

BEFORE THE PENNSYLVANIA UTILITIES COMMISSION

John F. Peoples,	:	
	:	
Complainant	:	Docket No. C-2018-3000667
	:	
v.	:	
	:	
Lyft, Inc.	:	
Respondent	:	

EXCEPTIONS OF JOHN F. PEOPLES-COMPLAINANT

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Complainant John F. Peoples, by and through counsel, Bochetto & Lentz, P.C., hereby takes exception to the Administrative Law Judge’s Initial Decision, entered on January 31, 2019, (“the Initial Decision”) as follows:

1. **The Initial Decision makes a finding of fact that “[t]he Complainant admits to the behavior alleged in the warnings.” (Initial Decision at 5, paragraph 14). Complainant raises an exception to this finding of fact.**

At the hearing, the Administrative Law Judge (“ALJ”) asked Complainant if he “acknowledged [the] behavior” contained in the warnings sent by Respondent. (Transcript at 54:13-25), and Complainant responded “yes.”

However, Complainant raises an exception to this finding of fact because he went on to clarify that: “I would just ask [the drivers] what you think about the foreign drivers because I had so much trouble with them and they would report that as racist. It wasn’t like harassed. I just mentioned it to them and then they would report it that I was a racist. It’s not harass. At least I

didn't know it was harass." [sic] (Transcript at 55: 9-13). As such, Complainant did not admit to the racist behavior allegedly contained in Lyft's warnings.

Complainant also notes that the contents of Lyft's warnings were not presented at the hearing, and Exhibit 5, purporting to contain the contents of those admissions, was not admitted. As such, Complainant cannot admit to the content of warnings that are not part of the record.

2. **The Initial Decision states that "the Complainant demonstrated throughout the testimony that he, rather than Lyft, is the one who is discriminating." (Initial Decision at 9). Complainant raises an exception to this finding.**

Complainant's testimony, quoted on pages 9-10 of the Initial Decision, reflects Complainant's difficulty using Lyft's services when the Lyft driver cannot speak English. Complainant is blind and does not speak any other languages. As he testified to during the hearing, if a driver does not speak English properly, Complainant won't know that the driver has arrived, the driver will not be able to help Complainant into the vehicle, and Complainant will not be able to aid the driver in identifying the correct pick-up or drop-off location. (Transcript at 8:20-10:4).

Much of the quoted testimony refers to the effect of non-English speaking drivers on Complainant's disability. For example: "**The drivers don't know where they are going, and they don't ever get out of the car and help you.** I mean the foreign drivers; not the American drivers. They are really nice. I have trouble with the foreign drivers."; "The guy is an Indian and **he didn't speak English and he took me to the wrong place** and that goes on all the time."; "All I can tell is that the foreign drivers are just interested in making money **and some of them**

don't understand but a lot of them don't care"; "[**The foreign drivers**] **don't understand; they pull away** and they whine. . ." (Initial Decision at 9) (emphasis added).

In fact, when asked if it was his position that "Lyft should only be sending [him] native English-speaking drivers to transport [him]," Complainant responded that "[i]t is my position that [Lyft] should send me drivers that can help you. That's my position. . ." (Transcript at 11:25-12:1).

Complaint raises an exception to this finding because he is not discriminating by requesting English-speaking drivers, he is simply requesting an accommodation for his disability.

3. **The Initial Decision makes a conclusion of law that "the Complainant failed to meet his burden of proving that Lyft discriminated against him when it deactivated his account from the platform." (Initial Decision at 11). Complainant raises an exception to this conclusion of law.**

As Complainant testified, Lyft drivers would continuously cancel services to Plaintiff upon discovering he was blind. When asked if he preferred English speaking drivers, Complainant responded "English speaking drivers that help you. I mean . . . I don't ask for too much help but you know, I do try to call them and sometimes they just don't answer the phone and as I said, if you do tell them that you are blind, a lot of them just cancel." (Transcript at 12:3-6).

As noted in Complainant's pre-hearing brief, "Appendix D to Part 37 of the Department of Transportation regulations provides examples of what constitutes discrimination by a taxi service. *See, e.g.,* Section 37.29 Private Providers of Taxi Service, 49 C.F.R. pt. 37 app. D, subpt. B (2014)

(“**It would be discrimination to pass up a passenger because he or she was blind** or used a wheelchair”) (emphasis added).” (Plaintiff’s Pre-Hearing Brief at 4).

Plaintiff attempted to resolve this matter by indicating to other Lyft drivers that he would need English-speaking drivers. Rather than address Plaintiff’s disability needs, Lyft chose to instead permanently ban Plaintiff from the Lyft platform.

Lyft argued that it banned Plaintiff for discriminatory conduct, rather than based on his disability. Lyft’s argument was not supported by evidence at the hearing. During the hearing, Lyft’s agent, Jessica Taylor, alleged that certain driver reviews would lead to alleged reprimands (the contents of which are still not on the record). (Transcript at 34:25-39:7).

Ms. Taylor walked through negative reviews made against the Complainant by various Lyft drivers, and the subsequent warning sent to Complainant. (Transcript at 36:24-38:22). The length of time between each allegation and warning was as follows:¹

- September 15, 2016 review: One day until warning sent
- February 19, 2017 review: Seven days until warning sent
- March 17, 2017 review: Warning sent on the same day
- June 26, 2017 review: One day until warning sent
- June 27, 2017 review: Eleven days until warning sent

Ms. Taylor went on to describe two additional reviews, one dated July 1, 2017 and one dated July 29, 2017. (Transcript at 38:9-18). She did not testify that either of dates were

¹ This is assuming that each warning is, in fact, connected to the specified review as Ms. Taylor stated. As the Court is aware, the substance of each warning is not on the record. There is no documentation regarding which reviews prompted which warnings.

accompanied by an associated warning. She did, however, testify that “an allegation” led to Complainant’s deactivation from the platform on August 23, 2017. (Transcript at 28:21-22).

Complainant raises an exception to this conclusion because, clearly, his deactivation was a result of discrimination rather than his violation of Lyft policy. As Ms. Taylor demonstrated, each negative review was followed by a warning, sent between zero and eleven days after the review.

Lyft contends that one of the July 2017 reviews was the ultimate basis for Complainant’s deactivation **nearly a month later**. This unprecedented delay is evidence that Complainant’s deactivation was not associated with any alleged policy violations, but was instead a deactivation based on discrimination. (Transcript at 48:18-9:2).

Respectfully submitted,

BOCHETTO & LENTZ, P.C.

Date: February 14, 2019

By: /s/ Kiersty M. DeGroot
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I.D. No. 326081
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54.

Michael W. Gang, Esquire
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Dated this 14th day of February, 2019

BOCHETTO AND LENTZ, P.C.

By: /s/ Kiersty DeGroot
Kiersty DeGroot
Attorney for Plaintiff