule 6713(c)(IX)) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (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.¹ In that Proceeding, Petitioner filed a verified Petition for Waiver/Variance of Safety Regulations – TNC Driver (Form PFW-TNC-1). In this proceeding, however, Petitioner filed Form PFW-D-15-1, seeking a waiver of Rule 6109(c)(I), 4 CCR 723-6, to permit him to drive a vehicle with a seating capacity of 15 passengers or less, including the driver. Hence, it was unclear 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), or whether Petitioner intended to seek a waiver of Rule 6713(c) to drive for a TNC following the expiration of his one-year waiver granted in Proceeding No. 20V-0032TNC.²

4. Second, the Medical Examiner’s Certificate (Form: MER-15-1, Version Date: 5/15/2018) filed with the First Petition stated: “This person is medically fit to drive for a motor carrier of passengers without condition.” However, the Medical Examiner’s Certificate did 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 did 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.”³

5. Decision No. R21-0041-I required Petitioner to file, on or before February 16, 2021, a written statement (a) confirming that he intended to file Form PFW-D-15-1, seeking a

¹ Decision No. R20-0069 (issued on January 29, 2020) in Proceeding No. 20V-0032TNC.

² Decision No. R21-0041-I (issued on January 26, 2021). Moreover, the instant Petition is a TNC proceeding identified as Proceeding No. 21V-0026TNC.

³ First Medical Examiner’s Certificate.

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; (b) to 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 to show cause why this matter should not be dismissed without prejudice.

6. On February 1, 2021, Petitioner filed a letter stating that he had erroneously filed Form PFW-D-15-1, seeking a waiver of Rule 6109(c)(I), 4 CCR 723-6, instead of filing Form PFW-TNC-1 to seek a waiver of Rule 6713(c)(IX), 4 CCR 723-6, to permit him to drive for a TNC. With the letter, Petitioner filed a Petition for Waiver/Variance of Safety Regulations – TNC Driver (Form PFW-TNC-1) to seek a waiver of Rule 6713(c)(IX), 4 CCR 723-6, to permit him to drive for a TNC (Amended Petition).

7. In the Amended Petition, Petitioner seeks a one-year waiver of Rule 6713(c) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, to allow Petitioner to drive for a TNC). With the Amended Petition, Petitioner submitted a completed medical examination report, a medical examiner's certificate, his Driving Record from the Colorado Division of Motor Vehicles, and a copy of his Colorado Driver's License.

8. Pursuant to § 40-6-109, C.R.S., the ALJ hereby transmits to the Commission the record of this proceeding and a written recommended decision containing findings of fact and conclusions of law.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Commission Rule 6713(a) states in relevant part: "No TNC shall permit any driver to log in to its digital network that is not medically examined and certified pursuant to 49 C.F.R. § 391.41, as revised on October 1, 2010 or pursuant to subsections (b)-(d) of this rule."

Petitioner submitted a completed copy of a medical examiner's report and a signed medical examiner's certificate. Petitioner is seeking a waiver of Rule 6713(c)(IX), 4 CCR 723-6, to permit him to drive for a TNC.

10. Under Rule 6713(c)(IX), a person is "physically qualified to drive if, upon physical examination, the medical examiner determines that the person" does not have visual "acuity of worse than 20/40 (Snellen) in each eye without corrective lenses or corrected to 20/40 (Snellen) or better with corrective lenses [and] distant binocular acuity worse than 20/40 (Snellen) in both eyes with or without corrective lenses...." According to the Amended Petition, Petitioner does not meet this standard. As a result, he is not qualified medically to drive for a TNC under Rule 6713(c)(IX).

11. However, the Commission's Rules also provide that a person may petition the Commission for a waiver or variance of any rule.⁴ Rule 1003 provides, in part, 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."⁵

12. In addition, the Commission may take evidence in uncontested or unopposed proceedings by affidavit or otherwise, without holding a formal hearing.⁶ Rule 1403(a), 4 CCR 723-1, provides that the Commission may determine a petition without a hearing and without further notice, upon its own motion, if the petition is uncontested or unopposed, if a hearing is not

⁴ See Rule 1003 of the Rules of Practice and Procedures, 4 CCR 723-1 (2020); Rule 6002 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6.

⁵ Rule 1003(a), 4 CCR 723-1.

⁶ See § 40-6-109(5), C.R.S.; Rule 1403, 4 CCR 723-1.

requested or required by law, and if the petition is accompanied by a sworn statement verifying sufficient facts and supported by attachments and/or exhibits that adequately support the filing.

13. The ALJ construes Petitioner's February 1, 2021 letter as a motion to amend the First Petition in order to seek a waiver of Rule 6713(c)(IX), 4 CCR 723-6, to permit him to drive for a TNC.

14. Here, because no one sought to intervene in this proceeding, the Petition is unopposed. The ALJ will grant the motion to amend the First Petition. In addition, the Amended Petition was verified by Petitioner. Accordingly, the Amended Petition shall be considered without a hearing.

15. Petitioner submitted the required documents to support the requested waiver. The medical examination report, submitted with the Amended Petition, stated that Petitioner has impaired vision due to loss of his right eye in 1995. The medical examiner's certificate, submitted with the Amended Petition, stated that, in the medical examiner's opinion, Petitioner's established medical history or clinical diagnosis is not likely to interfere with Petitioner's ability to control and drive a motor vehicle safely for a Colorado TNC, only if a vision waiver was granted by the Commission.

16. The medical examination report and medical examiner's certificate collectively establish that Petitioner can safely drive a motor vehicle despite his medical condition, which is corroborated by his driving record over the past three years that he submitted with the Amended Petition.⁷ The medical examination report and medical examiner's certificate also establish that Petitioner is qualified under Rule 6713 to operate a motor vehicle safely with a vision waiver.

⁷ See Rule 6711(a) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6.

17. Based on the foregoing, the ALJ finds that: (a) Petitioner's medical condition is unlikely to interfere with his ability to control and drive a motor vehicle safely for a Colorado TNC with the vision waiver granted by this Decision; (b) strict application of Rule 6713(c)(IX), 4 CCR 723-6, would create a hardship on Petitioner; and (c) granting the requested waiver would not compromise the public safety or the public interest. Accordingly, the ALJ finds and concludes that Petitioner has met his burden of proof in this matter and that the Amended Petition should be granted.

18. As noted above, Petitioner seeks a one-year waiver of Rule 6713(c)(IX) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. Moreover, the medical examiner's certificate signed by the medical examiner qualifies Petitioner to drive with a waiver for one year. Accordingly, the ALJ finds and concludes that the waiver and exemption will expire one year following the effective date of this Recommended Decision. The one-year waiver will also be subject to the conditions stated in the Ordering Paragraphs.

19. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER

A. It Is Ordered That:

1. Subject to the conditions stated below, the Amended Petition for Waiver/Variance of Safety Regulations – TNC Driver filed by Spencer Thomas Wilcock (Petitioner) on January 6, 2021 for a waiver of Rule 6713(c)(IX) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, is granted.

2. Subject to the conditions stated below, Petitioner is granted a one-year waiver of and exemption from Rule 6713(c)(IX), 4 *Code of Colorado Regulations* 723-6. If this

Recommended Decision becomes a decision of the Commission, the waiver and exemption granted by this Decision shall remain in effect for one year following the effective date of this Recommended Decision,⁸ unless revoked before that date upon notice to Petitioner.

3. The waiver and exemption granted in Ordering Paragraph No. 2 are subject to this condition: Petitioner 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 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.

4. The waiver and exemption granted in Ordering Paragraph No. 2 are subject to this condition: 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.

5. Proceeding No. 21V-0026TNC is closed.

6. 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.

7. 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.

⁸ Pursuant to § 40-6-109, C.R.S., if no exceptions are filed, which is unlikely since this Petition was unopposed, the effective date of this Recommended Decision, and the date it becomes a Decision of the Commission, will be the 20th day following the mailed date on page one of this this Recommended Decision.

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.

8. 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

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director