

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Chad Moyer, Notice of)
Apparent Violation and Intent to Assess) Case No. 11-78-TR-CVF
Forfeiture.) (OH0726003929D)

OPINION AND ORDER

The Commission, considering the testimony and exhibits presented in this matter, the applicable law, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Chad Moyer, 7909 Broad Street SW, Pataskala, Ohio 43062, on his own behalf.

Mike DeWine, Ohio Attorney General, by Steven L. Beeler and Devin D. Parram, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

OPINION:

I. Nature of the Proceeding and Background

On August 31, 2010, Trooper Mica Hatcher of the Ohio State Highway Patrol conducted an inspection of a commercial motor vehicle (CMV), near Mile Post 56 on Interstate 70 in Clark County, Ohio. The CMV was operated by Bonnie Speed Delivery Incorporated and driven by Chad Moyer. Trooper Hatcher found the following apparent violation of the Code of Federal Regulations (C.F.R.):

49 C.F.R. Section 392.16 - Failing to use a seat belt while operating a CMV.¹

Mr. Moyer was timely served a notice of preliminary determination in accordance with Rule 4901:2-7-12, Ohio Administrative Code (O.A.C.). In this notice, Mr. Moyer was notified that Commission staff intended to assess a civil forfeiture of \$100.00 for violation of 49 C.F.R. Section 392.16. On January 6, 2011, Mr. Moyer filed a request for an administrative hearing on the violation. A prehearing conference was held on February 10,

¹ 49 C.F.R. Section 392.16 provides: "A commercial motor vehicle which has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself/herself with the seat belt assembly."

2011; however, the parties could not resolve this matter. A hearing was conducted on April 14, 2011. At the hearing, Mr. Moyer stated that he did not contest the amount of the assessed civil forfeiture (Tr. at 5).

II. The Law

Under Rule 4901:2-5-02(A), O.A.C., the Commission adopted certain provisions of the motor carrier safety regulations of the U.S. Department of Transportation, including 49 C.F.R. Section 392.16, to govern the transportation of persons or property in intrastate commerce within Ohio. In addition, Rule 4901:2-5-02(B), O.A.C., requires all motor carriers engaged in interstate commerce in Ohio to operate in conformity with all regulations of the U.S. Department of Transportation, which have been adopted by the Commission. Further, Section 4919.99, Revised Code, authorizes the Commission to assess a civil forfeiture against any person who violates the safety regulations adopted by the Commission when transporting persons or property, in interstate commerce, into or through this state.

III. Issue in the Case

The sole issue in this case is whether Mr. Moyer was in violation of 49 C.F.R. Section 392.16, for failing to be properly restrained with the seat belt assembly while operating his CMV.

Staff's Position

Trooper Hatcher testified that, prior to the inspection, he was in his patrol vehicle, which was parked on the right-side berm of Interstate 70, facing east. Trooper Hatcher, who stated that he remembered this particular stop, explained that he was observing the eastbound traffic through his rearview mirror and was specifically checking for seat belt violations. According to Trooper Hatcher, as he watched Mr. Moyer's CMV coming toward him through his rearview mirror, Trooper Hatcher observed through Mr. Moyer's front windshield that Mr. Moyer was driving the vehicle without wearing the shoulder strap of his seat belt. Trooper Hatcher also indicated that this is a common way for patrol officers to look for this type of violation and that it does not in any way impair their observations. (Tr. at 10-13; Staff Ex. 1.)

Trooper Hatcher further testified that Mr. Moyer's seat belt was black in color and that Mr. Moyer was wearing a moderate to light green t-shirt. Trooper Hatcher explained that it is much easier to observe whether a driver is wearing a dark seat belt across his chest, if the driver, as in this case, is wearing a light shirt. (Tr. at 12-14, 21; Staff Ex. 1.)

Additionally, Trooper Hatcher testified that his patrol car is a Chevy Tahoe, which is a sport utility vehicle that sits higher off of the roadway and has large mirrors, eight inches

by six inches, which are factory installed and larger than the mirrors on a typical patrol car. He noted that his patrol vehicle is equipped with an especially large rearview mirror that provides a clear view of oncoming vehicles and drivers. Trooper Hatcher testified that the inspection occurred on a sunny day, but that the sun, which was in front of him, did not impair his observation of Mr. Moyer through the rearview mirror. "Q: Did the sun in any way impair your observation of this driver? A: No, absolutely not." Trooper Hatcher also testified that, while he did not specifically recall if the sun visor on Mr. Moyer's CMV was down, had it been down, it would not have impaired his observation in any way, because the few inches of the windshield that are blocked by the visor did not obstruct his view of Mr. Moyer or of Mr. Moyer's chest. (Tr. at 11, 14, 26, 27-29.)

Finally, Trooper Hatcher testified that, as he approached Mr. Moyer's vehicle after it was stopped for the inspection, he noticed that Mr. Moyer was, at that point, wearing his seat belt across his chest. Trooper Hatcher also noted that Mr. Moyer told him that he had been wearing his seat belt. Trooper Hatcher explained that, in his experience, drivers tend to quickly put on their seat belts when they are stopped for an inspection, because they are aware of the seat belt regulation. On cross-examination, Trooper Hatcher stated that he assumed that Mr. Moyer had quickly fastened his seat belt, although he did not see Mr. Moyer do so. (Tr. at 12, 15, 24; Staff Ex. 1.)

Mr. Moyer's Position

According to Mr. Moyer, on the day of the inspection, he was wearing his seat belt as he drove past Trooper Hatcher. Mr. Moyer indicated that his seat belt was fastened from the time that he departed from Illinois early that morning. Mr. Moyer testified that he was traveling in a 55 miles per hour construction zone on eastbound Interstate 70 in the lane closest to Trooper Hatcher, who was parked off to the side of the roadway, and that there were multiple trucks in that lane, as well as light automobile traffic in the left lane. (Tr. at 31-32.)

Noting that the inspection occurred around 9:00 a.m., Mr. Moyer claimed that, as he drove past Trooper Hatcher, the sun was extremely bright and shining directly in his eyes. Mr. Moyer also contended that he noticed, through his rearview mirror, that the sun was shining off of the windshields of the other vehicles. Because of the sun, Mr. Moyer explained that his visor was down. Additionally, Mr. Moyer testified that he mentioned to Trooper Hatcher that he had been wearing his seat belt and specifically denied that he had quickly fastened his seat belt after the stop. Mr. Moyer also stated that he had requested, but was denied, any video evidence of the stop and inspection from Trooper Hatcher.² Mr. Moyer testified that, as a general practice, he wears his seat belt. (Tr. at 31-33.)

² At the hearing, Trooper Hatcher testified that the video camera in the patrol car does not begin recording until after the warning lights are activated, which, in this case, occurred after Mr. Moyer had traveled past Trooper Hatcher. Therefore, the only recorded video was of the rear of Mr. Moyer's CMV. (Tr. at 24-25.)

Commission Conclusion

Rule 4901:2-7-20(A), O.A.C., requires that, at the hearing, staff prove the occurrence of the violation by a preponderance of the evidence. The Commission finds that, based upon the record in this proceeding, staff has proven that Mr. Moyer violated 49 C.F.R. Section 392.16 as alleged. We find the testimony of Trooper Hatcher to be persuasive and the evidence supports the conclusion that the violation occurred. Trooper Hatcher's testimony is supported by the detailed notes in his inspection report (Staff Ex. 1), which were prepared by Trooper Hatcher contemporaneously with the inspection (Tr. at 12). The evidence indicates that Trooper Hatcher had parked on the berm, from which he had a clear, unobstructed view of Mr. Moyer as he drove past him (Tr. at 10-11, 22-23). The evidence also indicates that Mr. Moyer was wearing a light green shirt, and that the shoulder belt, which was black, was not visible across his chest as he was driving (Tr. at 12-13). Although Mr. Moyer testified that his sun visor was down and that the sun was shining on the windshields of the eastbound vehicles (Tr. at 32), Trooper Hatcher refuted this testimony, stating that neither the sun nor the visor impacted his observation of Mr. Moyer through his large rearview mirror (Tr. at 11, 14, 27-29). Mr. Moyer's testimony at the hearing was not sufficient to demonstrate that he should not be held liable for the civil forfeiture assessed for violation of 49 C.F.R. Section 392.16.

Accordingly, Mr. Moyer is directed to make payment of the \$100.00 civil forfeiture by certified check or money order made payable to "Treasurer, State of Ohio" and mailed or delivered to the Public Utilities Commission of Ohio, Attention: Fiscal Division, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case No. 11-78-TR-CVF and Inspection No. OH0726003929D should be written on the face of the certified check or money order to ensure proper credit. Payment must be made within 30 days of this opinion and order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On January 6, 2011, Chad Moyer filed a request for an administrative hearing regarding an apparent violation of 49 C.F.R. Section 392.16 and a civil forfeiture of \$100.00 proposed by staff.
- (2) A prehearing conference was held on February 10, 2011.
- (3) A hearing was held on April 14, 2011.
- (4) Rule 4901:2-7-20(A), O.A.C., requires that, at the hearing, staff prove the occurrence of a violation by a preponderance of the evidence.

- (5) Based upon the record in this proceeding, staff has proven that Mr. Moyer violated 49 C.F.R. Section 392.16.
- (6) Mr. Moyer should be assessed the \$100.00 civil forfeiture for violation of 49 C.F.R. Section 392.16.

ORDER:

It is, therefore,

ORDERED, That Mr. Moyer pay the \$100.00 assessed civil forfeiture for violation of 49 C.F.R. Section 392.16, as set forth in this opinion and order. It is, further,

ORDERED, That the Ohio Attorney General take all legal steps necessary to enforce the terms of this opinion and order. It is, further,


ORDERED, That a copy of this opinion and order be served upon all parties of record.

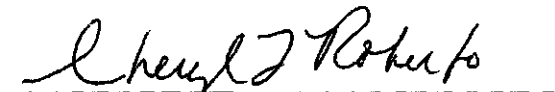
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella


Steven D. Lesser

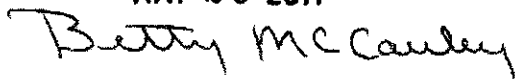

Andre T. Porter


Cheryl L. Roberto

SJP/sc

Entered in the Journal

MAY 25 2011



Betty McCauley
Secretary