

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19V-0549TNC

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

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
DISMISSING PETITION WITHOUT PREJUDICE**

Mailed Date: December 19, 2019

I. STATEMENT, BACKGROUND, AND FACTUAL FINDINGS

A. Summary

1. This Decision dismisses Mr. Calder Louis Vasold's "Petition for Waiver/Variance of Safety Regulations – TNC Driver" (Petition) in this proceeding because he has abandoned the Petition and failed to prosecute it. Dismissal is without prejudice, meaning, that Mr. Vasold may file a new petition seeking the same or similar relief sought here.

B. Procedural History and Findings

2. Mr. Vasold commenced this proceeding by filing the above-captioned Petition on October 9, 2019. The Petition seeks a waiver of Rule 6713(c) of the Rules Regulating Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. That Rule prohibits transportation network companies from allowing drivers who are not medically examined and certified qualified to drive to log into their digital networks.

3. Mr. Vasold filed documents in support of his Petition, including an incomplete copy of a "TNC Medical Examination Report" (Report). Among other issues, a portion of the

Report is missing and incomplete. *See* Report, and Decision No. R19-0880-I. The ALJ found that the missing information appears to include incomplete medical examiner notes concerning specific conditions or circumstances directly relating to whether Mr. Vasold is medically qualified to drive for a transportation network company. Decision No. R19-0880-I. As a result, on October 30, 2019, the ALJ ordered Mr. Vasold to file a complete copy of the Report by November 13, 2019. Decision No. R19-0880-I, Ordering ¶ 1.

4. Mr. Vasold failed to submit the information as required by Decision No. R19-0880-I. After the deadline to file the information, the ALJ reviewed the record in the proceeding, and found that it lacks key information necessary to grant the Petition. Decision No. R19-0939-I. Rather than denying the Petition, the ALJ scheduled an evidentiary hearing for December 3, 2019 at 9:00 a.m. to provide Mr. Vasold yet another opportunity to present evidence in support of the Petition. The Decision scheduling the hearing puts Mr. Vasold on notice that “if he does not appear at the evidentiary hearing scheduled by this Decision, the ALJ may deem that as abandoning his Petition, and may dismiss the Petition without granting Mr. Vasold the relief he seeks.” Decision No. R19-0939-I, ¶ 6.

5. The ALJ called the matter for a hearing as noticed, on December 3, 2019 at 9:00 a.m. Mr. Vasold did not appear. The ALJ recessed the hearing for twenty minutes to allow Mr. Vasold additional time to appear. At 9:20 a.m., when the ALJ recalled the matter for a hearing, Mr. Vasold still had not appeared, so the ALJ adjourned the hearing.

6. The administrative record in this proceeding shows that Decision No. R19-0880-I (requiring Mr. Vasold to submit additional information) and Decision No. R19-0939-I (scheduling the December 3, 2019 hearing) were mailed to Mr. Vasold at the address he provided with his Petition: 12755 Birch Street, Apartment 108, Denver, Colorado 80246. *See* Certificates

of Service for Decision Nos. R19-0880-I and R19-0939-I; Petition at 1. Neither Decisions were returned to the Commission as undeliverable.

7. Mr. Vasold did not submit a filing requesting that the December 3, 2019 hearing be continued. In fact, Mr. Vasold has submitted no filings in this proceeding since filing the Petition on October 9, 2019. He has made no efforts to prosecute or pursue his Petition since filing the Petition. Mr. Vasold's delay in pursuing his Petition appears indefinite. And, the record lacks information as to the reasons for the delay.

II. RELEVANT LAW, ANALYSIS, AND CONCLUSIONS

A. Service of Decisions on Mr. Vasold

8. The ALJ finds that Decision Nos. R19-0880-I and R19-0939-I were properly served on Mr. Vasold by mail at the address he provided. Rule 1205(a) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1; *Compare* Petition at 1 with Certificates of Service for Decision Nos. R19-0880-I and R19-0939-I. As a result, the ALJ concludes that Mr. Vasold received proper notice of both Decisions.

B. Dismissal for Failure to Prosecute or Pursue Petition

9. As the party seeking a Commission order, Mr. Vasold carries the burden to prove that the relief sought should be granted. Rule 1500, 4 CCR 723-1 (proponent of an order carries the burden of proof; party commencing proceeding is the proponent of the order). As such, Mr. Vasold also has the duty to prosecute or pursue his Petition without unnecessary or unreasonable delay. *See People in the Interest of R.F.A.*, 744 P.2d 1202, 1203 (Colo. App. 1987).

10. A petition may be dismissed for failing to prosecute it when the petitioner fails to appear at a properly noticed hearing. *See Rathbun v. Sparks*, 425 P.2d 296, 298-99 (Colo. 1967).

11. When determining whether to dismiss for failure to prosecute, the tribunal should “consider several factors when balancing the policies against unreasonable delay and favoring resolution of disputes on the merits,” including the length of delay, the reason for the delay, any prejudice that may result to other parties based on the delay, and the extent to which the petitioner has renewed efforts to prosecute the application. *Edmond v. City of Colorado Springs*, 226 P.3d 1248, 1253 (Colo. App. 2010). The ALJ has considered all factors relevant to determining whether the Petition should be dismissed, including policies favoring resolution of disputes on the merits and disfavoring unreasonable delay. *See id.*

12. Given Mr. Vasold’s failure to make the filing required by Decision No. R19-0880-I, his failure to appear at the hearing scheduled by Decision No. R19-0939-I, and his failure to take any action to prosecute or pursue his Petition since filing it, the ALJ finds that Mr. Vasold has abandoned his Petition and failed to prosecute or pursue it indefinitely. Over two weeks have passed since Mr. Vasold failed to appear at the December 3rd hearing, and over a month has passed since Mr. Vasold missed the November 13th deadline to submit the complete medical Report. He has offered no explanation for his inaction. Based on the record, the ALJ finds Mr. Vasold’s delay in pursuing his Petition, which appears indefinite, is unreasonable. Though Mr. Vasold is the only party to this proceeding, that does not negate his obligation to pursue his Petition, and not to abandon it.

13. Based on the foregoing reasons and authorities, the ALJ concludes that the Petition should be dismissed for failure to prosecute it and because Mr. Vasold has abandoned the Petition. Mr. Vasold was warned that failing to appear at the December 3, 2019 hearing may result in dismissal of his Petition for failing to prosecute it. Decision R19-0939-I, ¶ 6. Thus,

when Mr. Vasold failed to appear at the hearing, he assumed the risk that the Petition may be dismissed.

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. Consistent with the discussion above, Mr. Calder Louis Vasold's Petition for Waiver/Variance of Safety Regulations – TNC Driver filed on October 9, 2019 in this proceeding is dismissed without prejudice.

2. Proceeding No. 19V-0549TNC is closed.

3. This Recommended Decision will 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 will 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 will 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.

5. If exceptions to this Decision are filed, they must 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