

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14V-0998EC

IN THE MATTER OF THE PETITION OF CHARLES SIGMAN, 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
MELODY MIRBABA
GRANTING WAIVER WITH CONDITIONS**

Mailed Date: October 24, 2014

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I. STATEMENT

1. On October 2, 2014, Petitioner, Mr. Charles Sigman, filed a Petition for Waiver of Safety Regulations-Driver (Petition) with the Colorado Public Utilities Commission (Commission). Hearing Exhibit 6. Mr. Sigman 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.

2. During its weekly meeting held October 8, 2014, the Commission referred this matter for disposition to an administrative law judge (ALJ).

3. This matter was set for hearing on October 24, 2014. Decision No. R14-1241-I issued October 14, 2014. At the assigned place and time, the ALJ called the matter for hearing. Mr. Sigman appeared.

4. During the course of the hearing, Confidential Hearing Exhibits 3 and 5 were offered, identified, and admitted into evidence; Hearing Exhibits 1, 2, 4, 6 and 7 were also offered, identified, and admitted into evidence.¹ Mr. Sigman testified in support of his Petition. Pursuant to Rule 1201(b)(I), of the Rules of Practice and Procedure, 4 CCR 723-1, the ALJ permitted Mr. Sigman to represent himself.

II. FINDINGS, DISCUSSION, AND CONCLUSIONS

A. Rule Sought to Be Waived.

5. The Commission has adopted by reference, Federal Safety Rules, including the regulation at issue here, 49 *Code of Federal Regulations* Part 391.41(b)(10) (Rule 391.41(b)(10)), to protect the public safety. Rule 6102(a), 4 CCR 723-6. Mr. Sigman seeks a waiver of Rule 391.41(b)(10). That Rule provides that a person is physically qualified to drive a commercial vehicle if that person:

[h]as distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, [has] distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

¹ Hearing Exhibit 2 is redacted to exclude Mr. Sigman's driver's license number.

6. The Commission may grant a waiver of Rule 391.41(b)(10) for good cause shown so long as it would not be contrary to law. Rule 1003(a), 4 CCR 723-1. The Commission has recognized that it would be “contrary to law” to grant an exemption of the Safety Rules, such as that requested here, in the absence of proper assurances that the public safety will be protected. *See, e.g.*, Decision No. R00-1465, issued December 26, 2000 in Proceeding No. 00M-660CP. Among other factors, the Commission may consider conditions of hardship and equity when deciding whether to grant a waiver of a rule. Rule 1003(a), 4 CCR 723-1. The Commission may subject any waiver granted to such terms and conditions as it deems appropriate. *Id.*

B. Evidence Offered at Hearing.

7. Mr. Sigman owns a luxury limousine company, Silverado Limo, LLC, (Silverado), which is licensed by the Commission to provide luxury limousine service. Mr. Sigman is Silverado’s only driver. Mr. Sigman has invested a great deal of time and resources into his limousine company. Without a waiver, Mr. Sigman will be unable to operate his business, which would create a financial hardship on him.

8. Mr. Sigman filed the Petition because his right eye has been diagnosed with a disorder called amblyopia, commonly known as lazy eye. Hearing Exhibit 1. Due to this condition, Mr. Sigman’s vision in his right eye does not meet Rule 391.41(b)(10)’s requirement that distant visual acuity in each eye (viewing separately) be at least 20/40 (Snellen). However, evidence demonstrated that Mr. Sigman’s distant binocular acuity (with both eyes viewing) meets the requirements of Rule 391.41(b)(10) for both eyes viewing. In addition, the evidence also demonstrated that Mr. Sigman’s periphery vision meets the requirements of Rule 391.41(b)(10).

9. Mr. Sigman presented credible evidence from Dr. Emily Baker, O.D., that, in her medical opinion, Mr. Sigman's vision is sufficient to perform the driving tasks required to safely operate a commercial motor vehicle in intrastate commerce. Hearing Exhibit 1.

10. Mr. Sigman reports that the condition with this right eye causes blurry vision in that eye, but when viewing with both eyes together, the blurry vision is no longer apparent. This is consistent with confidential evidence in the record. Hearing Exhibit 3. Mr. Sigman is able to distinguish colors of traffic signals and devices showing standard red, green, and amber.

11. Mr. Sigman has recently obtained a Commercial Driver's License (CDL), after successfully completing 170 hours of training on large vehicles (tractors and trailers). Hearing Exhibits 2 and 7. That training will help him to safely drive his limousine, a 23 foot vehicle. Mr. Sigman has already obtained a medical waiver from the Colorado State Patrol for his CDL, relating to the same vision issue presented in this proceeding. Hearing Exhibit 2.

12. With the exception of a recent traffic infraction, Mr. Sigman's driving record is devoid of traffic infractions for the last 15 years.² Hearing Exhibit 5.

C. Discussion and Conclusions.

13. The ALJ finds Mr. Sigman to be credible. The evidence was undisputed.

14. Based on the evidence as a whole, the ALJ finds that Mr. Sigman has demonstrated, by a preponderance of the evidence, that he can safely operate a commercial motor vehicle with his current vision, and that granting the waiver is not contrary to law. In addition, the evidence and the conditions set forth in paragraph 15 below establish sufficient

² Mr. Sigman's driving record, Confidential Hearing Exhibit 5, only shows his driving record for the last seven years. Mr. Sigman testified that it had been 15 years since his last traffic infraction. The ALJ finds this testimony credible.

assurances that the public safety will be protected by granting the waiver. Moreover, denying the waiver would result in an unnecessary financial hardship on Mr. Sigman. The ALJ concludes that a grant of Mr. Sigman's request for a waiver is justified, reasonable, and not contrary to the public interest.

15. In order to ensure the health, safety and welfare of Mr. Sigman's passengers and the public, it is prudent to place conditions on the waiver granted. In the event that Mr. Sigman experiences any adverse symptoms associated with the condition in his right eye, such as a worsening of the vision in either eye, he shall notify his jurisdictional transportation provider employer immediately, which, in turn, shall notify Commission Transportation Staff, so they may evaluate whether it is appropriate for him to continue driving.

16. As required by Rule 6014(b), 4 CCR 723-6, Mr. Sigman's jurisdictional transportation provider employer shall ensure that a copy of the waiver is: (1) carried on the affected driver's person whenever the driver is operating a motor vehicle over which the Commission has jurisdiction; and (2) maintained in the affected driver's qualification file.

17. 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/Variance of Safety Regulations - Driver filed by Mr. Charles Lauren Sigman on October 2, 2014 is granted.

2. Subject to the conditions stated below, Mr. Sigman is granted a waiver of, and an exemption from, 49 *Code of Federal Regulations* § 391.41(b)(10), as applicable in Colorado by Rule 6102(a)(I), 4 *Code of Colorado Regulations* (CCR) 723-6.

3. If this Recommended Decision becomes a decision of the Commission, the waiver and exemption granted by this Decision shall remain in effect through October 24, 2016, unless revoked before that date by the Commission, upon notice to Mr. Sigman.

4. The waiver is granted subject to the following conditions:

- a. Mr. Sigman's jurisdictional transportation provider employer shall ensure that a copy of the waiver is carried on Mr. Sigman's person whenever he is operating a motor vehicle over which the Commission has jurisdiction, and is maintained in Mr. Ahmed's qualification file.
- b. Mr. Sigman shall immediately notify his jurisdictional transportation provider employer if he experiences any adverse symptoms associated with his eye condition, including, but not limited to a worsening of the vision in either eye. Mr. Sigman's jurisdictional transportation provider employer shall immediately share this information with Commission Transportation Staff so they may evaluate whether it is appropriate for Mr. Sigman to continue driving.

5. Pursuant to Commission Rule 6014(b), 4 CCR 723-6, Mr. Sigman 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. Sigman's jurisdictional employer's driver's qualification file.

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)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director