

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14V-0370CP

IN THE MATTER OF THE PETITION FOR WAIVER/VARIANCE OF SAFETY
REGULATIONS-DRIVER OF COMMISSION RULE 6102, 4 CCR 723-6 OF
DARCY GERARD SAFIE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING WAIVER WITH CONDITIONS**

Mailed Date: May 13, 2014

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I. STATEMENT

1. On April 23, 2014, Petitioner, Mr. Darcy Gerard Safie, filed a Petition for Waiver of Safety Regulations-Driver (Petition) with the Colorado Public Utilities Commission (Commission). Mr. Safie seeks a waiver of Commission Rule 6102(a)(I) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6 to allow Petitioner to drive a taxicab. The Petition is not opposed. Hearing Exhibit 5.

2. During its weekly meeting held April 30, 2014, the Commission referred this matter for disposition to an administrative law judge (ALJ).

3. This matter was set for hearing on May 12, 2014. Decision No. R14-0448-I. At the assigned place and time, the ALJ called the matter for hearing.

4. During the course of the hearing, Confidential Hearing Exhibits 1 and 2 were offered, identified, and admitted into evidence; Hearing Exhibits 3, 4, and 5 were also offered, identified, and admitted into evidence.¹ Mr. Safie testified under oath in support of his Petition.

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

II. FINDINGS OF FACT, DISCUSSION, AND CONCLUSIONS

A. Rule Sought to Be Waived.

6. Commission Rule 6102(a), 4 CCR 723-6, incorporates by reference, Federal Rule, 49 *Code of Federal Regulations* (CFR) Part 391.41(b)(3). That Rule provides that a person is physically qualified to drive a commercial vehicle if that person “[h]as no established medical history or clinical diagnosis of diabetes mellitus requiring insulin for control.”

7. The Commission has acknowledged that the prohibition against insulin dependent drivers operating motor vehicles imposed by 49 CFR § 391.41(b)(3) is designed to protect the public safety. *See*, Decision No. R00-1465, Proceeding No. 00M-660CP issued December 26, 2000. The Commission has recognized that it would be “contrary to law” to grant a waiver such

¹ Hearing Exhibits 3 and 4 are redacted to exclude social security numbers, driver’s license numbers and Colorado identification numbers.

as that requested here, in the absence of proper assurances that the public safety will be protected. *Id.*

8. This Commission is generally in accord with federal policy that while a safe and practicable protocol to allow some insulin-dependent drivers to operate commercial motor vehicles is feasible, nonetheless, when considering exemptions such as that requested here, there should be assurances that “the issuance of diabetes exemptions will not be contrary to the public interest and that the exemption achieves an acceptable level of safety.”² It is apparent that the federal government has repositioned its policy from an absolute bar to driving by individuals with insulin dependent diabetes, to a possible exemption based upon a demonstrated ability to effectively manage the diabetes with the use of insulin. This Commission’s policy course is congruous with federal policy.

9. The Commission may grant a waiver or variance from 49 CFR § 391.41(b)(3) for good cause shown, if it finds that the grant would not be contrary to statute. Rule 1003(a) of the Rules of Practice and Procedure, 4 CCR 723-1. In so doing, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *Id.* Moreover, the Commission may subject any waiver granted to such terms and conditions as it deems appropriate. *Id.*

B. Evidence Offered at Hearing.

10. Mr. Safie filed the Petition because he has been diagnosed with type 1 juvenile diabetes, and is insulin dependent. Hearing Exhibit 5. The Petition states that Mr. Safie seeks a waiver of Rule 6102(a) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6,

² *A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes mellitus to Operate in Interstate Commerce as Directed by the Transportation Equity Act for the 21st Century*. 68 Fed. Reg. 52443 (2003).

because, without a waiver, he is precluded from being certified medically to drive commercially. *Id.* Mr. Safie has not requested or received any prior waivers from the Commission.

11. Mr. Safie is in the process of obtaining a position as a taxicab driver with Metro Taxi Denver (Metro). As a part of that process, on April 18, 2014, V. Inez Brasher, D.C. conducted a medical examination on Mr. Safie. The medical examination report confirms that Mr. Safie has diabetes and is insulin dependent. The report concludes that Mr. Safie is not medically certified to drive commercially due to his diabetes and insulin dependence, but that he may be certified if he obtains a waiver.

12. Other than the type 1 diabetes and the requirement that Mr. Safie take daily doses of insulin, the medical examination report shows that he is in good health. His uncorrected eyesight in both eyes is 20/30 acuity (Snellen). His peripheral vision is 90° horizontal field of vision in both eyes. He can recognize and distinguish among traffic control signals and devices showing standard red, green, and amber colors. Additionally, Mr. Safie's blood pressure is well within normal readings. No other health issues are indicated.

13. Mr. Safie was diagnosed with type 1 diabetes 13 years ago. Since that time, he has been under the care of a physician and has become well educated on how to manage his diabetes. Mr. Safie's diabetes is genetically inherited; it is not the result of poor health choices. Mr. Safie manages his diabetes by checking his blood sugar at least twice a day, self-administering insulin daily as needed, eating the proper types of food in a purposeful manner, exercising, monitoring the symptoms of any issues relating to diabetes (*e.g.*, fatigue, extreme hunger, or dizziness), and immediately addressing any such issues. For example, Mr. Safie is always prepared to safely pull over when driving if any symptoms present themselves so that he may safely attend to those symptoms.

14. Mr. Safie reports that he has not suffered any issues with his vision or eyesight due to his diabetes. He has not been recently hospitalized for his diabetes and his blood-sugar is under control. Mr. Safie testified that his diabetic condition has not adversely affected his ability to safely operate a motor vehicle.

15. Mr. Safie provided additional support from a medical professional stating that he is medically cleared to drive a taxi. He has established a relationship with Colorado medical professionals to tend to his diabetes. He appeared ready and willing to abide by any conditions the Commission may place on the grant of a waiver of Rule 6102(a), 4 CCR 723-6.

16. Mr. Safie has lived in Colorado for approximately six months and is licensed to drive. He has no record of traffic infractions in Colorado. Hearing Exhibit 3. Prior to living in Colorado, Mr. Safie lived in Virginia, where he was convicted of several traffic infractions.³ Hearing Exhibit 4. *Id.* The most recent of those infractions occurred nine years ago, when Mr. Safie was in his early twenties.⁴ None of Mr. Safie's traffic infractions were caused by his diabetes. Moreover, because those infractions occurred so distantly in the past, they are no longer a reliable indicator of Mr. Safie's driving. Indeed, the fact that he did not receive traffic infractions in the last nine years is an indication that Mr. Safie has learned from his prior traffic infractions. And, Mr. Safie has never been a driver in a car accident.

17. Mr. Safie seeks a waiver of Rule 6102(a), 4 CCR 723-6, so that he may be employed as a taxicab driver, which will enable him to earn an income, support himself, and pay for his medical treatment. Mr. Safie has been diligent in taking all steps necessary to become a

³ Mr. Safie took a driver education course as a result of one or more of the Virginia traffic infractions.

⁴ Hearing Exhibit 4 shows that Mr. Safie was convicted of driving under revocation or suspension in 2012; however, the revocation or suspension was a result of Mr. Safie's failure to pay fines, court costs, and fees, and failure to complete a driver's education clinic. Hearing Exhibit 4. Thus, the revocation or suspension is not evidence of recent traffic infractions.

Metro driver, including timely seeking to be medically certified, seeing a medical professional, obtaining certified copies of his traffic record and criminal background record, submitting his Petition, as well as appearing at his hearing and testifying.

18. The ALJ found Mr. Safie to be credible. The ALJ has no reason to doubt that Mr. Safie will continue to appropriately tend to his medical needs, nor is there any reason to question Mr. Safie's representations at hearing. Mr. Safie confirmed that he is vigorously maintaining his blood glucose levels by injecting insulin several times a day, which seems sufficient to maintain proper blood sugar levels throughout the day. It would appear that Mr. Safie's diabetes is controlled at this time.

19. Based on the evidence as a whole, the ALJ finds that Mr. Safie has demonstrated that his diabetes is managed and controlled, and that a grant of his request for a waiver of Rule 6102(a) is justified.

20. However, in order to ensure the health, safety, and welfare of his passengers, it is prudent to place conditions on the approval of the waiver of the Safety Rule. Those conditions are set forth in the ordering paragraphs, below.

21. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Subject to the conditions stated below, the Petition for Waiver of Safety Regulations - Driver filed by Darcy Gerard Safie on April 23, 2014 is granted.

2. Subject to the conditions stated below, Darcy Gerard Safie is granted a waiver of, and an exemption from, 49 *Code of Federal Regulations* § 391.41(b)(3), as applicable in

Colorado by Rule 6102(a)(I), 4 *Code of Colorado Regulations* (CCR) 723-6. If this Recommended Decision becomes a decision of the Commission, the waiver and exemption granted by this Decision shall remain in effect through May 13, 2016, unless revoked before that date by the Commission, upon notice to Mr. Safie.

3. The waiver and exemption granted in Ordering Paragraph No. 2 are subject to the following conditions:

- (a) Mr. Safie shall follow the medically-prescribed regimen for treatment of his diabetes.
- (b) Mr. Safie shall notify the Commission, in writing and within seven calendar days of the occurrence, if Mr. Safie is involved in a motor vehicle accident. This reporting requirement applies only to a motor vehicle accident that occurs while Mr. Safie is driving as a taxicab driver 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.
- (c) Mr. Safie shall comply with the Rules Regulating Transportation by Motor Vehicle, found at 4 CCR 723-6, as they may be applicable to him and with the terms of this Decision.
- (d) Mr. Safie shall promptly (within 30 days) notify and file with the Commission, any documents or information concerning any convictions, license suspension, revocation that occur during the period of the waiver granted herein.

4. Pursuant to Commission Rule 6014(b), 4 CCR 723-6, Mr. Safie shall ensure that a copy of the waiver is: (1) carried on his person whenever he is operating a motor vehicle over which the Commission has jurisdiction; and (2) maintained in Mr. Safie's jurisdictional employer's driver's qualification file.

5. 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.

6. 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.

7. 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)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge