

Decision No. R14-1310

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14V-1009CP

IN THE MATTER OF THE PETITION OF LAVANDRIS SELFE 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.

**PUBLIC VERSION OF
RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING PETITION IN PART; GRANTING
WAIVER, IN PART AND SUBJECT TO
CONDITIONS; AND CONTAINING ADVISEMENT**

Mailed Date: October 30, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS¹

1. On October 6, 2014, Mr. Lavandris Selfe (Petitioner) filed a verified Petition for Waiver/Variance of Safety Regulations - Driver. The filing commenced this Proceeding.

2. On October 29, 2014, Petitioner supplemented the October 6, 2014 filing. In this Decision, unless the context indicates otherwise, Petition refers to the October 6, 2014 filing as supplemented on October 29, 2014.

3. Three documents are attached to the Petition: (a) Petitioner's Motor Vehicle Records for the past three years (driving record); (b) Medical Examination Report for Commercial Driver Fitness Determination dated October 28, 2014 (Medical Examination Report); and (c) a letter from Darren Dennis, PA-C (Dennis letter).

¹ Confidential information is redacted from this version of the Recommended Decision.

4. The driving record, Medical Examination Report, and Dennis letter contain Petitioner's social security number or date of birth (or both) or contain confidential medical information. As a result, these documents contain information that is confidential and are filed under seal with the Commission. Reference in this Decision to information contained in those documents is confidential.

5. On October 15, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

6. Pursuant to § 40-6-109(2), C.R.S., the ALJ now transmits to the Commission the record of this Proceeding together with a written recommended decision.

7. The Petition requests a waiver of 49 *Code of Federal Regulations* (CFR) § 391.41(b)(3) (2010), as made applicable in Colorado by Rule 4 *Code of Colorado Regulations* 723-6-6102(a)(I).² Petitioner requests a two-year waiver, beginning October 1, 2014 and ending October 1, 2016.

8. Petitioner recently moved to Colorado Springs, Colorado and has been offered employment as a taxi driver. Petitioner previously worked as a taxi driver in Missouri. Driving is Petitioner's livelihood.

9. Petitioner has [REDACTED]. As a result, the Medical Examination Report (at 3) states that Petitioner "meets standards, but periodic evaluation [is] required due to [REDACTED]. Driver [is] qualified only for 3 months[.]" Although Petitioner must obtain [REDACTED] waiver/exemption, the Medical Examination Report establishes that Petitioner meets all other physical requirements and qualifications for certification as a

² This Rule is found in the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723.

commercial driver. The medical certificate expires on January 28, 2015. Medical Examination Report at 4.

10. The Dennis letter at 1 states that, at present, Petitioner's [REDACTED]

[REDACTED]. The Dennis letter contains the opinion that Petitioner is able safely to operate a motor vehicle and that there is no reason that Petitioner's medical condition should prevent him from pursuing his occupation as a driver.

11. Petitioner's driving record establishes that, in the past three years, he has had no moving violations. It also establishes that, over that same period, Petitioner has not been involved in a traffic accident.

12. Petitioner seeks a two-year waiver of 49 CFR § 391.41(b)(3). That section reads: "A person is physically qualified to drive a commercial motor vehicle if that person -- ... has no established medical history or clinical diagnosis of [REDACTED]

[REDACTED]"

13. The record in this Proceeding establishes: (a) Petitioner has [REDACTED]; (b) but for the [REDACTED], Petitioner would be physically qualified to drive a commercial motor vehicle (*e.g.*, taxicab); (c) strict application of 49 CFR § 391.41(b)(3) would work a hardship on Petitioner because it would deprive him of the opportunity to continue in his occupation as a taxi driver; and (d) granting the requested waiver will not compromise the public safety or the public interest, so long as Petitioner follows the prescribed medical regimen for [REDACTED].

14. Based on the record of this Proceeding, the ALJ finds the Petitioner has met his burden of proof in this matter; that the Petition should be granted, in part; and that, consistent

with the Medical Examination Report, the requested waiver should be granted for a period of three months (*i.e.*, expire on January 28, 2015). In addition, the ALJ finds that the waiver should be subject to the conditions contained in the Ordering Paragraphs of this Decision. The ALJ concludes that, subject to the conditions contained in the Ordering Paragraphs, Petitioner Lavandris Selfe should be granted a waiver of 49 CFR § 391.41.(b)(3) and that the **waiver should expire on January 28, 2015.**

15. **Mr. Selfe is advised and is on notice that** in order to drive as a taxicab driver *after* January 28, 2015, Mr. Selfe must obtain another exemption from the Commission. To obtain the exemption, Mr. Selfe must file another petition for waiver and must file with that petition: (a) a new Medical Examination Report for Commercial Driver Fitness Determination; (b) a new statement that he is able safely to operate a motor vehicle and that there is no reason that his medical condition should prevent him from pursuing his occupation as a driver; and (c) a new copy of his driving record for the past three years. To give the Commission sufficient time to rule on the petition, the ALJ suggests that Mr. Selfe file the new petition not later than December 22, 2014.

16. In accordance with § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above and subject to the three conditions set out below, the verified Petition for Waiver of Safety Regulations - Driver filed on October 6, 2014 by Lavandris Selfe, as supplemented on October 28, 2014, is granted in part.

2. Consistent with the discussion above and subject to the three conditions set out below, Lavandris Selfe is granted a waiver of 49 *Code of Federal Regulations* § 391.41(b)(3) (2010), as made applicable in Colorado by Rule 4 *Code of Colorado Regulations* 723-6-6102(a)(I). The waiver shall remain in effect through and including January 28, 2015, unless the Commission revokes the waiver upon notice to Mr. Selfe or unless the provisions of Ordering Paragraph No. 3 apply.

3. The waiver granted in Ordering Paragraph No. 2 is subject to this condition: Lavandris Selfe shall follow the medically-prescribed regimen for treatment of [REDACTED]. If this condition is not met, the waiver granted by this Decision is rendered void without further order of the Commission.

4. The waiver granted in Ordering Paragraph No. 2 is subject to this condition: Lavandris Selfe 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 Lavandris Selfe is driving a taxicab. This reporting requirement 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. If this condition is not met, the waiver granted by this Decision may be rendered void by subsequent order of the Commission.

5. The waiver granted in Ordering Paragraph No. 2 is subject to this condition: Lavandris Selfe shall comply with the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723, as they may be applicable to him and shall comply with the terms of this Decision. If this condition is not met, the waiver granted by this Decision may be rendered void by subsequent order of the Commission.

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

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge