

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20M-0128TR

IN THE MATTER OF THE PETITION OF C. J. JOHNSON TO REVERSE AN INITIAL
DRIVER DISQUALIFICATION DETERMINATION PURSUANT TO RULE 6105 OF
4 CODE OF COLORADO REGULATIONS 723-6.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
DISMISSING PETITION WITHOUT PREJUDICE**

Mailed Date: October 13, 2020

I. STATEMENT

1. On March 27, 2020, Petitioner C.J. Johnson filed a Petition to reverse an initial determination of driver disqualification pursuant to Commission Rule 6105 of 4 *Code of Colorado Regulations* 723-6, Rules Regulating Transportation by Motor Vehicle.

2. On April 15, 2020, the matter was referred to an Administrative Law Judge (ALJ).

3. On April 21, 2020, Trial Staff of the Commission (Staff) timely filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401. The intervention is of right, and Staff is a party in this matter.

4. On April 23, 2020, by Decision No. R20-0294-I, an evidentiary hearing was scheduled for July 21, 2020.

5. On June 26, 2020, by Decision No. R20-0467-I, a remote status conference was scheduled for July 6, 2020, to discuss procedures for the evidentiary hearing.

6. On July 6, 2020, prior to the scheduled remote status conference, Ms. Johnson advised the Commission that due to an illness she would be unable to appear at the status conference.

7. Informal communications were held via email during the week of July 7, 2020, between the ALJ, Ms. Johnson, and Ms. Whitman representing Staff. Ms. Johnson requested that the evidentiary hearing scheduled for July 21, 2020 proceed as scheduled. The ALJ advised the parties that for the evidentiary hearing not to be vacated it would be necessary to hold a remote status conference during the week of July 13, 2020 in order to go over procedures to hold a remote hearing.¹

8. Parties were advised to provide the ALJ with their availability for a status conference before July 13, 2020. On July 10, 2020, Ms. Whitman provided all parties, including the ALJ, Staff's availability for a status conference. Ms. Johnson did not respond with her availability for the status conference.

9. On July 14, 2020, by Decision No. R20-0510-I, the evidentiary hearing was vacated, and a prehearing conference was scheduled for September 10, 2020.

10. At the prehearing conference the hearing was rescheduled for October 8, 2020.

11. The Petitioner was informed at the prehearing conference of the date of the evidentiary hearing.

12. On September 11, 2020 by Decision No. R20-0659-I, the setting of the evidentiary hearing was memorialized and served on the Petitioner.

¹ The Commission offices are currently closed due to the Covid-19 pandemic.

13. On September 30, 2020, an email was sent to the Petitioner with the link to access the remote hearing. The email address was the one on file with the Commission and used previously to communicate with the Petitioner.

14. The hearing in this matter was convened as scheduled on October 8, 2020. Petitioner failed to appear. Staff appeared through its counsel. At the hearing the undersigned ALJ, after establishing that the Petitioner was given proper notice, dismissed the petition due to the Petitioner's failure to appear

15. On October 9, 2020 an email² was forwarded to the undersigned ALJ that was from the Petitioner to Staff counsel. In the email the Petitioner indicates that she is again ill and was unable to participate in the hearing.

16. The undersigned finds that due to the Petitioner's illness and repeated failures to appear, there is good cause to dismiss the petition without prejudice. This dismissal does not prevent the Petitioner from filing a new petition to request the same relief at a time when her health will permit such a filing.

II. ORDER

A. The Commission Orders That:

1. The Petition to reverse an initial determination of driver disqualification pursuant to Commission Rule 6105 of 4 *Code of Colorado Regulations* 723-6, Rules Regulating Transportation by Motor Vehicle, filed by CJ Johnson on March 27, 2020 is dismissed without prejudice.

² The email was not sent to the Commission or the undersigned ALJ.

2. 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.

3. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

4. Response time to exceptions shall be shortened to seven days.

5. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended 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.

6. If a party seeks to amend, modify, annul, or reverse a basic finding 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.

7. If exceptions to this Recommended 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

ROBERT I. GARVEY

Administrative Law Judge