

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19V-0449TNC

IN THE MATTER OF THE PETITION OF JAMES O. ROBERTS FOR A WAIVER OF RULE 6713(C) (PROOF OF MEDICAL FITNESS) OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
GRANTING PETITION AND CLOSING PROCEEDING**

Mailed Date: September 23, 2019

I. STATEMENT

1. On August 15, 2019, Petitioner James O. Roberts filed a Petition for Waiver/Variance of Safety Regulations-Driver (Petition). In the Petition, Petitioner seeks waiver of Commission Rule 6713 of the Commission's Rules Regulating Transportation by Motor Vehicle, to allow Petitioner to drive for a Transportation Network Company (TNC).¹ With his Petition, Petitioner submitted a completed medical examiner's report and certificate and a copy of his driver's license, but not a copy of his Colorado driver's record and/or driver records from any state in which he was issued a driver's license in the last three years, as required by the form petition submitted by Petitioner.

2. On August 28, 2019, the Commission referred this proceeding to an Administrative Law Judge (ALJ) for resolution. The Petition was subsequently assigned to the undersigned ALJ.

¹ 4 Code of Colorado Regulations (CCR) 723-6.

3. On September 10, 2019, the ALJ issued Decision No. R19-0743-I that ordered Petitioner to file a copy of his Colorado driver record and/or any other driver records from states in which he was issued a driver's license in the last three years by September 23, 2019.

4. On September 16, 2019, Petitioner filed his driver record.

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

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. Commission Rule 6713(a) states in relevant part: "No TNC shall permit any driver to log in to its digital network that is not medically examined and certified pursuant to 49 C.F.R. § 391.41, as revised on October 1, 2010 or pursuant to subsections (b)-(d) of this rule." Petitioner submitted a completed copy of the Commission's TNC Driver Questionnaire for Medical Examination and a Medical Examiner's Certificate. Accordingly, Petitioner is seeking certification pursuant to Rule 6713(b)-(d).

7. Under Rule 6713(c)(IX), a person is "physically qualified" to operate a commercial motor vehicle if that person does not have visual "acuity of worse than 20/40 (Snellen) in each eye without corrective lenses or corrected to 20/40 (Snellen) or better with corrective lenses [and] distant binocular acuity worse than 20/40 (Snellen) in both eyes with or without corrective lenses." According to the Petition, Petitioner does not meet this standard. As a result, he is not qualified medically to drive for a TNC under Commission Rule 6713.

8. However, Commission Rules also provide that a person may petition the Commission for a waiver or variance of any rule.² Rule 1003 provides, in part, that “[t]he Commission may, for good cause shown, grant waivers or variances from ... Commission rules.... In making its determination the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.”³

9. In addition, the Commission may take evidence in uncontested or unopposed proceedings by affidavit or otherwise, without holding a formal hearing.⁴ Similarly, Rule 1403(a) provides that the Commission may determine a petition without a hearing and without further notice if the application or petition is uncontested or unopposed, if a hearing is not requested or required by law, and if the application or petition is accompanied by a sworn statement verifying sufficient facts and supported by attachments and/or exhibits that adequately support the filing.

10. Here, because no one sought to intervene in the proceeding, the Petition is unopposed. In addition, the Petition is verified by Petitioner and he submitted the required documents. Accordingly, the Petition shall be considered without a hearing.

11. The medical documents submitted with the Petition collectively establish that Petitioner can safely drive a motor vehicle despite his vision issue, which is corroborated by his driving record that he submitted with his Petition. The medical examination report also conclude that Petitioner is qualified under Rule 6713 to operate a motor vehicle with a waiver.

² See Rule 1003 of the Commission’s Rules of Practice and Procedures, 4 CCR 723-1; Rule 6002 of the Commission’s Transportation Rules, 4 CCR 723-6.

³ Rule 1003(a), 4 CCR 723-1.

⁴ § 40-6-109(5) C.R.S.

12. Based on the foregoing, the ALJ finds that: (a) the impairment of Petitioner's vision is unlikely to interfere with his ability to drive a motor vehicle safely in the future; and (b) granting the requested waiver would not compromise the public safety or the public interest. Accordingly, the ALJ finds and concludes that Petitioner has met his burden of proof in this matter and that the Petition should be granted.

13. Petitioner seeks a two-year waiver of Rule 6713 of the Commission Rules Regulating Transportation by Motor Vehicle, which is permissible under the Commission's rules. Accordingly, the ALJ finds and concludes that the waiver and exemption will expire two years following the effective date of this Recommended Decision.

14. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Petition for Waiver of Safety Regulations - Driver (Petition) filed by James O. Roberts (Petitioner) on August 15, 2019 for a waiver of Rule 6713(c)(IX) of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, is granted.

2. Proceeding No. 19V-0449TNC is closed.

3. If this Recommended Decision becomes a decision of the Commission, the waiver and exemption granted by this Decision shall remain in effect for a period of two years from the effective date of this Decision, unless revoked before that date upon notice to Petitioner.

4. 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.

5. 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.

15. 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

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director