

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Mircea :
Fritea, Notice of Apparent: Case No. 21-692-TR-CVF
Violation and Intent to :
Assess Forfeiture. :

- - -

PROCEEDINGS

before Mr. Michael L. Williams, Attorney Examiner, at
the Public Utilities Commission of Ohio, 180 East
Broad Street, Room 11-D, Columbus, Ohio, called at
1:35 p.m. on Thursday, November 4, 2021.

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1 APPEARANCES:

2 Dave Yost, Ohio Attorney General
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5 Assistant Attorney General
6 Public Utilities Section
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8 Columbus, Ohio 43215

9 On behalf of the Staff of the PUCO.

10 Mr. Mircea Fritea

11 On his own behalf.

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Thursday Afternoon Session,
November 4, 2021.

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EXAMINER WILLIAMS: We're on the record.

The Public Utilities Commission of Ohio
has scheduled today Case No. 21-692-TR-CVF captioned
in the Matter of Mircea Fritea, Notice of Apparent
Violation and Intend to Assess Forfeiture.

My name is Michael Williams. I am the
Administrative Law Judge assigned to today's case.
I'll take appearances by the parties.

MR. EUBANKS: Robert Eubanks, Assistant
Attorney General, 30 East Broad Street, Columbus,
Ohio 43215, 26th Floor.

EXAMINER WILLIAMS: Thank you,
Mr. Eubanks.

I would note for the record the
Respondent is not here. It is about 6 minutes into
the start of the hearing time, so we will proceed.

With that I will call on Staff to present
its case or argue any motions.

MR. EUBANKS: Yes, your Honor. I would
like to -- would you like me to put the motion on
first or?

EXAMINER WILLIAMS: Sure. Whatever works

1 best for you.

2 MR. EUBANKS: The State would like to
3 move for default judgment. The Respondent is not
4 here, and in accordance with the rules, if they do
5 not show, then it is an admission to the violations
6 that are a part of the examination report.

7 Given that that is an admission, that
8 wouldn't necessarily mean we would win the case so.

9 EXAMINER WILLIAMS: Thank you,
10 Mr. Eubanks. I will take that under advisement. I
11 will invite the Staff to make its -- present its case
12 on the record if you are so prepared.

13 MR. EUBANKS: Okay. I would like to call
14 to the stand the officer who made the inspection.

15 EXAMINER WILLIAMS: Excellent.

16 I will swear you in.

17 (Witness sworn.)

18 EXAMINER WILLIAMS: Please be seated.

19 MR. EUBANKS: Your Honor, will you need a
20 copy of the exhibits?

21 EXAMINER WILLIAMS: If you have them.

22 MR. EUBANKS: Okay.

23 EXAMINER WILLIAMS: Do you have one for
24 our court reporter also?

25 MR. EUBANKS: I'm going to -- yes, I

1 will. May I approach the witness?

2 EXAMINER WILLIAMS: Please.

3 - - -

4 MICHAEL BYRNE

5 being first duly sworn, as prescribed by law, was
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Eubanks:

9 Q. Good morning, Officer.

10 A. Good morning.

11 Q. Could you state your name for the record.

12 A. It's Motor Carrier Enforcement Inspector
13 Michael Byrne of the Findlay District Headquarters,
14 Ohio State Highway Patrol, Licensing and Commercial
15 Standards Section.

16 Q. Could you spell your name for the record.

17 A. It's spelled B-Y-R-N-E, first name common
18 spelling.

19 Q. And how are you related to this matter at
20 hand?

21 A. This matter was pertaining to a -- it's
22 commonly referred to as a DOT inspection that was
23 conducted on February 26 in Hancock County of a
24 commercial motor vehicle as well as the driver of the
25 commercial motor vehicle.

1 Q. And what is the name of the Respondent?

2 A. That is, of the driver?

3 Q. Of the driver, I'm sorry.

4 A. The driver was Mr. Mircea Fritea.

5 Q. And what were the violations that were
6 cited?

7 A. The violations were pertaining -- the
8 first one was a defective right turn signal lamp on
9 the rear of the trailer. The lamp stayed
10 continuously illuminated which is not typical of a
11 normal right turn signal lamp. The lamp never
12 flashed, so being that it was defective, it was
13 placed out of service.

14 Additionally, there was a tire violation
15 found where there was no measurable pressure. The
16 left front turn signal lamp of the tractor was
17 inoperable. Left front hazard warning lamp of the
18 truck was not operable. There was a leak at the
19 service gladhand. And at the rear of the trailer the
20 right hazard warning lamp was defective. That did
21 not flash upon activation, did not illuminate
22 properly. And Mr. Mircea was placed out of service
23 for that his license was revoked, CDL.

24 Q. Did you write an inspection report that
25 documented those violations?

1 A. Yes, sir.

2 Q. I would like to have what I've passed out
3 to the witness and to the Court Examiner marked as
4 State's Exhibit 1.

5 EXAMINER WILLIAMS: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. If you would take a look at what has been
8 marked as State's Exhibit 1. Do you recognize the
9 document?

10 A. Yes.

11 Q. And could you identify it.

12 A. This is our standard document that is
13 printed from a program called Aspen, A-S-P-E-N. It's
14 typically titled a Driver/Vehicle Examination Report.
15 This is our standard report that we use when we do
16 our DOT inspection.

17 Q. So this -- this report would have been
18 drafted by you?

19 A. That is correct.

20 Q. Okay. Is this a true and accurate
21 representation of --

22 A. Yes, it is.

23 Q. True and accurate copy of the examination
24 report?

25 A. That is correct.

1 Q. Okay. The violations that you mentioned,
2 are they cited on this examination report?

3 A. Yes, sir.

4 Q. And the name of the driver, is that also
5 on the examination report?

6 A. Correct.

7 Q. What was the date of the inspection?

8 A. The date was February 26 of 2020 -- 2021,
9 excuse me, of this year. February 26, 2021.

10 Q. That's also noted on the inspection
11 report?

12 A. Yes, sir.

13 Q. And, finally, what is the USDOT number?

14 A. The USDOT number of the carrier was
15 2251987.

16 Q. And how would you have got that number?

17 A. This would have been obtained several
18 ways. No. 1, the markings on the side of the truck
19 are required to have the USDOT markings on them.
20 Additionally, there -- apportion registration a lot
21 of times has the USDOT number on them plus any other
22 documents they may have. Let's say we will call it a
23 permit book or a book contains several other
24 documents such as those that may have been issued by
25 the Federal Motor Carrier Safety Administration.

1 Q. Specifically with regard to Violation
2 383.51A-SIN, driving a CMV while CDL is suspended,
3 how did you verify that violation?

4 A. This was verified two ways. No. 1,
5 through a system called Inlets. Running it through
6 Michigan, it indicated that the driver's commercial
7 status was revoked. Additionally, through another
8 system with the Federal Motor Carrier Safety
9 Administration called CDLIS, the license was also
10 checked through that, and it indicated eligible. Had
11 the license been valid, it would say active.

12 Q. Okay. What does eligible mean?

13 A. Eligible means that for whatever reason
14 his -- he's eligible to obtain a CDL and in whatever
15 fashion, but he does not have a valid CDL. So, for
16 example, let's say his medical was expired.

17 MR. EUBANKS: I'm sorry. One moment,
18 please. Can we take a break?

19 EXAMINER WILLIAMS: Yeah. We will go off
20 the record.

21 (Discussion off the record.)

22 EXAMINER WILLIAMS: We are back on the
23 record. It is about 1:45. Mr. Fritea just appeared
24 for his hearing.

25 We were about 10 minutes in the hearing,

1 Mr. Fritea, so what's occurred to this point was the
2 State moved for a default judgment in the case based
3 on your failure to appear and prosecute the case or
4 defend the case. Now that you have appeared, that
5 motion for default would appear to be moot.

6 The State was also moving to prosecute
7 its case on the evidence of the case that surrounded
8 the inspection that occurred on February 26 of 2021.
9 Inspector Byrne was the inspector who oversaw the
10 inspection, the DOT inspection, and was the one who
11 wrote the report that's the subject of today's case.
12 He was testifying regarding what had occurred on that
13 date and the different violations that occurred.
14 Those have all been labeled State Exhibit 1 and you
15 have a copy of that in front of you. I assume it's a
16 document you have seen before.

17 With that before we proceed with
18 Inspector Byrne's testimony, I would invite you to
19 ask any questions to clarify what's occurred to now
20 as well as any questions you have as to the process.

21 MR. FRITEA: The violation that appears,
22 you know, with the bulb and the tire, yeah, I mean,
23 they can happen any time on the road. We have this
24 problem, you know, so many times. The bulb can blow
25 up, and you don't know.

1 The tire when I get -- when I get the
2 trailer from the yard, the tire pressure was okay.
3 You know, I check all the tires, but maybe it was a
4 nail or something. But I think it was the valve
5 because when he put me out of service, I went to the
6 shop over there and they just put air and they just
7 tied to the valve. I think it was unloose so they
8 just tied it and they put pressure in and they were
9 staying so.

10 EXAMINER WILLIAMS: So with that, tell
11 you what we are going to do, do you have any
12 questions as to the process, as to what we are doing
13 here today and what's occurred to now?

14 MR. FRITEA: Well, I am just -- I am just
15 concerned that I get stopped, I understand. I get
16 stopped. They search; my driver license was
17 suspended. I was shocked when he told me that
18 because --

19 EXAMINER WILLIAMS: Let me stop you again
20 there. So there's a structure to these hearings and
21 the structure is the State presents its case and then
22 I will let you engage in any clarifying questions we
23 have as to the State's case and then you have a
24 chance to present your case after the State presents
25 its case. So I am going to let you say what you are

1 saying here, but I am going to let you clarify your
2 account as to why you think there wasn't a violation
3 or why you think it might have been an excusable
4 violation, but I am going to ask you to do that in
5 the proper order which is after the State has
6 presented its case, sir.

7 MR. FRITEA: Okay.

8 EXAMINER WILLIAMS: That's important for
9 a couple of reasons. One of which you will have a
10 chance to respond to what the State presents. And,
11 secondly, I will swear you in, and your testimony
12 will be sworn testimony at that juncture. It's
13 deemed reliable by the Commission, okay?

14 MR. FRITEA: Okay.

15 EXAMINER WILLIAMS: Okay, sir. Thank
16 you.

17 MR. EUBANKS: Your Honor, may I make one
18 clarification for purpose of Respondent?

19 EXAMINER WILLIAMS: Yes, Mr. Eubanks.

20 MR. EUBANKS: While there was testimony
21 about a variety of violations that occurred that day,
22 the only violation that is of issue here today is the
23 last one that I had him clarify, 383.15A-SIN, driving
24 a CMV while CDL is suspended --

25 EXAMINER WILLIAMS: Okay.

1 MR. EUBANKS: -- so.

2 EXAMINER WILLIAMS: Okay. That's --
3 that's so noted. Anything else you have for the
4 witness, Mr. Eubanks?

5 MR. EUBANKS: No, your Honor. I would
6 like to ask that the State's Exhibit 1 be moved into
7 evidence, or admitted into the evidence, and I have
8 no further questions for the witness.

9 EXAMINER WILLIAMS: Thank you,
10 Mr. Eubanks.

11 So Inspector -- you are welcome to stay
12 seated, if you want, sir, whatever you are most
13 comfort doing. Inspector Byrne has testified
14 regarding the events of February 26 of 2021 and those
15 are written in the Driver/Examination Report.
16 Counsel for Staff has clarified that the only
17 violation that's the subject of today's hearing is
18 the violation for driving under a suspended CDL. Do
19 you understand what that means?

20 MR. FRITEA: Yes.

21 EXAMINER WILLIAMS: Okay. So I will
22 invite you to ask any questions either through me or,
23 you know, politely through the witness. Do you have
24 any questions for the Inspector as to whether you
25 were cited for a suspended CDL?

1 MR. FRITEA: Well, he discovered when he
2 run my driver license that the license was suspended,
3 but I was shocked because I'm not guilty for that,
4 and I am going to move forward to prove that.

5 EXAMINER WILLIAMS: Okay.

6 MR. FRITEA: Because they suspended
7 because the Secretary of State did not did the job
8 right to update my medical card in the system.

9 EXAMINER WILLIAMS: So there is nothing
10 about that that involves the account of the
11 Inspector, correct?

12 MR. FRITEA: No.

13 EXAMINER WILLIAMS: Okay. All right. So
14 do you have any questions of the Inspector? It
15 doesn't seem as there are any practical questions.
16 He ran the computer. The computer said your CDL was
17 suspended. He wrote that down. So I don't know that
18 you have any questions or clarification, but I will
19 make sure you have that opportunity.

20 MR. FRITEA: Yeah. I really don't have
21 any questions. He did his job. I mean --

22 EXAMINER WILLIAMS: Okay.

23 MR. FRITEA: I think everything was okay.
24 It's just the license suspended, that was not my --
25 my problem, but I didn't know about it. And, like I

1 said, when I call -- when he put me out of service, I
2 called the Lansing directly and I told them what
3 happened and they -- they gave me an e-mail to send
4 the copy of my medical card right away. It was 5
5 minutes took me and they reinstated -- they updated
6 my license and I was able to leave from there because
7 he put me out of service and 10 minutes I left from
8 there. I put air and then I updated the -- I sent
9 the medical card to the Lansing and they updated and
10 I was ready to drive again.

11 - - -

12 EXAMINATION

13 By Examiner Williams:

14 Q. So, Inspector, you placed him out of
15 service, and then were you aware of how he left the
16 scene?

17 A. No.

18 Q. Okay. Does it surprise you that he
19 indicates that he believes he remedied the CDL issue
20 and left the scene in spite of being placed out of --

21 A. I am not going to contest it. I will say
22 that, you know, I gave him some instructions as to
23 what he needs to do. I told him that -- get ahold of
24 your license agency as soon as possible so basically
25 what you need to do, the procedures so you can get

1 back on the road.

2 Q. Have you done any work to investigate the
3 status of this matter after you prepared your report
4 to see if his CDL was ever reinstated or whether
5 there was any excuse as to why the CDL was
6 potentially inaccurate on the system you checked?

7 A. No, no.

8 EXAMINER WILLIAMS: All right.
9 Inspector, thank you for your testimony.

10 Mr. Eubanks, I don't recall if I admitted
11 State Exhibit 1, but I will admit State Exhibit 1 at
12 this time.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 MR. EUBANKS: Thank you, your Honor. At
15 this point I would like to call Rod Moser to the
16 stand.

17 (Witness sworn.)

18 EXAMINER WILLIAMS: Thank you. Please be
19 seated.

20 Mr. Eubanks.

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ROD A. MOSER

being first duly sworn, as prescribed by law, was
examined and testified as follows:

DIRECT EXAMINATION

By Mr. Eubanks:

Q. Could you state your name and spell it
for the record.

A. My name is Rod Allen Moser, last name is
M-O-S-E-R.

Q. Could you state your job position and
duties.

A. Sure. I am Chief of the Compliance for
the Registration and Compliance -- let me start over,
Chief of the sections within Transportation known as
Registration and Compliance Sections for the Public
Utilities Commission of Ohio.

Q. Okay. And your duties?

A. In this regard and in regard to this
case, basically to shepherd the civil forfeiture
process for the Transportation Department.

Q. And how does that relate to the Notices
of Preliminary Determination?

A. Preliminary -- Notice of Preliminary
Determinations are sent after a conference between
the Respondent and the assigned case officer.

1 Normally we send those when the two cannot come to an
2 agreement to settle the case. In this particular
3 case the Respondent failed to contact the case
4 officer on the scheduled date and time so there was
5 no opportunity to settle the case.

6 Q. Okay. Does the Notice of Preliminary
7 Determination also list the violation and forfeiture
8 amount?

9 A. It does, yes.

10 Q. And will you -- do you have any training
11 with regards to the various violations that would be
12 listed on the preliminary determination?

13 A. Sure. I am certified to -- as an
14 inspector for North American Standards Parts A and B,
15 general hazmat, bulk, and other -- cargo tank and
16 motor coach, so I am familiar with the violations.

17 Q. Okay. And would you also be familiar or
18 have training with regards to the proper forfeiture
19 amounts that would apply to various violations?

20 A. Yes. I've been doing this job for about
21 four and a half years now. During that time, when I
22 first started, I had a mentor that showed me the
23 process, and then I have been involved in updating
24 that process and refining it.

25 Q. If you saw the Notice of Preliminary

1 Determination that was used in this case, would you
2 be able to recognize it?

3 A. Yes, sir.

4 Q. And why?

5 A. Well, it's got Mr. Fritea's name on it.
6 It also has a case number related to him, and then it
7 would also point out the specific violation related
8 to this case.

9 MR. EUBANKS: Okay. May I approach, your
10 Honor?

11 EXAMINER WILLIAMS: Please.

12 MR. EUBANKS: I would like to have a
13 document that I have passed out marked as State's
14 Exhibit 2.

15 EXAMINER WILLIAMS: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. You have before you the document that's
18 been -- that I've requested to have marked as State's
19 Exhibit 2?

20 A. Yes, sir.

21 Q. Do you recognize the document?

22 A. It is a Notice of Preliminary
23 Determination to Mr. Fritea.

24 Q. Okay. And does it have the violation and
25 forfeiture amount that was listed?

1 A. Yes. So the document itself shows the
2 original violation and forfeiture amount, and then at
3 the top and then near the bottom is the resulting
4 violation and forfeiture amount post conference.

5 Q. And would this Notice of Preliminary
6 Determination, would it have been sent out to -- to
7 the Respondent?

8 A. Yes. It's sent out to whoever requests
9 the conference. In this case it was Mr. Fritea.

10 Q. Is this a true and accurate copy of the
11 Notice of Preliminary Determination?

12 A. Yes, I believe it is.

13 Q. Is the forfeiture amount appropriate for
14 the violation that existed?

15 A. It is. It's -- this violation is
16 assessed that forfeiture amount in all cases where
17 the violation is charged.

18 MR. EUBANKS: I would like to move into
19 evidence what has been marked as State's Exhibit 2.

20 EXAMINER WILLIAMS: Mr. Fritea, any
21 comments on admitting that as an exhibit?

22 MR. FRITEA: I'm just concerned, you
23 know, what -- what brought me here, you know. I am
24 not guilty, and I would prove.

25 EXAMINER WILLIAMS: We will get there,

1 sir. I am really just addressing now the
2 admissibility of this State report that's prepared in
3 the ordinary course. It's almost assuredly to come
4 in as evidence, but I wanted to give you a chance to
5 comment before I did that.

6 And I'm making this harder than it needs
7 to be. I am going to go ahead and admit this State's
8 Exhibit 2. It's a document kept in the ordinary
9 course, and it's certainly relevant to the matter
10 that we are here for today, so I don't want you to
11 think I'm taking away your opportunity to explain
12 your case, but I just want to streamline the
13 formality of admitting this exhibit.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER WILLIAMS: So what we are going
16 to do now Mr. Eubanks may very well be done with his
17 questioning. I have a clarifying question or two and
18 then I'll swear you in and I will let you -- allow
19 you to ask some questions as well, okay?

20 Okay. Mr. Eubanks?

21 MR. EUBANKS: Yes, your Honor. You are
22 correct. I am done with my questioning for the
23 witness.

24 EXAMINER WILLIAMS: Thank you.

25 - - -

EXAMINATION

By Examiner Williams:

Q. Mr. Moser, I want to clarify. You indicated that there is typically a communication process after a violation is issued where Staff and driver, Respondent, will communicate as to, hey, are there any questions or concerns about the case or possible compromise; is that correct?

A. Yes, sir.

Q. And you said that didn't happen here?

A. No. So our process is that Notice of Intent to Assess Forfeiture, an NIAF letter, is sent out which gives directions to the Respondent that if they don't believe it's a valid violation, they have a right to a conference. Mr. Fritea requested that conference, and it was set up for him. But on the date and time in which it was to take place he did not participate.

Q. Do you know if he participated in the prehearing conference that I had scheduled back on June 24? If you know.

A. Yeah, I don't remember.

Q. Okay.

A. There was no -- I can tell you normally we put a note on the case. There was no note in this

1 case.

2 Q. Okay. Thank you.

3 A. If I may.

4 Q. Of course.

5 A. There are photos attached to this case
6 that show at the time of the inspection Mr. Fritea
7 was not valid. He is -- I did check his CDLIS record
8 this morning. He is valid at this time.

9 Q. Do you know when it was reinstated?

10 A. I want to say June of 2021.

11 EXAMINER WILLIAMS: Thank you. So,
12 Mr. Fritea, since your questioning of the witness and
13 your testimony of your position in the case are so
14 intertwined, I am going to go ahead and swear you in.
15 That way you can ask questions and also present your
16 testimony here today in a sworn fashion, okay?

17 (Witness sworn.)

18 EXAMINER WILLIAMS: I am going to let
19 Mr. Fritea ask you some questions. But again, having
20 seen this, I mean, it's understandable that his
21 account of what happened and his questions to you are
22 kind of blended, so I wanted to get his sworn
23 testimony.

24 Mr. Fritea, I will let you ask any
25 clarifying questions. You heard Mr. Moser testify

1 that this is what he does. He processes these
2 Notices of Preliminary Determination, that the
3 process is a couple fold. There is an initial
4 outreach or opportunity for informal communication
5 between Respondent and the Division as to tell me
6 what happened, see if they can work out some sort of
7 compromise, and then the matter, if it's not
8 resolved, comes to my attention. I'll then set it
9 for prehearing conference. That has a second
10 opportunity for some informal dialogue and then if it
11 doesn't work out, then we are here today in this
12 setting.

13 So that's how we got here. That's what
14 Mr. Moser's role is in this process. And I will
15 allow you to ask any questions of him to clarify that
16 account including the notion that he confirmed your
17 CDL was reinstated. Again, he doesn't have the exact
18 date and time but that it was -- it showed with a
19 photograph that it was suspended back in February and
20 it shows reinstated in June. So with all that
21 information as a backdrop, please ask any questions
22 you have.

23 MR. FRITEA: Well, first of all, my
24 license was reinstated right at the moment after I
25 submitted my medical card to the Lansing Department.

1 So I e-mailed it and not even 5 minutes they
2 reinstate the license, and they told me that I'm okay
3 to drive back on the road so.

4 EXAMINER WILLIAMS: Do you have
5 anything -- do you have anything in writing that
6 supports that? Do you have a copy of your e-mail or
7 e-mail back from the agency?

8 MR. FRITEA: Probably I can find the
9 e-mail when I -- when I send it. I just really don't
10 remember the e-mail, but it's going to take me 2, 3
11 minutes to look into it, so I can be -- I can find
12 and I can prove it.

13 EXAMINER WILLIAMS: I tell you what we
14 are going to do --

15 MR. FRITEA: But my license was
16 reinstated right after, so after he put me out of
17 service, after 10 minutes, I was -- you know, I was
18 able to drive again. So if they check all these
19 things that my license was suspended and all that,
20 why they cannot check to see somewhere reinstated
21 right away after I get stopped? Because I didn't
22 know.

23 EXAMINER WILLIAMS: Okay. So the -- the
24 way this works is when you're pulled over and
25 inspected, you are required to show you have proof of

1 the right to be driving in the manner you are
 2 driving. If you can't provide that, then it is a
 3 violation. And then we are into is there -- are
 4 there mitigating circumstances or is there any
 5 confusion as to why you weren't valid which is what
 6 you seem to be proceeding toward which is there was
 7 some miss -- mess up with my medical card and once we
 8 had clarified that, then I was immediately
 9 reinstated. I just need you to come forward with
 10 that proof so that we can have something besides,
 11 hey, the computer said you had an inoperable license
 12 when you were pulled over. Does that make sense?

13 MR. FRITEA: Yes.

14 EXAMINER WILLIAMS: So I tell you what,
 15 we are going to do -- it's 3 minutes after 2:00. I
 16 want to give you every opportunity to present your
 17 case here today. If you think you have some
 18 information in your e-mail, I will let you -- we will
 19 go off the record here for as long as it takes, 5 or
 20 10 minutes, let you find whatever e-mail you think is
 21 relevant and see if you can get it to the court's
 22 attention, okay?

23 MR. FRITEA: Okay.

24 EXAMINER WILLIAMS: So we are off the
 25 record.

1 (Recess taken.)

2 EXAMINER WILLIAMS: Let's go back on the
3 record.

4 We took a 20-, 25-minute break.

5 Mr. Fritea had identified, I believe, he could
6 identify some e-mail that he thought was relevant to
7 his case. He hadn't come with a hard copy of that,
8 so I've proceeded down to print a copy that he had
9 forwarded to me. We will go ahead and mark that as
10 Respondent's Exhibit 1 which is the four-page e-mail
11 captioned at the top "Mircea Fritea" with today's
12 date, November 4, that he sent it to me.

13 He also then when I came back with the
14 copies from the e-mail presented me with a copy of
15 his Medical Examiner's Certificate which we'll mark
16 as Respondent's Exhibit 2 and that's purportedly
17 signed November 17 of 2020. And I believe
18 Mr. Fritea's account thus far on the record has been
19 that's when he e-mailed to Michigan in an effort to
20 reinstate or confirm an operable CDL on February 26,
21 2021.

22 Mr. Fritea, those documents are true and
23 accurate as they were presented to me, correct?

24 MR. FRITEA: Yes.

25 (EXHIBITS MARKED FOR IDENTIFICATION.)

1 EXAMINER WILLIAMS: Okay. Thank you.

2 Q. (By Examiner Williams) Mr. Moser, based
3 on the information that's come in here, to the extent
4 you know, did Mr. Fritea actually meet all
5 requirements for a valid CDL on February 26 when he
6 was pulled over?

7 A. I would say that this confirms he did
8 not.

9 Q. Why so?

10 A. Because I can't see what was sent to the
11 Michigan Secretary of State by the driver.

12 Q. So his testimony, I believe, is that he
13 sent a copy of this electronically, this being
14 Exhibit 2.

15 A. So that would have been at 3 --

16 MR. FRITEA: The PDF was included.

17 EXAMINER WILLIAMS: We have got to do one
18 at a time because the court reporter is taking this
19 down.

20 A. That would have been in 3:33, correct?
21 That's -- that looks like the first action that I
22 see.

23 MR. FRITEA: Yeah.

24 A. That's where he sent something to them.

25 MR. FRITEA: After I -- I get out of

1 service.

2 A. Okay. 10 minutes later, the person from
3 the Secretary of State says, okay, you are restored
4 which would indicate that you were not valid at the
5 time of the stop, or you would not have needed to be
6 restored.

7 EXAMINER WILLIAMS: Okay. I understand
8 the State's position in that regard.

9 Mr. Fritea, Mr. Moser is indicating that
10 the action you took after the examination and being
11 placed out of service was an action that frankly
12 verified that you were, in fact, without a CDL at the
13 time in question. Do you have questions for him
14 regarding his position?

15 MR. FRITEA: Well, when I find out that
16 my license was not valid and I -- because I know I
17 have a driver's before the Michigan has this kind of
18 issue because they make you to fax the copy of the
19 medical card to Secretary of State so they updated in
20 the system. So we send the fax to them when I up --
21 when I updated my medical card back in 2020 in
22 November 17, but they didn't update it in the system.
23 So when the officer put me out of service because of
24 this reason, I knew that, you know, this has to be
25 with the medical card because the same problem I have

1 with my other drivers and I have proof also that I
2 e-mailed directly to the Lansing Department, so to
3 make sure that the -- confirmed they updated the
4 medical card. So, of course, that was my first
5 option to do so, contact them directly. And I told
6 them, you know, I got pulled over. I am out of
7 service, and he said send me a copy of the -- of the
8 medical card, and I'll update it for you as soon as
9 possible.

10 So and the e-mail also shows that I have
11 a PDF file attached to that e-mail sent to
12 Michigan.gov and that was -- include my medical card
13 in the PDF. I don't know how you didn't receive the
14 PDF when I -- when I sent -- when I forwarded you the
15 e-mail.

16 EXAMINER WILLIAMS: Yeah. I received --
17 I printed out what you sent me so.

18 MR. FRITEA: But I can prove that. There
19 is PDF attached to that e-mail sent to the
20 Michigan.gov to update the medical card.

21 EXAMINER WILLIAMS: So you are indicating
22 that the PDF that you -- that's embedded in that
23 e-mail is the medical card that --

24 MR. FRITEA: Yes.

25 EXAMINER WILLIAMS: -- we have marked as

1 Respondent's Exhibit 2?

2 MR. FRITEA: Yes. And based off that
3 medical card, they stored, they updated in the system
4 because they were supposed to update it three months
5 ago, and they didn't.

6 EXAMINER WILLIAMS: Now, did you verify
7 when you sent it in the first time that they received
8 it that you were updating?

9 MR. FRITEA: There is no way you can
10 verify because they gave you -- when you go to
11 medical office, when you do the medical exam, when
12 they pass you, the exam, they give you fax number to
13 send to Secretary of State.

14 I send it but whatever works there they
15 didn't update it in the system. And it's not only
16 myself happen. It happen to my other drivers.
17 That's why from -- from that point I have to contact
18 them directly and I want to get an e-mail directly
19 from them that they prove that they update.
20 Otherwise today I wouldn't be able to prove all
21 this -- all this information that I got.

22 EXAMINER WILLIAMS: So my question was
23 your exam occurs in November of 2020.

24 MR. FRITEA: Yes.

25 EXAMINER WILLIAMS: Okay. And you are

1 pulled over in February of 2021.

2 MR. FRITEA: Yes.

3 EXAMINER WILLIAMS: So during that three
4 months, did you take any actions to follow up with
5 Michigan to confirm that they had received your
6 certificate and that your CDL was valid?

7 MR. FRITEA: No, because I thought they
8 updated when I send the fax to the Secretary of
9 State. They suppose to update it in that time. I
10 didn't know they didn't update it.

11 EXAMINER WILLIAMS: So let me -- let me
12 see if I can clarify this a slightly different way.
13 Your DOT inspection occurs at roughly 1:54 p.m. on
14 February 26, correct?

15 MR. FRITEA: Yes.

16 EXAMINER WILLIAMS: Started at 13:54,
17 completed at 15:24 so arguably would have been 2:50
18 in the afternoon.

19 MR. FRITEA: Yeah. My time here showed
20 13:24 I think when he put me out of service.

21 EXAMINER WILLIAMS: And then within less
22 than two hours you were in contact with somebody in
23 Michigan, had updated an e-mail address, and had sent
24 it to them and had reportedly received confirmation
25 your CDL was reinstated?

1 MR. FRITEA: No. It was 10 minutes later
2 after I got the -- after he stopped me. After he put
3 me out of service because that was my first option
4 when he put me out of service, I called them
5 directly, and I send them the medical proof that I
6 was valid to drive because I updated my medical card.
7 I have the medical card.

8 That was the reason because they -- I
9 mean, my driver was not valid because of -- because
10 the Secretary of State did not update my medical
11 card. That's why. And as soon as I send it to them,
12 in 10 minutes, they updated in the system, and you
13 can see in the e-mail that they told me that I am --
14 that I am ready to drive.

15 EXAMINER WILLIAMS: So was there anything
16 else you had to do afterwards? I know you forwarded
17 them an e-mail with your medical card. You got
18 e-mail confirm you were okay to drive in your words.

19 MR. FRITEA: Yes.

20 EXAMINER WILLIAMS: Did you have to
21 follow up with them at all after that?

22 MR. FRITEA: No. The first time I did
23 after I was put out of service. And in 10 minutes
24 after they received the medical card, the person from
25 the Michigan Department, they updated in the system

1 and my driver's become valid.

2 EXAMINER WILLIAMS: Had you ever had this
3 type of issue before with Michigan?

4 MR. FRITEA: If I ever what?

5 EXAMINER WILLIAMS: Did you ever have an
6 issue like this before with Michigan?

7 MR. FRITEA: We have with my other
8 drivers, yes.

9 EXAMINER WILLIAMS: Okay. So you knew
10 who to call and what -- how to follow up?

11 MR. FRITEA: Now I have that e-mail
12 stored and I send it to the same person. And same
13 thing, they update it right away. Otherwise you
14 have -- it's been an issue somewhere because usually
15 when you take your medical card exam, they suppose to
16 be already updated to the -- to the Michigan State,
17 you know. This way I don't have to send any fax, any
18 proof, or anything. But I guess this issue in
19 Michigan that has to be resolved because --

20 EXAMINER WILLIAMS: Did Michigan mail you
21 anything after February 26 to confirm a valid CDL?

22 MR. FRITEA: No, they did not.

23 EXAMINER WILLIAMS: Did you have to pay
24 any additional amounts to certify?

25 MR. FRITEA: No.

1 EXAMINER WILLIAMS: Or update your CDL?

2 MR. FRITEA: No. They updated right
3 there right at the spot.

4 Q. (By Examiner Williams) Mr. Moser, you've
5 heard Mr. Fritea's testimony/questioning, I guess.
6 Is there -- this may be outside of your experience or
7 your expertise, is there any motivation that might
8 have led to not following through on the CDL being
9 valid based on the medical card, or is it potentially
10 as he describes it? It was a matter of fault with
11 Michigan, faulty paperwork?

12 A. I guess it would not be possible for the
13 Inspector to know roadside if it was an error on the
14 Secretary of State's part or if the driver simply did
15 not fax it. You know, that's one of the reasons for
16 the conference is that would give the driver the
17 opportunity to produce a document like a fax
18 confirmation document that would be date and time
19 stamped. That was not produced here.

20 We do get this question from time to
21 time. But absent anything from the driver that can
22 show that they actually took the steps that were
23 necessary, we do have information, especially in this
24 case, from the state that shows Michigan took
25 revocation action based on this not being done.

1 Q. So if you could clarify that account. I
2 know you indicated anecdotally you saw someplace or
3 you thought you saw someplace his CDL was reinstated
4 in June.

5 A. Reinstate maybe is not the correct word.
6 It was issued in June, so possibly it could have been
7 reinstated prior to that. But the last thing or the
8 most current thing I can see in CDLIS, which is
9 Commercial Driver's License Information System, is
10 that his current CDL was issued June 27 of this year.

11 Q. Are you able to show the gap in his CDL
12 coverage on CDLIS?

13 A. No, I'm not. Because this is a Michigan
14 driver's license, I don't have access to that detail
15 of records. An Inspector with access to LEADS
16 possibly. LEADS is Law Enforcement Automated Data
17 System. They may be able to show that because LEADS
18 generally is more detailed than CDLIS.

19 But, no, since it's Michigan, I've even
20 requested in the past for Michigan certified copies
21 of driving history, and they do not provide those
22 even to another state agency.

23 Q. Now, you've indicated -- I didn't take
24 detailed notes -- that Michigan acted to rescind or
25 revoke his driver's license; is that what I

1 understood?

2 A. Yes. The pictures that I saw that are
3 part of our case here that the Inspector took was a
4 screenshot of CDLIS that shows the driver's status as
5 commercial status as eligible, and he also had a
6 screenshot of LEADS which showed that the CDL was
7 revoked. And that would be from -- it might not be
8 LEADS. Possibly it was a document that the driver
9 gave to the Inspector that showed the CDL was
10 revoked.

11 Q. Do we have any way to know the basis for
12 revocation and/or when that occurred?

13 A. I do not, no.

14 EXAMINER WILLIAMS: Mr. Fritea, you heard
15 Mr. Moser's testimony. The State has a snapshot or a
16 pic of a screen that shows that your driver's license
17 was revoked. Any reason aside -- to your knowledge
18 aside from the medical certification why your license
19 might have been revoked?

20 MR. FRITEA: He was -- he was mention
21 that my license was reinstated in June -- in June.
22 No, in June was renewal. I renew my license, and I
23 can -- you can see it on my license that was renewed
24 in June, so he -- he mentioned that was reinstated in
25 June. So from February to June that means I was not

1 able to drive. No, I was able to drive. I just
2 renewed in June. That's why probably it shows that
3 was reinstated or where he was mentioning in June,
4 June 23. You can see it on my license.

5 EXAMINER WILLIAMS: Okay. So my question
6 was were you aware of the revocation of your CDL
7 prior to February of 2021?

8 MR. FRITEA: No, I wasn't aware.
9 Actually I was shocked when he told me my license
10 is -- is suspended.

11 EXAMINER WILLIAMS: Okay.

12 MR. FRITEA: That was the first option I
13 took. I contacted directly to update the medical
14 card. And as soon as I send it, they was reinstated.

15 EXAMINER WILLIAMS: Okay.

16 MR. FRITEA: And we can find that. We
17 can -- we can go into it to the Michigan Department
18 and all that, and they can -- they can prove all
19 these things the way I prove with the e-mails that
20 also there was send them back to me that the license
21 is -- I'm valid to drive. They updated the medical
22 card, so we all -- we all know that the issue was the
23 medical card. That's why it was not updated in the
24 system and that's why I was not valid to drive which
25 I didn't know.

1 But once I send this paperwork to them,
2 they updated so I was able to -- to drive back on the
3 road after 10 minutes. So we cleared that there was
4 the reason my license was -- was revoked or were
5 suspended because they didn't update the medical
6 card.

7 Q. (By Examiner Williams) Mr. Moser, again,
8 this may or may not be within your bank of knowledge,
9 is there any reason, strategy, tactic, ploy, why a
10 driver might let his CDL be revoked or expire other
11 than as described here today? There was this cross
12 up with Michigan recordkeeping and once they had the
13 valid medical certificate, it was reinstated? Is
14 there anything that would -- not paying renewal fee
15 or any other strategy or rationale or motivation that
16 might have gone into that, if you know?

17 A. Yeah. I really couldn't answer to why
18 the driver may or may not have taken care of things
19 that he was supposed to, what his motivation would be
20 for not having his medical card updated, if that was
21 the reason, I'm looking at the document that I was
22 talking about earlier that is a LEADS printout from
23 the state of Michigan that shows commercial status is
24 revoked so.

25 Q. Does it give any more insight?

1 A. But it does not say specifically the
2 reason for the revocation.

3 Q. And that would have been a snapshot in
4 time on February 26.

5 A. It's actually dated and time stamped,
6 yes.

7 EXAMINER WILLIAMS: Okay. All right.
8 Mr. Fritea, do you have any more questions of
9 Mr. Moser?

10 MR. FRITEA: No.

11 EXAMINER WILLIAMS: No? Okay.
12 Mr. Moser, thank you for your time and testimony
13 today.

14 Mr. Fritea, I am going to assume that you
15 want to move to admit Respondent's Exhibits 1 and 2
16 which are the e-mail and the Medical Certificate --
17 Examiner's Certificate that we talked about, correct?
18 You want to move to admit those as exhibits?

19 MR. FRITEA: If I want to what?

20 EXAMINER WILLIAMS: You want to have
21 those admitted as exhibits in the case?

22 MR. FRITEA: Yeah.

23 MR. EUBANKS: Your Honor, I did have a
24 couple of follow-up questions for -- or cross
25 questions for the witness.

1 EXAMINER WILLIAMS: Absolutely.

2 Mr. Fritea, I think I have given you quite a bit of
3 latitude to explain your position here today. If
4 there is anything that I haven't let you say, by all
5 means I want you to say it. Otherwise the State is
6 entitled to ask you questions to clarify your
7 understanding here today or your position here today,
8 so I am going to let Mr. Eubanks ask you some
9 questions, okay?

10 MR. FRITEA: All right.

11 EXAMINER WILLIAMS: You remain under
12 oath. Do you want him on the stand?

13 MR. EUBANKS: He is fine where he is at.

14 - - -

15 MIRCEA FRITEA
16 being first duly sworn, as prescribed by law, was
17 examined and testified as follows:

18 CROSS-EXAMINATION

19 By Mr. Eubanks:

20 Q. I had a few questions. You mentioned the
21 fax, sending a fax to the Michigan Secretary of
22 State's Office?

23 A. Yes. We did send the fax, yes.

24 Q. You said you sent that fax on, when was
25 it, November?

1 A. When I updated -- when I updated the
2 card, when I did the medical card, when I -- when I
3 renewed on 11-17-2022.

4 Q. 11-17 of 2000?

5 A. '20, 2020, I'm sorry.

6 Q. 2000 --

7 A. Because it expires in 2022 so it's valid
8 for two years.

9 Q. Okay. So when on that day after you got
10 your medical card, you sent a fax to Secretary of
11 State?

12 A. Secretary of State, yes.

13 Q. Do you have a copy of that fax here
14 today?

15 A. I don't have it here.

16 Q. Okay. Is there a reason why you didn't
17 bring that document?

18 A. Well, as soon as I did the medical exam,
19 I went to -- because I didn't have a fax to my
20 office. So I went to the bank and my bank is Charter
21 One and the manager knows me because I'm going there
22 every day, you know, with my business and all that.
23 And I told him please send the fax to the number
24 that -- to the Secretary of State and send it to --
25 send it to the Secretary of State so we can update

1 the medical card.

2 So now this is another -- another
3 problem. Maybe I can get that letter if I -- if I go
4 back to the bank, do some searching and somewhere we
5 can -- we can find it or somewhere we can prove it.
6 I don't know how hard it is going to be.

7 Q. Well, let me ask you this -- let me ask
8 you this question, did you -- did the bank give you a
9 receipt of the fax?

10 A. Yes.

11 Q. They did.

12 A. Yes.

13 Q. Have you lost that receipt?

14 A. It's got to be somewhere. Somewhere it's
15 got to be in my office.

16 Q. Okay.

17 A. But I will have to probably search into
18 it and -- and, you know, find out where -- where it
19 can be because I got a lot of documents in my office
20 and.

21 Q. And in Michigan it is the responsibility
22 of the -- the driver to forward to the Secretary of
23 State the medical certificate?

24 A. Well, this is -- this is what -- what
25 makes me worry about and nobody work to this --

1 things to resolve the problem because when you --
 2 when you go to the medical in Michigan, when you do
 3 the medical exam, they submit the information
 4 directly to the DOT Department by computer. I seen
 5 them. And when I was passing the exam, they send it
 6 to them directly. So why --

7 Q. This is your doctor? You said they.

8 A. Pardon me?

9 Q. I don't mean to cut you off, but when you
 10 say they, who is they?

11 A. The medical center that examine,
 12 examining me when they did the examine, the medical
 13 examine. When I pass, they sent all those
 14 information to the DOT Department.

15 Q. Okay. By fax?

16 A. No. They have -- they have computer they
 17 communicated because I asked.

18 Q. By e-mail?

19 A. Not by e-mail. There is a website
 20 somewhere where they log into and they provide all
 21 the information for all the drivers that has the
 22 medical card renewed. But if they did that, why they
 23 come up with the second option to -- to fax the
 24 medical to the Secretary of State, why they didn't
 25 send directly to the DOT and update it right away,

1 right?

2 Q. Okay. But let me ask my question again.
3 Is it nonetheless your responsibility to fax your
4 medical card to the Secretary of State? Is that a
5 duty of -- of the driver? Make their Medical
6 Examiner's Certificate to forward it to the Secretary
7 of State?

8 A. Yeah. That's what -- that's what they
9 told me when they gave me the medical card from the
10 desk from the office, they gave me also a fax number
11 to fax it to the Secretary of State. I asked do you
12 have e-mails, do you have phone numbers where I can
13 call to confirm. No. They told me you just have to
14 fax it.

15 Q. Okay. So you knew today that the issue
16 was whether or not before the inspection you had sent
17 the Medical Examiner's Certificate to the Secretary
18 of State.

19 A. And sorry. I didn't understand the
20 question.

21 Q. Okay. You knew -- you can tell me yes or
22 no to this question, but did you or did you not know
23 in coming here today that at least an issue would
24 have been whether or not on 11-17 of 2020 you sent a
25 fax to the Secretary of State of your Medical

1 Examiner's Certificate?

2 A. Yes, I sent.

3 Q. But you knew that would be a question or
4 concern here today.

5 A. No. I thought if I can prove the -- that
6 I sent the medical card and also I have a proof from
7 the Michigan Department that they respond to me back
8 and they updated my license, I thought that was
9 clearly right there that you can -- that you can
10 prove that you have no -- I don't know how -- how
11 other way I can prove it, you know.

12 This was the issue from -- from the
13 Secretary of State and -- and the DOT Department, it
14 was not updated in the system. Because if they
15 did -- if they were updated at the time I renew my
16 medical card, wouldn't be no problem.

17 Q. Right. I guess my question is this, the
18 document you have provided us, those documents show
19 that after the stop, you provided to Michigan your
20 Medical Examiner's Certificate, correct?

21 A. Yes.

22 Q. You have nothing here today that shows
23 that before the stop you provided that, correct?

24 A. I don't have that -- that document, no.

25 Q. Okay. And --

1 A. I can probably get that.

2 Q. And you didn't know -- you didn't think
3 that that would be important -- an important means of
4 evidence to show before the stop you had provided the
5 Secretary of State with that information?

6 A. I really didn't think that wouldn't be
7 really important, and to be honest it would be really
8 hard to find that -- that receipt that we sent. I
9 have it somewhere in the office but if I -- if I can
10 find it, I will e-mail. I have the e-mail that I
11 send you all this evidence that I have and I can -- I
12 can forward it, that copy if -- if I don't have it in
13 my office, maybe we'll -- by the -- by the time and
14 date I can probably search with the bank and maybe
15 they can -- they can -- we can find it.

16 EXAMINER WILLIAMS: Other questions you
17 have, sir?

18 MR. EUBANKS: I have no further
19 questions.

20 EXAMINER WILLIAMS: Okay. Are you going
21 back to your office within the next day or two?

22 MR. FRITEA: Yes.

23 EXAMINER WILLIAMS: Tell you what I am
24 going to do, this is Thursday, November 4. I am
25 going to give you a week. If you find it, send it to

1 me via e-mail. I will make sure it gets distributed
2 to the State and representatives of the State. If
3 you can't find it, send me an e-mail confirming you
4 can't find it, okay? You've got my e-mail address.
5 I'll keep the record of this case open to receive
6 that limited information for one week from today,
7 okay?

8 MR. FRITEA: Okay.

9 EXAMINER WILLIAMS: Okay. Anything else
10 you want me to know before I close the hearing?

11 Okay. I will look for an e-mail I can't
12 find it or I will look for an e-mail with an
13 attachment that has the documentation of who you
14 faxed it to or how it was faxed on presumably
15 November 20 of 2020, understood?

16 MR. FRITEA: Yes.

17 EXAMINER WILLIAMS: Mr. Eubanks, anything
18 else on behalf of the State?

19 MR. EUBANKS: No, your Honor.

20 EXAMINER WILLIAMS: Okay. With that we
21 are adjourned. Thank you.

22 (Thereupon, at 2:55 p.m., the hearing was
23 adjourned.)

24 - - -

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Thursday, November 4,
2021, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7184)

- - -

**This foregoing document was electronically filed with the Public Utilities
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Case No(s). 21-0692-TR-CVF

Summary: Transcript November 4th 2021 In the Matter of Mircea Fritea, Notice of Apparent Violation and Intent to Assess Forfeiture. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.