

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of David A. Koehler, Notice)
of Apparent Violation and Intent to Assess) Case No. 10-1442-TR-CVF
Forfeiture.) (OH0726003584D)

OPINION AND ORDER

The Commission, considering the public hearing held on December 15, 2010, issues its opinion and order in this matter.

APPEARANCES:

David A. Koehler, 8315 West Promenade Drive, Homosassa, Florida 3448, on his own behalf.

Mike DeWine, Ohio Attorney General, by Sarah Parrot and Stephen A. Riley, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

NATURE OF THE PROCEEDING:

On April 5, 2010, the Ohio Highway Patrol (Highway Patrol) stopped a motor vehicle operated by Ram Motor Freight, Inc. and driven by David A. Koehler (Mr. Koehler, respondent) in the state of Ohio. The Highway Patrol found the following violation of the Code of Federal Regulations (C.F.R.):

49 C.F.R. Section 392.16 – Failing to use a seat belt while operating a CMV (commercial motor vehicle).¹

Mr. Koehler was timely served a Notice of Preliminary Determination in accordance with Rule 4901:2-7-12, Ohio Administrative Code (O.A.C.). In this notice, Mr. Koehler was notified that staff intended to assess a civil monetary forfeiture totaling \$100.00 for violation of 49 C.F.R. Section 392.16 (Section 392.16). A prehearing teleconference was conducted in the case. The parties, however, failed to reach a settlement agreement during the conference. Subsequently, a hearing was convened on December 15, 2010.

¹ 49 C.F.R. Section 392.16 provides that: "A commercial motor vehicle which has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself/herself with the seat belt assembly."

Background:

The inspection in this case took place on April 5, 2010. At the time of the inspection, Mr. Koehler was driving an empty truck eastbound on US Route 33 in Auglaize County, Ohio.

Issue in the Case:

Staff maintained that Trooper Hatcher observed Mr. Koehler driving without wearing the shoulder strap of his seat belt, and correctly cited him for the violation. Mr. Koehler denied committing the violation.

DISCUSSION:

Trooper Mica Hatcher testified that he observed Mr. Koehler driving a CMV without wearing the shoulder strap of his seat belt. Trooper Hatcher testified that Mr. Koehler was wearing a white shirt at the time, with thin dark stripes running through it, and that the shoulder strap was black in color. Trooper Hatcher testified that he was clearly able to see Mr. Koehler, without the shoulder strap on, from his patrol car, a sport utility vehicle, and that he did not know if Mr. Koehler was wearing the lap portion of his seat belt. Further, Trooper Hatcher noted that, if one starts looking on a daily basis, one can definitely see whether or not a lot of drivers traveling in the opposite direction are wearing their seat belts. (Tr. 8-18; Staff Exhibit 1.)

Tom Forbes, a compliance officer with the Commission's Civil Forfeiture Compliance Division, testified that staff calculated the proposed forfeiture in this case utilizing its fine schedule (Staff Exhibit 2) for violations. Mr. Forbes testified that the violation listed in this case is indicated by a violation group number in the schedule that refers to the amount of the fine. He stated that the fine schedule is consistent with the standards of the Commercial Vehicle Safety Alliance and that the proposed forfeiture is reasonable. Mr. Forbes also noted that a Notice of Apparent Violation and Intent to Assess Forfeiture and a Notice of Preliminary Determination (Staff Exhibit 3) were issued to Mr. Rickard notifying him that staff intended to assess a \$100.00 forfeiture for the violation. (Tr. at 20- 26.)

Mr. Koehler testified that he was wearing a seat belt while driving his company's truck. Mr. Koehler stated that, after he pulled over to the side of the road and stopped, he unbuckled his seat belt, got his license, registration, and insurance card, and prepared to speak to the trooper. Mr. Koehler stated that he always wears a seat belt when he drives or even rides in a vehicle, whether the vehicle is a CMV or a car. (Tr. 27-28.)

Mr. Koehler indicated that Trooper Hatcher possibly could not see the shoulder strap of his seat belt because of the color of his shirt, which he displayed at hearing. He described the shirt as being white with vertical and horizontal black stripes. Mr. Koehler also stated that he has looked at approaching vehicles on the highway and that he cannot see if a person is wearing a seat belt. In addition, Mr. Koehler testified that he wears a seat belt religiously; and he was wearing it properly when he was stopped. (Tr. 29-30, 34-36.)

The Commission initially observes that the parties seemed to have different opinions about the effect that Mr. Koehler's shirt color had on Trooper Hatcher's ability to observe the violation. Trooper Hatcher testified that Mr. Koehler was wearing a white, dark-striped shirt and that he thus was clearly able to see Mr. Koehler driving without wearing the black shoulder strap of his seat belt (Tr. 8, 14). Mr. Koehler, on the other hand, indicated that the shoulder strap might have blended visually into the color of his shirt. (Tr. 29, 34.)

Section 392.16 specifies that a CMV "shall not be driven unless the driver has properly restrained himself/herself with the seat belt assembly" (emphasis added). As we have decided in past cases, this means that, if the CMV is equipped with a lap and shoulder belt, then aside from buckling the whole seat belt assembly, the shoulder strap must be in place diagonally across the driver's chest. See, e.g., *In the Matter of Lyden Oil Company, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 08-734-TR-CVF (Opinion and Order dated June 10, 2009) and *In the Matter of Dean Rickard, , Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 09-1926-TR-CVF (Opinion and Order dated May 13, 2010).

In this case, the driver/vehicle examination report (Staff Exhibit 1), completed by Trooper Hatcher at the scene of the inspection, listed a violation of Section 392.16, with the following notation: "Driver was traveling east on US 33. I was traveling west on US 33. I looked @ said driver. He was wearing a white shirt with thin stripes. Driver clearly did not have the black chest strap portion of the seat belt across his chest. Driver stated that he had it on." As noted previously, Trooper Hatcher confirmed at hearing that Mr. Koehler was not wearing the shoulder strap of his seat belt. And, for his part, Mr. Koehler, testified that he did wear his seat belt, that the shoulder strap of his seat belt possibly was not visible to Trooper Hatcher against the color of his shirt, and that he is unable to observe whether people in other vehicles wear seat belts. With regard to his observation of people in other vehicles, Mr. Koehler stated, in part, that: "...I cannot see if a person has a seat belt on as far as the lap belt itself as he claims he couldn't see my lap belt" (Tr. 35).

Despite the parties' difference of opinion about Mr. Koehler's shirt color, either highlighting or hindering observation of the shoulder strap of Mr. Koehler's seat belt prior to the stop for the violation, we believe that the record is clear concerning a violation of

Section 392.16. After a review of the testimony and evidence submitted in the case, the Commission is of the opinion that Trooper Hatcher saw Mr. Koehler commit the violation by not wearing the shoulder strap of the seat belt properly, as required by Section 392.16, and subsequently correctly cited him for that violation. Mr. Koehler's arguments at hearing were not sufficient to demonstrate that he should not be held liable for the civil forfeiture assessed for violation of Section 392.16. Accordingly, the Commission finds that the respondent was in violation of Section 392.16.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On April 5, 2010, the Highway Patrol stopped and inspected a motor vehicle driven by Mr. Koehler in the state of Ohio. The Highway Patrol found the following violation of the Code of Federal Regulations (C.F.R.): 49 C.F.R. Section 392.16 - Failing to use a seat belt while operating a CMV.
- (2) Mr. Koehler was timely served a Notice of Preliminary Determination that set forth a civil forfeiture of \$100.00 for violation of 49 C.F.R. Section 392.16.
- (3) A hearing in this matter was convened on December 15, 2010.
- (4) Staff demonstrated at hearing, by a preponderance of the evidence, that Mr. Koehler violated 49 C.F.R. Section 392.16.
- (5) Mr. Koehler's arguments at hearing were not sufficient to demonstrate that he should not be held liable for the civil forfeiture assessed for violation of 49 C.F.R. Section 392.16.
- (6) Pursuant to Section 4905.83, Revised Code, respondent must pay the State of Ohio the civil forfeiture assessed for violation of 49 C.F.R. Section 392.16. Mr. Koehler shall have 30 days from the date of this entry to pay the assessed forfeiture of \$100.00.


It is, therefore,

ORDERED, That Mr. Koehler pay the assessed amount of \$100.00 for violation of 49 C.F.R. Section 392.16, as set forth in Finding (6). Payment should be made payable to "Treasurer, State of Ohio" and mailed or delivered to Public Utilities Commission of Ohio, Attention: Fiscal Department, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Mr. Koehler is directed to write the case number (OH0726003584D) on the face of the check. It is, further,

ORDERED, That the Attorney General of Ohio take all legal steps necessary to enforce the terms of this opinion and order. It is, further,

ORDERED, That a copy of this opinion and order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Steven D. Lesser, Chairman


Paul A. Centolella

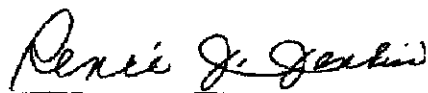

Valerie A. Lemmie


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Entered in the Journal

FEB 23 2011



Renee J. Jenkins
Secretary