

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners: Mark Sievers, Chairman  
Thomas E. Wright  
Shari Feist Albrecht

In the Matter of the Revocation of the Waiver of )  
Physical Requirements of Drivers of )  
Commercial Motor Vehicles for **Luke Wester** ) Docket No. 14-TRAM-092-MIS  
**of Liberal, Kansas,** in accordance with )  
Commission Motor Carrier Safety Statutes, )  
Rules and Regulations. )

**ORDER RESCINDING WAIVER OF PHYSICAL REQUIREMENTS**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) on its own motion. Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

**I. JURISDICTION**

1. Pursuant to K.S.A. 2012 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2012 Supp. 66-1,108, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

2. Pursuant to 2012 Supp. 66-1,129, the Commission has enacted requirements for the physical qualification of drivers of commercial motor vehicles, which are adopted as rule and regulation at K.A.R. 82-4-3g.

3. Pursuant to K.A.R. 82-4-6d, any person failing to meet the requirements of K.A.R. 82-4-3g may be permitted to drive a vehicle if the person applies for and is granted a waiver of the physical requirements.

## **II. BACKGROUND**

4. On December 5, 2012, Luke A. Wester submitted application materials to the Commission requesting a waiver of the physical qualification requirements of K.A.R. 82-4-3g.

5. The application was reviewed by a neutral third-party licensed medical examiner, and the medical examiner reported the applicant met the requirements of K.A.R. 82-4-6d and the standards of the Commission's Medical Waiver Program.

6. On December 14, 2012, Mr. Wester's application was granted, and a waiver was issued.

7. On August 1, 2013, after re-reviewing Mr. Wester's application, the medical examiner reported that Mr. Wester did not meet the requirements of the Commission's Medical Waiver Program, and the waiver was granted in error.

## **III. STAFF'S RECOMMENDATION**

8. Staff recommends the waiver issued to Mr. Wester on December 14, 2012, be rescinded.<sup>1</sup>

## **IV. CONCLUSIONS OF LAW**

9. The Commission finds it has jurisdiction over Mr. Wester with respect to the driving of commercial motor vehicles pursuant to K.S.A. 66-1,108 and K.S.A. 2012 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115.

10. The Commission finds Mr. Wester does not satisfy the requirements of K.A.R. 82-4-6d and the Commission's Medical Waiver Program for the waiver of physical qualifications of driving a commercial motor vehicle pursuant to K.A.R. 82-4-3g.

11. The Commission finds that it is consistent with highway safety and in the public interest to rescind the waiver issued to Mr. Wester on December 14, 2012.


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<sup>1</sup> See, Staff's Report and Recommendation (August 12, 2013).

**BY THE COMMISSION IT IS SO ORDERED.**

Sievers, Chmn; Wright, Com.; Albrecht, Com.

Dated: AUG 15 2013

  
ORDER MAILED AUG 16 2013  
Kim Christiansen  
Executive Director

AS

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Mark Sievers, Chairman  
Thomas E. Wright, Commissioner  
Shari Feist Albrecht, Commissioner

Sam Brownback, Governor

**REPORT AND RECOMMENDATION  
TRANSPORTATION DIVISION  
\*\*PUBLIC VERSION\*\***

**TO:** Chairman Mark Sievers  
Commissioner Thomas E. Wright  
Commissioner Shari Feist Albrecht

**FROM:** Gary Davenport, Deputy Director of Transportation  
Mike Hoeme, Director of Transportation

**DATE:** August 12, 2013

**DATE SUBMITTED TO LEGAL:** 8-12-13

**DATE SUBMITTED TO COMMISSIONERS:** 8-12-13

**SUBJECT:** Docket no. 14-TRAM-092-MIS; In the Matter of the Revocation of the Waiver of Physical Requirements of Drivers of Commercial Motor Vehicles for Luke Wester of Liberal, Kansas, in accordance with Commission Motor Carrier Safety Statutes, Rules and Regulations.

**EXECUTIVE SUMMARY:**

On December 14, 2012, due to an oversight on the part of the Commission's third party medical examiner and Transportation Staff, a waiver was issued to Luke A. Wester, which should not have been issued as Mr. Wester did not meet the requirements pursuant to K.A.R. 82-4-6d. Upon re-review of the application and discovery of this error, the Transportation Division recommends this waiver be rescinded.

**BACKGROUND:**

On December 5, 2012, Luke A. Wester submitted application materials to the Commission's Transportation Division requesting a waiver of the physical qualification requirements of driving commercial motor vehicles. [REDACTED]

[REDACTED]

[REDACTED] Pursuant to Commission policy, this application was reviewed by MKM, P.A.,

which is the impartial third party medical reviewer for the KCC Medical Waiver Program. After review, MKM, P.A. reported to the Commission that the applicant met the requirements for a one-year waiver. However, [REDACTED]

[REDACTED] on August 1, 2013, MKM, P.A. reported to the Commission that, after re-reviewing the application, the applicant does not meet the requirements for a one-year waiver. [REDACTED]

### **ANALYSIS:**

The physical qualification requirements for drivers of commercial motor vehicles include instructions for medical examiners performing physical examinations found at 49 C.F.R. 391.43, as adopted by K.A.R. 82-4-3g. These qualifications standards cover thirteen areas which directly relate to the driving function. All but four of the standards require a judgment by the medical examiner; a person's qualification to drive is determined by a medical examiner that is knowledgeable about the driver's functions and whether a particular condition would interfere with the driver's ability to safely operate a commercial motor vehicle. In the case of vision, hearing, insulin-using diabetes, and epilepsy, the standards are absolute, providing no discretion to the medical examiner. Therefore, the Commission's Medical Waiver Program provides additional scrutiny for these conditions.

Pursuant to K.A.R. 82-4-6d, the Director of Transportation may approve applications for the waiver of physical requirements for driving a commercial motor vehicle found at 49 C.F.R. 391.41, as adopted by K.A.R. 82-4-3g, if the Director finds that granting the waiver is consistent with highway safety and is in the public interest.<sup>1</sup> If the application is denied, an order setting forth an explanation for the denial and specifying the procedure for an appeal of the decision shall be issued by the Commission.<sup>2</sup> Standards for the Commission's Medical Waiver Program are set forth within K.A.R. 82-4-6d.<sup>3</sup>

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<sup>1</sup> K.A.R. 82-4-6d(a).

<sup>2</sup> K.A.R. 82-4-6d(e).

<sup>3</sup> K.A.R. 82-4-6d(b) and (c).

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Therefore, Staff recommends the waiver issued on  
December 14, 2012, be rescinded.

**RECOMMENDATION:**

The Transportation Division recommends the Commission issue an Order rescinding the waiver issued to Luke A. Wester on December 14, 2012.

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET  
TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
AMBER SMITH, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		
LUKE A. WESTER, OWNER 741 S HOLLY DR LIBERAL, KS 67901		

ORDER MAILED AUG 16 2013

The Docket Room hereby certified that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.