

Decision No. R14-1086

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14V-0813TNC

IN THE MATTER OF THE PETITION OF KENNETH MANNING, FOR AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING PETITION AND GRANTING
WAIVER, SUBJECT TO CONDITIONS**

Mailed Date: September 8, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On July 30, 2014, Mr. Kenneth Manning (Petitioner) filed a Verified Petition for Waiver of Safety Regulations - Driver. The petition included the following documents: (a) Confidential Driving Record (driving record); (b) Confidential Medical Exam dated July 24, 2014 conducted by Dr. David Gasper (Gasper Report); and an additional Confidential Medical Exam dated July 18, 2012 conducted by Dr. Robert White (White Report).

2. The petition requests a waiver of 49 *Code of Federal Regulations* (CFR) § 391.41(b)(3), as made applicable in Colorado by Rule 4 *Code of Colorado Regulations* 723-6-6102(a)(I) of the Commission Rules Regulating Transportation by Motor Vehicle.

3. This matter was referred to an Administrative Law Judge (ALJ) for disposition by minute entry during the Commission's Weekly Meeting held August 6, 2014.

4. By Decision No. R14-1003-I, issued August 20, 2014, a hearing was scheduled in this matter for August 28, 2014. At the scheduled time and place, the hearing was convened. Petitioner is the only party and was the only witness testifying in support of the requested relief.

5. Petitioner has been hired by Uber Technologies as a driver, subject to the Commission granting the waiver sought in the petition.

6. Petitioner states that he suffers from Type II diabetes, high blood pressure, hearing loss, and had heart surgery performed seven years ago.

7. Dr. David Gasper is Mr. Manning's primary physician.

8. Petitioner's diabetes is controlled by insulin and pills. The Gasper Report shows that Mr. Manning's blood glucose and hemoglobin A1C levels are elevated above a normal reading.

9. Mr. Manning thoroughly and convincingly explains that he successfully controls his diabetes through a combination of diet, insulin and pills.

10. Mr. Manning is currently under the care of a physician and has managed his diabetes through diet and medication since the diagnosis. He recently saw his doctor prior to the hearing in this matter.

11. A review of Mr. Manning's driving record gives no indication that his having diabetes has affected the safety of his driving. In the past three years, he has had one moving violation. Over that same period, he has not been involved in a traffic accident.

12. The Petitioner thoroughly and convincingly explains that he has no further incidents related to his heart.

13. The Petitioner thoroughly and convincingly explains that his hearing loss has been corrected with a hearing aid.

14. The Petitioner seeks a two-year waiver of 49 CFR § 391.41(b)(3) and 49 CFR § 391.41(b)(10).

15. The record establishes that: (a) Petitioner has diabetes; (b) Petitioner's diabetes is controlled with insulin and pills; (c) but for the insulin-controlled diabetes, Petitioner would be found to be physically qualified to drive a commercial motor vehicle; (d) strict application of 49 CFR § 391.41(b)(3) would work a hardship on Petitioner; and (e) granting the requested waiver would not compromise the public safety or the public interest, so long as Petitioner follows the prescribed medical regimen for treatment of his diabetes. In addition, as no one has sought to intervene, the Petition is unopposed.

16. The Gasper Report and the White Report do not indicate any vision issues that would disqualify the Petitioner from working as a driver for a Transportation Network Company. Based upon the information provided during the hearing, the Petitioner is not disqualified due to 49 CFR § 391.41(b)(10).

17. 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 and exemption, the Petition should be granted. The ALJ finds and concludes that, subject to conditions, Kenneth Manning should be granted a waiver of, and exemption from, 49 CFR § 391.41(b)(3) and that the waiver and exemption should expire two years following the effective date of this Recommended Decision.

18. In accordance with § 40-6-109, C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. Subject to the conditions stated below, the Verified Petition for Waiver of Safety Regulations - Driver filed by Kenneth Manning on July 30, 2014, 49 *Code of Federal Regulations* (CFR) § 391.41.(b)(3) is granted.

2. Subject to the conditions stated below, Kenneth Manning is granted a waiver of, and an exemption from, 49 CFR § 391.41(b)(3), as applicable in Colorado by Rule 4 *Code of Colorado Regulations* 723-6-6102(a)(I). If this Recommended Decision becomes a decision of the Commission, the waiver and exemption granted by this Decision shall remain in effect through September 8, 2016, unless revoked before that date upon notice to Mr. Manning.

3. The waiver and exemption granted in Ordering Paragraph No. 2 are subject to this condition: Mr. Kenneth Manning shall follow the medically-prescribed regimen for treatment of his diabetes.

4. The waiver and exemption granted in Ordering Paragraph No. 2 are subject to this condition: Mr. Kenneth Manning shall notify the Commission, in writing and within seven calendar days of the occurrence, if Mr. Manning is involved in a motor vehicle accident. This reporting requirement applies only to a motor vehicle accident that occurs while Mr. Manning is driving as a Transportation Network Carrier or cab driver 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.

5. The waiver and exemption granted in Ordering Paragraph No. 2 are subject to this condition: Mr. Kenneth Manning shall comply with the Rules Regulating Transportation by Motor Vehicle as they may be applicable to him and with the terms of this Decision.

6. 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.

7. 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.

8. 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director