

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Everton Thompson,)
Notice of Apparent Violation and Intent) Case No. 15-223-TR-CVF
to Assess Forfeiture.) (OH3291010407D)

OPINION AND ORDER

The Commission, considering the applicable law and evidence of record, and being otherwise fully advised, hereby issues its Opinion and Order in this matter, finding Everton Thompson in violation of 49 C.F.R. 391.41(a) for having no medical certificate in his possession at the time of the inspection.

I. Procedural History

Following the stop of a commercial motor vehicle driven by Everton Thompson (Respondent), Respondent was timely served with a Notice of Preliminary Determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-12, notifying him that Staff intended to assess a \$100 civil forfeiture for a violation of the Commission's transportation rules. A prehearing conference was conducted in this case on February 25, 2015, and a hearing was held on April 7, 2015. At the hearing, Inspector John Holzworth and Thomas Persinger appeared as witnesses for Staff and Respondent appeared pro se.

II. Law

Under Ohio Adm.Code 4901:2-5-03(A), the Commission adopted certain provisions of the federal motor carrier safety regulations to govern the transportation of persons or property within Ohio. Ohio Adm.Code 4901:2-7-20 requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

III. Issue

The issue in this case is whether Respondent failed to have his medical card in his possession at the time of the inspection, in violation of 49 C.F.R. 391.41(a). Staff maintains that Respondent failed to provide his medical card to the inspector at the time of the inspection. (Staff Ex. 1; Tr. at 7-14, 17-18.) Respondent contests the alleged violation, although Respondent does not dispute or otherwise question Staff's calculation of the assessed civil forfeiture (Staff Ex. 2; Tr. at 27-28, 33-35).

IV. Summary of the Evidence Presented at the Hearing

Inspector Holzworth, an inspector with the Motor Carrier Enforcement Division of the Ohio State Highway Patrol, testified that, on September 11, 2014, he stopped a commercial motor vehicle driven by Respondent, in Wyandot County, Ohio. Following his inspection of Respondent's qualifications and documentation, Inspector Holzworth prepared a Driver/Vehicle Examination Report, noting that Respondent did not have a medical certificate in his possession at the time of the inspection, in violation of 49 C.F.R. 391.41(a). Inspector Holzworth testified that he asked Respondent for a medical card, which was not produced by Respondent during the inspection. Inspector Holzworth further testified that, at that point, he checked the Law Enforcement Automated Data System (LEADS) for Respondent's medical information, but did not find the information in the system. (Staff Ex. 1; Tr. at 7-12, 17-18.) When presented with a copy of Respondent's medical examiner's certificate (Staff Ex. 2) at the hearing, Inspector Holzworth testified that, although the certificate is an acceptable form of medical documentation, Respondent did not present the certificate at the time of the inspection. In fact, Inspector Holzworth noted that he had not seen Respondent's medical examiner's certificate prior to the date of the hearing. (Tr. at 12-14.)

During the course of his testimony, Respondent explained that he has both "long form" and "short form" versions of his medical certification. Respondent testified that, at the time of the inspection, he provided the short form to Inspector Holzworth, which Inspector Holzworth refused to accept as proper certification. Respondent further testified that he typically keeps the long form in the door of the vehicle, but he was unable to find it during the inspection, which he indicated to Inspector Holzworth. Respondent's position is that he did indeed provide his medical card at the time of the inspection to Inspector Holzworth, who, according to Respondent, stated that it was not acceptable medical certification. Respondent also noted that he faxed a copy of his medical card multiple times to a number provided by Inspector Holzworth. (Staff Ex. 2; Tr. at 27-28, 33-35.)

V. Commission Conclusion and Order

Based upon the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Respondent violated 49 C.F.R. 391.41(a). The regulation requires that a driver "must not operate a commercial motor vehicle unless he or she is medically certified as physically qualified to do so, and * * * when on-duty has on his or her person the original, or a copy, of a current medical examiner's certificate that he or she is physically qualified to drive a commercial motor vehicle."

The record in this case reflects that Inspector Holzworth, who has been employed as a motor carrier enforcement inspector for approximately 17 years, unequivocally testified that Respondent failed to produce his medical card at the time of the inspection. Specifically, Inspector Holzworth testified that, although he asked Respondent for his medical card, Respondent did not produce one at the time of the inspection. Inspector Holzworth further testified that, at that point, he attempted to retrieve Respondent's medical information in LEADS, but found that the system did not contain Respondent's medical information. (Tr. at 7-12, 17-18.) Inspector Holzworth's testimony is supported by the findings in the Driver/Vehicle Examination Report that he prepared contemporaneously with the inspection (Staff Ex. 1). Finally, Inspector Holzworth explained that the copy of Respondent's medical examiner's certificate admitted as Staff Exhibit 2 would have been acceptable documentation if it had been presented by Respondent to him at the time of the inspection. Inspector Holzworth added that he had not seen the copy of Respondent's medical examiner's certificate prior to the hearing on April 7, 2015, well after the inspection occurred on September 11, 2014. (Tr. at 12-14.)

The evidence of record also reflects that, although Respondent recalled that he provided some sort of medical-related documentation to Inspector Holzworth at the time of the inspection, Inspector Holzworth informed Respondent that it was not a proper medical certification. Additionally, Respondent testified that he was instructed by Inspector Holzworth to fax a copy of his medical card to a number provided by the inspector. (Tr. at 27.) At a later point during the hearing, Respondent asserted that he provided a copy of his medical examiner's certificate, which was admitted as Staff Exhibit 2, to Inspector Holzworth at the time of the inspection and that Inspector Holzworth refused to accept it in place of the long form (Tr. at 34-35). The Commission finds, however, that Inspector Holzworth sufficiently refuted Respondent's testimony. Specifically, Inspector Holzworth indicated that Staff Exhibit 2 is a standard medical examiner's certificate that is often produced by drivers during roadside inspections as an acceptable form of medical certification. Inspector Holzworth also concluded that, if Respondent had produced the medical examiner's certificate admitted as Staff Exhibit 2 at the time of the inspection, there would not have been a violation in this case. (Tr. at 12-14.) In short, upon review of the record, the Commission finds that Respondent did not provide sufficient evidence to indicate that proper medical certification was produced at the time of the inspection and that Staff has sustained its burden of proof to show that the violation occurred as alleged.

With regard to the civil forfeiture recommended by Staff, the record reflects that a \$100 civil forfeiture was assessed in this case, which is the proper assessment for the violation of 49 C.F.R. 391.41(a) (Staff Ex. 4; Tr. at 21). The record further indicates, however, that, at some point following the inspection, Respondent faxed a copy of his valid medical examiner's certificate (Staff Ex. 2; Tr. at 27-28, 30). In light of this

mitigating factor, as well as Respondent's assertion that the assessed civil forfeiture amount poses a financial hardship (Tr. at 32), the Commission finds that the amount should be reduced to \$50. Respondent is directed to make payment of the \$50 civil forfeiture within 60 days of this Opinion and Order by certified check or money order payable to "Treasurer, State of Ohio" and mailed or delivered to the Public Utilities Commission of Ohio, Attention: Fiscal Division, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. The inspection number (OH3291010407D) should be written on the face of the certified check or money order to ensure proper credit.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On September 11, 2014, an inspector for the Ohio State Highway Patrol stopped a commercial motor vehicle driven by Respondent and found him to be in violation of 49 C.F.R. 391.41(a) for having no medical certificate in his possession at the time of the inspection.
- (2) Respondent was timely served with an NPD, alleging a violation of 49 C.F.R. 391.41(a) for having no medical certificate in his possession at the time of the inspection, and informing him that Staff intended to assess a \$100 civil forfeiture.
- (3) A prehearing conference was conducted on February 25, 2015, and a hearing was held on April 7, 2015.
- (4) In accordance with Ohio Adm.Code 4901:2-7-20, Staff has proven, by a preponderance of the evidence, that Respondent had no medical certificate in his possession at the time of the inspection, in violation of 49 C.F.R. 391.41(a).
- (5) Respondent should be assessed a \$50 civil forfeiture for the violation of 49 C.F.R. 391.41(a).

ORDER:

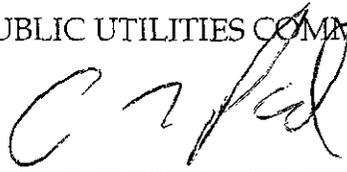
It is, therefore,

ORDERED, That Respondent violated 49 C.F.R. 391.41(a) by having no medical certificate in his possession at the time of the inspection. It is, further,

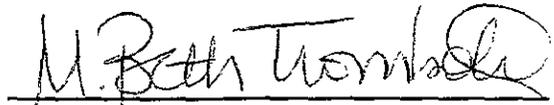
ORDERED, That Respondent pay a civil forfeiture of \$50 for the violation of 49 C.F.R. 391.41(a), within 60 days of this Opinion and Order. Payment shall be made by check or money order payable to "Treasurer, State of Ohio," and mailed to PUCO Fiscal, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. The inspection number (OH3291010407D) should be written on the face of the check or money order. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

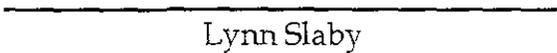
THE PUBLIC UTILITIES COMMISSION OF OHIO



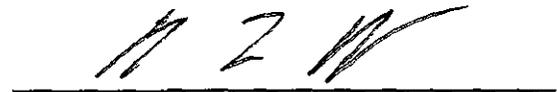
Andre T. Porter, Chairman



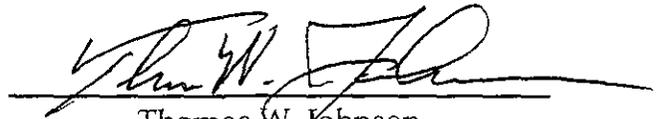
M. Beth Trombold



Lynn Slaby



Asim Z. Haque



Thomas W. Johnson

SJP/sc

Entered in the Journal **DEC 02 2015**



Barcy F. McNeal
Secretary