

Decision No. R14-0410

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0149EC

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

ADVANCED LIMOUSINE, LLC,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
DISMISSING CIVIL PENALTY
ASSESSMENT WITH PREJUDICE**

Mailed Date: April 17, 2014

I. STATEMENT

A. Background

1. The captioned proceeding was initiated on December 26, 2013, when the Staff of the Colorado Public Utilities Commission (Commission or PUC) issued Civil Penalty Assessment Notice (CPAN) No. 108475 to Advanced Limousine, LLC (Respondent), alleging one violation of 4 *Code of Colorado Regulations* (CCR) 723-6-6102(a)(I) of the Commission's Rules Regulating Transportation by Motor Vehicle and 47 *Code of Federal Regulations* (CFR) § 391.41(a)(1)(i) for failure of driver to have current copy of medical examiner's certificate while on duty. The total amount of the civil penalty assessment for the violation of 4 CCR 723-6-6102(a)(I) is \$275.00. Respondent was served with a copy of CPAN No. 108475 on February 12, 2014 by certified mail, return receipt requested.

2. CPAN No. 108475 provides that if Respondent wishes to contest the allegations contained therein, or if Respondent does not pay the penalty amount within 10 days of its receipt of the CPAN, Respondent is obliged, within 15 days of such receipt, to contact the Commission to set the matter for hearing. In the absence of such a contact, CPAN No. 108475 provides that it will become a Complaint to Appear Notice and that the Commission will set a hearing date without regard to Respondent's wishes.

3. Respondent failed to respond to the CPAN by indicating it admits that it violated the Commission Rules indicated by paying the civil penalty assessment within the time periods specified in CPAN No. 108475; nor did Respondent contact the Commission to set a hearing date regarding the alleged violations contained in CPAN No. 108475. Therefore, by Interim Decision No. R14-0279-I, issued March 12, 2014, a hearing was set in this matter for Monday, April 7, 2014.

4. At the scheduled date and time, the hearing was held. Appearances were entered by the Office of the Colorado Attorney General, representing Transportation Staff of the Commission (Staff) and by the Respondent, Mr. Husen Robleh. Hearing Exhibit Nos. 1 through 5 were offered and entered into evidence. Criminal Investigators (CIs) Nate Riley and Brian Gates testified on behalf of Staff. Mr. Robleh testified on behalf of Respondent.

II. FINDINGS OF FACT

5. CI Riley testified that he, along with other CIs of the Commission were conducting random safety inspections on Level 5 of Denver International Airport (DIA) on December 23, 2013 when Respondent was contacted. CI Riley indicated that Respondent was asked for his driver's license and Department of Transportation medical examiner's certificate (medical certificate). CI Riley testified that Respondent produced his driver's license but was

not able to produce the medical certificate. CI Riley stated that the driver of the sedan was identified as Respondent through his driver's license.

6. CI Riley further stated that he determined that Respondent was on duty based on the representation by the driver of the vehicle that he was on duty and was in the process of transporting a passenger. CI Riley determined that the vehicle had a valid PUC permit sticker affixed to it.

7. CI Riley testified that due to the failure of Respondent to produce a valid medical certificate, he placed the driver out-of-service. CI Riley subsequently confirmed that Respondent held a valid PUC permit when he reviewed the Commission's case management system known as IFMS.¹

8. CI Riley offered that Respondent subsequently produced his medical certificate at the Commission on December 24, 2013 and a copy was made by Staff.²

9. On February 12, 2014, CPAN No. 108475 was issued to Respondent alleging the violations indicated above in Paragraph No. 1.³ CI Riley testified that Respondent's address was confirmed through the Colorado Secretary of State's website,⁴ and the CPAN was served on Respondent by certified mail, return receipt requested.⁵

10. CI Riley offered testimony that the amount of the civil penalty assessment was set at \$275 because Respondent later produced a valid medical certificate at the Commission.

¹ See, Hearing Exhibit No. 1, Certificate of Registration for Respondent, Advanced Limousine, LLC.

² See, Hearing Exhibit No. 2, copy of medical certificate card for Mr. Husen Robleh.

³ See, Hearing Exhibit No. 3, CPAN No. 108745.

⁴ See, Hearing Exhibit No. 4, screen shot from the Colorado Secretary of State's website showing the current address for Respondent, Advanced Limousine, LLC.

⁵ See, Hearing Exhibit No. 5, Return Receipt confirming delivery of CPAN No. 108745 to Respondent as evidenced by Mr. Robleh's signature.

This was determined by CI Riley to be the only mitigating factor here. CI Riley further testified that there were no aggravating circumstances.

11. On cross-examination by Respondent, it was determined that CI Riley was not the initial CI who made contact with Respondent. Rather, another investigator, CI Gates, initiated contact. It was determined that CI Riley did not approach Respondent until sometime after CI Gates had already requested Respondent's documents.

12. Upon further cross-examination, CI Riley stated that he may have requested Respondent to bring his medical certificate to the Commission to confirm that he indeed had a valid medical certificate. However, CI Riley testified that he was not present when Respondent subsequently appeared at the Commission with the valid medical certificate (Hearing Exhibit No. 2).

13. CI Riley confirmed through cross-examination that CI Gates was the investigator that initially contacted Respondent at DIA, and that he later approached CI Gates and Respondent. According to CI Riley, Respondent was given approximately three to five minutes to produce his medical certificate. When he could not produce it, Respondent was placed out-of-service until he had the medical certificate on his person.

14. Although CI Gates was not initially offered as a witness, because he made the initial contact with Respondent, CI Gates was required to take the witness stand and offer testimony regarding CPAN No. 108475.

15. CI Gates confirmed that he made the initial contact with Respondent and that Respondent produced a valid driver's license, but was not able to produce a medical certificate. CI Gates testified that cases were worked jointly with other CIs on that occasion, but cases were subsequently assigned individually in order to complete the investigations.

16. On cross-examination, CI Gates testified that he could not recall whether Respondent indicated it would take him a few minutes to find the medical certificate. Nor could CI Gates recall specifically where his contact with Respondent occurred at DIA. Namely, in which lane Respondent was stopped by CI Gates.

17. It was also established on cross-examination that while CI Gates attempted to solicit a ride from Respondent, Respondent was clear that he could not provide transportation service without a reservation and directed CI Gates to the taxi stand. Respondent did not agree to provide transportation service to CI Gates despite being solicited for a ride twice by the CI.

18. Respondent testified that he has been driving a commercial vehicle since 1998 without incident. He further testified that he was stopped by CI Gates while parked on the east side of DIA in a lane that is now designated as both a pickup and drop-off lane utilized by taxis and limousines due to construction detours at the airport.

19. Respondent testified that he searched in the glove compartment of his vehicle for the medical certificate but could not find it. After several minutes, he inquired whether the CI wanted him to keep looking as he was concerned he was blocking traffic in the busy lane. Respondent indicated that at that point, CI Gates told him it was okay to just bring the medical card to the Commission. Respondent further testified that CI Riley stated to Respondent that Respondent must bring the medical certificate to the Commission.

20. Finally, Respondent testified that the medical certificate was in fact in his vehicle in the glove compartment, but had become stuck to another piece of paper and that is the reason he could not produce it immediately. However, Respondent stated that as soon as he found the medical certificate, he took it to the Commission (in this instance, the day following the contact with the CIs) at which time a Staff member made a copy of it for Commission records.

21. On February 2, 2014, a CPAN was issued to Respondent for failure to have a copy of a current medical certificate on his person on December 23, 2014.

III. FINDINGS AND CONCLUSIONS

22. The Commission has subject matter jurisdiction over this matter and personal jurisdiction over the Respondent pursuant to §§ 40-1-103 and 40-10.1-102, C.R.S.

23. Commission enforcement personnel have authority to issue CPANs under § 40-7-116, C.R.S. That statute provides that the Commission has the burden of demonstrating a violation by a preponderance of the evidence. The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole, slightly tips in favor of that party

24. Commission Rule 4 CCR 723-6-6102(a)(I) incorporates by reference 47 CFR § 391.41(a)(1)(i), which provides in relevant part as follows:

(a)(1)(i) 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, and, except as provided in paragraph (a)(2) of this section, when on-duty has on his or her person the original, or a copy, of a current medical examiner's certificate that he or she is physically qualified to drive a commercial motor vehicle.

25. Pursuant to § 40-7-113(g), C.R.S., it must be shown that a person intentionally violates (among other rules) 4 CCR 723-6-6102(a)(I) in order to assess a civil penalty.

26. It is undisputed that Respondent, while not able to immediately produce his medical certificate at the time of the contact with Commission CIs, nonetheless produced a valid medical certificate the following day at the Commission. It is further undisputed that said

medical certificate was valid as of the date of contact with Respondent at DIA and at the time Respondent presented the medical certificate to Staff.

27. Respondent testified that when contacted by CIs, he was in a drop-off and pickup lane at DIA utilized by limousines and taxis during ongoing construction. Witnesses for Staff failed to rebut this testimony. Each merely testified that they could not recall the circumstances and exact location of the contact with Respondent. On rebuttal, CI Riley stated that they try not to stop drivers in tight spots, but he offered no testimony rebutting Respondent's testimony.

28. Additionally, Respondent testified that he was concerned that he was blocking taxi and limousine traffic and asked the CIs if they wanted him to continue searching for his medical certificate. Respondent recalls that CI Gates requested that Respondent just bring the certificate to the Commission, which Respondent subsequently complied with the very next day. Staff witnesses did not rebut Respondent's testimony that the medical certificate was in fact in the glove compartment the entire time, but stuck to another paper.

29. It is apparent that Staff has failed to meet its burden of proof in this matter. Staff provided no testimony that Respondent intentionally violated Rule 6102(a)(I). Staff further failed to show that the medical certificate was not on Respondent's person at all. The only finding that can be ascertained from Staff's testimony is that Respondent was not able to produce the medical certificate in the time he was allotted, which by Staff's own admission was approximately three to five minutes.

30. Respondent's testimony was credible. There is no reason to question his statement that the CI told him just to bring the medical certificate to the Commission as soon as possible. Respondent's testimony that the medical certificate was in the vehicle but stuck to

another piece of paper is also credible since he produced the valid medical certificate at the Commission the next day.

31. Respondent's credibility is buttressed by the fact that he testified that he has been a driver since 1998 and has had no civil penalty assessments against him, and indeed, Staff presented no evidence contradicting that representation. Further, Staff's own testimony that Respondent refused CI Gates' initial attempts to solicit an illegal ride further enhances Respondent's credibility. By all accounts, Respondent is a responsible driver operating within Commission regulations.

32. Based on the information held by Staff, including Respondent's production of the medical certificate within 24 hours of the initial contact; Respondent's refusal to provide illegal transportation when solicited; and no previous violations by Respondent, it is remarkable that Staff would choose to issue Respondent a CPAN based on what was at best flimsy and unsubstantial evidence. More importantly, Staff failed to show that Respondent acted intentionally by failing to produce his medical certificate.

33. The issuance of a CPAN under the evidence and circumstances presented here borders on frivolous and does nothing more than waste precious Commission resources which could be diverted to prosecuting more egregious matters. It is hoped that in the future, Transportation Staff exercises a higher level of diligent prosecutorial discretion in determining which matters are truly worthy of issuance of a CPAN.

34. For all these reasons, CPAN No. 108475 issued to Advanced Limousine, LLC will be dismissed with prejudice.

35. 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. Civil Penalty Assessment No. 108475 issued by the Colorado Public Utilities Commission against Advanced Limousine, LLC is dismissed with prejudice consistent with the discussion above.

2. This Proceeding is now closed.

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 § 40-6-106, 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 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.

b) 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.

5. 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)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director