

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Radu P. Fotea, Notice of)	Case No. 15-2065-TR-CVF
Apparent Violation and Intent to Assess)	(OH1663003435D)
Forfeiture)	

OPINION AND ORDER

The Commission, considering the evidence of record, issues its Opinion and Order in this matter finding that Radu P. Fotea violated 49 C.F.R. 391.11(b)(4) because he was 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 vehicle operated by RTS Holdings, LLC and driven by Radu P. Fotea (Mr. Fotea or 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 civil monetary forfeiture of \$250.00 for the violation of driving without corrective lenses, 49 C.F.R. 391.11(b)(4). A prehearing conference was conducted on January 5, 2016, and a hearing was held on February 18, 2016.

At the hearing, Trooper Phillip Melicant and Thomas Persinger appeared as witnesses for Staff. Mr. Fotea appeared on his own behalf.

II. The Law

Under Ohio Adm.Code 4901:2-5-03(A) and 4901:2-5-03(B), the Commission adopted certain provisions of the federal motor carrier safety regulations (FMCSR) to govern the transportation of persons or property in intrastate commerce within Ohio. Ohio Adm.Code 4901:2-5-03(C) requires all motor carriers engaged in 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. Fotea 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. Fotea

was not wearing the corrective lenses that are listed as a restriction on his medical certificate, and which are necessary for him to comply with 49 C.F.R. 391.11(b)(4). Mr. Fotea acknowledged that he was not wearing corrective lenses while driving, but stated that he put his glasses on immediately after being stopped. Mr. Fotea urges that, in consideration of his honesty in admitting that he did not have his glasses on, and his immediate correction of the situation by donning his glasses, the amount of his forfeiture should be eliminated and he should be issued a warning instead of a citation for the violation.

IV. Summary of the Evidence Presented at Hearing

Trooper Melicant testified that, after counting every 10th truck on the highway, as a method of selecting vehicles to be inspected, he stopped the CMV driven by Mr. Fotea for a safety inspection at the Brunswick rest area on Interstate 71. Trooper Melicant stated that, after the stop, he ascertained that Mr. Fotea's medical certificate listed a restriction requiring him to wear corrective lenses. However, he was not wearing corrective lenses at the time of the inspection. Trooper Melicant also testified that, according to Mr. Fotea's own statement, he also was not wearing contact lenses. Trooper Melicant stated that there were no glasses anywhere on Mr. Fotea's person, and when asked about his glasses, Mr. Fotea replied that he had them, but that he just was not wearing them because he had just left Parma, Ohio, his origin point. Furthermore, Trooper Melicant noted that, after he issued the inspection report for the violation, and placed Mr. Fotea out of service for not wearing corrective lenses, he explained to Mr. Fotea that he actually was back in service, and could continue driving, just by the act of putting his glasses on. (Tr. at 15-17, 25-26.)

Thomas Persinger, Compliance Officer with the Commission's Motor Carrier Compliance Division, testified that Staff, using the information in an inspection report, and depending on the violation, determines a fine for a particular violation. Mr. Persinger explained that, after being downloaded into the Commission's computer database, the data from an inspection is imported into a separate computer program called OPOSIS, and that program generates a preset fine for the violation. Further, with regard to the fine in this case, the OPOSIS program generates the \$250.00 fine for the Ohio Adm.Code 391.11(b)(4) violation. Mr. Persinger next identified Staff Exhibit 2, the Notice of Preliminary Determination (NPD) that was sent to Mr. Fotea, and testified that the NPD reflects the \$250.00 forfeiture assessed in this matter. In addition, Mr. Persinger testified that the forfeiture is based on the recommended fine schedule of the Commercial Vehicle Safety Alliance and that the amount of the forfeiture is consistent with forfeitures assessed to other drivers for similar violations. (Tr. at 30-34.)

Mr. Fotea testified that he was not wearing his glasses, which were near him in his truck, when he was stopped by Trooper Melicant. Mr. Fotea explained that he had just left the parking lot and had forgotten to put them on; however, he corrected the

situation immediately and put his glasses on even before Trooper Melicant started the paperwork for the inspection. Mr. Fotea stated that he usually does not need to wear glasses when he is at home, but that he does wear them while driving because one of his eyes has less than 20-40 vision. Mr. Fotea also stated that Trooper Melicant, having seen him put his glasses on right away, clearly stated that he would not give him a ticket, and thus there would be no fine for the violation and no other consequences. (Tr. at 37-40.)

Mr. Fotea testified that, at the time of the inspection, he did not understand that he had been placed out of service for the violation, and he did not realize there was an out-of-service designation on the inspection report until he participated in the first telephone conference in this matter. Mr. Fotea stated that the out-of-service designation for the violation was very confusing for him, because he fixed the problem right away at the beginning of the inspection, when he first met Trooper Melicant, and because he does not consider the violation to merit an out-of-service designation. He also noted that insurance coverage and other factors in the trucking business are impacted by a driver being placed out of service. Moreover, in view of the fact that he was honest and admitted that he did not have his glasses on, and the fact that he corrected the situation immediately, Mr. Fotea indicated that the fine for the violation should be eliminated and that he should be issued a warning. (Tr. at 40-47.)

V. Commission Conclusion

49 C.F.R. 395.2 defines "driving time" as "all time spent at the driving controls of a * * * [CMV] in operation." 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). In this case, Mr. Fotea admitted that he did not wear his glasses while driving prior to the inspection (Tr. at 37, 40-41). Considering this admission by Mr. Fotea, and Trooper Melicant's testimony during the hearing that Mr. Fotea's medical certificate carries a restriction requiring him to wear corrective lenses while driving and that he was not wearing glasses prior to the inspection (Tr. at 15-16), it is obvious that Mr. Fotea was, in fact, not in compliance with the corrective-lens restriction on his medical certificate when he was stopped. We thus find that, based on a preponderance of the evidence, Staff has proven that Mr. Fotea violated 49 C.F.R. 391.11(b)(4) by failing to wear corrective lenses while driving a CMV.

Therefore, Mr. Fotea 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. 15-2065-TR-CVF

and inspection report number OH1663003435D shall be written on Mr. Fotea's check or money order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On September 21, 2015, Highway Patrol Trooper Melicant stopped and inspected a CMV driven by Mr. Fotea and found a violation of the Commission's transportation regulations, 49 C.F.R. 391.11(b)(4), failing to wear corrective lenses while driving a CMV.
- (2) Mr. Fotea was timely served with an NPD assessing a civil forfeiture of \$250.00 for violation of 49 C.F.R. 391.11(b)(4), failing to wear corrective lenses while driving a CMV.
- (3) A prehearing conference was conducted on January 5, 2016, and a hearing was held on February 18, 2016.
- (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. Fotea 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) Pursuant to R.C. 4923.99, Mr. Fotea should be assessed a \$250.00 civil forfeiture for violation of 49 C.F.R. 391.11(b)(4).

ORDER:

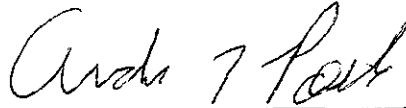
It is, therefore,

ORDERED, That Mr. Fotea pay a civil forfeiture of \$250.00 for the violation of 49 C.F.R. 391.11(b)(4), in accordance with this Opinion and Order. Payment shall be made by check or money order payable to the 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. Case Number 15-2065-TR-CVF and inspection report number OH1663003435D should be written on the face of the check or money order. Payment must be made within 60 days of this Opinion and Order. It is, further,

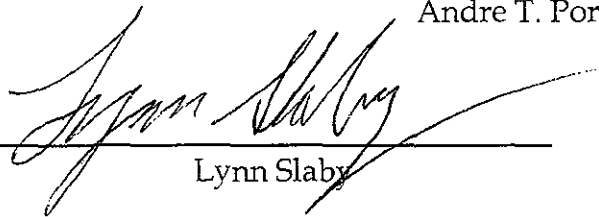
ORDERED, That the Attorney General of Ohio take all legal steps necessary to enforce the terms of this Opinion and Order. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon each party of record.

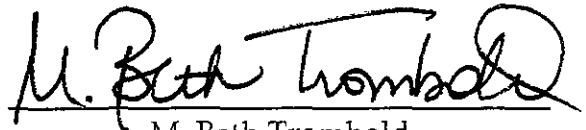
THE PUBLIC UTILITIES COMMISSION OF OHIO



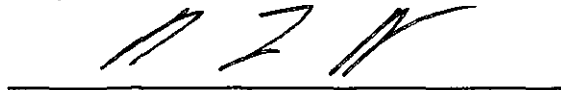
Andre T. Porter, Chairman



Lynn Slaby



M. Beth Trombold



Asim Z. Haque

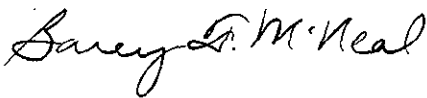


Thomas W. Johnson

KKS/vrm/dah

Entered in the Journal

APR 27 2016



Barcy F. McNeal
Secretary