

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF JOSH COX, NOTICE
OF APPARENT VIOLATION AND INTENT
TO ASSESS FORFEITURE.

CASE NO. 19-2126-TR-CVF
(OH1057000114D)

OPINION AND ORDER

Entered in the Journal on November 17, 2021

I. SUMMARY

{¶ 1} The Commission finds that Staff demonstrated, by a preponderance of the evidence, that Respondent violated the Commission's transportation rules, and directs Respondent to pay the assessed \$100 forfeiture within 60 days of this Entry.

II. PROCEDURAL HISTORY

{¶ 2} On September 12, 2019, Trooper Zachary Coleman (Trooper Coleman) of the Ohio State Highway Patrol (OSHP) stopped and inspected a vehicle operated by Rose Transportation Inc. and driven by Joshua Cox (Respondent or Mr. Cox), in the state of Ohio. During the inspection, Trooper Coleman prepared a report indicating a single violation of the Commission's transportation regulations: failure to use a seat belt while operating a commercial motor vehicle (CMV). (Staff Ex. 1.)

{¶ 3} Commission Staff timely served Mr. Cox with a Notice of Preliminary Determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-12, alleging a violation of 49 C.F.R. 392.16 for failure to use a seat belt while operating a CMV. The NPD also notified Respondent that Staff intended to assess a \$100 civil monetary forfeiture for violating the Commission's transportation rules pursuant to Ohio Adm.Code 4901:2-7-07. (Staff Ex. 2.)

{¶ 4} On December 9, 2019, Mr. Cox filed a request for a hearing in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 5} By Entry dated January 6, 2020, the attorney examiner scheduled a prehearing telephone conference for February 4, 2020, pursuant to Ohio Adm.Code 4901:2-7-16(B). Respondent and Staff participated in the prehearing conference, but the matter was not resolved.

{¶ 6} By Entry dated February 13, 2020, the attorney examiner scheduled an evidentiary hearing for April 2, 2020. On February 21, 2020, Staff filed a motion for a continuance and a request for expedited consideration requesting that the hearing be rescheduled for April 14, 2020, since one of Staff's witnesses for the inspection report had a scheduling conflict on April 2, 2020. Upon this motion for a continuance, the attorney examiner, by Entry dated February 24, 2020, rescheduled the evidentiary hearing for April 14, 2020.

{¶ 7} Due to further scheduling conflicts and the continuing COVID-19 state of emergency, the hearing for this matter was rescheduled multiple times by Entries issued on March 18, May 27, August 12, and ultimately October 6, 2020, within which the attorney examiner noted that a hearing date would be set by future Entry.

{¶ 8} In light of the updated health-safety guidelines, by Entry issued on July 12, 2021, the attorney examiner found appropriate to schedule a hearing for August 12, 2021.

{¶ 9} At the hearing, Staff witnesses' Trooper Coleman and Rod Moser testified in support of the violation and forfeiture amount, respectively. Mr. Cox represented himself at the hearing and testified on his own behalf.

III. APPLICABLE LAW

{¶ 10} R.C. 4923.04 provides that the Commission shall adopt rules applicable to the transportation of persons or property by motor carriers operating in interstate and intrastate commerce. Under Ohio Adm.Code 4901:2-5-03(A), the Commission adopted certain provisions of the Federal Motor Carrier Safety Regulations (FMCSR). Specifically, the Commission adopted 49 C.F.R. Sections 40, 367, 380, 382, 383, 385, 386, 387, and 390-397, to

govern the transportation of persons or property in intrastate commerce within Ohio. Ohio Adm.Code 4901:2-5-03(C) requires all motor carriers engaged in 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 requires that, at the hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

{¶ 11} The specific regulation that Staff alleges Respondent violated is 49 C.F.R. 392.16. The provisions of 49 C.F.R. 392.16 require that every driver of a CMV shall wear a seat belt while operating the vehicle.

IV. ISSUE

{¶ 12} At issue is whether Staff has satisfied its burden to show, by a preponderance of the evidence, that Respondent failed to wear a seat belt while operating a CMV and was, thus, in violation of 49 C.F.R. 392.16.

V. SUMMARY OF EVIDENCE

{¶ 13} At the hearing on August 12, 2021, Staff presented the testimony of Trooper Coleman. Trooper Coleman identified Staff Ex. 1 as the driver/vehicle examiner report, which he prepared after inspecting the vehicle on September 12, 2019. Trooper Coleman stopped the vehicle driven by Mr. Cox on Interstate 71 (I-71), while Mr. Cox was driving southbound. Trooper Coleman testified that he was sitting in his patrol vehicle in the middle of the crossover between the north and southbound lanes of I-71, facing southbound oncoming traffic, when he observed Mr. Cox's CMV approach him southbound. Trooper Coleman testified that he observed Mr. Cox wearing a grey t-shirt, but he did not see a seat belt strap across his shoulder. He affirmed that the shirt was a lighter color than the seat belt strap and saw no strap across his shirt. (Tr. at 11, 14-15; Staff Ex. 1.)

{¶ 14} Trooper Coleman testified that, as a Licensing and Commercial Standards (LCS) Trooper, it is part of his job to specifically look for drivers not wearing their seat belts. He further testified that he does not wear glasses or contacts and undergoes testing at the police academy every two years regarding his eyesight. (Tr. at 12-13.)

{¶ 15} Trooper Coleman further testified that, when he first approached Mr. Cox's CMV after pulling it over, Mr. Cox had the seat belt strap behind his back. Trooper Coleman further noted that upon inspection, the belt was behind Mr. Cox's back, "like he was sitting on it." (Tr. at 11-12.) On cross-examination, Trooper Coleman again confirmed that the seat belt was still behind Mr. Cox's back when Trooper Coleman opened the door for inspection (Tr. at 14).

{¶ 16} Mr. Rod Moser, Chief of the Compliance Division within the Commission's Transportation Department, testified regarding the assessment of forfeitures following roadside inspections (Tr. at 17).

{¶ 17} Referring to Staff Ex. 2, the NPD, Mr. Moser explained that a single violation of 49 C.F.R. 392.16 may be grouped into one of five groups depending upon the likelihood that the violation could cause a crash. Here, a safety belt violation is a Group 4 and such violations always have a fine. (Tr. at 17.) Mr. Moser added that the fine schedule used by Staff in making this assessment is consistent with the fine schedule recommended by the Commercial Vehicle Safety Alliance and is consistent with Commission rules, with the fine for this violation being \$100 (Tr. at 19-20).

{¶ 18} On direct examination, Mr. Cox testified that he slid his seat belt down on his left arm/bicep while operating his CMV to scratch off taco sauce that fell onto his breastplate from an earlier lunch. Mr. Cox affirms that he had the seat belt down across his arm while scratching off the residue, and it was then that he passed Trooper Coleman's patrol vehicle. Mr. Cox recalled attempting to make a lane change from the far-left lane to the middle lane, and then Trooper Coleman pulled out and put on his lights. During the inspection, Mr. Cox

recalls Trooper Coleman asking if Mr. Cox knew why he was pulled over, and when Mr. Cox responded no, Trooper Coleman advised Mr. Cox that he would conduct an inspection of the vehicle. After finishing his inspection, Trooper Coleman told him that he would be assessed for not wearing his seat belt. Mr. Cox stated that he tried to explain to Trooper Coleman about the taco sauce incident and that the seat belt was off his shoulder “a little bit” but not behind his back. Mr. Cox said that, after he tried to explain his perspective to Trooper Coleman, he “basically just accepted the ticket” and knew he could fight it at a later date. (Tr. at 22-26, 29.)

{¶ 19} After describing the incident, Mr. Cox’s testimony involved a description of the exhibits he was submitting into evidence. First, Mr. Cox submitted photographs taken at different angles of what he perceived to be ones from Trooper Coleman’s point-of-view. All photos presented as exhibits by Mr. Cox were taken by the owner of the truck and Mr. Cox’s supervisor, Ms. Krieger, approximately 30 minutes after the inspection and at a different location from the inspection. Furthermore, Mr. Cox noted that these exhibits demonstrate that, from Trooper Coleman’s viewpoint, it would have been difficult to see the seat belt, given where it was sitting at the time Mr. Cox was driving. (Tr. at 26-27; 28-29; Respondent Exs. 1 and 2.) Mr. Cox also presented a statement from Ms. Krieger within which she provided her understanding of the events leading to the inspection, the results of a call she made to the OSHP, and a request for a conference in this matter (Respondent Ex. 3).

{¶ 20} On re-direct examination, Trooper Coleman testified that it was a clear day and that the photos presented by Mr. Cox were not accurate representations of what Trooper Coleman saw on that day, affirming that the seat belt was behind Mr. Cox’s back on his first approach and that the specific make of the CMV, Kenworth, would not impede his ability to see whether the seat belt is on or off. Trooper Coleman affirmed that the way Mr. Cox described wearing his seatbelt, lowered across his arm/bicep, would not qualify as being properly restrained under the code. Trooper Coleman testified that, to be properly

restrained, the shoulder strap should be snug across shoulder or shoulder to chest tight, and the driver should be wearing a strap across their lap, as well. (Tr. at 32-35.)

VI. COMMISSION CONCLUSION

{¶ 21} Ohio Adm.Code 4901:2-7-20 requires that Staff prove the occurrence of a violation by a preponderance of the evidence at hearing. The Commission finds, based on a preponderance of the evidence, that Staff has proven that Mr. Cox violated 49 C.F.R. 49 C.F.R. 392.16.

{¶ 22} Considering the evidence, the Commission finds that the testimony of Trooper Coleman regarding the circumstances of alleged seat belt violation to be persuasive and that the weight of the evidence supports the conclusion that Mr. Cox failed to wear his seat belt properly while operating a CMV. Mr. Cox's testimony was not sufficient to demonstrate that he should not be held liable for the civil forfeiture assessed for violation of violated 49 C.F.R. 392.16.

{¶ 23} The Commission finds convincing the testimony of Trooper Coleman, who has been with the OHSP for 10 years, has been serving as an LCS Trooper for one-and-a-half years, and has maintained yearly training and physical examinations, including optical examinations (Tr. at 7, 13). He testified that on a clear day with moderate traffic he observed from the interstate crossover that, as Mr. Cox approached southbound on I-71, Mr. Cox was not wearing his seat belt properly. Further, Trooper Coleman testified that, during the inspection in which he opened Mr. Cox's door, Mr. Cox's seat belt was situated behind his back, as if he were sitting on top of it. (Tr. at 12, 33-34.) While Mr. Cox disputes the reason for his improper seat belt usage, on cross-examination, Trooper Coleman confirmed that Mr. Cox's seat belt remained improperly behind his back (Tr. at 14). Additionally, Trooper Coleman unequivocally affirmed that, even if Mr. Cox had been wearing his seat belt lower on his arm/bicep, it would not be considered properly restrained under the code; he must have the shoulder strap snug across his shoulder or shoulder to chest and be wearing a strap

around his lap (Tr. at 34-35). Consequently, nothing in Mr. Cox's testimony disputes the fact that his seat belt was improperly placed, regardless of his reasoning for the incident.

{¶ 24} Based on this finding, Respondent should be assessed a \$100 forfeiture for a violation of 49 C.F.R. 392.16, and he should pay the forfeiture within 60 days from the date of this Opinion and Order. Ohio Adm.Code 4901:2-7-22 provides that payment of such forfeitures shall be made by check or money order payable to the "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 19-2126-TR-CVF and inspection number OH1057000114D should be written on the face of the check or money order.

{¶ 25} As a final matter, we would like to address Mr. Cox's concern regarding the suspension of his commercial driver's license. As the Commission will not be the agency charged with suspending his license, we would encourage Mr. Cox to contact the Ohio Bureau of Motor Vehicles to request an administrative hearing, which is the more appropriate forum for disputing a commercial driver's license suspension.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 26} On September 12, 2019, Trooper Zachary Coleman of the OSHP stopped and inspected a CMV operated by Rose Transportation, Inc. and driven by Mr. Joshua. Cox. Trooper Coleman found a driver violation of 49 C.F.R. 392.16, failure to use a seatbelt while operating a CMV.

{¶ 27} Mr. Cox was timely served with a NPD, alleging a violation of 49 C.F.R. 392.16 for failure to use a seat belt while operating a CMV. In the NPD, Mr. Cox was notified that Staff intended to assess a civil monetary forfeiture of \$100.

{¶ 28} Mr. Cox participated in a prehearing teleconference on February 4, 2020.

{¶ 29} An evidentiary hearing was held on August 12, 2021.

{¶ 30} Ohio Adm.Code 4901:2-7-20(A) requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

{¶ 31} Based upon the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Mr. Cox violated 49 C.F.R. 392.16 for failing to use a seat belt while operating a CMV. Accordingly, Mr. Cox should be assessed a \$100 forfeiture for a violation of 49 C.F.R. 392.16, and he should pay the forfeiture within 60 days from the date of this Opinion and Order.

VIII. ORDER

{¶ 32} It is, therefore,

{¶ 33} ORDERED, That Respondent pay a civil forfeiture of \$100 for violating 49 C.F.R. 392.16 within 60 days of this Opinion and Order. Payment shall be made [via the Commission website](#) or by check or money order payable to the “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 19-2126-TR-CVF and inspection number OH1057000114D should be written on the face of the check or money order. It is, further,

{¶ 34} ORDERED, That a copy of this Opinion and Order be served upon each party of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Daniel R. Conway
Dennis P. Deters

MJS/IMM/kck

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Case No(s). 19-2126-TR-CVF

Summary: Opinion & Order finding that Staff demonstrated, by a preponderance of the evidence, that Respondent violated the Commission's transportation rules, and directs Respondent to pay the assessed \$100 forfeiture within 60 days of this Entry. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio