

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19V-0572TNC

IN THE MATTER OF THE PETITION OF RONALD G. RICHARD JR. FOR A WAIVER OF
RULE 6713 (PROOF OF MEDICAL FITNESS) OF THE RULES REGULATING
TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
DENYING PETITION FOR WAIVER**

Mailed Date: November 12, 2019

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On October 18, 2019, Ronald G. Richard Jr. (Petitioner) filed a Petition for Waiver/Variance of Safety Regulations – TNC Driver (Petition). The Petition included the following documents: (a) confidential Medical Examiner’s Certificate and Medical Examination Report; (b) Certified Official Driving Record (driving record); and (c) a copy of Petitioner’s Driver License.

2. Petitioner seeks a waiver of Rule 6713(c)(II) of the Commission Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. Petitioner requires a waiver be granted to permit him to drive for a transportation network company (TNC) because the medical examiner found him not qualified to drive for a TNC without a waiver due to his diabetes mellitus currently requiring insulin for control.

3. On October 30, 2019, the Commission referred this proceeding to an Administrative Law Judge (ALJ) for disposition.

4. Rule 6713(a), 4 CCR 723-6, provides that “[n]o TNC shall permit any driver to log in to its digital network that is not medically examined and certified pursuant to 49 C.F.R. § 391.41, as revised on October 1, 2010 [,]or pursuant to subsections (b)-(d) of this rule.”

5. Under Rule 6713(c)(II), 4 CCR 723-6, “[a] person is physically qualified to drive if, upon physical examination, the medical examiner determines that the person does not exhibit . . . [an] established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control likely to interfere with his/her ability to control and drive a motor vehicle safely.”

6. The Commission Rules, however, also provide that a person may petition the Commission for a waiver or variance of any rule in this Part 6. *See* Rules 6003 and 1003 of the Commission’s Rules of Practice and Procedures, 4 CCR 723-1. In part, Rule 1003 provides that “[t]he Commission may, for good cause shown, grant waivers or variances from . . . Commission rules In making its determination[,], the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.” Rule 1003(a), 4 CCR 723-1.

7. The Commission may take evidence in uncontested or unopposed proceedings by affidavit or otherwise, without the necessity of a formal oral hearing. § 40-6-109(5), C.R.S.

8. Rule 1403(a) provides that the Commission may determine a petition without a hearing and without further notice if the application or petition is uncontested or unopposed, if a hearing is not requested or required by law, *and if the application or petition is accompanied by a sworn statement verifying sufficient facts* and supported by attachments and/or exhibits that adequately support the filing (emphasis added).

9. Page two of the Petition states:

The items checked demonstrate good cause as to why a waiver of the Commission's rule(s) should be granted (check all that apply):

- ☐ The filed Medical Examiner's Certificate requires a waiver for me to drive for a transportation network company.
- ☐ I want to drive for a transportation network company in Colorado.
- ☐ This petition, and all additional information as referenced above, shows that I can safely operate a personal vehicle in connection with providing transportation network company services.
- ☐ Other:

I verify that I have read and know the contents of this petition, including all additional information filed by me, and that the contents are true and correct to the best of my knowledge and belief. I also claim pages 1 through 3 of the TNC Medical Examination Report, the copy of all driving records and the copy of my Driver's License to be confidential in accordance with Rule 1100 et seq. of the Commission's Rules of Practice and Procedure, 4 CCR 723-1 (available at www.colorado.gov/dora/pucrules). I agree and understand that any false statement of facts may cause cancellation of this waiver, if granted.

Petitioner Signature:

Date:

10. Here, the Petition is not verified by Petitioner. Specifically, Petitioner did not check any of the boxes as being applicable to why a waiver should be granted. Moreover, Petitioner did not sign the Petition, verifying that the contents of it, and the additional information filed with it, are true and correct to the best of Petitioner's knowledge and belief.

11. Based on the record, the ALJ finds and concludes Petitioner has not met his burden of proof in this matter and that the Petition, and waiver sought, should be denied without prejudice.

12. 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. The verified Petition for Waiver/Variance of Safety Regulations – Driver, filed by Ronald G. Richard Jr. on October 18, 2019, is denied without prejudice.¹

2. A waiver of Rule 6713(c)(II), 4 *Code of Colorado Regulations* 723-6, is denied without prejudice.

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.

¹ Because the Petition is denied without prejudice, Petitioner may refile a verified petition that is signed and completed, along with all of the required additional information as attachments to the petition.

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)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director