

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of :
Steven R. Highley, : Case No. 10-905-TR-CVF
:

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PROCEEDINGS

before Kerry Sheets, Attorney Examiner, held at the
offices of the Public Utilities Commission of Ohio, 180
East Broad Street, Hearing Room 11-C, Columbus, Ohio,
on Tuesday, October 19, 2010 at 10:09 a.m.

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APPEARANCES

Richard Cordray, Ohio Attorney General
Mr. John Jones
and Ms. Sarah J. Parrot
Public Utilities
180 East Broad Street, 9th Floor
Columbus, Ohio 43215

On behalf of the Transportation Staff of
the Public Utilities Commission of Ohio

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Tuesday Morning Session,
October 19, 2010.

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ATTORNEY EXAMINER: The Public Utilities
Commission of Ohio has set for a hearing at this time
and place, Case No. 10-905-TR-CVF in the matter of
Steven R. Highley.

My name is Kerry Sheets. I'm an Attorney
Examiner with the Commission and I've been assigned to
hear this case. May I have the appearances of the
parties.

MR. JONES: Yes, your Honor. On behalf of
the transportation staff of the Public Utilities
Commission of Ohio, the Ohio Attorney General, Richard
Cordray, Assistant Attorneys General Sarah Parrot and
John Jones, 180 East Broad Street, Columbus, Ohio
43215.

ATTORNEY EXAMINER: Thank you. Let the
record show there are no other parties in the hearing
room at this time.

Do we have any preliminary matters to take
care of, Mr. Jones?

MR. JONES: Your Honor, I just wanted to
make a motion to the Court for a default judgment prior
to proceeding, if I could do so before we call our

1 first witness. Do you want me to do that now or wait?

2 ATTORNEY EXAMINER: Go ahead.

3 MR. JONES: Okay. Your Honor, the Staff
4 moves for a default judgment in this case pursuant to
5 Ohio Administrative Code Section 4901:2-7-14(A). That
6 provision provides that a respondent who has requested
7 an administrative hearing and fails to participate in
8 the hearing proceeding shall be in default. It is 10
9 minutes after 10:00 on the hearing date. I did have a
10 conversation with Mr. Highley yesterday by telephone.
11 I asked him if he was aware that there was a hearing
12 today. He did indicate to me that he was aware, he did
13 receive the notice, and that he would not be coming to
14 the hearing today.

15 So based on that conversation and based on
16 his not appearing here today after receiving notice of
17 the hearing, we would move for that default judgment,
18 your Honor, pursuant to that rule.

19 ATTORNEY EXAMINER: Thank you, Mr. Jones.
20 I'll take that default judgment under recommendation
21 here and proceed with the case at this time.

22 MR. JONES: Yes, your Honor. At this time
23 we would call Officer Holzworth to the stand.

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OFFICER JONATHAN HOLZWORTH

being first duly sworn, as prescribed by law, was
examined and testified as follows:

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DIRECT EXAMINATION

By Mr. Jones:

Q. Could you please state your name for the
record, please.

A. Jonathan M. Holzworth.

Q. And where are you employed?

A. Ohio State Highway Patrol, Bucyrus, Ohio.

Q. And what is your position?

A. Motor carrier enforcement inspector.

Q. And how long have you been employed in that
role?

A. Approximately 12 years.

Q. And what training and certifications do you
have to be able to perform your role?

A. North American Standard Level I Training,
HazMat involved, not involved and dangerous goods and
motor coach.

Q. And what equipment is provided to you to
perform your duties?

A. Obviously a patrol car, a Tahoe, laptop,
all the FMCSA books, HazMat books, creeper chucks,

1 et cetera.

2 Q. And you're also issued a uniform and a
3 cruiser?

4 A. That's correct.

5 Q. Okay. And what is your jurisdiction?

6 A. We have approximately nine counties that
7 we -- in our area to patrol. Jurisdiction is basically
8 in the whole state of Ohio.

9 Q. And if you would just kind of go over what
10 a typical inspection is that you would perform in the
11 course of duties.

12 A. Well, we've got several levels of
13 inspection. Would you like me to pertain to this one
14 here or just all of them?

15 Q. Just the typical, what do you look for in
16 an inspection, if you can kind of generally tell us.

17 A. Obvious violations. We have first start,
18 then we use the ISS score which is the DOT number we
19 run through our computer and it will identify the
20 carrier and it will let us know if we should inspect
21 that vehicle or pass it. It's set up through the
22 federal government. It's kind of a safety stat score
23 to let us know, you know, this vehicle has been
24 inspected. This carrier has been inspected X amount of
25 times. It's passed so many. It's failed so many. An

1 inspection is requested at this time if we run that.

2 Or, like I said, obvious violations.

3 Anything like a light being out when they go by,
4 headlight out or taillight out, flat tire, driver not
5 wearing a seat belt, something of that nature.

6 Q. After an inspection is conducted, what kind
7 of paperwork is generated from that inspection?

8 A. We print out a copy of the inspection and
9 it is given to the driver, explained to the driver at
10 the time that we stopped them, the time it was
11 completed, what level inspection was done, the location
12 of where it was. Obviously the vehicle information and
13 any violations noted during that inspection we would
14 give that to the driver and explain to him what it is,
15 be it a log book violation, seat belt, out of service
16 violation on the vehicle, be it a flat tire, brakes
17 out, adjustment.

18 Q. You have before you what's marked as Staff
19 Exhibit 1. Could you please identify that exhibit for
20 the record, please.

21 A. This is a copy of the inspection that I
22 performed 3-25-2010 at 08:38 hours. It looks like I
23 stopped the gentleman here in Wyandot County on 30,
24 Milepost 21 and it was just a basic level three which
25 is a driver only. The driver only inspection would be

1 seat belt, medical card, hours of service. It doesn't
2 go, you know, go over the vehicle there at all.

3 I got one violation on the driver on this
4 inspection. It shows an obvious violation and it's a
5 seat belt violation.

6 Q. Okay. And how did you identify this
7 driver?

8 A. Sitting stationary on US-30 facing the
9 eastbound side. Obviously the sun rises in the east so
10 incoming east we can get a good view into the vehicle.
11 I observed the driver, when he passed me, not having a
12 seat belt on and identified what he was wearing and
13 what color the belt was.

14 Q. Would you please read your inspection notes
15 to this report.

16 A. "While on stationary patrol on US-30,
17 Milepost 20, I observed driver, Steven R. Highley, pass
18 me traveling eastbound without wearing a seat belt,
19 driver was wearing a long sleeve black and gray striped
20 shirt, seat belt was gray in color."

21 Q. And you were sitting stationary?

22 A. Yes, sir.

23 Q. And where were you -- were you in the
24 median?

25 A. Yes, sir. A crossover, yeah.

1 Q. And so how far away was Steve when he
2 passed you?

3 A. Probably approximately 15 feet, 20 feet
4 max.

5 Q. So you had an unobstructed view of this
6 driver in the cab of that truck?

7 A. Yes.

8 Q. And you identified this vehicle -- we have
9 vehicle identification information provided in your
10 report; is that correct?

11 A. Yes.

12 Q. And this a commercial motor vehicle?

13 A. Yes, it is. Tractor trailer it looks like.

14 Q. Tractor trailer?

15 A. Uh-huh.

16 Q. Okay. And from this -- this was an obvious
17 violation that you observed in this situation?

18 A. Yes. That was my reason for the stop, was
19 an obvious violation. Under the FMCSA 392.16 requires
20 all drivers of commercial vehicles to wear seat belts
21 while in operation.

22 Q. And that's the -- in the violation box you
23 cited the code that pertains to witnessing a driver not
24 wearing a seat belt when required by the Federal Motor
25 Carrier Safety Regulations; is that correct?

1 A. Yes, sir.

2 Q. And so then after you observed this
3 violation, what did you do?

4 A. I pulled out in the crossover, got behind
5 the truck and trailer, stopped him in the rest area, a
6 safe location, performed my level three inspection, and
7 advised -- you know, I questioned the driver, is there
8 any reason you didn't wear a seat belt? I don't have
9 anything specifically about the conversation in my
10 notes. Usually if I don't put anything in my notes to
11 reference that, he doesn't argue the fact. He usually
12 just says, oh, I forgot to put it on or, you know, I
13 was wearing it, I took it off to grab my donuts or
14 coffee or something, you know. I'm not saying that's
15 what he said, but that's generally the case.

16 Q. Okay. And so you confirmed then that
17 the -- in the cab of the truck the seat belt, the color
18 was gray in color?

19 A. Yes.

20 Q. And his shirt was black and gray?

21 A. Black and gray stripe.

22 Q. And then so what -- after you then
23 conducted the level three inspection and made contact
24 with the driver, Mr. Highley, how did you personally
25 identify that he was Mr. Highley?

1 A. Through his driver's license, his
2 commercial driver's license.

3 Q. Okay. And the other identifying
4 information as to his truck, where did you get that
5 from?

6 A. Registration, the plates on them. You have
7 a paper registration and obviously the plate and we
8 identify it through that. If anything seems
9 suspicious, we'll look at the inside tag of the
10 manufacturer to identify the VIN on it, the vehicle
11 identification number.

12 Q. And so how soon then did you prepare this
13 report in relation to observing this and also making
14 contact with the driver and conducting a level three
15 inspection?

16 A. It looks like about 22 minutes, 23
17 minutes. Usually level three is anywhere from 20
18 minutes to a half hour, give or take how many
19 violations that you have to note.

20 Q. How long did it take to stop him from the
21 time that you're sitting stationary and observing him
22 go by?

23 A. Approximately three minutes. Not very
24 long.

25 Q. And then after you generated your report, I

1 take it you generated it from your laptop in your
2 cruiser?

3 A. Yes, sir. We have a laptop. We also have
4 a printer inside the vehicle. We print that right out
5 and give it right to them at the location of the stop.

6 Q. So is there any signatures required for the
7 form?

8 A. Yes, there is. After we go over the
9 inspection with the driver and identify the violations,
10 we'll ask them to sign it. The only reason they would
11 be signing it is they're receiving a copy of it from us
12 and then we'll explain to them that they need to fill
13 it out and fax or mail it back to the address provided
14 on the inspection report and that's usually circled and
15 we tell them that they have 15 days to have it -- have
16 it turned back.

17 Q. So on the copy that was served on
18 Mr. Highley, that had signatures by him and by you; is
19 that correct?

20 A. That's correct.

21 Q. And Staff Exhibit 1, is that an accurate
22 representation of the driver/vehicle examination report
23 that you had prepared and served on Mr. Highley on that
24 date?

25 A. Yes.

1 Q. And is this a record that's ordinarily kept
2 in the ordinary course of business as to you using
3 these forms in your everyday duties?

4 A. Yes.

5 Q. So it is your opinion that Mr. Highley
6 violated the Code Section 392.16 for failing to wear a
7 seat belt as required --

8 A. That's correct.

9 Q. -- by the Federal Motor Carrier Safety
10 Regulations?

11 A. Yes, sir.

12 MR. JONES: Your Honor, that's all the
13 questions we have.

14 ATTORNEY EXAMINER: Thank you. I have no
15 questions. You're excused.

16 MR. JONES: Your Honor, we move for the
17 admission of Staff Exhibit 1 at this time into
18 evidence.

19 ATTORNEY EXAMINER: I'll admit that into
20 evidence at this time.

21 MR. JONES: Thank you.

22 MS. PARROT: Your Honor, the Staff calls
23 John Canty.

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JOHN CANTY

being first duly sworn, as prescribed by law, was
examined and testified as follows:

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DIRECT EXAMINATION

By Ms. Parrot:

Q. Good morning, Mr. Canty. Would you please
state your full name for the record.

A. Yes. John Canty.

Q. And your business address, please.

A. 180 East Broad Street, Columbus, Ohio
43215.

Q. And by whom are you employed?

A. The Public Utilities Commission of Ohio.

Q. And what is your role with the Public
Utilities Commission of Ohio?

A. I'm the assistant chief of the compliance
division.

Q. And how long have you been so employed?

A. Approximately 18 years.

Q. And would you please briefly describe for
us your responsibilities as assistant chief of the
compliance division?

A. Yes. I supervise the employees who are
responsible for assessing and sending out the violation

1 notices for violations that are discovered during
2 roadside inspections.

3 Q. And do you hold any certifications or have
4 you received any type of special training?

5 A. Yes. Over the years I received multiple
6 training, hazardous materials, radioactive materials,
7 North American standard inspection class, several
8 others that I'm sure I'm forgetting at this point.

9 Q. Would you please describe for us generally
10 how civil forfeitures are assessed as the result of
11 violations discovered during a roadside inspection?

12 A. Yes. The data from the roadside inspection
13 comes into us. It's uploaded by the inspector who
14 conducts the inspection in the field, it comes into our
15 office and is stored in our database here at the Public
16 Utilities Commission. We then run a program that
17 assesses the violations that were discovered and noted
18 on the inspection report. We have a fine assessment
19 schedule that we use, which was developed many years
20 ago, it breaks down the violations into four categories
21 and then assesses the violations based on which
22 category they fall into.

23 Q. I believe you have what's been admitted as
24 Staff Exhibit 1 before you. Sorry.

25 MS. PARROT: May I approach, your Honor?

1 ATTORNEY EXAMINER: You may.

2 Q. Do you recognize Staff Exhibit 1,
3 Mr. Canty?

4 A. Yes.

5 Q. And would you identify it?

6 A. Yes. This is the inspection report No.
7 OH3291007484, inspection date of March 25th, 2010.

8 Q. And as part of your official duties as the
9 assistant chief, did you have the opportunity to review
10 Staff Exhibit No. 1?

11 A. Yes.

12 Q. Would you please tell us how this
13 examination report reached the Public Utilities
14 Commission of Ohio?

15 A. Yes. After the inspector conducts his
16 roadside inspection, he input the data into his laptop
17 computer. Of course, he prints out a copy for the
18 driver, which the driver signs and takes with him. And
19 then he uploads that information from his laptop to us,
20 to the Public Utilities Commission and we store that
21 information here in our databases.

22 Q. And what did you do after the information
23 was received?

24 A. A program is run which assesses the
25 violations that are discovered.

1 Q. And were violations discovered in this
2 case?

3 A. Yes. There's one noted here, it's
4 Violation Code 392.16, driver was not wearing a seat
5 belt as required.

6 Q. And what happens as a result of this
7 particular violation?

8 A. We issue our usual notice of appearance
9 violation and intent to assess civil forfeiture notice
10 to the driver, Mr. Highley.

11 Q. I believe you mentioned earlier that
12 there's a chart that you use that lists the forfeiture
13 amounts; is that correct?

14 A. That's correct.

15 Q. And was that used in this case?

16 A. Yes, it was.

17 Q. I believe you have before you what's been
18 marked for identification purposes as Staff Exhibit 2?

19 MS. PARROT: May I approach, your Honor?

20 ATTORNEY EXAMINER: You may.

21 A. I don't have any, if you have any more.

22 Q. I'm sorry.

23 A. That's fine.

24 Q. All right. Do you have Staff Exhibit 2,
25 Mr. Canty?

1 A. Yes, I do.

2 Q. And would you please identify it for us?

3 A. Yes. This is the fine schedule for
4 violations discovered during inspection. This is dated
5 effective January 1st, 2010. It's a multi-page
6 document. The first two pages break down the
7 violations into four groups, surprisingly labeled
8 groups 1, 2, 3 and 4. And then the remaining six or so
9 pages list all the violations that we assess and the
10 dollar amount for each one.

11 Q. And you noted that this fine schedule was
12 in effect as of January 1, 2010. Was it in effect for
13 this particular inspection?

14 A. Yes. The date of the inspection was
15 March -- I'm sorry -- yes, March 25th, 2010.

16 Q. And is this fine schedule used consistently
17 for all drivers and carriers by the commission staff?

18 A. Yes, it is. It's used for every inspection
19 that comes through our system.

20 Q. And would you please explain to us how this
21 fine schedule was used to determine the amount of the
22 forfeiture in this particular case?

23 A. Yes. In this particular case this seat
24 belt violation falls into group 4 which is on the
25 second page which lists -- group 4 box lists several

1 violations, one of them is not using seat belt which is
2 a \$100 fine.

3 Q. And so \$100 is the amount of the forfeiture
4 that the Staff recommends in this case?

5 A. Yes, it is.

6 Q. This fine schedule that you use and
7 generally the procedures that the Staff uses to assess
8 forfeitures, are those procedures consistent with the
9 guidelines of the Commercial Vehicle Safety Alliance?

10 A. Yes, they are.

11 Q. Do you believe that the forfeiture in this
12 case was properly determined?

13 A. Yes.

14 Q. And do you believe that it's reasonable?

15 A. Yes.

16 Q. Mr. Canty, I believe you mentioned that the
17 Staff also sends out notices to inform drivers of the
18 assessment of a civil forfeiture; is that correct?

19 A. Yes.

20 Q. And was that done in this case?

21 A. Yes, it was.

22 Q. I believe you now have before you what's
23 been marked for identification purposes as Staff
24 Exhibit 3. Do you have that?

25 A. Yes, I do.

1 Q. And would you identify it.

2 A. Yes. This is what we refer to as the
3 notice of preliminary determination. It's dated June
4 1st, 2010. It's addressed to Mr. Steven Highley. It
5 is regarding the inspection number that I noted
6 previously.

7 Q. And is this an accurate representation of
8 the actual notice that was mailed to Mr. Highley?

9 A. Yes, it is. This is a copy of it. This is
10 an accurate representation of it.

11 Q. And what is the purpose of sending this
12 notice?

13 A. This notice is required to send to
14 respondents who request conference with us. It's to
15 advise the respondent that a conference was conducted.
16 And then on the second page, as a result of the
17 conference, the Staff has made the preliminary
18 determination that the Commission should maintain the
19 fine at \$100.

20 Q. Thank you. Mr. Canty, are Staff Exhibits 2
21 and 3 documents that are ordinarily maintained by the
22 Commission Staff?

23 A. Yes.

24 Q. In the course of business?

25 A. Yes.

1 MS. PARROT: Thank you. We have no further
2 questions, your Honor.

3 ATTORNEY EXAMINER: Okay. I have no
4 questions. You're excused.

5 MS. PARROT: Your Honor, at this time the
6 Staff moves for the admission of Staff Exhibits 2 and
7 3.

8 ATTORNEY EXAMINER: I'll admit those
9 exhibits into evidence at this time.

10 MR. JONES: The Staff has no further
11 witnesses, your Honor.

12 ATTORNEY EXAMINER: Very good. If there's
13 nothing further, I'll consider this matter and submit
14 it on the record. Thank you.

15 (The proceedings concluded at 10:35 a.m.)

16 - - -

17 CERTIFICATE

18 I do hereby certify that the foregoing is a
19 true and correct transcript of the proceedings taken by
20 me in this matter on October 19, 2010, and carefully
21 compared with my original stenographic notes.
22

23
24 _____
25 CATHERINE PASSMORE
Certified Shorthand Reporter and
Notary Public in and for the
State of Ohio

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 10-0905-TR-CVF

Summary: Transcript Transcript of Steven R. Highley hearing held on 10/19/10. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Passmore, Cathy