

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Chad Harra, Notice of )  
Apparent Violation and Intent to Assess ) Case No. 15-111-TR-CVF  
Forfeiture. ) (OH3269010761D)

OPINION AND ORDER

The Commission, considering the applicable law and evidence of the record, and being otherwise fully advised, hereby issues its Opinion and Order in this matter. The Commission finds that Chad Harra (Mr. Harra or Respondent) violated 49 C.F.R. 391.11(b)(4) by not wearing the corrective lenses necessary to be physically qualified while driving a commercial motor vehicle (CMV).

I. Procedural History

Following an inspection of a CMV driven by Mr. Harra, Staff timely served Mr. Harra with a Notice of Preliminary Determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-02. The NPD notified Respondent that Staff intended to assess a \$250.00 civil monetary forfeiture for a violation of the Commission's transportation rules. A prehearing conference was conducted on February 20, 2015, and a hearing was held on April 15, 2015.

II. Law

Under Ohio Adm.Code 4901:2-5-03(A) the Commission adopted certain provisions of the Federal Motor Carrier Safety Regulations (FMCSR), 49 C.F.R. Sections 40, 42, 383, 387, 390-397, to govern the transportation of persons or property in intrastate commerce within Ohio. Ohio Adm.Code 4901:2-5-03(B) and (C) require all motor carriers engaged in intrastate and interstate commerce in Ohio to operate in conformity with all federal regulations that have been adopted by the Commission. Ohio Adm.Code 4901:2-7-20(A) requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

III. Issue

The issue is whether Mr. Harra complied with 49 C.F.R. 391.11(b)(4), which requires that a person be physically qualified to drive a CMV; physical qualifications, as specified in 49 C.F.R. subpart E, require that a driver have at least 20/40 vision with or without corrective lenses. "Driving time" is defined by 49 C.F.R. 395.2 as "all time spent at the driving controls of a \* \* \* [CMV] in operation." Staff alleges that Mr. Harra

was not wearing corrective lenses that are indicated on his commercial driver's license (CDL) and medical examiner's certificate (medical card) as necessary for him to comply with 49 C.F.R. 391.11(b)(4). Mr. Harra asserts that he was wearing corrective lenses while driving.

#### IV. Summary of the Evidence Presented at the Hearing

Inspector Lester testified that, after stopping Mr. Harra for an inspection, he approached the CMV cab on its passenger side, and observed Mr. Harra unbuckle his seat belt before reaching over to open the passenger door. Inspector Lester noted that although Mr. Harra's CDL and medical card indicated that he must wear corrective lenses, Mr. Harra was not wearing glasses and acknowledged that he does not wear contact lenses. (Staff Ex. 1; Tr. at 12-13, 15-16, 35-36.) According to Inspector Lester's testimony, and the driver/vehicle examination report (examination report), Mr. Harra's glasses were found behind the passenger seat "in floorboard of sleeper compartment inside a [closed] black case" (Staff Ex. 1; Tr. at 13, 15, 35, 37). Inspector Lester asserted that Mr. Harra would have needed to take off his seat belt to reach the glasses case (Tr. at 15-16). Inspector Lester also noted that Mr. Harra retrieved his glasses at the point in time that they were reviewing the inspection report.

Inspector Lester further testified that the glasses frame was bent, and when Mr. Harra put the glasses on during review of the examination report, the right side lens did not sit squarely on his face, but rather toward the right side of his face (Tr. at 16-18, 37-38). Further, Inspector Lester added, the right side lens had "some type of debris or something on it" and would have needed cleaning to see through it (Tr. at 17).

Staff also presented testimony by Jonathan Frye, Chief of the Commission's Compliance Division (Tr. at 15). Mr. Frye testified that the proposed forfeiture of \$250.00 is appropriate and consistent with the fine schedule that Staff maintains (Tr. at 24-25). Mr. Frye added that Mr. Harra received all of the notices that he was required to be served with in a timely fashion, pursuant to Commission rules (Tr. at 22-24).

Mr. Harra testified that when he was stopped at roadside, and just before the inspection began, he removed the glasses that he was wearing while driving, placed them inside a glasses case, and put the case on the center console of the CMV cab, which is "right beside the driver's seat" and "on the floor right behind where my lunchbox sits \* \* \* in the middle of the truck" (Tr. at 27-28, 31-33). According to Mr. Harra, when he reached over from the driver's seat to open the passenger door, which he typically locks, he knocked the glasses case off the console and onto the floor (Tr. at 26-28, 33). Mr. Harra asserts that at no time were the glasses behind the passenger seat, because the sleeper berth mattress is "right up against the back of the seats" (Tr. at 33, 41).

Mr. Harra explained that he wears glasses only while driving, and that it is "just my habit" to remove glasses when he stops driving (Tr. at 28-29, 33-34, 39). He contends that he has only one pair of glasses, which have never been bent, and that the glasses case "springs right back open" and "won't stay closed" (Tr. at 29-30, 32, 39).

#### V. Commission Conclusion and Order

49 C.F.R. 395.2 defines "driving time" as "all time spent at the driving controls of a \* \* \* [CMV] in operation." The Commission finds that, based on a preponderance of the evidence, Staff has proven that Mr. Harra violated 49 C.F.R. 391.11(b)(4) by failing to wear corrective lenses while driving his CMV. In this case, when Mr. Harra was stopped for the inspection, he remained at the driving controls of his CMV that was on route to his destination; however, he was not wearing his glasses. Thus, he was in clear violation of 49 C.F.R. 391.11(b)(4). All drivers who are required to wear glasses in order to comply with 49 C.F.R. 391.11(b)(4) must not remove their glasses when their CMV is stopped for an inspection, as they are still at the driving controls of a CMV in operation. If, when an inspection begins, a driver is not wearing the glasses necessary to comply with 49 C.F.R. 391.11(b)(4), the driver will be found in violation of 49 C.F.R. 391.11(b)(4).

Therefore, Mr. Harra shall pay the \$250.00 civil forfeiture to the Commission by check of money order, 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. Case No. 15-111-TR-CVF and examination report number OH3269010761D shall be written on Mr. Harra's check.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On October 22, 2014, an Highway Patrol Inspector Anthony Lester stopped and inspected a motor vehicle driven by Chad Harra, and found Mr. Harra to be in violation of 49 C.F.R. Section 391.11(b)(4) for not wearing corrective lenses necessary to be physically qualified while driving a CMV.
- (2) Respondent was timely served with an NPD, alleging a violation of 49 C.F.R. Section 391.11(b)(4) for not wearing the corrective lenses necessary to be physically qualified while driving a CMV. The NPD indicated that Staff intended to assess a civil monetary forfeiture of \$250.00.

- (3) A prehearing conference was conducted on February 20, 2015, and a hearing was held on April 15, 2015.
- (4) Ohio Adm.Code 4901:2-7-20 requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.
- (5) Based upon the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Mr. Harra violated 49 C.F.R. 391.11(b)(4) by not wearing the corrective lenses necessary to be physically qualified when driving a CMV.
- (6) Respondent should be assessed a \$250.00 civil forfeiture for the violation of 49 C.F.R. 391.11(b)(4).

ORDER:

It is, therefore,

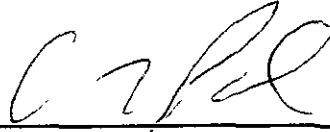
ORDERED, That Mr. Harra pay a \$250.00 civil forfeiture for the violation of 49 C.F.R. Section 391.11(b)(4). It is, further,

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

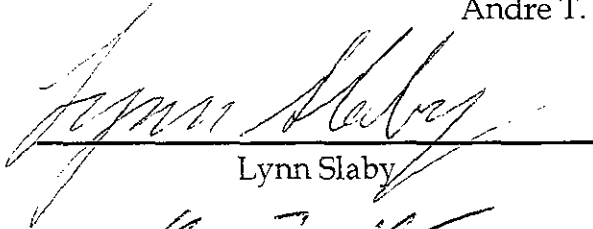
ORDERED, That Respondent pay a civil forfeiture of \$250.00 for the violation of 49 C.F.R. 391.11(b)(4), within 60 days of this Opinion and Order. Payment shall be made by check or money order payable to "Treasurer, State of Ohio" and mailed or delivered to the Public Utilities Commission of Ohio, Attention: CF Processing, 180 East Broad Street, Columbus, Ohio 43215-3793. The inspection number (OH3269010761D) 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.

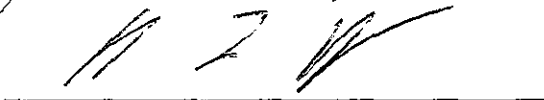
THE PUBLIC UTILITIES COMMISSION OF OHIO




Andre T. Porter, Chairman



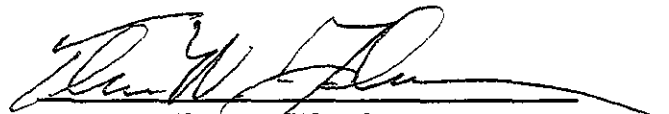
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JAN 06 2016



Barcy F. McNeal  
Secretary