

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF BRYAN PETTIFORD,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE NO. 21-495-TR-CVF
(OH1251006740D)

OPINION AND ORDER

Entered in the Journal on January 12, 2022

I. SUMMARY

{¶ 1} The Commission finds that Staff has demonstrated, by a preponderance of the evidence, that Respondent Bryan Pettiford violated the Commission's transportation regulations.

II. PROCEDURAL HISTORY

{¶ 2} Staff served a notice of apparent violation and intent to assess forfeiture upon Bryan Pettiford (Respondent), alleging a violation of the Commission's transportation regulations.

{¶ 3} On April 26, 2021, Applicant filed correspondence seeking to "reopen" his case. In this filing, Applicant describes that he did not receive prior Commission notices relating to his case because the notices were sent to a former address in Columbus, Ohio, and Applicant had relocated to Toledo, Ohio.

{¶ 4} On July 9, 2021, Staff filed a response opposing Applicant's case reopening request. Staff described that Applicant was served a notice of intent to assess a forfeiture (NIF) for violation of the Commission's transportation regulations as a result of a vehicle inspection that occurred on July 31, 2019. According to Staff, the NIF was served on August 2, 2019. In response to Applicant's failure to respond to the original NIF, additional NIF letters were issued on September 1, and September 4, 2019. On January 16, 2020, in response to Applicant's continuing failure to respond to the Staff's NIF letters, Applicant was served with a notice of unpaid civil forfeiture, along with a Commission Finding and Order (*In the Matter of the Default of Motor Carriers and Drivers Pursuant to Rule 4901:2-7-14*, Case No. 19-2132-TR-CVF) dated January 15, 2020, both of which directed him to pay the assessed

forfeiture. In response to Applicant's continuing failure to respond to the matter, his case was certified to the Ohio Attorney General's office for collection on May 15, 2020. Based on these considerations, Staff asserted that Applicant's lack of response to the NIF letters, the notice of unpaid civil forfeiture, and the Commission's Finding and Order operated as an admission of the violations listed in the NIF such that the matter should not be further considered by the Commission.

{¶ 5} On July 15, 2021, the attorney examiner ordered that Respondent file a written response to Staff's letter in opposition to reopening the case.

{¶ 6} On July 20, 2021, Respondent filed correspondence in the docket, wherein he described that, due to his residence change, he did not receive any written correspondence from the Commission prior to filing his case reopening request.

{¶ 7} On July 20, 2021, the attorney examiner scheduled this matter for a telephonic prehearing conference on August 10, 2021. At the designated time for the conference, the attorney examiner telephoned Respondent. Respondent did not answer the call and his telephone indicated that his voicemail was full.

{¶ 8} On August 11, 2021, following the prehearing conference in which Respondent failed to participate, the attorney examiner scheduled an in-person evidentiary hearing for October 12, 2021 at 10:00 a.m.

{¶ 9} The evidentiary hearing occurred as scheduled on October 12, 2021. Respondent was not present when the hearing was scheduled to start at 10:00 a.m. As an accommodation to Respondent, the attorney examiner delayed the start of the hearing until 10:18 a.m. At that time, the attorney examiner conducted the hearing on the record. During the course of the hearing, Staff initially moved for a default judgment pursuant to Ohio Adm.Code 4901:2-7-14 due to Respondent's failure to appear at the hearing. The attorney examiner took Staff's motion under advisement. Staff then proceeded by presenting the

merits of its case. Following the hearing, the attorney examiner took the matter under advisement.

{¶ 10} After the close of the hearing, at 4:41 p.m. on October 12, 2021, the attorney examiner received an email from Respondent's wife, Hallie Pettiford, seeking to "appeal" the missed hearing. In the email, Mrs. Pettiford attempts to explain Respondent's failure to appear at the hearing, describing that Respondent fell asleep after checking into his hotel in Columbus, Ohio at 5:30 a.m. Mrs. Pettiford further communicates that Respondent's driving activities over the past few months, combined with family health issues, were the cause of his sleeping through his designated hearing time.

{¶ 11} On October 25, 2021, Hallie Pettiford again emailed the attorney examiner seeking to add information into the docket. On October 29, 2021, the attorney examiner filed this email in the case docket on Respondent's behalf.

III. LAW

{¶ 12} R.C. 4923.04 provides that the Commission shall adopt rules applicable to the transportation of persons or property by motor carriers operating in interstate and intrastate commerce. Pursuant to Ohio Adm.Code 4901:2-5-03(A), the Commission has adopted several provisions of the Federal Motor Carrier Safety Regulations (FMCSR), including relevant provisions in 49 C.F.R. Sections 383 through 397, for the purpose of governing transportation by motor vehicle in the state of Ohio.

{¶ 13} 49 C.F.R. 390.5 defines a commercial motor vehicle (CMV), in pertinent part, as "any self-propelled *** motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle *** has a gross vehicle rating *** of 4,536 kilograms (10,001 pounds) or more ***."

{¶ 14} Pursuant to 49 C.F.R. 383.51(a), no person may legally operate a CMV during a period of commercial driver's license (CDL) suspension

{¶ 15} Pursuant to 49 C.F.R. 395.8(a)(1) no person may legally operate a CMV without a record of duty status (logbook).

{¶ 16} Pursuant to 49 C.F.R. 392.2 and R.C. 4506.14(D), a CMV operator is required to update his CDL address information within 10 days of an address change.

{¶ 17} Pursuant to 49 C.F.R. 392.2 and Ohio Adm.Code 4901:2-15-03, an interstate CMV operator is required to comply with unified carrier registration (UCR) requirements, including the payment of required fees.

{¶ 18} Pursuant to 49 C.F.R. 390.21(B), a CMV may not be operated without proper carrier name and DOT markings.

{¶ 19} Pursuant to 49 C.F.R. 393.9, a CMV is required to comply with operating lamp requirements.

{¶ 20} R.C. 4923.99 authorizes the Commission to assess a civil forfeiture of up to \$25,000 per day, per violation, against any person who violates the safety rules adopted by the Commission.

{¶ 21} Ohio Adm.Code 4901:2-7-20 requires that, at a hearing, Staff must prove the occurrence of a violation by a preponderance of the evidence.

{¶ 22} Ohio Adm.Code 4901:2-7-14 provides that, where a Respondent fails to attend an evidentiary hearing, the case is subject to a default judgment against the Respondent.

IV. SUMMARY OF EVIDENCE

A *Staff's Arguments*

{¶ 23} On July 31, 2019, Ohio State Highway Patrol (OSHP) Trooper Rodney Ramps stopped and inspected a vehicle operated by Convenient Transport LLC and driven by Bryan Pettiford (Respondent). As a result of the inspection, Trooper Ramps found the following violations of Title 49 of the C.F.R.:

<u>C.F.R. Section</u>	<u>Violation</u>
49 C.F.R. 383.51(a)	Operating a CMV while CDL under suspension
49 C.F.R. 395.8(a)(1)	No driver record of duty status
49 C.F.R. 392.2	Driving while in violation of local laws
49 C.F.R. 392.2UCR	Failure to pay UCR fee
49 C.F.R. 390.21(B)	Carrier name and/or USDOT not displayed
49 C.F.R. 393.9	CMV with inoperable lamp

(Staff Ex. 1; Tr. at 7-11.)

{¶ 24} At the hearing, Trooper Ramps described his actions on the day of the inspection, which included reviewing Respondent's driving credentials using the Ohio LEADS program. Trooper Ramps identified the screenshots he took of the LEADS database, which documented Respondent's CDL suspension. Further, Trooper Ramps described that he determined that Respondent was also operating without a proper logbook. As to each of these findings, Trooper Ramps (1) documented Respondent's awareness of the violations, and (2) concluded that Respondent's CMV should be placed in an out-of-service status. Additionally, Trooper Ramps described his findings as to the four remaining findings from his examination report, which did not involve out-of-service recommendations. (Staff Ex. 2; Tr. at 9-11.)

{¶ 25} Staff also presented witness Rod Moser, Transportation Department Compliance Chief. Mr. Moser testified regarding his role in administering the department's civil forfeiture process. Per Mr. Moser, the forfeiture recommendations against Respondent (\$500 for driving without a CDL, and \$100 for his combined Group 1 violations) are consistent with the department's recommendations to the Commission as to the violations at issue. (Staff Ex. 3; Tr. at 17.)

{¶ 26} In addition to the testimony as to the inspection events and the recommended forfeiture amounts, both Trooper Ramps and Mr. Moser testified as to Respondent's mailing address, which is the subject of Respondent's jurisdictional argument in this case. Initially, Trooper Ramps describes that Respondent provided him with an address that was different than the address that was listed on Respondent's CDL.¹ (Tr. at 11-12.) Witness Moser added further information as to Commission correspondence to Respondent in the case, indicating that the second NIF letter dated September 4, 2019, was mailed to the address that Respondent provided to Trooper Ramps. (Tr. at 17.) Further, both Trooper Ramps and Mr. Moser indicated that a driver has the burden of notifying the licensing agency within 10 days of a change of address to ensure that mailing records remain current. (Tr. at 12, 18-19.)

B. Respondent's Arguments

{¶ 27} In spite of his not attending either the prehearing conference or the evidentiary hearing, Respondent's case has been developed through his filings in the case docket. Initially, Respondent claims in his correspondence filed on April 26, 2021, that his failure to timely respond to Commission notices in this case should be excused because the notices were mailed to his former address and he did not receive them. Respondent claims that he initially learned of Commission action in the case during the course of his efforts at renewing his driver's license.

{¶ 28} In response to Staff's correspondence opposing the reopening of this case filed on July 9, 2021, Respondent filed additional correspondence on July 20, 2021. Again, he denied receipt of prior Commission communication in the case due to his moving from his Columbus address.

{¶ 29} Further, in response to his review of the transcript from the evidentiary hearing on October 12, 2021, Respondent submitted additional email correspondence that was filed in the case docket on October 29, 2021. In this communication, Respondent

¹ The CDL address was list as 5821 Rock Hill Road, Columbus, Ohio. Per Trooper Ramps' inspection report, Respondent indicated that his address was actually 2953 Quarry Road, Maumee, Ohio. (Staff Ex. 1, 2.)

describes that he was driving “a 12ft box truck which an ordinary person can *** rent and drive with no CDL” such that he was unaware that he was required to maintain a logbook. In that same correspondence, he indicates that his truck was under 10,000 pounds. Though he does admit that his truck lacked the necessary carrier and/or USDOT markings, and that he failed to comply with UCR filing requirements due to errors by persons who he hired to initially set up his business.

C. Commission Conclusion

{¶ 30} Initially, we note that the Commission has already found the Respondent in violation on this issue in a default judgment entry filed on January 15, 2020 in *In the Matter of the Default of Motor Carriers and Drivers Pursuant to Rule 4901:2-7-14*, Case No. 19-2132-TR-CVF. That order directed the listed respondents to show cause why they are not in default by February 14, 2020. Here, Respondent did not make a filing until April 26, 2021. As discussed below, the Commission does not find there were any improper issues regarding service or notice and therefore we do not find our original decision should be reconsidered. However, we will still consider the evidence presented in the case. Accordingly, the Commission finds that, based on a preponderance of the evidence, Staff has met its burden of proof that Respondent violated the Commission’s transportation rules, including: 49 C.F.R. 383.51(a), Operating a CMV while CDL under suspension; 49 C.F.R. 395.8(a)(1), No driver record of duty status; 49 C.F.R. 392.2, Driving while in violation of local laws; 49 C.F.R. 392.2UCR, Failure to pay UCR fee; 49 C.F.R. 390.21(B), Carrier name and/or USDOT not displayed; and, 49 C.F.R. 393.9, CMV with inoperable lamp. Upon reviewing the transcript and exhibits to this case, the Commission finds that the case is proper for adjudication in spite of Respondent’s absence at the hearing.

{¶ 31} We conclude that Respondent was knowingly operating a CMV in spite of his suspended CDL at the time of the inspection. Respondent indicates in his October 29, 2021 correspondence that the truck he was driving was less than 10,000 pounds, and that he was not operating it in a CMV manner. We find otherwise, relying on the testimony of Trooper Ramps, who indicated that the vehicle weight was actually 12,000 pounds. (Staff Ex. 1.)

Additionally, we conclude that Respondent was operating the vehicle as a CMV, relying upon Trooper Ramps' inspection notes wherein he indicates that "Driver stated that he is the owner of the carrier. Driver stated one of his other drivers broke down in Pittsburgh, so he took the chance of going to pick up the load and make the return run. Driver stated he knew he was suspended, and that he did not complete a logbook." (Staff Ex. 1.)

{¶ 32} In addition to our conclusion that Trooper Ramps is entirely credible, we also note that Respondent demonstrates a consistent lack of credibility in the case. Initially, Respondent claims that he did not receive any Commission notices in the case, and that he first learned of the matter when he attempted to renew his CDL in 2021. We conclude otherwise, noting that (1) per the testimony of witness Moser, Staff mailed the September 4, 2019 NIF letter to Respondent at the address that he provided to Trooper Ramps, and (2) per a review of the service notice in Case No. 19-2132-TR-CVF, Respondent was also provided notice of the case, which was issued to the same address that Respondent provided to Trooper Ramps, pursuant to the Commission's Entry on January 15, 2020 in *In re Default of Motor Carriers and Drivers Pursuant to Rule 4901:2-7-14 of the Ohio Administrative Code*, Case No. 19-2132-TR-CVF, Finding and Order (Jan. 15, 2020).

{¶ 33} In addition to the evidence that contradicts Respondent's claimed lack of notice as to the case, we also note that Respondent has failed to prosecute the case in a reasonable manner. In addition to his claim that he slept through the time of his evidentiary hearing on October 12, 2021, we also note that he failed to participate in the prehearing conference on August 10, 2021, as directed by the attorney examiner on July 20, 2021.²

{¶ 34} In summary, Respondent's claims in this case are not credible. His attempted explanation of the events surrounding the inspection at issue is grossly inconsistent with the information that was documented by Trooper Ramps at the time of the inspection. Further, Respondent's credibility is diminished by (1) his claimed lack of receipt of at least

² Respondent's failure to attend the prehearing conference is described in the attorney examiner Entry on August 11, 2021, at Paragraph 4.

two different mailings that the Commission issued to his correct address on September 4, 2019, and January 15, 2020, (2) his prior inattention to updating his records as to his change of address, (3) his prior inattention to complying with UCR filing requirements, and (4) his inattention to presenting for the prehearing conference and evidentiary hearings in the case. For these reasons, the Commission rejects his defense claims, finding that Staff has proven the violations at issue by a preponderance of the evidence.

{¶ 35} Moreover, we note that pursuant to Ohio Adm.Code 4901:2-7-14(E), a respondent who has requested an administrative hearing and fails to appear for the evidentiary hearing shall be in default. The rule further states that a respondent in default shall be deemed to have admitted the occurrence of the violations charged and to have waived all further right to contest liability to the state for the forfeiture described in the notice. While we have determined based on Staff's evidence in the case that Respondent violated the Commission's transportation rules, we note that our decision is consistent with this default provision, as Respondent's failure to attend his evidentiary hearing would also warrant the issuance of a default judgment against him in this case.

{¶ 36} For the reasons stated herein, we find that Staff has met its burden of proof that Respondent violated the Commission's transportation rules. As Respondent has already been found in default and the forfeiture has been submitted to Collections Enforcement Section of the Ohio Attorney General, Respondent is directed to pay the assessed forfeiture by contacting the Ohio Attorney General at 888-301-8885 or online at <https://www.ohioattorneygeneral.gov/business/collections/pay-online>.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 37} On July 31, 2019, an inspector for the Ohio State Highway Patrol stopped and inspected a CMV operated by Convenient Transport LLC and driven by Respondent, and found Respondent to be in violation of 49 C.F.R. 383.51(a), 49 C.F.R. 395.8(a)(1), 49 C.F.R. 392.2, 49 C.F.R. 392.2UCR, 49 C.F.R. 390.21(B), and 49 C.F.R. 393.9.

{¶ 38} Respondent was timely served with an NPD alleging the violations set forth herein and informing him that Staff intended to assess a civil forfeiture in the amount of \$600.

{¶ 39} A prehearing conference was conducted on August 10, 2021, and a hearing was held on October 12, 2021.

{¶ 40} In accordance with Ohio Adm.Code 4901:1-2-7-20, Staff has proven, by a preponderance of the evidence, that Respondent was in violation of 49 C.F.R. 383.51(a), 49 C.F.R. 395.8(a)(1), 49 C.F.R 392.2, 49 C.F.R. 392.2UCR, 49 C.F.R. 390.21(B), and 49 C.F.R. 393.9.

VI. ORDER

{¶ 41} It is, therefore,

{¶ 42} ORDERED, That Respondent pay the assessed forfeiture in accordance with Paragraph 36. It is, further,

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

COMMISSIONERS:

Approving:

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

MLW/hac

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Case No(s). 21-0495-TR-CVF

Summary: Opinion & Order finding that Staff has demonstrated, by a preponderance of the evidence, that Respondent Bryan Pettiford violated the Commission's transportation regulations. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio