

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19V-0571EC

IN THE MATTER OF THE PETITION OF MATTHEW D. KARGES FOR A WAIVER OF
RULE 6109 (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, Matthew D. Karges (Petitioner) filed a verified Petition for Waiver/Variance of Safety Regulations – 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 one-year waiver of Rule 6109(c) of the Commission Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. Specifically, Petitioner requests a waiver be granted to permit him to drive a commercial motor vehicle because he is a left leg below knee amputee with high blood pressure and he can safely operate such vehicle.

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

4. Rule 6109(a) of the Commission Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, incorporates by reference 49 *Code of Federal Regulations* (C.F.R.) Part 391.

5. Rule 49 C.F.R. § 391.41(a)(1)(i) states in relevant part: “A person subject to this part must not operate a commercial motor vehicle unless he or she is medically certified as physically qualified to do so” Section 391.41(b)(1) and (6) respectively provide: “A person is physically qualified to drive a commercial motor vehicle if that person . . . [h]as no loss of a foot, a leg, a hand, or an arm, or has been granted a skill performance evaluation certificate pursuant to § 391.49 . . . and [h]as no current clinical diagnosis of high blood pressure likely to interfere with his/her ability to operate a commercial 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.

9. Here, the Petitioner identified no ground in support of the requested waiver (*i.e.*, no grounds in the form, including other, are indicated to apply). Further, the verified Petition affirms that “[t]he filed Medical Examiner’s Certificate states [that Petitioner is] medically fit to drive only if accompanied by a waiver for . . . loss of limb . . . [and] [h]igh blood pressure”¹

10. The Medical Examiner concluded that Petitioner did not satisfy the physical qualification standards in 49 C.F.R. § 391.41-391.49. Rather, the Medical Examiner’s Certificate found him medically qualified **only** when accompanied by a Skill Performance Evaluation certificate (SPE) under 49 C.F.R. § 391.49.

11. As a result of the medical examination, Petitioner is not qualified to drive. Petitioner failed to file an SPE Certificate.

12. Petitioner failed to demonstrate sufficient grounds for a waiver of Commission rules. Petitioner failed to demonstrate he is able to safely operate vehicles permitted to be operated under the waiver sought. 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.

13. Petitioner may choose to file a new petition with additional support. Without determining what evidence may be acceptable in a future proceeding, the undersigned provides some additional information for the Petitioner in this uncommon circumstance (based upon the undersigned’s experience). Petitioner may obtain an SPE. Petitioner may inquire whether the

¹ Application at p. 1.

Medical Examiner is willing to modify the certificate or issue a medical opinion in a different form (e.g., the medical opinion expressed on the Colorado form available on the Commission's website does not include the SPE requirement).² Finally, the undersigned informs Petitioner that the Commission has granted a waiver based upon alternative evidence of driver skills in lieu of an SPE certificate.³ See Decision No. R07-0264 in Proceeding No. 07M-074CP issued April 6, 2007.

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. The verified Petition for Waiver/Variance of Safety Regulations – Driver, filed by Matthew D. Karges on October 18, 2019, is denied without prejudice.⁴

2. A waiver of Rule 6109(c), 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.

² An alternative Medical Examination Report and Medical Examiner's Certificate (which does not include the SPE Certificate), may be found on the Commission's website at the following link:

<https://drive.google.com/file/d/1oaJ0PRkwjvYGkdvVKwOn3Q-rjzsV2kH6/view>.

³ Testimony was offered from the driver's employer regarding an extensive road test performed in a van similar to the one that would be driven if the waiver were granted. The test included in-town and highway driving that was typical of the roads over which transportation would be provided, including various aspects of driving.

⁴ Because the Petition is denied without prejudice, Petitioner may refile his verified petition and all required additional information as attachments to the petition.

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

G. HARRIS ADAMS

Administrative Law Judge