THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF ABDIQANI J. MOHAMED, NOTICE OF APPARENT VIOLATION AND INTENT TO ASSESS FORFEITURE.	**CASE NO. 19-134-TR-CVF (OH3235005741D)**

OPINION AND ORDER

Entered in the Journal on September 26, 2019

I. SUMMARY

{¶ 1} The Commission finds that Staff demonstrated, by a preponderance of the evidence, that Abdiqani J. Mohamed failed to submit requisite medical certification documentation to the State and operated a commercial motor vehicle without a valid commercial driver's license in violation of 49 C.F.R. 383.71(h) and 383.23(a)(2), respectively.

II. PROCEDURAL HISTORY

{¶ 2} Following an inspection of a commercial motor vehicle (CMV) operated by Proficient Transport, Inc., and driven by Abdiqani J. Mohamed (Respondent), Commission Staff (Staff) timely served Respondent with a Notice of Preliminary Determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-12, notifying him that Staff intended to assess a $250 civil forfeiture for a violation of the Commission's transportation rules.

{¶ 3} A prehearing conference convened on March 4, 2019, and an evidentiary hearing took place on April 16, 2019. At the hearing, Officer Steven Morgan and Rod Moser appeared as witnesses for Staff, and Respondent appeared on his own behalf.

III. LAW

{¶ 4} Under Ohio Adm.Code 4901:2-5-03(A), the Commission adopted certain provisions of the Federal Motor Carrier Safety Regulations, 49 C.F.R. Sections 40, 42, 383, 387, and 390-397, to govern the transportation of persons or property within Ohio. Ohio Adm.Code 4901:2-5-03(B) and (C) require all motor carriers engaged in intrastate and interstate commerce in Ohio to operate in conformity with all federal regulations that have been adopted by the Commission. Further, R.C. 4923.99 authorizes, the Commission to

assess a civil forfeiture of up to $25,000 per day, per violation, against any person who violates the safety rules adopted by the Commission when transporting persons or property in interstate commerce in or through Ohio. Ohio Adm.Code 4901:2-7-20(A) requires that, at the hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

IV. ISSUE

{¶ 5} At issue is whether Respondent complied with (1) 49 C.F.R. 383.71(h), which states that, in order to maintain a medical certification status of "certified", a CDL holder must provide the State with an original or copy or each subsequently issued medical examiner's certificate and (2) 49 C.F.R. 383.23(a)(2), which generally provides that no person may legally operate a CMV unless such person possesses a valid CDL.

{¶ 6} Staff alleges that, at the time of the inspection, Respondent's CDL was canceled, and therefore, Respondent was operating a CMV without a valid CDL in violation of 49 C.F.R. 383.23(a)(2). Staff further alleges that the cancelation was explicitly determined to be the result of Respondent's failure to provide the Ohio Bureau of Motor Vehicles (Ohio BMV) with a copy of his current medical examiner's certificate in violation of 49 C.F.R. 383.71(h). Respondent claims that he was not aware that his CDL had been canceled and argues that his current medical examiner's certificate was provided to the Ohio BMV, as well as provided for review during the inspection.

V. SUMMARY OF THE EVIDENCE

{¶ 7} Staff witness Rod Moser testified that he is employed at the Commission as the Chief of the Compliance within the Transportation Department, and his duties are to administer the civil forfeiture process. Additionally, Mr. Moser stated that he is currently certified as a motor carrier enforcement inspector and has 30 years of experience with the Ohio State Highway Patrol. Mr. Moser averred that Respondent received an NPD after an unsuccessful preliminary settlement conference. Mr. Moser testified that the NPD is a

document the Commission creates in its normal course of business and that Staff's Exhibit 1 is a true and accurate copy of the NPD Respondent received. (Tr. at 6-8; Staff Ex. 1 at 1-2.)

{¶ 8} Officer Steven Morgan, a motor carrier enforcement inspector for the State of Ohio, testified that, on August 22, 2018, following an inspection of the CMV, he prepared a Driver/Vehicle Examination Report, noting several apparent driver-related violations, but that the violations related to this case are 49 C.F.R. 383.71(h) and 383.23(a)(2) (Tr. at 10-11; Staff Ex. 2). Officer Morgan testified that, at the time of the inspection, the Law Enforcement Automated Data System (LEADS) revealed that Respondent did not have a medical certificate on record with the Ohio BMV and that his CDL was canceled. Officer Morgan testified that he asked Respondent if he had a medical certificate to which Respondent stated that he did not have one (Tr. at 11-12). In regards to the alleged violation of 49 C.F.R. 383.23(a)(2), Officer Morgan testified that, as noted in the Driver/Vehicle Examination Report, Respondent did not provide his medical examiner's certificate to the Ohio BMV, which was the basis for the cancelation of Respondent's CDL by the Ohio BMV. Therefore, Respondent was operating a CMV without a valid CDL. (Tr. at 12-13.)

{¶ 9} On cross-examination, Officer Morgan stated that Respondent did not show him his medical certificate (Tr. at 14). Additionally, Officer Morgan testified that a violation of 49 C.F.R. 383.23(a)(2) would still exist even if Respondent had a medical certificate on his person because Respondent is required to provide the Ohio BMV with his most current medical certificate and failed to do so. Lastly, Officer Morgan claimed that if Respondent's medical certificate is not updated in LEADS, then his CDL is automatically canceled. (Tr. at 15-16.)

{¶ 10} Mr. Mohamed testified that Officer Morgan pulled him over for a taillight infraction, and subsequently told Respondent, after checking LEADS, that Respondent did not have a medical certificate on record (Tr. at 17-18). Mr. Mohamed averred that he showed Officer Morgan his medical certificate, that he previously paid to update his medical certificate with the BMV, and that his company also automatically updates medical

certificates with the BMV (Tr. at 18). Mr. Mohamed testified that, after the inspection, he went to a local BMV branch to update his medical certificate, per Officer Morgan's recommendation. At the BMV, Mr. Mohamed explained that he paid $3.50 to check his CDL and that the BMV Staff told him there were no issues with his license. Lastly, Mr. Mohamed stated that he subsequently visited his doctor to obtain a new medical certificate, which he filed within this case docket and brought to the evidentiary hearing. (Tr. at 18; Respondent Ex. 1.)

{¶ 11} On cross-examination, Mr. Mohamed testified that he went to another BMV branch to update his medical certificate on file, and his company also updates his medical certificate with the BMV (Tr. at 21). Mr. Mohamed affirmed that he did not receive any notices from the BMV alerting him to the fact that the BMV had received his medical certificate. Additionally, Mr. Mohamed stated that he can check online to see whether there are any issues with his CDL, including cancelation, and that he checks this website every two to three months, including throughout 2018, to see if there are any issues with his CDL. Mr. Mohamed stated that, during his periodic checks, he did not see that the BMV canceled his CDL. (Tr. at 21-23.)

{¶ 12} During the latter half of Mr. Mohamed's cross-examination, Staff introduced a cancelation notice admitted into the record as Staff Exhibit 3 (Tr. at 23; Staff Ex. 3). Mr. Mohamed testified that he recognized the cancelation notice was from the BMV and confirmed that the letter was addressed to him, dated January 10, 2018, stated that his CDL privileges were canceled, and advised him that his CDL will remain canceled until he submits a valid medical certificate. (Tr. at 23-24, 26; Staff Ex. 3). Mr. Mohamed clarified that he did not get a new medical certificate between January 2018 and August 2018, but that he renewed his medical certificate in 2019; therefore, Mr. Mohamed agreed that the cancelation notice did not refer to his newly renewed 2019 medical certificate. Mr. Mohamed agreed that from January 10, 2018, until the date that he was stopped by Officer Morgan on August 22, 2018, he had not been to the BMV to update his medical certificate even though the letter

indicated to Mr. Mohamed that he needed to submit the required documentation to the BMV in order to renew his CDL driving privileges. (Tr. at 26-27). Mr. Mohamed further clarified his previous statement that when he went to the BMV in 2018, he did so to get a new license plate for his motor vehicle and to update his medical certificate; however, Mr. Mohamed did not presently have any documentation that proved he was at the BMV in 2018 to update his medical certificate. Mr. Mohamed averred that, throughout 2018, he never saw that the BMV canceled his CDL on the online website. (Tr. at 26-28). Lastly, Mr. Mohamed testified that he did not receive the cancelation notice (Tr. at 29).

VI. COMMISSION CONCLUSION

{¶ 13} After reviewing the evidence, the Commission finds that Staff has demonstrated, by a preponderance of the evidence at hearing, that a violation of 49 C.F.R. 383.71(h) and 383.23(a)(2) occurred when Respondent failed to provide the State with his current medical certificate, therefore revoking his CDL driving privileges, and then when Respondent operated a CMV without a valid CDL. In this case, Officer Morgan testified that, at the time of the inspection, Respondent's CDL privileges in the state of Ohio were canceled due to the fact that Respondent's medical examiner's certificate on file with the Ohio BMV had not been received (Tr. at 10-13; Staff Ex. 2 at 1). This was confirmed by the cancelation notice (Staff Ex. 3). Although Respondent testified that he updated his medical certificate with the BMV in 2018, he does not have any corresponding documentation (Tr. at 28). Furthermore, Respondent testified that between the time that he received the cancelation notice on January 10, 2018, and August 22, 2019, the date of the inspection, he had not been to the BMV to update his medical certificate even though the cancelation notice instructed him to do so (Tr. at 26). Although Respondent testified that he did not receive the January 10, 2018 cancelation notice, he testified that he regularly checks the status of his CDL online, and therefore, the Commission finds that Respondent should have been aware that his CDL was canceled. Additionally, the January 10, 2018 cancelation notice was not the BMV's first attempt in notifying Respondent that cancelation of his CDL was forthcoming because of his failure to submit a valid medical certificate to the BMV (Staff Ex.

3). As a driver, it was Respondent's responsibility to ensure that he was properly licensed to operate a CMV, as required by 49 C.F.R. 383.23(a)(2). The Commission, therefore, finds that, based on a preponderance of the evidence, Staff has proven that Respondent violated 49 C.F.R. 383.71(h) by failing to submit the required medical certification documentation to the State and violated 49 C.F.R. 383.23(a)(2) by driving a CMV without a valid CDL.

{¶ 14} Accordingly, the Commission finds that sufficient evidence was presented to show that, more likely than not, the violation occurred. Thus, Respondent is directed to make payment of the $250 civil forfeiture within 60 days of this Opinion and Order by certified check or money order payable to "Treasurer, State of Ohio" and mailed or delivered to the Public Utilities Commission of Ohio, Attention: CF Processing, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case number 19-134-TR-CVF and inspection number OH3235005741D should be written on the face of the certified check or money order to ensure proper credit.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 15} On August 22, 2018, an inspector for the Ohio State Highway Patrol stopped and inspected a CMV driven by Respondent and found him to be in violation of 49 C.F.R. 383.71(h) and 383.23(a)(2).

{¶ 16} Respondent was timely served with an NPD, alleging a violation of 49 C.F.R. 383.71(h) and 383.23(a)(2), and informing him that Staff intended to assess a $250 civil forfeiture.

{¶ 17} A prehearing conference was conducted on March 4, 2019, and a hearing was held on April 16, 2019.

{¶ 18} In accordance with Ohio Adm.Code 4901:2-7-20, Staff has proven, by a preponderance of the evidence, that Respondent was in violation of 49 C.F.R. 383.71(h) and 383.23(a)(2).

{¶ 19} Respondent should be assessed a $250 civil forfeiture for the violations of 49 C.F.R. 383.71(h) and 383.23(a)(2).

VIII. ORDER

{¶ 20} It is, therefore,

{¶ 21} ORDERED, That Respondent pay a civil forfeiture of $250 for the violations of 49 C.F.R. 383.71(h) and 383.23(a)(2), within 60 days of this Opinion and Order. Payment shall be made by check or money order payable to "Treasurer, State of Ohio" and mailed or delivered to the Public Utilities Commission of Ohio, Attention: CF Processing, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case number 19-134-TR-CVF and the inspection number (OH3235005741D) should be written on the face of the check or money order. It is, further,

{¶ 22} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

COMMISSIONERS:
Approving:
Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

LLA/mef

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