

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04M-317EC

IN THE MATTER OF THE PETITION OF A&A DREAM LIMO FOR AN ORDER OF THE COMMISSION EXEMPTING DRIVER MARIANO LOPEZ FROM THE REQUIREMENT OF PART 391.41(B)(10)(EYE SIGHT) OF THE RULES REGULATING SAFETY FOR MOTOR VEHICLE CARRIERS AND ESTABLISHING CIVIL PENALTIES, 4 CCR 723-15.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
GRANTING WAIVER**

Mailed Date: June 30, 2004

Appearances:

Mariano Lopez, *Pro Se*, Applicant.

I. STATEMENT

1. On June 9, 2004, Applicant A&A Dream Limo filed a Petition for Waiver of Safety Regulations, requesting a waiver of the visual acuity requirements of 49 *Code of Federal Regulations* (C.F.R.) 391.41(B)(10) as incorporated by Rule 2 of the Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties, 4 *Code of Colorado Regulations* (CCR) 723-15.

2. A hearing on the application/petition was scheduled for June 29, 2004.

3. The hearing was held as scheduled. Testimony was received from Mr. Mariano Lopez. Exhibit A was marked for identification and admitted into evidence.

4. Pursuant to § 40-6-109, C.R.S., the record of the hearing and a written recommended decision are transmitted to the Commission.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

5. Applicant, A&A Dream Limo holds luxury limousine registration no. LL-01336 from this Commission. Mr. Mariano Lopez is the owner of the company.

6. Applicant requests a waiver of the visual acuity requirements of 49 C.F.R. 391.41(B)(10) as incorporated by 4 CCR 723-15-2 for driver and owner, Mariano Lopez.

7. Mr. Lopez testified that he started the company, A&A Dream Limo with the intention of providing luxury limousine service. He has purchased a Lincoln Town Car to provide the service.

8. As part of the application for the waiver, Mr. Lopez was examined by Dr. Chad Nicholson, O.D. Dr. Nicholson in his letter contained in Exhibit A dated June 8, 2004, states that visual acuity in Mr. Lopez's right eye is 20/20 uncorrected, and 20/400 in his left eye. Dr. Nicholson states that vision in Mr. Lopez's left eye is the result of "amblyopia secondary to strabismus." Dr. Nicholson states that since Mr. Lopez has had this condition since childhood, he has never known any different visual function, and he relies on his right eye to a much greater degree than his left eye. The doctor states that Mr. Lopez's left eye still provides relatively good peripheral vision. It is the doctor's opinion that Mr. Lopez's visual condition should not impair his ability to safely operate a motor vehicle.

9. On May 17, 2004, Mr. Lopez had a physical examination. The medical examination report, contained in Exhibit A indicates that the physical health of Mr. Lopez is good. The medical examiner concludes that Mr. Lopez is qualified to operate a commercial vehicle in accordance with the Federal Motor Carrier Safety Regulations (49 C.F.R. 391.41-

391.49) provided that Mr. Lopez is granted a waiver of the visual acuity requirements of 49 C.F.R. 391.41(B)(10).

10. On June 11, 2004, Commission Staff Compliance Investigator Reinhard A. Wolf gave Mr. Lopez a road test. Mr. Wolf in his certification of road test report concludes that Mr. Lopez possesses sufficient driving skill to safely operate a luxury limousine.

11. Mr. Lopez currently holds a valid Colorado driver's license. He has operated motor vehicles ever since he was 16 years of age. His Colorado Motor Vehicle driving record indicates only one violation of the Colorado Motor Vehicle Laws. He was issued a citation on July 2, 1998 for defective headlamps.

12. Rule 4 CCR 723-15-11 provides for a waiver from the Commission's Motor Vehicle Carrier Safety Rules. The rule states that "the Commission may grant a variance from Rules 723-15-1 through 723-15-10 for good cause shown if it finds that compliance is impossible, impracticable, or unreasonable, if such variance is not contrary to law." It is found and concluded that the waiver of the visual acuity requirements of 49 C.F.R. 391.41(B)(10) as incorporated by Rule 4 CCR 723-15-2 should be granted. Applicant has shown good cause for the waiver, establishing that compliance would be impracticable or unreasonable. It is found that the public safety should not be adversely affected if the waiver is granted.

13. Pursuant to § 40-6-109(2), C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. A&A Dream Limo, is granted a waiver of 49 Code of Federal Regulations 391.41(B)(10) (eyesight) as incorporated by 4 *Code of Colorado Regulations* 723-15-2 for a period of two years, expiring July 1, 2006. This waiver applies only to Mariano Lopez.

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 § 40-6-109, 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.

4. 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.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge