

Decision No. R20-0560-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20V-0289TNC

IN THE MATTER OF THE PETITION OF BYUNG SOO KIM FOR A WAIVER OF RULE 6713(C) (PROOF OF MEDICAL FITNESS) OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE 4 CCR 723-6.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
GRANTING PETITION AND
WAIVER, SUBJECT TO CONDITIONS**

Mailed Date: July 31, 2020

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On July 2, 2020, Byung Soo Kim (Petitioner) filed a verified Petition for Waiver/Variance of Safety Regulations – Drivers of vehicles with a seating capacity of 15 passengers or less, including the driver. Because this Petition states that Petitioner requests a vision waiver to drive for Uber, it will be construed as a verified Petition for Waiver/Variance of Safety Regulations – TNC Driver (Petition).¹ The Petition included the following documents: (a) a confidential Medical Examiner's Report and Medical Examiner's Certificate; (b) Certified Official Driving Record (driving record); (c) a copy of Petitioner's Driver License; and (d) physician letter from Kingsley Okafor, MD.

¹ The Petition includes a request for a waiver to drive for Uber. According to Commission records, Rasier, LLC, holds an active Transportation Network Company (TNC) permit. "Uber" does not hold any active authority with the Commission. The Commission has construed the Petition as a request for waiver of Commission rules to permit Petitioner to drive for a TNC by assignment of the proceeding number above. The Petition will be decided accordingly.

2. The Petition, as construed, seeks a two-year waiver of Rule 6713(c)(IX) 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 for a TNC because he can safely operate a personal vehicle in connection with providing TNC services.

3. On July 22, 2020, the Commission referred this proceeding to an Administrative Law Judge (ALJ) for disposition.

4. Rule 6713(a) of the Commission Rules Regulating Transportation by Motor Vehicle, 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)(IX), 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 ... [a] visual disorder or impairment resulting in acuity of worse than 20/40 (Snellen) in each eye without corrective lenses or corrected to 20/40 (Snellen) or better with corrective lenses.”

6. The Commission’s 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), 4 CCR 723-1, 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, no one sought to intervene in the proceeding. The Petition is unopposed. Additionally, the Petition is verified by Petitioner and the required documents have been submitted with the Petition. Thus, the Petition shall be considered without a hearing.

10. The Medical Examiner's Certificate filed with the Petition certifies that Petitioner is medically fit to drive for a TNC only if accompanied by the waiver sought.

11. The Petition, as construed, requests a two-year waiver of Rule 6713(c)(IX), 4 CCR 723-6, based upon grounds stated in the Petition and incorporated herein by reference.

12. A review of Petitioner's driving record gives no indication that his visual impairment has affected the safety of his driving. Granting the waiver is in the public interest in that it keeps a knowledgeable and safe driver on the street for an authorized carrier.

13. The record establishes that: (a) Petitioner has a visual impairment; (b) Petitioner can safely operate a personal vehicle in connection with providing TNC services; (c) but for his visual impairment, Petitioner would be found to be physically qualified to drive a commercial motor vehicle; (d) strict application of Rule 6713(c)(IX), 4 CCR 723-6, would create a hardship on Petitioner; and (e) granting the requested waiver would not compromise the public safety or the public interest.

14. Based on the record, the ALJ finds and concludes Petitioner has met his burden of proof in this matter and that, subject to conditions on the waiver, the Petition should be granted.

The ALJ finds and concludes that granting the requested waiver subject to the conditions specified below provides reasonable assurances that the health, safety, and welfare of Petitioner's passengers and the public will be protected.

15. The ALJ finds and concludes that, subject to the conditions ordered below, Petitioner should be granted a waiver of Rule 6713(c)(IX), 4 CCR 723-6, and that the waiver should expire two years following the effective date of this Recommended Decision. Granting such waiver has no effect on other medical requirements (*e.g.*, the medical examination).

16. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. Subject to the conditions ordered herein, the verified Petition for Waiver/Variance of Safety Regulations – Drivers of vehicles with a seating capacity of 15 passengers or less, which has been construed as a Petition for Waiver/Variance of Safety Regulations – TNC Driver, filed by Byung Soo Kim (Petitioner) on July 2, 2020, is granted.

2. Petitioner is granted a waiver of Rule 6713(c)(IX), 4 *Code of Colorado Regulations* 723-6, subject to the following conditions:

a) Petitioner shall notify the Commission, in writing and within seven calendar days of the occurrence, if Petitioner is involved in a motor vehicle accident. This reporting requirement applies only to a motor vehicle accident that occurs while Petitioner is driving as a transportation network company driver for hire and 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; and

b) Petitioner shall comply with the Rules Regulating Transportation by Motor Vehicle as they may be applicable to him and with the terms of this Decision.

3. If this Recommended Decision becomes a decision of the Commission, the waiver and exemption granted by this Decision shall remain in effect for a period of two years from the effective date of this Decision, unless revoked before that date upon notice to Petitioner.

4. 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.

5. 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.

6. 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