

FILE

9

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of Phillip :
Smith, Notice of Apparent : Case No. 09-422-TR-CVF
Violation and Intent to :
Assess Forfeiture :

- - -

PROCEEDINGS

Before Scott E. Farkas, Hearing Examiner, at the Public
Utilities Commission of Ohio, 180 East Broad Street,
Room 11-F, Columbus, Ohio, called at 10:00 a.m. on
Tuesday, October 20, 2009.

- - -

PUCO

2009 NOV -4 PM 1:18

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ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-4620
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

- - -

PUCO EXHIBIT FILING

Date of Hearing: 10/20/09

Case No. 09-422-TR-CVF

PUCO Case Caption: In The Matter of Phillip Smith

List of exhibits being filed:

Staff Exhibits 1-3

Reporter's Signature: Valerie Sloan
Date Submitted: 10/30/09



Public Utilities Commission of Ohio
180 East Broad Street
Transportation Department
Columbus, OH 43215
Phone #: (614)466-0429 Fax #: (614)752-9274

DRIVER/VEHICLE EXAMINATION REPORT

Report Number: OH3288003473
Inspection Date: 6/7/2007 Certification Date: 08/14/2007
Time Started: 12:50 Time Ended: 13:28
Inspection Level: I - Full Inspection No HM Insp.

ABF FREIGHT SYSTEM INC

P O BOX 10048

FORT SMITH, AR 72917-0048

Phone #: (479)785-6000

Fax #:

USDOT #: 82866

MC/MX #: 029910

State #:

Driver: SMITH, PHILLIP H

License #: RL877069

State: OH

Date of Birth: 01/05/1953

Location: ROSS COUNTY(CHILLICOTHE) SCAL MilePost: MP14

Highway: US23

Origin:

Bill of Lading:

County: ROSS

Destination:

Cargo: EMPTY

Shipper:

VEHICLE IDENTIFICATION:

Unit	Type	Make	Year	State	License #	Company #	Unit VIN	GVWR	CVSA #	OOS#
1	TT	INTL	2000	OH	PAG5975	30805	1HSHBAAN0YH245740	80,000		
2	ST	GDAN	2007	OK	2713FM	86713	1GRAA56157K288195	0		

BRAKE ADJUSTMENTS:

Axle #	1	2	3
Right	1	1 1/4	3/4
Left	1	1 1/4	1 1/4
Chamber	C-20	C-30	C-30

VIOLATIONS:

Section Code	St	Unit	OOS	Lvl 6	Citation #	Verify*	Crash	Violation Description
391.45(b)		D	N	N		N	N	Expired medical examiner's certificate-5/15/07
393.95(a)		1	N	N		N	N	No/discharged/unsecured fire extinguisher-DISCHARGED
393.11		2	N	N		N	N	No/defective lighting devices-LICENSE PLATE LIGHT MISSING

* N - Non-OOS or Driver OOS Violation

HazMat:

No HM transported.

Placard: NA

Cargo Tank:

Special Checks:

- ☐ Alcohol/Controlled Substance Check
☐ Conducted by Local Jurisdiction
☐ Size and Weight Enforcement

- ☐ Traffic Enforcement
☐ Drug Interdiction Search
☐ PASA Conducted Inspection

- ☐ Post Crash Inspection
Arrests:

Inspection Notes:

Special Study Fields:

Special Study 1:
Special Study 2:
Special Study 3:

Special Study 4:
Special Study 5:

Locally Defined Fields:

For-Hire Carrier: Y

Driver State: OH

Reason Code: USSP

CDL Verified (Y/N): Y

Driver Address: 629 S FAYETTE ST

Driver Zip: 43160

Replacement Seal: N

FMCSA OOS Order Issued(Y/N): N

Driver City: WASHINGTON CH

Photos Taken (Y/N): N

FMCSA Credentials Verified-Y/N: N

STAFF EX.
I

Report Prepared By:
O R Adkins

Badge #:
3288

Copy Received By:
SMITH, PHILLIP H





Public Utilities Commission of Ohio
180 East Broad Street
Transportation Department
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State: OH

Date of Birth: 01/05/1953

All violations of the FHMR and FMCSR or Title 49 of the Ohio Revised Code will be reviewed by the PUCO's Transportation Department to determine whether civil forfeitures should be assessed against any responsible parties in accordance with the penalty provisions of Title 49 of the Ohio Revised Code. If civil forfeitures are assessed, you will receive a separate notice by mail. These penalties may be assessed to motor carriers, shippers, and/or drivers.

ATTENTION DRIVER: This report must be sent to the motor carrier whose name appears at the top of this inspection report within 24 hours. If the inspection report cannot be delivered within 24 hours the driver must mail or fax the inspection report to the motor carrier.

ATTENTION MOTOR CARRIER: The motor carrier must examine this report and repair all the vehicle defects/violations noted above -AND- The motor carrier must sign the Certification of Repairs below and return the signed form to: Public Utilities Commission of Ohio-TASD; 180 E. Broad St.; Columbus, Oh; 43215-3793 -OR- Fax (614) 752-9274 within 15 days of the inspection. If "No Violations Were Discovered" then you do not need to return this report. Failure to return this report with the required certification can result in penalties up to \$1,000 per day for each day the violation continues, up to a total of \$10,000.

MOTOR CARRIER CERTIFICATION OF COMPLETED REPAIRS: The undersigned certifies that all violations noted on this report have been corrected and action taken to assure compliance with the Federal Motor Carrier Safety & Hazardous Materials Regulations insofar as they are applicable to motor carriers and drivers. A false certification of repairs is required to be prosecuted with penalties up to \$10,000.

Signature of Carrier Official: X

Title: _____

Date: _____

Report Prepared By:

O R Adkins

Badge #:

3288

Copy Received By:

SMITH, PHILLIP H



Staff Ex. 2

Westlaw

49 C.F.R. § 391.45

Page 1

C**Effective:[See Text Amendments]**

Code of Federal Regulations Currentness

Title 49. Transportation

Subtitle B. Other Regulations Relating to Transportation

Chapter III. Federal Motor Carrier Safety Administration, Department of Transportation (Refs & Annos)

Subchapter B. Federal Motor Carrier Safety Regulations

Part 391. Qualifications of Drivers and Longer Combination Vehicle (Lcv) Driver Instructors (Refs & Annos)

Subpart E. Physical Qualifications and Examinations

→ § 391.45 Persons who must be medically examined and certified.

Except as provided in § 391.67, the following persons must be medically examined and certified in accordance with § 391.43 as physically qualified to operate a commercial motor vehicle:

(a) Any person who has not been medically examined and certified as physically qualified to operate a commercial motor vehicle;

(b)(1) Any driver who has not been medically examined and certified as qualified to operate a commercial motor vehicle during the preceding 24 months; or

(2) Any driver authorized to operate a commercial motor vehicle only with an exempt intracity zone pursuant to § 391.62, or only by operation of the exemption in § 391.64, if such driver has not been medically examined and certified as qualified to drive in such zone dur-

ing the preceding 12 months; and

(c) Any driver whose ability to perform his/her normal duties has been impaired by a physical or mental injury or disease.

[35 FR 6460, Apr. 22, 1970, as amended at 36 FR 223, Jan. 7, 1971; 54 FR 12202, March 24, 1989; 61 FR 13347, March 26, 1996]

SOURCE: 35 FR 6460, April 22, 1970; 39 FR 32561, Sept. 9, 1974; 51 FR 12621, April 14, 1986; 51 FR 17571, May 13, 1986; 53 FR 18056, May 19, 1988; 54 FR 7191, Feb. 17, 1989; 59 FR 49586, Sept. 29, 1994; 59 FR 60323, Nov. 23, 1994; 60 FR 38744, July 28, 1995; 65 FR 25287, May 1, 2000; 69 FR 16719, 16738, March 30, 2004; 69 FR 28846, May 19, 2004; 73 FR 73126, Dec. 1, 2008, unless otherwise noted.

AUTHORITY: 49 U.S.C. 322, 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub.L. 102-240, 105 Stat. 2152; sec. 114 of Pub.L. 103-311, 108 Stat. 1673, 1677; sec. 215 of Pub.L. 106-159, 113 Stat. 1767; and 49 CFR 1.73.

49 C. F. R. § 391.45, 49 CFR § 391.45
Current through October 9, 2009; 74 FR 52373

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END OF DOCUMENT

7-29-09

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Whom It May Concern:

Please understand that I have attempted to comply with the Public Utilities Commission 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.

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 wives' cell phone number since my vacation had been scheduled the week of 7-7-09.

Subsequently, my wives' cell phone became inopera!

On return, I called and left a message for Scott Farba

Bill Wright returned my call and left a message for m

I returned Bill Wrights' call and left a message for t

Bill Wright returned my call to him, with a phone num

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 examination

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

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