

FILE

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2009 AUG -3 PM 2:59

7-29-09

Whom It May Concern:

Please understand that I have attempted to comply with the Public Utilities Commissions' regulations regarding case # 09-422-TR-CVF, (OH 3288003473 D) these two years. The violation on 6-7-07 concerned my medical examiners' certificate, which had expired on 5-15-07.

I recieved a notice of apparent violation and intent to assess forfeiture dated 1-18-08.

I submitted a request for conference on 2-13-08.

I recieved scheduling for this conference dated 8-13-08.

I attended the conference 9-23-08.

I recieved a notice of preliminary determination dated 1-7-09.

I recieved an Entry dated 4-2-09, ordering payment of forfeiture or a response by 5-6-09 to show why I should not be held in default.

I submitted a response on 5-4-09.

I submitted a request for an administrative hearing, dated 5-18-09, per instructions from John. at the docketing division on 5-15-09.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Date Processed 8-3-09

I recieved an Entry of the Public Utilities Commission 6-1-09 directing me to participate in an administrative prehearing conference by telephone 7-7-09.

I contacted Scott Farbas to leave my wife's cell phone number since my vacation had been scheduled the week of 7-7-09.

Subsequently, my wife's cell phone became inoperable.

On return, I called and left a message for Scott Farbas.

Bill Wright returned my call and left a message for me.

I returned Bill Wright's call and left a message for him.

Bill Wright returned my call to him, with a phone number.

I talked with Bill Wright by telephone 7-21-09 and I submit the following consideration at his instruction.

I have been employed by ABF freight system since 5-28-85. As you know, the holder of a CDL is required to pass a DOT medical examination prior to employment and subsequent, bi-annual examinations through the term of their employment. These examinations, in every instance, have, in my particular experience, been scheduled and payed for by the company. The company notifies me of the appointment and I comply. This scenerio is contractual. Article 4, paragraph 2 of the National Master Freight Agreement, Local Cartage Supplement states "The employer reserves the right to select its own medical examiners or doctor". Paragraph 1 states "The employer shall pay for all such examinations"

It is my position that by reserving the right to select the medical examiners or doctor, and by agreeing, in contract, to pay for this examination, the company has assumed the responsibility of making the appointment with the doctor it has chosen, and it is required to pay.

Indeed, the company has scheduled the appointment with, and made payment to, its' doctor, for my medical examinations for 25 years. I believe the company has done this not only because of their contractual obligations to me, but more specifically, because of their statutory obligations to the Public Utilities Commission to require a valid Medical Examiners Certificate for the operation of their business.

I am required to pass physical and performance examinations at the federal and state levels in order to obtain my commercial drivers' license. The responsibility for scheduling, meeting standards, and payment for these licenses lays with me, both statutorily and contractually. I have met these obligations. The company is required, by contract and, more importantly, by statute, to assure that the operator of their equipment holds a valid Medical Examiners' Certificate. In this instance, the company did not conform to these requirements.

The scheduling of this examination by the company on the day following the offense is an indication that the company understands its obligations and therefore, in my opinion, the company should also understand their liability in the civil forfeiture.

Respectfully,

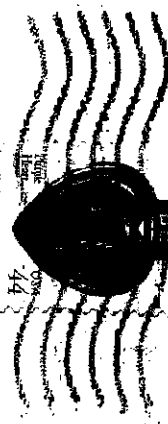
Philip H. Smith

PLEASE FILE IN DOCKETING # 09-422-TR-CVF
(0H3288003473 D)

PER BILL WRIGHT

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31 JUL 2008 PM 4 T



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