

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF CHRISTOPHER M.
WICKHAM, NOTICE OF APPARENT
VIOLATION AND INTENT TO ASSESS
FORFEITURE.

CASE NO. 16-753-TR-CVF
(OH3269012116D)

OPINION AND ORDER

Entered in the Journal on September 7, 2016

I. SUMMARY

{¶ 1} The Commission finds that Christopher M. Wickham operated a commercial motor vehicle without a valid commercial driver's license, in violation of 49 C.F.R. 383.23(a)(2).

II. PROCEDURAL HISTORY

{¶ 2} Following an inspection of a commercial motor vehicle (CMV) operated by Richard E. Tomlison and driven by Christopher M. Wickham (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 \$250 civil forfeiture for a violation of the Commission's transportation rules. A prehearing conference was conducted in this case on May 4, 2016, and a hearing was held on June 21, 2016. At the hearing, Anthony Lester and Tom Persinger appeared as witnesses for Staff and Respondent appeared on his own behalf, along with Rochelle Fultz. Staff filed a brief on July 15, 2016. Respondent did not file a brief.

III. LAW

{¶ 3} Under Ohio Adm.Code 4901:2-5-03(A), the Commission adopted certain provisions of the Federal Motor Carrier Safety Regulations, including 49 C.F.R. Part 383, to govern the transportation of persons or property 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. Pursuant to 49 C.F.R. 383.23(a)(2), no person may legally operate a CMV unless such person possesses a commercial driver's license (CDL) that meets certain standards and is issued by his or her state or jurisdiction of domicile.

IV. ISSUE

{¶ 4} The issue is whether Respondent complied with 49 C.F.R. 383.23(a)(2), which generally provides that no person may legally operate a CMV unless such person possesses a valid CDL. Staff alleges that, at the time of the inspection, Respondent's CDL was suspended for medical-related reasons. Staff further alleges that the suspension was specifically determined to be the result of Respondent's failure to provide the Ohio Bureau of Motor Vehicles (Ohio BMV) with a copy of his current medical examiner's certificate. Respondent claims that he was not fully aware that his CDL had been suspended and argues that his current medical examiner's certificate was timely faxed to the Ohio BMV, as well as provided for review during the inspection.

V. SUMMARY OF THE EVIDENCE

{¶ 5} Anthony Lester, a motor carrier enforcement inspector with the Ohio State Highway Patrol, testified that, on February 1, 2016, he inspected a CMV driven by Respondent, in Ross County, Ohio. Following a walk-around inspection of the CMV, Inspector Lester prepared a Driver/Vehicle Examination Report, noting one apparent driver-related violation. Inspector Lester testified that, at the time of the inspection, the Law Enforcement Automated Data System revealed that Respondent's CDL was suspended for medical-related reasons. Inspector Lester further testified that, as noted in the Driver/Vehicle Examination Report, Respondent's medical examiner's certificate on file with the Ohio BMV expired in February 2015, which was the basis for the suspension of Respondent's CDL by the Ohio BMV. Finally, Inspector Lester testified that, although Respondent provided a valid medical examiner's certificate during the inspection,

Respondent was specifically cited for operating a CMV while his CDL privileges in the state of Ohio were suspended. (Staff Ex. 1-2, 4; Tr. at 7, 8, 11-15.)

{¶ 6} Staff witness Tom Persinger, compliance officer in the Transportation Department, testified that an NPD was issued to Respondent with a civil forfeiture of \$250 assessed for the violation in this case. Mr. Persinger also testified that the monetary value of the forfeiture for Respondent's violation was determined by using a fine schedule. Further, Mr. Persinger explained that the Commission applies the fine schedule and the procedures used in determining the forfeitures in the fine schedule uniformly to motor carriers and drivers, and that Respondent's assessed forfeiture is consistent with the recommended fine schedule and civil penalty procedures adopted by the Commercial Vehicle Safety Alliance (CVSA). (Staff Ex. 3; Tr. at 16-19.)

{¶ 7} In its brief, Staff argues that the record reflects that Respondent has a history of license suspensions due to medical certification reasons, does not take the necessary corrective actions with the Ohio BMV, and instead improperly relies on his employer, which, in turn, improperly relies on a third party to ensure his compliance (Staff Br. at 4). Specifically, Staff contends that Respondent was required to submit his medical examiner's certificate to the Ohio BMV, consistent with 49 C.F.R. 383.71, and that it was not sufficient for Respondent merely to carry the medical examiner's certificate and produce it at the time of the inspection (Staff Br. at 4-6, 8-10). Staff further contends that Respondent failed to heed notices regarding the suspension of his CDL (Staff Br. at 6-8). Finally, Staff asserts that neither Respondent's reliance on his employer nor his employer's reliance on third-party verification services excuses Respondent's failure to comply with the regulations (Staff Br. at 10-13).

{¶ 8} Respondent testified that, upon completion of his physical examination, he provided a copy of his medical examiner's certificate to his employer and that the employer then faxed the copy to the Ohio BMV. Respondent also testified, initially, that, although he received multiple notices indicating that his medical examiner's certificate

had expired, he did not receive a notice indicating that this CDL had been suspended and that, as far as he was aware, his CDL was still valid. Finally, Respondent explained that he provided the current medical examiner's certificate at the time of the inspection. (Tr. at 22-23.) During cross-examination, Respondent admitted that he had received multiple notices from the Ohio BMV regarding the expiration of his medical examiner's certificate, including a notice dated April 29, 2015, which indicated that his CDL privileges had been cancelled. Respondent testified that he believed that the cancellation notice was similar to prior notices and admitted that he did not read the entire cancellation notice. (Staff Ex. 4 at 7-9; Tr. at 28-32.) Respondent also admitted that he had received notices from the Ohio BMV regarding the expiration of a prior medical examiner's certificate (Staff Ex. 4 at 3-4; Tr. at 25-28).

{¶ 9} Rochelle Fultz, compliance coordinator for Respondent's employer, testified that she faxed a copy of Respondent's current medical examiner's certificate to the Ohio BMV on March 12, 2015, and that she received confirmation that the fax was successfully sent. Ms. Fultz further testified that she, therefore, believed that the Ohio BMV had received the medical examiner's certificate. Ms. Fultz also testified that three roadside inspections involving Respondent in 2015 revealed no issues with Respondent's CDL and that it was not until the inspection at issue in this case that she became aware of the suspension of the CDL. Ms. Fultz added that compliance reviews conducted in May 2015 and August 2015 by the employer's insurance company and drug consortium, respectively, also revealed no issues with Respondent's CDL or medical examiner's certificate. Among other documents, Ms. Fultz offered copies of her personal fax log and a fax confirmation report, the Driver/Vehicle Examination Reports from the three inspections in 2015, and the results of the compliance reviews from the insurance company and drug consortium. (Respondent Ex. 2, 4-6, 8-10; Tr. at 35-39.)

VI. COMMISSION CONCLUSION

{¶ 10} Per 49 C.F.R. 383.23(a)(2), no person may legally operate a CMV unless such person possesses a valid CDL. In this case, Inspector Lester testified that, at the time of the inspection, Respondent's CDL privileges in the state of Ohio were suspended due to the fact that Respondent's medical examiner's certificate on file with the Ohio BMV had expired, which is confirmed by the cancellation notice (Tr. at 11-15; Staff Ex. 1; Staff Ex. 4 at 9). Although Respondent and Ms. Fultz testified that the current medical examiner's certificate was faxed by Ms. Fultz to the Ohio BMV, neither witness disputed the fact that Respondent's CDL was, ultimately, suspended by the Ohio BMV. Respondent acknowledged that he had received the cancellation notice and several other notices from the Ohio BMV regarding the expiration of his medical examiner's certificate, as well as the expiration of a prior medical examiner's certificate, all of which informed him that he was no longer eligible to operate a CMV (Tr. at 25-32; Staff Ex. 4 at 4, 7-9). As a driver, it was Respondent's responsibility to ensure that he was properly licensed to operate a CMV, as required by 49 C.F.R. 383.23(a)(2). The Commission, therefore, finds that, based on a preponderance of the evidence, Staff has proven that Respondent violated 49 C.F.R. 383.23(a)(2) by driving a CMV without a valid CDL.

{¶ 11} Additionally, R.C. 4923.99 provides that, in determining the amount of the forfeiture for a violation discovered during an inspection, the Commission shall utilize a system comparable to the recommended civil penalty procedure adopted by the CVSA. Consistent with the testimony of Staff witness Persinger, we find that the assessed civil forfeiture is both reasonable and consistent with the fines recommended by the CVSA. Accordingly, based on the evidence of record, the Commission finds that Respondent was in violation of 49 C.F.R. 383.23(a)(2) and should be assessed a civil forfeiture of \$250. Respondent is directed to make payment of the \$250 civil forfeiture within 60 days of this Opinion and Order 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, 4th Floor, Columbus, Ohio 43215-3793. The inspection number

(OH3269012116D) should be written on the face of the check or money order to ensure proper credit.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 12} On February 1, 2016, an inspector for the Ohio State Highway Patrol stopped and inspected a CMV driven by Respondent and found him to be in violation of 49 C.F.R. 383.23(a)(2).

{¶ 13} Respondent was timely served with an NPD, alleging a violation of 49 C.F.R. 383.23(a)(2), and informing him that Staff intended to assess a \$250 civil forfeiture.

{¶ 14} A prehearing conference was conducted on May 4, 2016, and a hearing was held on June 21, 2016.

{¶ 15} In accordance with Ohio Adm.Code 4901:2-7-20, Staff has proven, by a preponderance of the evidence, that Respondent was in violation of 49 C.F.R. 383.23(a)(2).

{¶ 16} Respondent should be assessed a \$250 civil forfeiture for the violation of 49 C.F.R. 383.23(a)(2).

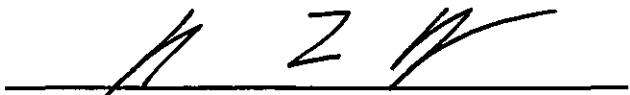
VIII. ORDER

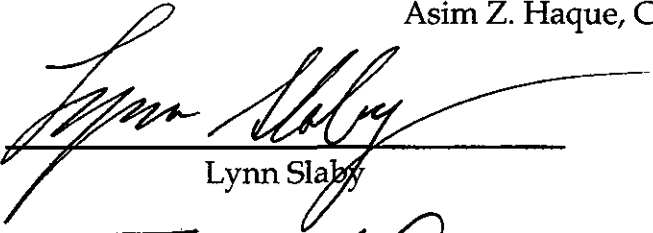
{¶ 17} It is, therefore,

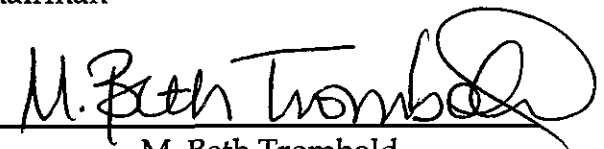
{¶ 18} ORDERED, That Respondent pay a civil forfeiture of \$250 for the violation of 49 C.F.R. 383.23(a)(2), within 60 days of this Opinion and Order. Payment shall be made by check or money order payable to "Treasurer, State of Ohio" and mailed or delivered to the Public Utilities Commission of Ohio, Attention: CF Processing, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. The inspection number (OH3269012116D) should be written on the face of the check or money order. It is, further,

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


THE PUBLIC UTILITIES COMMISSION OF OHIO


Asim Z. Haque, Chairman


Lynn Slaby


M. Beth Trombold

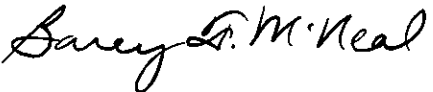

Thomas W. Johnson


M. Howard Petricoff

SJP/sc

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Barcy F. McNeal
Secretary