

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of : Case No.
Radu P. Fotea. : 15-2065-TR-CVF

- - -

PROCEEDINGS

Before Kerry Sheets, Attorney Examiner, held at
the offices of the Public Utilities Commission
of Ohio, 180 East Broad Street, Hearing Room No.
11-D, Columbus, Ohio, on Thursday, February 18,
2016, at 10:00 A.M.

- - -

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1 APPEARANCES:

2 Mr. John H. Jones
3 Assistant Attorney General
4 180 East Broad Street, 6th Floor
5 Columbus, Ohio 43215

6 On behalf of the Staff of the
7 Public Utilities Commission
8 of Ohio.

9 Mr. Radu P. Fotea
10 5103 Wood Avenue
11 Parma, Ohio 44134

12 Appearing Pro se.

13 ALSO PRESENT:
14 Gavius Vaduva

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1 Thursday Morning,
2 February 18, 2016.

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4 ATTORNEY EXAMINER: The Public
5 Utilities Commission of Ohio has set for hearing
6 at this time and place Case No. 15-2065-TR-CVF
7 in the matter of Radu P. Fotea.

8 My name is Kerry Sheets, I am the
9 Attorney Examiner for the Commission and I have
10 been assigned to hear this case. We will now
11 have the appearances of the parties, please,
12 starting with the Staff.

13 MR. JONES: Yes. Good morning, Your
14 Honor. On behalf of the Staff of the Public
15 Utilities Commission of Ohio, Ohio Attorney
16 General, Mike DeWine, Assistant Attorney
17 General, John Jones, 180 East Broad Street,
18 Columbus, Ohio 43215.

19 ATTORNEY EXAMINER: Thank you.
20 Now I need the Respondent's name and address
21 for the record.

22 MR. FOTEA: Radu P. Fotea. The
23 address is 5103 Wood Avenue, Parma, Ohio.

24 ATTORNEY EXAMINER: Thank you. Do
25 we have any preliminary matters to take care of

1 this morning?

2 MR. JONES: I just wanted to note
3 for the record, your Honor, that Mr. Fotea does
4 have an interpreter with him today to help with
5 the proceedings.

6 ATTORNEY EXAMINER: Very good. Do
7 you have any witnesses to call?

8 MR. JONES: Yes, your Honor. The
9 Staff would like to call officer Phillip
10 Melicant to the stand, please.

11 (WITNESS SWORN)

12 - - -

13 OFFICER PHILLIP MELICANT
14 called as a witness, being first duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Jones:

18 Q. Would you, please, state your name
19 for the record, please?

20 A. My name is Phillip John Melicant.

21 Q. And where are you employed?

22 A. I am currently employed by the Ohio
23 State Highway Patrol out of the Cleveland LCS
24 Division.

25 Q. And how long have you been employed

1 there?

2 A. Twenty-two years.

3 Q. And what is your job title?

4 A. Commercial Motor Vehicle Inspector,
5 in addition to Trooper duties.

6 Q. And what are your duties and
7 responsibilities?

8 A. For the Trooper aspect is to aid and
9 assist Ohio's motorists and enforce the Ohio
10 Revised Code.

11 On the commercial end is to act as
12 an agent for the PUCO to enforce the FMCSR
13 regulations.

14 Q. And what is your training for your
15 position?

16 A. For CMV I received my training at
17 the Ohio State Highway Patrol Academy, Part A,
18 Part B, and hazardous material.

19 Q. And do you have certificates then as
20 a result of that training?

21 A. I do.

22 Q. What are they?

23 A. That I completed Part A, B, and
24 hazardous material training along with my annual
25 certifications.

1 Q. And so how long have you been doing
2 inspections of commercial motor vehicles?

3 A. Approximately five years.

4 Q. Okay. And what equipment is issued
5 to you for you to do your job?

6 A. First I drive a marked Patrol truck,
7 marked Ohio State Highway Patrol. I have a
8 creeper if I have to get underneath any
9 vehicles.

10 I have brake measurement devices,
11 chamber mates to determine the size of the brake
12 chamber, and that sort of thing. Depth gauges
13 and air gauges.

14 Q. Okay. And what is your
15 jurisdiction?

16 A. I have jurisdiction within the State
17 of Ohio and -- anywhere basically in the State
18 of Ohio.

19 Q. Are you assigned to a certain area?

20 A. I am assigned to the Cleveland
21 District, which incorporates seven different
22 counties in the State.

23 Q. Okay. And do you generate any
24 paperwork as a result of your job doing
25 inspections?

1 A. Yes.

2 Q. And how is that done?

3 A. Through the Aspen program and with
4 an Aspen report.

5 Q. And do you do that on the scene?

6 A. I do.

7 Q. And how?

8 A. I generate, all the paperwork is
9 generated from my vehicle on the computer,
10 laptop, and then I print it out in the vehicle
11 itself.

12 Q. And this is done immediately after
13 you do a visual inspection of the vehicle?

14 A. That's correct.

15 Q. Okay. And do you transmit that
16 information to any agency, any State agency?

17 A. Yes.

18 Q. Where?

19 A. At the end of the day I upload it to
20 Safer.

21 Q. And where does that go to?

22 A. Not exactly sure.

23 Q. Is it sent --

24 A. Public Utilities Commission, yes.

25 Q. Okay. You have before you what's

1 marked as Staff Exhibits 1 and 2 on the stand in
2 front of you. And the first one being the
3 Driver/Vehicle Examination Report. Do you see
4 that?

5 A. Yes.

6 Q. And that is Staff Exhibit 1. And I
7 want to ask you, were you on duty on the date of
8 September 21st, 2015 and have the occasion to
9 stop a Mr. Radu Fotea for an inspection?

10 A. I did, yes.

11 Q. And could you, please, describe the
12 circumstances under which that inspection
13 occurred?

14 A. I was sitting in Brunswick on
15 Interstate 71 and it was just north of the
16 Brunswick rest area. And the way I operate, and
17 specifically on in this day, what I do is I
18 generally when I pull into a cross-over I watch
19 for every 10th truck, unless I have an obvious
20 violation, or if I have a traffic violation that
21 cuts into that.

22 So, I got the first truck that pulls
23 in front of me, I count 10 trucks. And on
24 the 10th truck if I don't have anything that
25 cuts in like a flat tire or light violation,

1 something obvious or a traffic violation, then I
2 will conduct the stop on the 10th truck. And in
3 this case the defendant was the 10th truck.

4 Q. Okay. And so then you counted 10
5 trucks, you end up stopping Mr. Fotea. Why
6 don't you pick up from that point as to what
7 happened at that point?

8 A. After Mr. Fotea passed I pulled out
9 of the cross-over, which I normally sit, and I
10 conducted a traffic stop trying to get him into
11 the southbound Brunswick rest area. And it was,
12 for all intents and purposes, it was a perfect
13 traffic stop.

14 I pulled out, activated my pursuit
15 lights, Mr. Fotea went into the rest area. No
16 glitches. We pulled in, and at that point I
17 made contact with Mr. Fotea and stated to him
18 that I am Trooper Melicant with the Ohio State
19 Highway Patrol and I stopped him for the reason
20 of conducting a safety inspection for a
21 commercial vehicle.

22 Q. And you were on duty at this time?

23 A. Yes. I work 6 A to 4:00 P.M.

24 Q. And you had the uniform on at that
25 time?

1 A. Yes.

2 Q. And a marked cruiser?

3 A. Yes.

4 Q. Okay. Let's go through your report
5 here, Staff Exhibit 1. The first block of that
6 information has information pertaining to a
7 report number. Where does that come from
8 and what does it represent?

9 A. The report number?

10 Q. Yes.

11 A. It's just generated by the
12 sequential numbers through the computer.

13 Q. Does that happen to contain any
14 information that is relevant to identifying you
15 as the officer?

16 A. It does. It has my unit number in
17 the first four numerical digits.

18 Q. And then, of course, then there is
19 the date of the inspection. And then how much
20 time did this inspection take?

21 A. From the time that you enter in the
22 Aspen, which was 9:50 to 10:15, so 25 minutes.

23 Q. And this was a Level 3 inspection.
24 What does that mean?

25 A. Just driver only inspection.

1 Q. Okay. And then there is another
2 block of information that identifies Smart
3 Express Logistics. Who is that?

4 A. That is the carrier that Mr. Fotea
5 was driving for.

6 Q. How did you identify the carrier?

7 A. Through the DOT number and the
8 company listings on the side of the vehicle.

9 Q. So Mr. Fotea was the driver
10 identified operating for the carrier by the name
11 of Smart Express Logistics?

12 A. That's correct. Yes.

13 Q. Okay. And you have other
14 information here as to Mr. Fotea. How did you
15 get the license number and so forth of Mr.
16 Fotea?

17 A. As soon as Mr. Fotea pulled in the
18 rest area I went ahead and made contact, knocked
19 on the driver's door. And I always ask
20 the driver if it's okay to open the door, for a
21 couple reasons.

22 One, I can see the driver, and it's
23 an officer safety issue.

24 Two, I can usually identify the
25 gross vehicle rating of the vehicle by

1 the federal VIN plat on the side of the door.

2 So, there are just a couple reasons I always
3 knock on the door and ask the driver if it's
4 okay. And 99 percent of the time they comply,
5 so they open the door.

6 Plus, I hate having to move driver
7 license and paperwork out through the window
8 because you never know, slip on something or
9 blow away, or get lost.

10 So, I opened the door, talked to Mr.
11 Fotea, identified him by his driver's license,
12 his CDL. And one thing I always do is I always
13 ask the driver is this your current home address
14 just so that I can put it, you know, properly in
15 the Aspen program.

16 And I always ask for driver's
17 license, medical certificate, and a log book if
18 it pertains.

19 Q. And so the person you had stopped
20 that day driving that commercial motor vehicle
21 at that location is the person you describe as
22 Mr. Fotea is in the courtroom today?

23 A. Yes, he is.

24 Q. Could you please point out where he
25 is at and describe what he is wearing?

1 A. He is just off to your left, to the
2 right of his person with him. And he has got
3 his blue suit with a purple tie.

4 MR. JONES: Your Honor, can the
5 record reflect the witness has identified
6 the driver, Mr. Radu Fotea?

7 ATTORNEY EXAMINER: It may.

8 MR. JONES: Thank you, Your Honor.

9 Q. So, as to the documentation you
10 received then from Mr. Fotea having made contact
11 with him to include the medical certificate,
12 what did you discover as to any restrictions
13 being involved here?

14 A. I asked Mr. Fotea for his driver's
15 license, medical certificate, and when he did
16 hand me his medical certificate. I always look
17 at it to, A, match the driver that I have. Two,
18 I make sure that it's current. And, three, to
19 make sure there is no restrictions on
20 the medical certificate itself.

21 Once I review all those I hand the
22 medical certificate right back to the driver.

23 Q. Okay. And was there any
24 restrictions as far as lenses or anything?

25 A. Yes. Mr. Fotea was required

1 corrective lenses per his medical certificate.

2 Q. And what did you observe then from
3 Mr. Fotea as to seeing that restriction?

4 A. As soon as I saw the restriction on
5 his medical certificate I asked him, you know,
6 is he wearing contact lenses, because at the
7 time of the stop he was not wearing his
8 eyeglasses.

9 So any time if I stop a driver and
10 he is required to wear corrective lenses I
11 always ask him, you know, do you have contact
12 lenses in, and almost unequivocally drivers are
13 going to say yes, I do, and they will want to
14 show you, they will open their eyes and look
15 around and they will want to make sure that you
16 can see that they are wearing their corrective
17 contact lenses.

18 Q. So, let me understand what you are
19 saying. You are saying that you identified a
20 restriction from the medical certificate that
21 required corrective lenses for him to operate
22 his commercial motor vehicle, and you identified
23 that he was not wearing any corrective glasses
24 on his face.

25 And also you identified that he, or

1 he identified that he was not wearing any
2 contact lenses to comply with that restriction?

3 A. That's correct.

4 Q. And did you ask him if he was
5 wearing contact lenses?

6 A. Yes, I did.

7 Q. And you didn't see any glasses on
8 his person at that time?

9 A. That's right. He wasn't wearing any
10 glasses at all.

11 Q. Any glasses. All right. Did Mr.
12 Fotea make any acknowledgments as to not
13 complying with the restriction?

14 A. Yes. When I asked him where are
15 your glasses, I asked him if he was wearing
16 his -- if he had contacts and he said no. And
17 I asked him where are his glasses, and he said
18 he had them, but he just wasn't wearing them
19 because he just left Parma.

20 Q. Okay. Did he admit that he was not
21 wearing his glasses when he was operating the
22 commercial motor vehicle?

23 A. Yes. He said he had them, but he
24 wasn't wearing them just because he had just
25 left Parma.

1 Q. All right. And we have here -- and
2 the stop was made in Medina County on Interstate
3 71. And where did this -- where did he
4 originate from when he started his trip, and
5 where was his destination?

6 A. I am not exactly 100 percent sure
7 where in Parma he came from, but he said he left
8 Parma. And I conducted the stop in Brunswick
9 Hills, or Brunswick in Medina County, which is
10 approximately 15 miles.

11 Q. Okay. And what was his cargo?

12 A. He was empty at the time. He said
13 he was heading from Parma to Lima to pick up a
14 load.

15 Q. Okay. And so, then, for the
16 violations that are noted in the Staff Exhibit 1
17 here with this report you identified a code
18 violation. Would you, please, identify
19 and describe what you have there for code
20 violations here for your report?

21 A. The violation Code is 391.11 (b) (4),
22 "Driver not physically qualified, operating a
23 commercial vehicle without corrective lenses as
24 indicated on the driver's medical certificate."

25 Q. Okay. And this is a code of the

1 Federal Regulations provision?

2 A. Yes.

3 Q. And I see there is some information
4 here under State Citation. Would you, please,
5 describe what that information is?

6 A. For the State Citation number --

7 Q. Under that whole area there I guess,
8 the unit?

9 A. Unit.

10 Q. 002, Verify, Crash, all that
11 information.

12 A. For the violation code, is this
13 section, same as the section, and the Unit D
14 equals the violations being addressed to the
15 driver.

16 Out of service, 00S, or out of
17 service, violation is that section. An out of
18 service violation, yes, it is.

19 The State Citation number is a
20 column if I were to cite him for traffic
21 violation.

22 Verify, either yes or no, that
23 the driver corrected the out of service
24 violation at the scene.

25 And Crash in the column, it's an N

1 for no. So there was no crash causing
2 violations.

3 Q. So, you made contact, you identify
4 this violation. Then what did you do next?
5 Did you then generate some paperwork?

6 A. Yes. I printed it out on the Aspen
7 program and handed it back to Mr. Fotea.

8 Q. Okay. And at that time were there
9 any signatures obtained for the report?

10 A. Yes. The report prepared by, I
11 always sign, and then I always have the driver
12 receiving a copy and sign at the bottom where it
13 says copy received by.

14 And then I explained to him that
15 the driver has 24 hours to report to the motor
16 carrier. And then in turn then send it down to
17 the Public Utilities Commission.

18 Q. Very good. So, is Staff Exhibit 1,
19 although this is not the signed version that you
20 just testified to, is this an accurate
21 representation of the Drive/Vehicle Examination
22 Report that you generated on the day of
23 the inspection on September 21st, 2015 for Mr.
24 Radu Fotea?

25 A. Yes, sir.

1 Q. And is this a record kept in the
2 ordinary course of business for the State
3 Highway Patrol?

4 A. Yes.

5 Q. So this report was served on Mr.
6 Fotea at that time?

7 A. Yes, sir, it was.

8 Q. And did you explain the report to
9 him?

10 A. Yes.

11 Q. And you also placed him out of
12 service at that time as well?

13 A. Yes, until he complies with his
14 medical.

15 Q. How did you do that? Did you -- how
16 did you explain to him that he was out of
17 service?

18 A. On the Aspen report, it has a block
19 stating that the driver may not drive any
20 commercial motor vehicle, nor may any carrier
21 permit or require the driver to drive any
22 commercial vehicle until the driver is compliant
23 with the medical certificate.

24 So, not only do I mark that in the
25 block, the dropdown blocks for a driver being

1 placed out of service, I also tell the driver,
2 you know, you are not driving, you are out of
3 service until you are compliant with your
4 medical.

5 Q. And so then after the inspection
6 then did you transmit this document, this Staff
7 Exhibit 1, to any agency?

8 A. Yes.

9 Q. And where did you send it to?

10 A. To the Public Utilities Commission
11 through Safer program.

12 Q. And did you do that on the day of
13 the inspection?

14 A. Yes.

15 Q. I skipped over a piece of
16 information on the report. The vehicle
17 identification has units 1 and 2. What
18 information is provided there?

19 A. Unit No. 1 is always the
20 truck-tractor the way I operate there. And the
21 make was a Volvo, year 2005. And I have the
22 State, which is Ohio. Plat number, which was
23 assigned to the truck. Then the unit number,
24 and then the vehicle identification number.
25 And then the gross vehicle weight rating of

1 the truck.

2 And then Unit 2 is the trailer, same
3 thing, semi-trailer, SD. It's a Walbash, it's a
4 1998 registered in the State of Ohio. No
5 equipment identifier was listed for the trailer.

6 Then the vehicle identification
7 number. And then the gross vehicle rating of
8 the trailer itself.

9 Q. So is it your recommendation to the
10 Commission then based on your training,
11 experience, and the fact that you were the
12 inspector on this day of September 21st, 2015,
13 involved in this inspection and make contact
14 with Mr. Fotea, that he was -- as the driver he
15 was not physically qualified to operate his
16 commercial motor vehicle because he was not in
17 compliance with his driver's medical certificate
18 by having corrective lenses for operating that
19 vehicle?

20 A. That's correct.

21 MR. JONES: Your Honor, I have no
22 further questions of this witness.

23 ATTORNEY EXAMINER: Does the
24 Respondent have any questions for this witness?

25 MR. FOTEA: Yes, sir.

1 ATTORNEY EXAMINER: Now, let's go
2 off the record here briefly.

3 (DISCUSSION OFF THE RECORD)

4 ATTORNEY EXAMINER: You can ask
5 questions of this witness.

6 MR. VADUVA: May I ask the question
7 as well? Have him relate it to me?

8 ATTORNEY EXAMINER: Yes. He can
9 tell you what questions to ask, and you can --

10 MR. VADUVA: Sure.

11 CROSS-EXAMINATION

12 By Mr. Fotea through Mr. Vaduva:

13 Q. I spoke with Mr. Fotea, have been
14 friends for may years and he asked me to -- he
15 speaks English, but he wants to make sure that
16 everything comes across clearly.

17 And one of the things that we
18 want -- we were talking about driving in here
19 this morning, we are very grateful for what you
20 do, for what the State Troopers do. I speak on
21 my behalf and on his behalf as well because we
22 understand the need for safety. Very
23 appreciative.

24 I am a father of five, he has two
25 children. And anybody going out there and does

1 your kind of work, I have the greatest respect
2 for because I understand the need for safety.

3 ATTORNEY EXAMINER: What is the
4 question now?

5 Q. That's the first statement that we
6 have.

7 ATTORNEY EXAMINER: We don't need
8 statements now, we need questions.

9 Q. The first question that he had was
10 regarding the out of service, was he put back in
11 service, and how was he put back in service at
12 the end of the stop?

13 A. I explained to Mr. Fotea once he was
14 being placed out of service for not operating a
15 commercial vehicle with his corrective lenses,
16 or, you know, glasses, at that point he said he
17 had his glasses with him. And nothing more than
18 just putting his glasses on. At that point he
19 is good to drive. He is now compliant as long
20 as he is wearing his corrective lenses.

21 Q. And did he do that?

22 A. I don't know.

23 Q. You are not sure if he put his
24 glasses back on? If you are put out of service
25 how does he get back in service to be able to --

1 A. Just merely putting his glasses on.

2 Q. And do you know, do you have
3 knowledge if he did that with you there?

4 A. I can't recall if he put them on at
5 that time, you know, after he was told. But I
6 went back to my truck and I don't know if he
7 continued on with his glasses or not.

8 Q. And what's customary with that
9 scenario if a driver is put out of service, how
10 would he be allowed to leave the scene without
11 being put back in service?

12 A. As soon as he complies with his
13 medical certificate.

14 Q. On his own without having to be
15 verified by you?

16 A. Yes, that's correct. That's
17 correct. At that point once he complies with
18 his medical certificate either by putting his
19 glasses on or putting contact lenses in, at that
20 point he is compliant with his medical and he is
21 good to leave at that point.

22 Q. And you did not see glasses at all,
23 him putting on his glasses?

24 A. I don't recall if he put them on or
25 not.

1 Q. The other question that he had
2 regarding the Level 3 inspection, driver only
3 inspection, was that the only inspection that
4 you did?

5 A. For Mr. Fotea, that's correct, yes.
6 Because there was nothing more to raise my
7 suspicion to look at the actual vehicle itself.

8 Q. Did you walk around the truck and
9 inspect the vehicle at all?

10 A. Yes. You do an initial walk around
11 to see if you have low tire or flat tire or
12 anything -- anything that you would see like
13 obvious violation that would step the inspection
14 up from a Level 3 driver only to a Level 2 or
15 possibly a Level 1, which is a full inspection.

16 But by my initial contact with the
17 vehicle and Mr. Fotea, my suspicion wasn't
18 raised to amp the inspection up to a Level 2 or
19 a Level 1.

20 Q. So everything else was in good order
21 besides the glasses not being on, or corrective
22 lenses, everything else was in good order?

23 A. That's correct, yes.

24 Q. In your conversation with him did
25 you mention at all you would not put him out of

1 service?

2 A. No.

3 Q. Was that clearly communicated
4 verbally to him that he would be put out of
5 service?

6 A. I explained clearly without him
7 complying with his medical certificate that he
8 will be placed out of service.

9 Q. One of his questions that was
10 pertaining to your conversation with him that he
11 would not receive any violation or being put out
12 of service. Do you recall that at all, in that
13 conversation with him? Because the fact that he
14 had the glasses, he put them on, do you recall
15 having a conversation with Mr. Fotea that you
16 stated that you would not give him a violation?

17 A. Absolutely not.

18 Q. Do you recall saying words that if
19 you would give him a violation he would have to
20 go to Court and go through all sorts of trouble,
21 but you would be gracious with him and not give
22 him a violation or citation? Do you recall that
23 at all?

24 A. No.

25 Q. You don't recall?

1 A. No.

2 MR. VADUVA: Thanks.

3 ATTORNEY EXAMINER: No more
4 questions?

5 MR. VADUVA: That's all.

6 ATTORNEY EXAMINER: Do you have any
7 redirect?

8 MR. JONES: No questions, your
9 Honor.

10 ATTORNEY EXAMINER: You are
11 excused.

12 THE WITNESS: Thank you.

13 MR. JONES: Your Honor, Staff would
14 like to call Tom Persinger as a witness.

15 (WITNESS SWORN)

16 THOMAS PERSINGER
17 called as a witness, being first duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 By Mr. Jones:

21 Q. Would you, please, state your name
22 for the record, please?

23 A. My name is Tom Persinger.

24 Q. And where are you employed?

25 A. I am employed with the Public

1 Utilities Commission of Ohio.

2 Q. And what is your job title and
3 responsibilities?

4 A. My job title is Compliance Officer
5 in the Transportation Department, Compliance
6 Division. My duties include determining any
7 applicable fines resulting from roadside
8 inspections.

9 Q. And you heard the testimony of
10 Trooper Melicant this morning as to transmitting
11 the document before you that is marked as Staff
12 Exhibit 1 to the Public Utilities Commission of
13 Ohio. Did you have an opportunity to review
14 that report for this case?

15 A. Yes, sir.

16 Q. You reviewed that case file?

17 A. Yes, sir.

18 Q. Okay. And as a result of the
19 Commission receiving documentation from the
20 field like that and report of inspection, what
21 does the Commission Staff do with that
22 information?

23 A. We take that information and
24 depending upon what the violation code is a fine
25 is determined for that particular violation.

1 Q. And explain the process, what you
2 used to determine that calculation.

3 A. For any 300 level violation, once
4 the inspection is uploaded into the Safety Net
5 database where all the inspections are kept the
6 data gets imported into another computer system
7 that we call OPOSIS that has preset fine amounts
8 attached with different violations.

9 And in this case the OPOSIS program
10 generates the \$250 fine for this 391.11(b) (4)
11 violation.

12 Q. And once the calculation is made as
13 to a forfeiture amount based on the process you
14 just described, is there any other paperwork
15 generated then?

16 A. We will send out a letter to the
17 Respondent for those particular violations and
18 then any applicable fines.

19 Q. And I have there before you a Notice
20 of Preliminary Determination I would like to
21 have marked as Staff Exhibit 2.

22 (EXHIBIT MARKED FOR PURPOSES OF
23 IDENTIFICATION)

24 Q. Could you, please, describe and
25 identify what that document is?

1 A. This is a Preliminary Notice of
2 Determination. It is generated after
3 the inspection has been made, and if the
4 Respondent requests a conference to discuss the
5 case, and we cannot come to a resolution on it,
6 and it simply indicates that the fine was
7 initially issued at, in this case, \$250. And we
8 couldn't come up with some sort of agreement or
9 resolution on the matter.

10 And upon sending this Notice of
11 Preliminary Determination letter the Respondent
12 is given an opportunity to request a hearing on
13 the matter.

14 Q. And how does the Staff Exhibit 2
15 cross-reference information from Staff Exhibit
16 1?

17 A. On the inspection report there is a
18 report number. The report number on the
19 inspection report and the case number on the
20 Notice of Preliminary Determination letter are
21 essentially one and the same.

22 Q. And how about the address where the
23 letter is sent to?

24 A. In this instance since this is
25 considered a driver violation it was sent to

1 whatever address was put in the fields on the
2 roadside inspection for the driver.

3 Q. And so the information described for
4 the addressee for the letter matches the
5 information from Staff Exhibit 1?

6 A. Yes, sir.

7 Q. Okay. And what was the date of the
8 Notice of Preliminary Determination being sent
9 to Mr. Fotea?

10 A. That was November 10th of 2015.

11 Q. And Staff Exhibit 2, would also
12 then -- does it also repeat the violation that
13 is indicated in Staff Exhibit 1?

14 A. Yes, sir.

15 Q. And is Staff Exhibit 2 a record kept
16 in the ordinary course of business by the Public
17 Utilities Commission of Ohio?

18 A. Yes, sir.

19 Q. And is Staff 2 an accurate
20 representation of information contained in the
21 Notice of Preliminary Determination that you
22 reviewed in the case file of the Commission?

23 A. Yes, sir.

24 Q. And let me ask you then, the process
25 that the Commission Staff went through in making

1 the calculation of the forfeiture of \$250, was
2 that done in compliance with the Commercial
3 Vehicle Safety Alliance?

4 A. Yes, sir.

5 Q. Okay. So, this is done in a process
6 which similar violations have the same type of
7 forfeiture assessment recommendations; is that
8 correct?

9 A. Yes, sir.

10 Q. And in this matter involving Mr.
11 Fotea, is it Staff's recommendation to the
12 Commission that a forfeiture of \$250 be assessed
13 to Mr. Fotea?

14 A. Yes, sir.

15 MR. JONES: Your Honor, I have no
16 further questions of this witness.

17 ATTORNEY EXAMINER: Does the
18 Respondent have any questions for this witness?

19 CROSS-EXAMINATION BY MR. FOTEA THROUGH MR.
20 VADUVA

21 Q. His question is on this type of
22 fine for out of service for medical corrective
23 lenses, his question is, is this a standard
24 fine, \$250? Maybe a warning first or a
25 different amount?

1 A. Based upon our policies and
2 procedures anything that comes into our system
3 like a 391.11 (b) (4) violation is assessed
4 uniformly. So, you would get it -- if I was
5 driving on this day instead of you I would get
6 the same fine. It's pretty uniform across the
7 board.

8 MR. VADUVA: Thank you.

9 ATTORNEY EXAMINER: Anything else?

10 MR. JONES: Your Honor, Staff has no
11 further witnesses, and I would move
12 the admission of Staff Exhibits 1 and 2.

13 ATTORNEY EXAMINER: I will admit
14 those exhibits into evidence at this time.

15 (EXHIBITS ADMITTED INTO EVIDENCE)

16 ATTORNEY EXAMINER: You are
17 excused. Now we will proceed to the
18 Respondent's side of the case. Do you wish to
19 present testimony, Mr. Fotea?

20 MR. FOTEA: Yes, sir.

21 ATTORNEY EXAMINER: Come up to the
22 witness stand.

23 (WITNESS SWORN)

24 - - -

25 RADU FOTEA

1 called as a witness, being first duly sworn,
2 testified as follows:

3 ATTORNEY EXAMINER: Now, if you want
4 to join him and interpret his answers, bring a
5 chair up and you can sit by him if you want to.

6 Now, go ahead and I will let you
7 present your testimony in a narrative style.
8 And if you want to consult with your interpreter
9 first and have him speak after you tell him
10 what you want to say, that is fine. Go ahead.
11 Tell us what transpired on the day of the
12 inspection.

13 MR. FOTEA: First I want to thank
14 for the officer and staff that work on the road
15 and be safe. I really appreciate these jobs
16 that they do.

17 That day I was pulled out by Officer
18 Melicant, pulled over. And when I brought in
19 the parking he came, present, he presented
20 himself and he asked my paper, driver license,
21 medical card certificate, these two.

22 And he told me he pulled me out
23 because he suspect I have a flat tire. And he
24 requested me to come down and go around the
25 truck with him, in front of him, that I did

1 right away. And before go down I was with him.
 2 He look at the paper and he told me I should
 3 have eyeglasses, and right away I said, yes,
 4 it's true, it's near me, I just left from
 5 parking and forgot to put them on.

6 But it's near me. Right away I put
 7 on my glasses. He asked me if I wear corrective
 8 lenses, and I said, no, because I don't have
 9 contact lenses. Sorry. I am sorry. Contact
 10 lenses. And I said no.

11 But I have with me all the time, and
 12 I wear my eyeglasses, and to put right away on
 13 my eye. And I explained, I just started from
 14 the parking lot and I forgot to put on.

15 And I made a little explanation, I
 16 told him I don't need to wear eyeglasses, but I
 17 forgot because I know the law to wear because
 18 the law request both eyes to have minimum 20-40.
 19 And one eye it's normal and one eye it's a
 20 little less than 20-40. And usually when I
 21 didn't wear home to read, look at TV, do any
 22 stuff, I don't need to wear eyeglasses or
 23 corrective lenses.

24 But because right now I am the
 25 driver, and the law requests if it's less than

1 20-40 to wear it. And I told him, yes, I know,
2 is my fault, I forgot put -- it's near me and
3 right away I put on.

4 After that I go down and take around
5 the truck. He look in the front of the truck,
6 he looked on the right side of the truck and
7 the back of the trailer. All the tires, he
8 checks, he looks at the other things.

9 And after that he told me go up in
10 the truck and wait there because I need to do
11 the report.

12 After that go in his truck and he
13 called me, told me make sign to go. And he told
14 me, I understand you, I thought he told me to
15 go. My fault. But I wear usually, it never
16 happen, these things.

17 And he told me, you know, if I give
18 you a ticket you are going to Court, and you
19 have problem with your driver's license. But I
20 understand you have put on and I will not give
21 you any ticket.

22 And I said thank you very much.
23 He told me go back in the truck and wait there.

24 I wait another few minutes and he come to the
25 truck and gave me the paper and told me again I

1 didn't give you any ticket. And I said thank
2 you, sir, I appreciate it. And he left and I
3 left also.

4 After a while, few days, few weeks,
5 when I was home I received the paper with the
6 fine. And I was very frustrated because he told
7 me very clear, not be any ticket. And I didn't
8 know the rules because he can or can't. I am
9 not sure. Should issue the ticket right away.

10 Anyway, the paper would go in the
11 center place and they will issue the fines. I
12 didn't realize in that moment and until the
13 first hearing that I had on the phone I realized
14 I was also out of service. I didn't know I was
15 out of service when I received the paper and the
16 driver examination report.

17 I saw here driver violation, and for
18 me it's not an out of service violation. And I
19 go right away, I sign the paper and send because
20 I received and complying with the request.

21 And after that I received a fine.
22 I realized I was out of service. And then was
23 very frustrating for me because told me, very
24 clear, not be any ticket. And not issue any
25 ticket. And so would not be a fine, would not

1 be any other consequences.

2 I understood, misunderstood. I
3 don't know. It's like a warning, like a
4 warning, the paper. Because he saw I put right
5 away, he saw was next to me. I explained why,
6 just left from the parking and was maybe 10
7 miles, it's true.

8 And I wear eye wear usually because
9 I was stopped on the road so many times, never
10 happened to be -- I don't have the eyeglasses.
11 And there I want to come and plead my case
12 because, first of all, I don't think was fair
13 to, don't know which are the next steps.

14 Second, the out of service, it's
15 very important in this business, the insurance
16 and other factors are based on this out of
17 service. And this out of service was issue
18 after I put on the glasses. It's true when he
19 stopped me I didn't wear. But I fix the problem
20 right away.

21 And I consider it's not correct to
22 issue an out of service for this. Also, I was
23 interested about the fine was \$250. Maybe have
24 been, maybe less, but for them. Who can make
25 payments? Yes, it's true. But for them, and I

1 asked in these two other phone calls, you don't
2 have for the first violation a warning? I was
3 honest, I said I don't have corrective
4 eyeglasses, I don't have corrective lenses. And
5 I fix the problem right away.

6 And with my -- if it's possible to
7 adjust these problems.

8 ATTORNEY EXAMINER: Okay. You have
9 given us the events of the day of the
10 inspection; correct?

11 MR. FOTEA: Yes.

12 ATTORNEY EXAMINER: Okay. Do you
13 have anything more to add to that actual
14 inspection. Is there anything more?

15 MR. FOTEA: No. Checked the truck,
16 everything was fine.

17 ATTORNEY EXAMINER: I think we have
18 that on the record. Thank you. Do you have any
19 questions for this witness?

20 MR. JONES: Just briefly.

21 CROSS-EXAMINATION

22 By Mr. Jones:

23 Q. So, Mr. Fotea, you are admitting
24 that you were driving or operating your
25 commercial motor vehicle without the corrective

1 lenses as required by your medical certificate
2 at the time that you were stopped by Trooper
3 Melicant; is that correct?

4 A. Yes.

5 Q. Okay.

6 A. The eyeglasses, and I told him, yes,
7 it's true, I didn't wear. I just left from the
8 parking lot and I forgot to put on. Usually I
9 have there because I don't use another -- only
10 for driving because required by the law. Not
11 because I need it. And if I need it -- it's
12 nothing missing, but --

13 Q. You understand, Mr. Fotea, that
14 the way that that would have been corrected is
15 that you would only have to put your glasses on
16 to go ahead and continue then to operate
17 following the violation. Do you understand
18 that? That is how you get back in service?

19 A. Yes. But I already put the glasses
20 when he stop me. The paper, didn't fill out yet
21 and I already correct the problem, corrected the
22 problem. I realize the mistake after, correct
23 right away.

24 Q. After you were cited for
25 the violation?

1 A. After he asked me if I wear the
2 corrective lenses.

3 Q. Yes.

4 A. Yes. Right away I put on.

5 Q. Right away after he informed you of
6 the violation?

7 A. Yes.

8 Q. Okay. Okay.

9 MR. VADUVA: Can you repeat that
10 question one more time, sir?

11 Q. Yes. Mr. Fotea, you are saying that
12 after you were cited for the violation --

13 A. What you mean?

14 (Mr. Vaduva talked to Mr.
15 Fotea)

16 A. No, sir. I do not understand the
17 full question. But I put the eyeglasses right
18 after he come to my truck and he looked at the
19 paper and he asked me about the eyeglasses. And
20 I put right away. Not after the -- sorry, I
21 didn't know terms.

22 Q. But you understood that is how you
23 would go back in service is having your glasses
24 to continue your travel?

25 A. No, I already put it right away.

1 Didn't told me I need to -- I didn't know, I
2 didn't realize. I didn't understood any time I
3 was out of service. I didn't realize from
4 the moment. And if you look at the paper, I saw
5 here, there, not out of service or driver out of
6 service violation. And I didn't realized I was
7 out of service because it's -- that's marked
8 down. And after that when I have the first
9 phone hearing I realized, just a second, it's
10 here, out of service, now it's not out of
11 service.

12 And for me was very confusing at
13 that moment. And the gentleman who speak on the
14 phone confirm me, yes, I was out of service.

15 Q. Well, Mr. Fotea, I just want to
16 direct your attention to Staff Exhibit 1 which I
17 believe you are holding in your hands there.

18 A. Yes, sir.

19 Q. And there is a declaration on the
20 form itself at the bottom. You will see it says
21 "I hereby declare Radu P. Fotea out of service.
22 This driver," and in capital letters, "may not
23 drive any commercial motor vehicle nor may any
24 carrier permit or require this driver to drive
25 any commercial motor vehicle until compliant

1 with medical certificate."

2 Do you see that on that?

3 A. Yes, now I see that, but at the
4 moment, now I see that.

5 Q. You see that?

6 A. But the moment didn't, but didn't
7 state to read everything. I read if telling
8 what violation was, and I didn't realize I was
9 out of service.

10 Q. He did provide this form to you?

11 A. Of course, sir.

12 Q. Okay.

13 A. Right away when he finished the
14 inspection and the paper.

15 Q. And he explained the form to you?

16 A. No, no, sir. He told me when I
17 didn't issue any ticket for you and give me the
18 paper. And I said thank you, sir, and I left.
19 And he left.

20 Q. But he did tell you you couldn't
21 operate the vehicle without glasses; right? You
22 said you have glasses. He told you you couldn't
23 operate without glasses?

24 A. He told me when he stopped me, you
25 know, on the medical certificate you have

1 restriction for eyeglasses and I said, yes. And
2 right away I put on. Now you can operate. I
3 know. Next to me. But, I forgot to put on.

4 At the beginning he told me you know
5 you need to have it. Yes, I need to have it.
6 It's very clear. I know what I have restriction
7 on the driver's license and I wear it. But that
8 moment I explain to him I forgot.

9 Q. But Trooper Melicant made clear to
10 you that you couldn't move that vehicle unless
11 you put your corrective lenses on; correct?

12 A. No. I didn't understood this. I
13 understand you need when you driving the
14 commercial motor vehicle you have to wear
15 eyeglasses, and said yes, I know. It's my
16 fault, and I am sorry for this, and I put right
17 away on.

18 I didn't realize you can leave here
19 because you are out of service. I already have
20 on the eyeglasses, so I already fixed before he
21 proceed to finish to check the truck and
22 trailer. I already put it on.

23 MR. JONES: I have no further
24 questions, your Honor.

25 ATTORNEY EXAMINER: Okay. At this

1 point do you have anything more to add?

2 MR. FOTEA: Sir --

3 ATTORNEY EXAMINER: Anything in
4 addition to what you already stated on the
5 record?

6 MR. FOTEA: No. For the record, I
7 didn't -- nobody -- any time -- he didn't tell
8 me I am out of service. I didn't realize I was
9 out of service in the moment. I didn't know I
10 was out service.

11 And I also look also on the paper,
12 but I didn't realize I was out of service. And
13 I request respectfully if possible to remove
14 this out of service because it's so much
15 implication, and I fix the problem right away
16 before he starts filling out the paper.

17 And the implications are so hard for
18 the rating of the company and also for the
19 insurance because the insurance is based on
20 this. And there are consequences on this out of
21 service.

22 And because the violation I request
23 remove also the fine, if it's possible, and to
24 receive a warning. I know I was at fault, I fix
25 the problem right away, and if it's possible

1 to --

2 ATTORNEY EXAMINER: I think we have
3 that on the record. Thank you. Anymore on
4 recross?

5 MR. JONES: No, your Honor.

6 ATTORNEY EXAMINER: Okay. You are
7 excused.

8 MR. FOTEA: Thank you, sir.

9 ATTORNEY EXAMINER: Is there
10 anything more today?

11 MR. JONES: No, your Honor.

12 ATTORNEY EXAMINER: All right. I
13 will consider this case submitted on the record.
14 And I thank you all for coming.

15 MR. JONES: Thank you, your Honor.

16 (At 11:00 A.M. the hearing was
17 concluded)

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CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter on
February 18, 2016, and carefully compared with
my original stenographic notes.

Michael O. Spencer,
Registered Professional
Reporter.

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Case No(s). 15-2065-TR-CVF

Summary: Transcript In the matter of: Radu P. Fotea hearing held on February 18, 2016 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.