

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14V-0935EC

IN THE MATTER OF THE PETITION OF CHARM CHAUFFEURS INC., FOR AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF RULE 6102 (DRIVER) OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE 4 CCR-723-6.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING PETITION AND GRANTING
WAIVER, SUBJECT TO CONDITIONS**

Mailed Date: October 2, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On September 12, 2014, Charm Chauffeurs Inc. (Petitioner) filed a Verified Petition for Waiver of Safety Regulations – Driver for Edwin J. Callaway, Jr. The petition included the following documents: (a) Confidential Driving Record (driving record); (b) Confidential Medical Exam dated February 24, 2014 conducted by Dr. Sandra Plybon; (c) an additional Confidential Medical Exam dated September 4, 2014 conducted by Dr. Dennis Eicher; (d) a letter from Mr. Callaway's personal doctor dated September 10, 2014; and (e) letter from Charmaine Jones, the owner of Charm Chauffeurs.

2. The Petition requests a waiver of 49 *Code of Federal Regulations* (CFR) § 391.41(b)(3), as made applicable in Colorado by Rule 4 *Code of Colorado Regulations* 723-6-6102(a)(I) of the Commission Rules Regulating Transportation by 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 September 24, 2014.

4. Pursuant to § 40-6-109(5), C.R.S., and *Rule 1403*, 4 CCR 723-1 of the Commission's Rules of Practice and Procedure, an uncontested application may be processed under the modified procedure, without a formal hearing. Based upon the filings made by the Petitioner, the undersigned ALJ does not feel a hearing is necessary.

5. Petitioner has been employed by Charm Chauffeurs Inc. as a driver for four years. He has had no health issues during this time. *See letter from Charmaine Jones.*

6. Petitioner states that he suffers from Type II diabetes.

7. Petitioner's diabetes is controlled by insulin.

8. The letter from Mr. Callaway's doctor states that his blood glucose and hemoglobin A1C levels are currently under controlled.

9. Mr. Callaway is currently under the care of a physician and has managed his diabetes through diet and medication since the diagnosis. He recently saw his doctor prior to filing the petition in this matter.

10. A review of Mr. Callaway's driving record gives no indication that his having diabetes has affected the safety of his driving. In the past three years, he has had no moving violations.

11. The Petitioner seeks a one-year waiver of 49 CFR § 391.41(b)(3).

12. The record establishes that: (a) Petitioner has diabetes; (b) Petitioner's diabetes is controlled with insulin; (c) but for the insulin-controlled diabetes, Petitioner would be found to be physically qualified to drive a commercial motor vehicle; (d) strict application of 49 CFR § 391.41(b)(3) would work a hardship on Petitioner; and (e) granting the requested waiver would not compromise the public safety or the public interest, so long as Petitioner follows the

prescribed medical regimen for treatment of his diabetes. In addition, as no one has sought to intervene, the Petition is unopposed.

13. 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, subject to conditions, Edwin Callaway, Jr. should be granted a waiver of, and exemption from, 49 CFR § 391.41(b)(3) and that the waiver and exemption should expire one year following the effective date of this Recommended Decision.

14. 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 stated below, the Verified Petition for Waiver of Safety Regulations - Driver filed by Charm Chauffeurs Inc. on September 12, 2014 for Edwin Callaway Jr., is granted.

2. Subject to the conditions stated below, Mr. Edwin Callaway Jr. is granted a waiver of, and an exemption from, 49 *Code of Federal Regulations* § 391.41(b)(3), as applicable in Colorado by Rule 4 *Code of Colorado Regulations* 723-6-6102(a)(I). If this Recommended Decision becomes a decision of the Commission, the waiver and exemption granted by this Decision shall remain in effect through October 2, 2015, unless revoked before that date upon notice to Mr. Edwin Callaway Jr.

3. The waiver and exemption granted in Ordering Paragraph No. 2 are subject to this condition: Mr. Edwin Callaway Jr. shall follow the medically-prescribed regimen for treatment of his diabetes.

4. The waiver and exemption granted in Ordering Paragraph No. 2 are subject to this condition: Mr. Edwin Callaway Jr. shall notify the Commission, in writing and within seven calendar days of the occurrence, if Mr. Callaway Jr. is involved in a motor vehicle accident. This reporting requirement applies only to a motor vehicle accident that occurs while Mr. Callaway Jr. is driving as a chauffeur or cab 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.

5. The waiver and exemption granted in Ordering Paragraph No. 2 are subject to this condition: Mr. Edwin Callaway Jr. shall comply with the Rules Regulating Transportation by Motor Vehicle as they may be applicable to him and with the terms of this Decision.

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.

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)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge