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before Mr. Jim M. Lynn, Hearing Examiner, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-D, Columbus, Ohio, called at 10:00 a.m. on Tuesday, November 30, 2010.

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1 APPEARANCES:

2 Richard Cordray
3 Ohio Attorney General
4 By Mr. Stephen A. Reilly
5 Mr. John Jones
6 Public Utilities Section
7 180 East Broad Street, Floor 9
8 Columbus, Ohio 43215

9 On behalf of the Staff.

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1 - Driver/Vehicle Examination Report 12 23

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1 Tuesday Morning Session,
2 November 30, 2010.

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4 HEARING EXAMINER: Let's go on the record
5 at this time.

6 The Public Utilities Commission of Ohio
7 has assigned for hearing at this time and place Case
8 No. 10-474-TR-CVF, In the Matter of Gregory
9 Artemenkov Notice of Apparent Violation and Intent to
10 Assess Forfeiture.

11 I'm Jim Lynn, the Attorney Examiner
12 assigned to hear this case.

13 At this time we'll have the appearances
14 of the parties, beginning with the Ohio Attorney
15 General's Office.

16 MR. REILLY: Thank you, your Honor. On
17 behalf of the Ohio Public Utilities Commission,
18 Richard Cordray, Ohio Attorney General, William
19 Wright, Section Chief, Steve Reilly and John Jones,
20 Assistant Attorneys General, 180 East Broad Street,
21 Columbus, Ohio 43215.

22 HEARING EXAMINER: Thank you.

23 And for the record I'd like to note that
24 Mr. Artemenkov is not here. When we had convened at
25 an earlier time a month or so ago for this hearing

1 Mr. Artemenkov also was not present, so, Mr. Reilly,
2 I believe you were telling me that there had been
3 attempts to contact Mr. Artemenkov and remind him of
4 the hearing today; am I correct?

5 MR. REILLY: Yes, your Honor. Last
6 Wednesday, November 24th, our office called Mr.
7 Artemenkov, was not able to reach him but left a
8 voicemail message for him on the telephone number we
9 had, telling him, reminding him of the hearing this
10 morning.

11 HEARING EXAMINER: And the message was
12 left and nothing's been heard.

13 MR. REILLY: We've heard nothing in
14 response.

15 HEARING EXAMINER: Thank you. Well,
16 having said that, if you'd like to call your first
17 witness please, we'll get underway.

18 MR. REILLY: Thank you, your Honor. We
19 would call Sergeant Ogden.

20 HEARING EXAMINER: If you'd like to come
21 up here to the witness stand, Sergeant.

22 (Witness sworn.)

23 HEARING EXAMINER: Please take a seat.

24 Mr. Reilly, please continue.

25 MR. REILLY: Thank you, your Honor.

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ALAN T. OGDEN

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

DIRECT EXAMINATION

By Mr. Reilly:

Q. Morning, Sergeant Ogden.

A. Morning.

Q. Would you introduce yourself to the Bench
and give your name and your employer?

A. My name is Sergeant Alan T. Ogden. I
work for the Ohio State Highway Patrol.

Q. You're a sergeant with the Ohio Highway
Patrol?

A. That's correct.

Q. How long have you been with the Patrol?

A. Eighteen years.

Q. What's your current position with the
Patrol?

A. Supervisor of the licensed commercial
standards section, Warren District Headquarters.

Q. What does that -- just generally what
does that involve?

A. A lot. We oversee the Motor Carrier
Enforcement Section. We also oversee school bus

1 inspection, platform scales, and the driver exam
2 stations and driving schools.

3 Q. Now, Sergeant Ogden, in the 18 years
4 you've been with the Patrol, I take it you have had
5 occasion to enforce the motor carrier safety
6 regulation?

7 A. I've been with the commercial enforcement
8 section for ten years.

9 Q. And have you taken any classes on the
10 commercial motor vehicle safety regulations?

11 A. Yes, sir.

12 Q. And there's some sort of certifications
13 with those?

14 A. Originally we have to attend a two-week
15 course and receive just a general part A/B
16 driver/vehicle. Once we're done with that we have to
17 obtain 32 level 1s.

18 In addition to that there's our general
19 hazmat courses, our cargo tank courses, and our bulk
20 under-package courses, which we have to be certified
21 annually to do inspections on those to maintain our
22 certifications.

23 Q. Sergeant, I'd like to draw your attention
24 at this point to August 13 of 2009. Did you have an
25 occasion to meet a Gregory Artemenkov --

1 A. Yes, I did.

2 Q. -- on that date?

3 Could you describe the circumstances of
4 that meeting?

5 A. That particular day I was working in
6 Columbiana County on U.S. 30 around the Westpoint
7 exit of the four-lane highway. I observed
8 Mr. Artemenkov drive past my vehicle. I believe he
9 was headed northbound at the time.

10 And as he passed I looked over at his
11 truck, he was wearing a light colored shirt, later
12 was discovered it's a light tan shirt, and as he went
13 by no seat belt was visible as he went past my
14 vehicle.

15 Q. Now, you mentioned he was driving a
16 truck. Was it a commercial motor vehicle?

17 A. Yes, it was. It was a truck-trailer
18 combination.

19 Q. And this was on U.S. 30.

20 A. That's correct.

21 Q. What happened after he drove by you?

22 A. I proceeded to stop him, activated the
23 overhead light, stopped him alongside the berm, and
24 approached the driver's side -- correction,
25 passenger's side.

1 When I approached the passenger's side,
2 as I normally do, I will knock on the door, announce
3 my presence, explain to the driver why I stopped him,
4 and also that I will be conducting a vehicle
5 inspection on his truck at that time.

6 Q. And the reason you stopped him was you
7 didn't see him wearing his seat belt.

8 A. That's correct.

9 Q. And that would have been a violation of
10 the commercial motor vehicle safety rules?

11 A. That's correct.

12 Q. Now, we're here on a failure to wear the
13 seat belt today.

14 A. Correct.

15 Q. Could you describe the seat belt in the
16 truck for us?

17 A. It was a lap/shoulder combination, it was
18 dark in color.

19 Q. Did it appear to be operational?

20 A. Appeared to be, yes.

21 Q. You said you conducted an inspection. At
22 the end of the inspection what happened?

23 A. I carry a pad and paper around noting the
24 violations as I see them. Also recording information
25 as far as the vehicle, plates, VIN numbers, and so

1 forth.

2 At the conclusion of the walk-around
3 inspection I'll immediately go to the patrol car and
4 begin entering this information into our Aspen
5 program we have preloaded on all of our laptops.

6 Q. The Aspen program is a computer database?

7 A. That's correct.

8 Q. What happens to the information after you
9 load it onto your laptop?

10 A. After it's entered into the computer a
11 report is generated much like the one I have here
12 today, much like the one you have as well. The
13 driver is given a copy of the report. I go over the
14 violations discovered and explain to the driver how
15 to take care of the report from here.

16 I will sign the bottom, the driver will
17 sign the bottom, and he's given the report to take to
18 the company.

19 Q. Do you recall -- did you do this in this
20 case?

21 A. Yes, I did.

22 Q. When you presented the report to
23 Mr. Ogden did he say anything with regard to the seat
24 belt violation -- strike that.

25 HEARING EXAMINER: Mr. Artemenkov?

1 A. What was the question?

2 Q. Was there any interaction between you and
3 Mr. Artemenkov with regard to the seat belt
4 violation?

5 A. No. As our discussion earlier on this
6 case, I'll note in the section under the "Inspection
7 Notes" of a driver who will say I had it tucked under
8 my arm or I had it behind my back. If they're
9 adamant they had it on, that will be noted on my
10 inspection report. There's nothing noted on here.

11 Q. Now, you mentioned that you went -- at
12 the end of the inspection you went to your laptop,
13 you entered the information into the Aspen database
14 and then what happened with the inspection, do you
15 know?

16 A. At the end of that day all the reports
17 are tagged and uploaded to the server.

18 Q. And the server, have you ever heard of
19 the Safety Net program?

20 A. That's correct.

21 Q. Could you tell me what that is?

22 A. I believe that's where they store all the
23 reports and where the reports are pulled from.

24 Q. And is the accuracy of the information in
25 that database important?

1 A. Yes, it is.

2 Q. Why is that?

3 A. If it wasn't, what's the sense of
4 recording the information into that?

5 Q. Is that information used in the
6 enforcement of the motor carrier safety program?

7 A. Yes, it is.

8 Q. You mentioned a couple of times that
9 printout from that database, have you seen those
10 printouts before? From the Safety Net database?

11 A. Yes, I have.

12 Q. In your 18 years you've probably seen
13 many of them.

14 A. This is just one that I have. I pulled
15 it off of my laptop.

16 Q. I'd like you to take a look there on the
17 witness stand I have a document marked Staff
18 Exhibit 1. Can you find that for us?

19 A. Yes, sir.

20 Q. Can you tell me what that is?

21 A. This is the copy that you're referring to
22 here.

23 Q. Of the report from the Safety Net
24 database?

25 A. Yes, sir.

1 Q. If you would take a look at it, does it
2 accurately reflect your observations --

3 A. Yes.

4 Q. -- on August 13, 2009?

5 A. Yes, that's correct.

6 Q. Does it reflect the violations for a seat
7 belt anywhere?

8 A. Yes, it does.

9 Q. And where is that?

10 A. Under the "Violations" section.

11 MR. REILLY: I have nothing further.

12 HEARING EXAMINER: Thank you, Mr. Reilly.

13 - - -

14 EXAMINATION

15 By Hearing Examiner:

16 Q. Sergeant, you're indicating then you were
17 along U.S. 30 and you observed Mr. Artemenkov as he
18 drove by?

19 A. That's correct.

20 Q. Can you tell me what the weather
21 conditions were like that day? Was it a sunny day,
22 did you have good visibility?

23 A. I had good enough visibility to see he
24 didn't have a seat belt on.

25 Q. And you were looking up into the cab?

1 A. Absolutely.

2 Q. You were not parked at a location where
3 you happened to be higher than the cab and looking
4 down into it.

5 A. No. I drive a 2007 Chevy Tahoe so it
6 sits up a little bit higher than a patrol car.

7 Q. And you indicated then when
8 Mr. Artemenkov was -- when you stopped him at the
9 beginning of the inspection there was a useable lap
10 and shoulder belt combination there but he had not
11 had it buckled.

12 A. That's correct.

13 Q. And when you gave him a copy of the
14 inspection which indicated the violation, did you
15 mention the violation to him?

16 A. Yes, I did.

17 Q. And then he had no response?

18 A. No response.

19 HEARING EXAMINER: Let's go off the
20 record for a minute please.

21 (Off the record.)

22 HEARING EXAMINER: We'll go back on the
23 record.

24 Q. One more question, Sergeant, what was the
25 speed of the driver at this time that you estimate?

1 A. I can't even guess. I don't even know.
2 I mean I would say he was going at least 55 miles an
3 hour. At least that. I mean I can't say he was
4 speeding.

5 HEARING EXAMINER: Thank you. I have no
6 further questions for you. Thank you.

7 MR. REILLY: Just a couple more if I
8 could.

9 - - -

10 FUTHER DIRECT EXAMINATION

11 By Mr. Reilly:

12 Q. Sergeant, did you have a clear view of
13 the driver Mr. Artemenkov as he drove by you?

14 A. Yes, I did.

15 Q. Were you able to see inside the cab
16 plainly?

17 A. Yes, I was.

18 MR. REILLY: Thank you.

19 HEARING EXAMINER: And, Sergeant, was
20 there anything like tinted glass on the windows?

21 THE WITNESS: No. I could clearly see he
22 didn't have his seat belt on.

23 MR. REILLY: Thank you.

24 HEARING EXAMINER: Thank you, you can
25 take your seat.

1 Before we go on, I wanted to mention for
2 the record that the prior hearing date which
3 Mr. Artemenkov was not present was October 14.
4 Shortly afterwards I determined that a notice that
5 had been sent of that hearing date sent certified
6 mail was returned unsigned by Mr. Artemenkov.

7 So for today's hearing, which is
8 November 30th, I directed that notice be sent to
9 Mr. Artemenkov both certified mail and non-certified
10 as well. The certified mail card Mr. Artemenkov was
11 to sign was returned unsigned, however, presumably
12 the non-certified letter got through to his address.

13 And in addition, Mr. Reilly had noted
14 that the Attorney General's Office attempted to
15 contact Mr. Artemenkov as well and left a phone
16 message too. So I'm assuming that adequate notice
17 was given to Mr. Artemenkov through ordinary mail and
18 through phone call as well.

19 Mr. Reilly?

20 MR. REILLY: Yes, your Honor. This will
21 come as no surprise to your Honor, we will be moving
22 for default at the end of this hearing. And I think
23 from the explanation your Honor's just given, all
24 reasonable means were taken in which to notify
25 Mr. Artemenkov of this hearing.

1 We don't have any reason to believe that
2 he was not aware of the hearing given -- particularly
3 given the means that were taken to notify him of it.

4 HEARING EXAMINER: Thank you.

5 Mr. Reilly, do you have another witness?

6 MR. REILLY: We do, your Honor, we would
7 call Mr. John Candy.

8 (Witness sworn.)

9 HEARING EXAMINER: Mr. Reilly, please
10 continue.

11 - - -

12 JOHN CANDY

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

15 DIRECT EXAMINATION

16 By Mr. Reilly:

17 Q. Mr. Candy, would you tell us by whom
18 you're employed and in what position?

19 A. The Public Utilities Commission of Ohio,
20 I'm the assistant chief of the Compliance Division.

21 Q. And what are your responsibilities
22 generally as assistant chief of the Compliance
23 Division?

24 A. Generally supervising the employees in
25 the Division who are responsible for sending out

1 notices of violations that are discovered during
2 commercial motor vehicle inspections.

3 Q. Is it a fair statement that the
4 proceedings for the assessment for the -- strike
5 that.

6 Is it a fair statement that the
7 proceedings for the enforcement of the federal motor
8 carrier safety rules and the Ohio motor carrier
9 safety rules come under your general supervision?

10 A. That's correct.

11 Q. The inspection report from this case
12 against Mr. Artemenkov comes under your general
13 supervision, does it not?

14 A. Yes.

15 Q. Mr. Candy, I would like to first of all
16 talk to you about the procedures involved in this
17 case. And did Mr. Artemenkov receive notice of the
18 violation asserted in this case?

19 A. Yes, he did.

20 Q. I'd like you to take a look at what has
21 been marked for identification purposes as Staff
22 Exhibit No. 2. Do you find that up there on the
23 witness stand?

24 A. Yes.

25 Q. Could you tell me what that is?

1 A. Yes; this is referred to as a notice of
2 apparent violation and intent to assess forfeiture.
3 It is dated August 26, 2009. Case No. OH0499007420D.

4 It's addressed to a Gregory Artemenkov,
5 it informs him of the violation of failing to wear a
6 seat belt while operating a commercial motor vehicle,
7 and that we intend to assess him \$100 for that. In
8 addition he is directed to either pay that fine or
9 request a conference.

10 Q. And is that sent out pursuant to the
11 Commission's rules?

12 A. Yes, it is.

13 Q. Do you know if Mr. Artemenkov requested a
14 conference?

15 A. Yes, he did.

16 Q. Do you know if Mr. Artemenkov
17 participated in that conference?

18 A. Yes, he did.

19 Q. Did that conference result -- what was
20 the result of that conference?

21 A. As a result of that conference we
22 notified him that we still intended to assess him the
23 \$100 for the forfeiture and again gave him directions
24 for paying that amount or for requesting
25 administrative hearing.

1 Q. And that was done through what document?

2 A. That's referred to as notice of
3 preliminary determination.

4 Q. And is a notice of preliminary
5 determination also provided for in the Commission's
6 rules?

7 A. Yes, it is.

8 Q. I would like to take a look at what has
9 been marked for identification purposes as Staff
10 Exhibit No. 3. Can you find that for me there?

11 A. Yes.

12 Q. Can you tell me what that is?

13 A. Yes; that is the notice I just referred
14 to as dated August 8, 2010, the same case number that
15 I've referenced before, written to Mr. Artemenkov and
16 again telling him that following the conference we
17 still intend to assess him a \$100 forfeiture, with
18 the directions there to either pay that or request an
19 administrative hearing.

20 Q. And what did Mr. Artemenkov do?

21 A. He requested the administrative hearing.

22 Q. And all of this is pursuant to the
23 Commission's procedures in civil forfeiture cases; is
24 that not correct?

25 A. Yes, it is.

1 Q. Can you tell me, are the Commission's --
2 strike that.

3 Are you familiar with the procedural
4 guidelines of the Commercial Motor Vehicle Safety
5 Alliance?

6 A. Yes.

7 Q. Are the procedures that are outlined in
8 the Commission's rules consistent with the guidelines
9 from the Commercial Motor Vehicle Safety Alliance?

10 A. Yes, they are.

11 Q. Were the procedures followed in this case
12 consistent with the guidelines followed by the --
13 consistent with the guidelines suggested by the
14 Commercial Motor Vehicle Safety Alliance?

15 A. Yes.

16 Q. I would like to talk to you about the
17 fine itself. The fine imposed in this case by the
18 staff was \$100; is that not correct?

19 A. Yes.

20 Q. Can you tell me how this fine amount was
21 determined?

22 A. We have a fine schedule that we use. It
23 breaks down the various violations into four groups.
24 It lists those violations generally into those four
25 groups or categories, and depending on the number of

1 violations that you have in each one of those groups,
2 that determines your fine.

3 There's also attached to that fine
4 schedule a list of all the various violations and
5 what the dollar amount is for each violation.

6 Q. I'd like you to look and see if you can
7 find what has been marked for identification as Staff
8 Exhibit No. 4. Can you find that?

9 A. Yes.

10 Q. Can you tell me what that is?

11 A. Yes; that is the fine schedule that I
12 referred to. This has an effective date of
13 October 1, 2008.

14 Q. Calling your attention to page 2 of that
15 fine schedule, group 4, is failure to wear a seat
16 belt identified anywhere on there?

17 A. Yes, it is.

18 Q. Where is that?

19 A. It is in, as you mentioned, group 4, it
20 is approximately halfway down that list of
21 violations, and not using a seat belt is a \$100 fine.

22 Q. Is this fine consistent with the
23 recommended fine or penalties schedule adopted by the
24 Commercial Motor Vehicle Safety Alliance?

25 A. Yes, it is.

1 Q. Was the respondent in this case treated
2 any differently than anyone else would have been
3 treated in similar circumstances?

4 A. No; this is a very standard case.

5 Q. Thank you, Mr. Candy.

6 MR. REILLY: We have nothing further,
7 your Honor.

8 HEARING EXAMINER: I have no questions
9 for Mr. Candy. You may step down.

10 I want to thank --

11 MR. REILLY: If I could, your Honor, I
12 would like to move Staff Exhibits 1 through 4 into
13 evidence.

14 HEARING EXAMINER: Yes, and they will be
15 admitted.

16 (EXHIBITS ADMITTED INTO EVIDENCE.)

17 MR. REILLY: And I would also like to
18 move for default in this case, your Honor. As the
19 Bench is aware, Mr. Artemenkov has not attended this
20 hearing. Under the Commission's rules specifically
21 4901:2-7-14, the failure to attend a hearing an
22 individual has requested constitutes default and
23 default constitutes admission of all the violations
24 contained in the hearing -- asserted in the hearing.

25 The Commission has enforced this rule in

1 at least two cases, and they are In the Matter of
2 James P. Matheny, Jr., Notice of Apparent Violation
3 and Intent to Assess Forfeiture, Case No.
4 08-596-TR-CVH, and In the Matter of Michael Waller
5 for Administrative Hearing, Case No. 09-1859-TR-CVF.

6 Those cases are factually identical to
7 this one in that the respondent requested a hearing
8 and did not appear. As in those cases, in this case
9 staff has presented evidence demonstrating the
10 occurrence of the violation and supporting the civil
11 forfeiture.

12 For that reason on the precedent of those
13 cases and on the basis of the Commission's rules, we
14 would move for default.

15 HEARING EXAMINER: Thank you, I'll take
16 that into consideration. And thank you for moving
17 the exhibits into evidence.

18 On that note, I believe we can wrap up
19 the proceedings for today, and again, thanks for
20 everyone for your attendance.

21 MR. REILLY: Thank you.

22 (Hearing adjourned at 10:30 a.m.)

23 - - -

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, November 30, 2010, and carefully compared with my original stenographic notes.

Julieanna Hennebert, Registered Professional Reporter and RMR and Notary Public in and for the State of Ohio.

My commission expires February 19, 2013.

(JUL-1664)

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This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 10-0474-TR-CVF

Summary: Transcript Transcript of Gregory Artemenkov hearing held on 11/30//10.
electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Anderson,
Rosemary Foster Mrs.