

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04M-511CP

IN THE MATTER OF THE APPLICATION OF WHITE DOVE LIMOUSINE, INC., FOR AN ORDER OF THE COMMISSION EXEMPTING DRIVER DENNIS B. SHARKEY FROM THE REQUIREMENT OF PART 391.41(B)(3) OF THE RULES REGULATING SAFETY FOR MOTOR VEHICLE CARRIERS AND ESTABLISHING CIVIL PENALTIES, 4 CCR 723-15.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
GRANTING WAIVER**

Mailed Date: November 5, 2004

I. STATEMENT

1. By this application, White Dove Limousine, Inc. (White Dove), seeks a two-year waiver of Rule 391.41(b)(3) of the Commission's Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties (Safety Rules) found at 4 *Code of Colorado Regulations* (CCR) 723-15 in connection with driver Dennis B. Sharkey (Sharkey).

2. On October 13, 2004, the matter was set for a hearing to be held on October 28, 2004 at 1:00 p.m. in a Commission hearing room in Denver, Colorado. At the assigned place and time the undersigned administrative law judge (ALJ) called the matter for hearing.

3. During the course of the hearing testimony was received from Ms. Francie Ouzounis, White Dove's Secretary/Treasurer,¹ and Sharkey. Administrative notice was taken of the application filed in this matter by White Dove on October 8, 2004, and the attachments

¹ Ms. Ousounis' testimony was received via telephone.

thereto. At the conclusion of the hearing the ALJ indicated that the application, which is unopposed, would be granted.

4. Pursuant to § 40-6-109, C.R.S., the ALJ hereby transmits to the Commission the record of this proceeding, a written recommended decision containing findings of fact and conclusions of law, and a recommended order.

II. FINDINGS OF FACT

5. White Dove provides transportation service as a luxury limousine operator pursuant to § 40-16-103, C.R.S. (Registration No. LL-175). It wishes to employ Sharkey to operate its Lincoln TC stretch and sedan limousines. However, the Medical Examination to Determine Physical Examination of Drivers/Medical Examiner's Certificate prepared in connection with Sharkey's physical conducted on October 6, 2004 identifies him as an insulin dependent diabetic. Sharkey was diagnosed with this condition approximately 18 years ago. He has taken insulin to control his diabetes since that time.

6. Rule 391.41(b)(3) provides that a person is physically qualified to drive a motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

7. Ms. Ousounis testified that Sharkey is well-qualified as a luxury limousine driver and she has no reason to believe that his medical condition will inhibit his ability to successfully operate motor vehicles. She has confirmed with White Dove's insurance carrier that the company's insurance coverage will not be affected by its employment of Sharkey so long as it complies with all applicable safety regulations in connection with such employment. White Dove wants to hire Sharkey as a driver and requests that this application for waiver of Safety Rule 391.41(b)(3) be granted.

8. Sharkey is currently under the care of Dr. Kristina Reitz and takes diabetes self-management classes at Presbyterian/St. Luke's Medical Center every two weeks. Correspondence submitted with the application by Sandra Wolder, the Certified Diabetes Educator of the Diabetes Management Center at Presbyterian/St. Luke's Medical Center, states that Sharkey has demonstrated motivation to achieve improved control over his diabetes, complies with recommended frequency for blood glucose monitoring, and is knowledgeable about signs, symptoms, and treatment of high and low blood sugar levels.

9. Dr. Reitz submitted correspondence with the application wherein she states that Sharkey's diabetes is "currently well controlled" and that he has "no significant physical limitations secondary to his diabetes and has never had any serious complications of his disease." In her opinion, Sharkey "is fully capable of driving for a limousine service without risk to himself or others."

10. Sharkey testified that he has never experienced hypoglycemic episodes or other adverse diabetes related incidents while operating a motor vehicle. Sharkey's driving record, a copy of which was submitted with the application, is devoid of any traffic-related citations. Sharkey testified that he has not received a traffic-related citation in the 24 years he has operated motor vehicles.

11. In 1996 and again in 1998 the Commission granted requests for the waiver of Safety Rule 391.41(b)(3) in connection with Sharkey. This enabled him to provide driving services for two different passenger carriers, Cabs, Inc., doing business as Centennial Sedans, and Limo Express, Inc. between 1996 and 1999. *See*, Decision Nos. R96-1172 and R98-468. There is no evidence that Sharkey's diabetic condition interfered with his ability to safely operate motor vehicle equipment during this time.

III. DISCUSSION; CONCLUSIONS OF LAW

12. Rule 12 of the Commission's **Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties** (4 CCR723-15-12) provides that the Commission may grant a variance from the provisions of Rule 391.41(b)(3) "for good cause shown if it finds that compliance is impossible, impracticable or unreasonable, if such variance is not contrary to law."

13. The prohibition against insulin dependent drivers operating motor vehicles imposed by Safety Rule 391.41(b)(3) is designed to protect the public safety. It would be "contrary to law" to grant the requested waiver in the absence of proper assurances that the public safety will be so protected.

14. The evidence indicates that Sharkey's diabetic condition has not heretofore adversely affected his ability to safely operate motor vehicle equipment. The statements submitted by Ms. Wolder and Dr. Weitz establish that he has succeeded in controlling this condition to the satisfaction of his medical advisors and that it will not inhibit his ability to safely operate motor vehicle equipment in the future.

15. As a result of the above, sufficient evidence has been presented justifying White Dove's request for a two-year waiver of Safety Rule 391.41(b)(3).

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

IV. ORDER

A. The Commission Orders That:

1. Docket No. 04M-511CP, being an application of White Dove Limousine, Inc., is granted. White Dove Limousine, Inc., is granted a two-year waiver from Rule 391.41(b)(3) of

the Commission's Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties in connection with driver Dennis B. Sharkey.

2. White Dove Limousine, Inc., shall promptly (within 30 days) notify and file with the Commission any documents and information concerning any accidents, arrests, license suspensions, revocations or withdrawals, and convictions involving Dennis B. Sharkey during the period of the waiver granted herein.

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.

17. 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

G:\ORDER\511CP.doc:srs