

Decision No. C14-0774

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0149EC

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

ADVANCED LIMOUSINE, LLC,

RESPONDENT.

**COMMISSION DECISION DENYING
EXCEPTIONS WITH CLARIFICATION**

Mailed Date: July 8, 2014
Adopted Date: June 18, 2014

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I. BY THE COMMISSION**A. Statement**

1. On May 7, 2014, Staff of the Public Utilities Commission (Staff), filed exceptions to Decision No. R14-0410 (Recommended Decision). Staff requests the Commission enter a decision imposing the full civil penalty in Civil Penalty Assessment Notice (CPAN) No. 108475. We deny the exceptions, with clarification, as set forth below.

B. Background

2. Mr. Husen Robleh, a driver for Advanced Limousine, LLC, was unable to produce his medical certificate immediately on December 23, 2013, when requested by Criminal Investigators (CIs) for Staff of the Commission, who were conducting random safety inspections at Denver International Airport (DIA). Staff issued a CPAN to Respondent, Advanced Limousine, LLC, on December 26, 2013, for one violation of Rule 6102(a)(I), 4 *Code of Colorado Regulations* 723-6 of the Commission's Rules Regulating Transportation by Motor Vehicle, and 49 *Code of Federal Regulations* (CFR) § 391.41(a)(1)(i). Rule 6102(a)(I) incorporates by reference 49 CFR § 391.41(a)(1)(i), which provides:

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, and, except as provided in paragraph (a)(2) of this section, when on-duty has on his or her person the original, or a copy, of a current medical examiner's certificate that he or she is physically qualified to drive a commercial motor vehicle.

(Emphasis added)

3. The assigned Administrative Law Judge (ALJ) held a hearing on April 7, 2014, which included Mr. Robleh's testimony claiming, among other facts: (a) when stopped on December 23, 2013 at DIA, he searched the glove compartment of his vehicle for the medical certificate and, after several minutes, inquired whether the CIs wanted him to keep looking because he was concerned he was blocking traffic; (b) the CIs told Mr. Robleh that he could

bring the medical card to the Commission; and (c) the medical certificate was in the vehicle's glove compartment at the time he was questioned by CIs, but it had become stuck to another piece of paper.

4. Mr. Robleh was placed out of service until he provided his medical card to the Commission on December 24, 2013. The certificate verified that it was valid on December 23, 2013, when he was questioned the day before. Staff issued the CPAN to Advanced Limousine, LLC, the next business day, December 26, 2013.

5. In the Recommended Decision, the ALJ states that Staff must show by a preponderance of the evidence that there was a violation of a rule or statute for purposes of issuing a CPAN. The ALJ found that Mr. Robleh's testimony was credible;¹ that Staff failed to show that the medical certificate was not on Respondent's person when he was stopped; and "[t]he only finding that can be ascertained from Staff's testimony is that Respondent was not able to produce the medical certificate in the time he was allotted, which by Staff's own admission was approximately three to five minutes."² In addition, the ALJ stated that "[p]ursuant to § 40-7-113(1)(g), C.R.S., it must be shown that a person *intentionally* violates [Rule 6102(a)(I)] in order to assess a civil penalty" (Emphasis added) and that Staff did not show that this violation was intentional.

C. Exceptions

6. Staff filed exceptions to the Recommended Decision, requesting the Commission impose the full civil penalty amount. Staff argues: (a) the violation is to a Commission Safety Rule, and pursuant to § 40-7-113(1)(g), C.R.S., no element of intent is required; (b) if intent is

¹ The ALJ found Mr. Robleh's credibility was enhanced due to evidence Mr. Robleh had no civil penalty violations since he started driving in 1998 and Mr. Robleh refused the CI's attempts to solicit an illegal ride.

² Recommended Decision, ¶ 29.

required, it was intentional that Mr. Robleh did not “immediately produce” his medical certificate; and (c) “failure to immediately present a valid medical examiner’s certificate is considered an egregious matter,”³ and Staff properly investigated and issued the CPAN.

1. Commission Safety Rule Violation Does Not Require Proof of Intent

7. In the Recommended Decision, the ALJ relied on § 40-7-113(1)(g), C.R.S., to conclude “it must be shown that a person intentionally violates [Rule 6102(a)(I)] in order to assess a civil penalty.”⁴ Section 40-7-113(1)(g) provides:

A person who intentionally violates any provision of article 10.1 or 10.5 of this title not enumerated in paragraph (a), (b), or (e) of this subsection (1), any rule promulgated by the commission pursuant to this title, or any safety rule adopted by the department of public safety relating to motor carriers as defined in section 40-10.1-101 may be assessed a civil penalty of not more than one thousand one hundred dollars; except that any person who violates a safety rule promulgated by the commission is subject to the civil penalties authorized pursuant to 49 CFR 386, subpart G, and associated appendices to part 386, as such subpart existed on October 1, 2010

(Emphasis added).

8. We consider the plain and ordinary meaning of the language to give effect to the legislative intent.⁵ The Commission agrees with Staff that the highlighted language above omits that a person must “intentionally [violate]” Commission issued safety rules to be subject to certain civil penalties. The omission must be viewed as intentional and given effect.⁶ We clarify that, if Staff shows that the violation is of a safety rule promulgated by the Commission, consistent with § 40-7-113(1)(g), C.R.S., there is no element of intentional violation required to assess the civil penalties permitted by the statute.

³ Staff Exceptions, p. 11.

⁴ Recommended Decision, ¶ 25.

⁵ See *State v. Nieto*, 993 P.2d 493, 502 (Colo. 2000).

⁶ See *Zamarripa v. Q&T Food Stores*, 929 P.2d 1332, 1339 (Colo. 1997).

9. Our reading of § 40-7-113(1)(g), C.R.S., promotes critical public safety interests. The General Assembly, through this statute, recognized the importance of enforcing safety rules promulgated by the Commission without regard to the driver's state of mind or intent, with the objective of promoting public safety. Providers of transportation services subject to the Commission's safety rules are placed on notice of the applicability and enforcement of Commission safety rules without regard to the provider's intent. The Staff has the ability to bring violations of safety rules before the Commission; but, such claims must be proven during the hearing and evidentiary phases of the proceeding. The Commission's current regulations do not identify which rules are "safety rules" subject to the "except" clause of § 40-7-113(1)(g), C.R.S. Absent further rulemaking, we will depend upon the expertise and discretion of the ALJs and hearing officers to implement procedures to hear charges of safety rule violations and to ensure respondents are afforded due process rights in defending such charges.

2. Violation Cited in the CPAN

10. We need not address here whether the cited violation is a "safety rule" under § 40-7-113(1)(g), C.R.S., or whether the element of intent is necessary, because we agree with the ALJ that Staff did not meet its burden of proving the underlying basis of the violation. The ALJ found that Mr. Robleh was not able to produce the medical certificate in the brief time he was allotted and that he produced a valid certificate at the Commission offices as instructed by the investigators; the Staff did not prove he did not have it on his person at the time of the investigators' inquiry.⁷

11. We therefore uphold the Recommended Decision's dismissal of the CPAN with prejudice. Staff's exceptions are denied.

⁷ Recommended Decision, ¶¶ 29 and 30.

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

1. The Exceptions filed May 7, 2014, by Staff of the Commission are denied, with clarification, consistent with the discussion above.

2. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

3. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 18, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners