

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14V-1028EC

IN THE MATTER OF THE PETITION OF KOLAWOLE O. DADA, FOR AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF RULE 6102 (DRIVER) OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE 4 CCR 723-6.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING WAIVER WITH CONDITIONS**

Mailed Date: November 25, 2014

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I. STATEMENT

1. On October 20, 2014, Mr. Kolawole O. Dada filed a Petition for Waiver of Safety Regulations-Driver (Petition) with the Colorado Public Utilities Commission (Commission). He later amended the Petition by a filing made on October 27, 2014. Mr. Dada seeks a waiver of Commission Rule 6102(a)(I) of the Rules Regulating Transportation by Motor Vehicle,

4 *Code of Colorado Regulations* (CCR) 723-6 to allow Petitioner to drive a limousine for his limousine company. The Petition is not opposed.

2. The Commission referred this proceeding to an administrative law judge (ALJ) for disposition on November 5, 2014.

3. This matter was set for hearing on November 25, 2014. Decision No. R14-1338-I issued November 5, 2014. At the assigned place and time, the ALJ called the matter for hearing. Mr. Dada appeared and was represented by Mr. Jacques Ruda.

4. During the course of the hearing, Hearing Exhibits 1, 2 and 3 were offered, identified, and admitted into evidence. Mr. Dada and Mr. Ruda testified in support of the Petition.

II. FINDINGS, DISCUSSION, AND CONCLUSIONS

A. Rule Sought to Be Waived.

5. The Commission has adopted by reference, Federal Safety Rules, including the regulation at issue here, 49 *Code of Federal Regulations* Part 391.41(b)(10), to protect the public safety. Rule 6102(a), 4 CCR 723-6. Mr. Dada seeks a waiver of Rule 391.41(b)(10). That Rule provides that a person is physically qualified to drive a commercial vehicle if that person:

[h]as distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, [has] distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

6. The Commission may grant a waiver of Rule 391.41(b)(10) for good cause shown as long as it would not be contrary to law. Rule 1003(a), 4 CCR 723-1. The Commission has recognized that it would be “contrary to law” to grant an exemption of the Safety Rules, such as

that requested here, in the absence of proper assurances that the public safety will be protected. *See, e.g.*, Decision No. R00-1465, issued December 26, 2000 in Proceeding No. 00M-660CP. Among other factors, the Commission may consider conditions of hardship and equity when deciding whether to grant a waiver of a rule. Rule 1003(a), 4 CCR 723-1. The Commission may subject any waiver granted to such terms and conditions as it deems appropriate. *Id.*

B. Evidence Offered at Hearing.

7. Mr. Dada owns and drives for a luxury limousine company. He started his company in 2003. Before that, he drove for various other motor carriers dating as far back as 1996. Mr. Dada's sole income is from driving for his luxury limousine company. Without a waiver, Mr. Dada will be unable to operate his business, which would create a financial hardship on him.

8. Mr. Dada filed the Petition due to several conditions in his right eye. In 2011, when the problem developed, his doctor performed laser surgery on the eye. However, due to complications resulting from that surgery, he had blood clots and a decrease in his eye pressure. Due to that decreased pressure, the conditions could not be corrected. His current treating physician, Dr. Charles Stumpf, O.D., has indicated that his conditions can be corrected once the pressure in his right eye has returned. It is unknown when that will happen. Once his eye pressure has returned, Mr. Dada intends to take all necessary action to correct his vision.

9. As a result of his eye conditions, Mr. Dada is monocular, with no vision in his right eye. Mr. Dada's left eye is correctable to 20/25; Mr. Dada uses the prescription glasses his doctor gave him so that his left eye is 20/25. Hearing Exhibit 3. Due to these issues, Mr. Dada's vision in his right eye does not meet Rule 391.41(b)(10)'s requirement that distant visual acuity in each eye (viewing separately) be at least 20/40 (Snellen). However, Mr. Dada's corrected

vision in his left eye meets the requirements of Rule 391.41(b)(10) that his distant binocular acuity be at least 20/40.

10. Mr. Dada presented credible evidence from Dr. Stumpf that, in his medical opinion, Mr. Dada's corrected¹ vision is sufficient to perform the driving tasks required to safely operate a commercial motor vehicle in intrastate commerce. Hearing Exhibit 3. This opinion is confirmed by a second doctor's opinion (Dr. Samples) that Mr. Dada has sufficient vision to perform the driving tasks required to safely operate a commercial motor vehicle in intrastate commerce. Hearing Exhibit 2.

11. Mr. Dada is able to distinguish colors of traffic signals and devices showing standard red, green, and amber.

12. With the exception of a 2013 traffic infraction, Mr. Dada's driving record is devoid of traffic infractions for at least the last 11 years.² Hearing Exhibit 1.

13. Mr. Ruda has been using Mr. Dada's limousine service to transport him and his family since 2006. He finds Mr. Dada to be a safe and conscientious driver.

C. Discussion and Conclusions.

14. The ALJ finds Mr. Dada to be credible. The evidence was undisputed.

15. Based on the evidence as a whole, the ALJ finds that Mr. Dada has demonstrated, by a preponderance of the evidence, that he can safely operate a commercial motor vehicle with his current vision, and that granting the waiver is not contrary to law. In addition, the evidence and the conditions set forth below establish sufficient assurances that the public safety will be

¹ Reference to corrected vision is to vision as corrected by prescription glasses or contacts.

²Mr. Dada testified that it has been at least 11 years since his last traffic infraction. The ALJ finds this testimony credible.

protected by granting the waiver. Moreover, denying the waiver would result in an unnecessary financial hardship on Mr. Dada. The ALJ concludes that a grant of Mr. Dada's request for a waiver is justified, reasonable, and not contrary to the public interest.

16. In order to ensure the health, safety and welfare of Mr. Dada's passengers and the public, it is prudent to place conditions on the waiver granted. In the event that Mr. Dada experiences any adverse symptoms with his vision, such as a worsening of the vision in his left eye, he shall notify his jurisdictional transportation provider employer immediately, which, in turn, shall notify Commission Transportation Staff, so they may evaluate whether it is appropriate for him to continue driving. In addition, Mr. Dada will be required to wear his prescription glasses or contact at all times when driving.

17. As required by Rule 6014(b), 4 CCR 723-6, Mr. Dada's jurisdictional transportation provider employer shall ensure that a copy of the waiver is: (1) carried on the affected driver's person whenever the driver is operating a motor vehicle over which the Commission has jurisdiction; and (2) maintained in the affected driver's qualification file.

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

III. ORDER

A. The Commission Orders That:

1. Subject to the conditions stated below, the Petition for Waiver/Variance of Safety Regulations - Driver filed by Mr. Kolawole O. Dada on October 20, 2014 is granted.

2. Subject to the conditions stated below, Mr. Dada is granted a waiver of, and an exemption from, 49 *Code of Federal Regulations* § 391.41(b)(10), as applicable in Colorado by Rule 6102(a)(I), 4 *Code of Colorado Regulations* (CCR) 723-6.

3. If this Recommended Decision becomes a decision of the Commission, the waiver and exemption granted by this Decision shall remain in effect through November 25, 2016, unless revoked before that date by the Commission, upon notice to Mr. Dada.

4. The waiver is granted subject to the following conditions:

- a. Pursuant to Commission Rule 6014(b), 4 CCR 723-6, Mr. Dada's jurisdictional transportation provider employer shall ensure that a copy of the waiver is carried on Mr. Dada's person whenever he is operating a motor vehicle over which the Commission has jurisdiction, and is maintained in Mr. Dada's qualification file;
- b. Mr. Dada shall wear his prescription glasses or contact at all times when operating a motor vehicle over which the Commission has jurisdiction; and
- c. Mr. Dada shall immediately notify his jurisdictional transportation provider employer if he experiences any adverse symptoms associated with his vision, including, but not limited to a worsening of the vision in his left eye. Mr. Dada's jurisdictional transportation provider employer shall immediately share this information with Commission Transportation Staff so they may evaluate whether it is appropriate for Mr. Dada to continue driving.

5. Proceeding No. 14V-1028EC is closed.

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

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director