

ORIGINAL

Decision No. 48555

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of Highway Drivers Council of California, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A.F.L., for modification of Section 7.09 of General Order No. 99.)))))
				Application No. 34091	
				(Filed February 13,	
				1953)	

Tobriner and Lazarus and Albert Brundage, for applicant.
Robert D. Boynton, for California Motor Transport Association, interested party.
L. E. Hull and John Power for Commission's staff.

O P I N I O N

Highway Drivers Council of California International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F. of L., hereinafter called "Council", requests the Commission to amend Section 7.09 of its General Order No. 99, to provide for periodical physical re-examination of drivers of vehicles used for the transportation of property by a highway common carrier, petroleum irregular route carrier, or petroleum contract carrier at three-year instead of two-year intervals.

A public hearing was held at San Francisco before Commissioner Hull and Examiner Silverhart, on March 26, 1953, on which date the matter was submitted.

Council's secretary testified that it did not oppose physical examinations but sought uniformity between Section 7.09 and Section 191.9 of the Motor Carrier Safety Regulations of the Interstate Commerce Commission. He stated that drivers in the employ of the

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- (1) Section 7.09 reads: "Periodical Re-examination Required. Every driver shall be re-examined in the same manner as provided in Section 7.06 at not less than two-year intervals to ascertain whether he meets the qualification requirements of Section 7.01 to 7.04, inclusive."
 - (2) Section 191.9 provides: Periodic Physical Examination of Drivers. On and after January 1, 1954, every driver shall be physically re-examined at least once in every 36 months and no person shall drive nor shall any motor carrier require or permit any person to drive any motor vehicle unless such person shall have been physically examined and certified by a licensed doctor of medicine as meeting the requirements of 191.2; provided, however, that this section shall not apply to drivers of motor vehicles controlled and operated by farmers when used in the transportation of agricultural commodities or products thereof from his farm, or in the transportation of supplies to his farm."

same carrier would be subject either to the Commission's two-year re-examination period or the Interstate Commerce Commission's three-year interval between re-examinations, dependent upon whether such drivers were operating intrastate or interstate runs. Drivers employed in both intrastate and interstate runs, he said, would be amenable to the requirements of both Commissions. Upon cross-examination the witness conceded that compliance with Section 7.09 of General Order No. 99 would satisfy Section 191.9 of the Motor Carrier Safety Regulations.

The associate medical director for Metropolitan Life Insurance Company's Pacific and Mountain States District, was called as a witness by the Commission's staff. The doctor testified that generally all persons should receive physical examinations at least annually. He stated that physical examinations reveal conditions of which the examinee is unaware and can assist in the detection of incipient degenerative diseases. Such diseases, he said, are more easily uncovered by a physical examination made every two years than one conducted every three years.

In Application No. 33923, the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, A.F. of L., Divisions 1225, 1222, 1055 and 1223, requested the Commission to conform Section 12.09 of General Order No. 98⁽³⁾ to Section 191.9 (idem) so that periodical physical re-examinations of drivers of passenger stages and trolley coaches would be required at three-year instead of two-year intervals. Such application was

(3) Section 12.09, General Order No. 98, provides as follows: "Periodical Re-examination Required. Drivers shall be re-examined in the same manner as provided in Section 12.06 at not less than two-year intervals to ascertain whether they still meet the qualification requirements of Section 12.01 to 12.04 inclusive."

filed to obtain uniformity and to eliminate alleged administrative difficulty. In denying that application (Decision No. 48357, dated March 10, 1953), we said "Both General Order No. 98 and the Motor Carrier Safety Regulations prohibit any person from driving unless he possesses certain minimum physical and mental requirements. Such minima are substantially similar and it must be expected that the Interstate Commerce Commission will insist upon compliance with its requirements, whether the defect is made apparent by a physical examination under its own rules or under those of California." The same may be said with equal force as to General Order No. 99 and the motor carrier safety regulations.

It is incumbent upon the Commission to demand that property transportation companies subject to its jurisdiction operate their lines, equipment and apparatus in such manner as to promote and safeguard the health and safety of their employees and the public.

Decision No. 46089, dated August 14, 1951, was issued in Case No. 5097, an investigation conducted by this Commission in order to determine the reasonableness and propriety of adopting a general order containing safety rules and regulations applicable to highway common carriers. In such decision at mimeograph page 5 we said, "It is our further conclusion and we so find, that the regulations as set forth in the order concerning the physical and mental requirements of drivers and the requirement of a physical examination and an accompanying certificate should be considered as the minimum reasonable requirements calculated to eliminate, insofar as possible, those accidents resulting from the physical failure or incapacity of the drivers" and at mimeograph page 8, "It is our conclusion therefore, based upon the testimony and evidence introduced during the proceeding, and we so find, that the safety rules and other regulations covering the operations of highway common carriers,

petroleum irregular route carriers, and petroleum contract carriers set forth in the attached General Order No. 99 are reasonable and necessary and will promote safety in the transportation of property by such carriers on the highways in California" (underscoring added).

In the promulgation of safety rules, uniformity, while desirable, is not the determinant. Rather we must be governed by that which best fosters the public safety.

It is our opinion that Section 7.09, in providing for biennial physical re-examinations, is better calculated to promote the public safety than a rule requiring triennial physical re-examinations.

The application will be denied.

O R D E R

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED that Application No. 34091 is denied.

The effective date of this order shall be twenty days after the date hereof.

dated at San Francisco, California, this 28th day of April, 1953.

A. J. Montgomery
PRESIDENT
Harold P. Kule

Francis W. Patten
Richard L. Mitchell

COMMISSIONERS