

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19M-0230TR

IN THE MATTER OF THE PETITION OF ROBERT LAWRENCE VELHO TO REVERSE AN
INITIAL DRIVER DISQUALIFICATION PURSUANT TO RULE 6105 OF 4 CCR 723-6.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
DENYING PETITION WITHOUT
PREJUDICE AND CLOSING PROCEEDING**

Mailed Date: August 14, 2019

I. STATEMENT

A. Background

1. On May 2, 2019, Robert Lawrence Velho filed a letter asking the Commission to reverse an initial determination by Commission Staff disqualifying him from driving for a limited regulation passenger carrier and/or taxi carrier on the basis of a fingerprint-based criminal history record check, pursuant to Commission Rule 6105.¹ The Commission construed Mr. Velho's letter as a Petition to reverse the initial driver disqualification determination and initiated the instant Proceeding (Petition).

2. On May 15, 2019, the matter was referred to an Administrative Law Judge (ALJ) for resolution. The proceeding was subsequently assigned to the undersigned ALJ.

3. On June 5, 2019, the ALJ issued Decision No. R19-0472-I that, among other things, scheduled the hearing in this proceeding for July 11, 2019.

4. On June 7, 2019, Trial Staff of the Commission (Staff) filed its Notice of Intervention in this proceeding.

¹ Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6.

5. On July 10, 2019, the Commission received correspondence from Mr. Velho stating that he could not attend the hearing scheduled for July 11, 2019 due to his work schedule in Steamboat Springs.

6. The ALJ informed the parties to this proceeding by email on July 10, 2019, that the hearing would be vacated and rescheduled due to Mr. Velho's unavailability. The ALJ requested the parties to identify in response to the email which of the following dates they were available for the rescheduled hearing: July 12, 15, 17, 18, 29, 31, and August 1. The parties responded and stated that they were both available on July 31, 2019. Mr. Velho also requested permission to attend the hearing by telephone, and Staff did not object thereto.

7. In Decision No. R19-0602-I issued July 16, 2019, the ALJ vacated the hearing scheduled for July 11, 2019, rescheduled the hearing for July 31, 2019 at 10:30 a.m., granted Mr. Velho's request to attend the hearing by telephone, and ordered Staff to file and serve by email to Mr. Velho the exhibits Staff would seek to admit at the hearing. The deadline for Staff to file and serve its exhibits was July 30, 2019. Decision No. R19-0602-I required Mr. Velho to be available on July 31, 2019 starting at 10:25 a.m. to receive a call from the Commission to participate in the hearing. The telephone number specified in the Decision was the telephone number supplied by Mr. Velho.

8. On July 30, 2019, Staff filed and served its witness and exhibit list and the exhibits it intended to seek to admit into the evidentiary record during the hearing scheduled for July 31, 2019. Staff served these documents on Mr. Velho by email, as required in Decision No. R19-0602-I.

9. At 10:30 a.m. on July 31, 2019, the ALJ convened the hearing. The attorney and witness for Staff appeared for the hearing. The ALJ attempted several times to contact Mr. Velho at the telephone number supplied by Mr. Velho, but Mr. Velho did not answer. The ALJ left

voicemail messages instructing Mr. Velho that the ALJ and Staff were ready to commence the hearing and requesting Mr. Velho to call back the ALJ. Mr. Velho did not return the calls. The ALJ took a lengthy recess, after which the ALJ attempted to call Mr. Velho again. However, Mr. Velho did not answer the call. As a result, the ALJ adjourned the hearing.

10. Mr. Velho has not submitted any information explaining his failure to appear at the hearing.

11. Because Mr. Velho, who has the burden, failed to appear for the hearing noticed in Decision No. R19-0602-I, the Petition shall be dismissed without prejudice.

12. Pursuant to § 40-6-109, C.R.S., the ALJ hereby transmits to the Commission the record of this proceeding and a recommended decision.

II. ORDER

A. The Commission Orders That:

1. The Petition to Reverse an Initial Driver Disqualification Determination by Commission Staff filed on May 2, 2019 by Robert Lawrence Velho is dismissed without prejudice.

2. Proceeding No. 19M-0230TR is closed.

3. 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.

4. 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.

5. 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

CONOR F. FARLEY

Administrative Law Judge