

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF ANIBAL MEDINA
PERALES, NOTICE OF APPARENT
VIOLATION AND INTENT TO ASSESS
FORFEITURE.

CASE NO. 22-481-TR-CVF
(OH1721002656D)

OPINION AND ORDER

Entered in the Journal on May 3, 2023

I. SUMMARY

{¶ 1} The Commission finds that Staff has not demonstrated, by a preponderance of the evidence, that Anibal Medina Perales violated 49 C.F.R. 391.15(a) (operating commercial motor vehicle while CDL is disqualified).

II. PROCEDURAL HISTORY

{¶ 2} On November 12, 2021, Inspector Steven Robison (Inspector Robison) of the Ohio State Highway Patrol stopped and inspected a commercial motor vehicle (CMV) operated by Werner Enterprises Inc. and driven by Anibal Medina Perales (Mr. Medina Perales or Respondent). At the time of the inspection, Inspector Robison prepared a report indicating a violation of the Federal Motor Carrier Safety Regulations (FMCSR), specifically, 49 C.F.R. 391.15(a) (operating a CMV while CDL is disqualified) (Staff Ex. 1).

{¶ 3} On November 15, 2021, Staff served a notice of preliminary determination (NPD) upon Respondent in accordance with Ohio Adm.Code 4901:2-7-07, alleging a violation of the Commission's Transportation regulations.

{¶ 4} On May 4, 2022, Respondent requested an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 5} On November 15, 2022, an Entry was issued scheduling a January 18, 2023, hearing. However, on January 11, 2023, counsel for Respondent requested a continuance.

The continuance was granted in a January 20, 2023 Entry that rescheduled the hearing to February 17, 2023.

{¶ 6} At the hearing on February 17, 2023, Inspector Robison testified in support of the violations identified by Staff. Mr. Medina Perales testified on his own behalf and was represented by counsel Howard Elliott.

III. LAW

{¶ 7} Under Ohio Adm.Code 4901:2-5-03(A), the Commission adopted certain provisions of the FMCSR, specifically, 49 C.F.R. Sections 40, 367, 380, 382, 383, 385, 386, 387, 390-397, to govern the transportation of persons or property in intrastate commerce within Ohio. Through the same rule, the Commission also adopted those portions of the regulations contained in 49 C.F.R. 107, Subparts F and G, and 49 C.F.R. 171 to 180, as are applicable to transportation of hazardous materials by motor vehicle. 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. Further, 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 when transporting persons or property, in interstate commerce, in or through this state. Ohio Adm.Code 4901:2-7-20 requires that, at the hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

IV. ISSUES IN THE CASE

{¶ 8} Staff has the burden to prove, by a preponderance of the evidence, that Mr. Medina Perales violated 49 C.F.R. 391.15(a) (operating a CMV while CDL is disqualified).

V. SUMMARY OF THE EVIDENCE

{¶ 9} Inspector Robison testified that, during the inspection at a scale house, he checked the Commercial Driver's License Information System (CDLIS) to determine the status of Mr. Medina Perales' CDL (Tr. at 23-26). According to Inspector Robison, although CDLIS indicated Respondent's CDL status as "eligible" for operating a CMV, the CDL was not "valid" (Tr. at 23-25). Inspector Robison explained that CDLIS typically categorizes a CDL as "either valid, eligible, disqualified, or suspended. Eligible category means he's done all the training. He's done everything . . . like the medical exam. * * * [T]ypically when somebody * * * [is] eligible but not valid, there is some sort of administrative issue." (Tr. at 24.) The inspector added that "at the time of the stop, it [CDLIS] showed his medical [examiner's certificate] was on file and current" and was not suspended; given this factor, Inspector Robison surmised that a "clerical error" may have caused the CDL's status to only be "eligible." Inspector Robison added that during a roadside inspection it is difficult to initially know why a CDL is "eligible" rather than "valid." (Tr. at 24-25.)

{¶ 10} Inspector Robison testified that, during the inspection, he did not contact the state agency in Missouri that issued Respondent's CDL to ask why the CDL was not classified as "valid."¹ Rather, he suggested that Mr. Medina Perales make such a call. According to Inspector Robison, after Respondent contacted the MDR, Mr. Medina Perales reported that the MDR had changed the CDL's status to "valid." Upon learning this, Inspector Robison explained that he accepted as true Mr. Medina Perales' update on the CDL's status. (Tr. at 24-26.)

{¶ 11} Mr. Medina Perales testified that his medical examiner's certificate (the "certificate") was issued January 29, 2020, prior to the roadside inspection, and that his physician had concluded that he was medically eligible to drive (Tr. at 12; Respondent Ex.

¹ The Commission takes administrative notice that the Missouri Department of Revenue (MDR), issued the CDL.

1). After receiving the certificate, Respondent added, he faxed the certificate to the MDR three times and called the MDR to confirm its receipt of the certificate (Tr. at 13). According to Respondent, during those calls, MDR staff informed him that no certificate had been received. After discussing further with MDR staff, it was Mr. Medina Perales' understanding that, because he did not personally appear at a MDR location and pay a fee when filing his certificate, MDR's records indicated that no certificate had been filed. (Tr. at 12-14). Respondent testified that he had relocated to Dallas, Texas, at the time of his medical examination and was unaware that he had to appear at an MDR location to pay the certificate filing fee. Because of his frequent over-the-road travel, Mr. Medina Perales ultimately decided to pay the filing fee via credit card. After making payment, he believed that the CDL was valid. Respondent provided as evidence a receipt from the state of Missouri indicating that he had paid the fee by credit card on February 16, 2021. (Tr. at 12, 14-16; Respondent Ex. 2.)

{¶ 12} On the day of the inspection, Mr. Medina Perales explained, Inspector Robison stated that there was "a problem" with Respondent's CDL status, which caused him to be placed out-of-service (Tr. at 11, 17). At the inspector's suggestion, Respondent then called the MDR and informed MDR staff that he had paid the filing fee on February 16, 2021. Respondent contends that, during the call, MDR Staff corrected its records to reflect the fee payment; Respondent asserts that MDR did not ask him to do anything further. After the correction of MDR records, Respondent stated, Inspector Robison "checked the system, and I am free to go." (Tr. at 14, 17-22.)

{¶ 13} The parties stipulated concerning the calculation of the \$500 fine for the violation of 49 C.F.R. 391.15(a) (operating a CMV while CDL is disqualified).

VI. COMMISSION CONCLUSION

{¶ 14} Ohio Adm.Code 4901:2-7-20 requires that Staff, at a hearing, prove the occurrence of a violation by a preponderance of the evidence. The Commission finds that, based on a preponderance of the evidence, Staff has not met its burden of proving that

Mr. Medina Perales has violated the Commission's transportation rules, specifically 49 C.F.R. 383.23(a)(2) (operating CMV while CDL is disqualified). Further, the Commission finds that the forfeiture should be deleted and the alleged violation removed from Respondent's Safety-Net record.

{¶ 15} In reaching our conclusion, we initially observe Respondent's testimony, not refuted by Staff, that the MDR requires payment of a fee when a medical examiner's certificate is filed; that he paid the fee by credit card because his frequent travel prevented him from paying in person; and that the MDR changed the CDL's status to "valid" when he contacted the MDR during the inspection and informed MDR staff of the credit card payment for the fee (Tr. at 14-16). We also note that Mr. Medina Perales provided exhibits proving that his medical examiner's certificate expired on January 29, 2022, a date after the inspection, and that he had paid a filing fee to the MDR on February 16, 2021, before the inspection (Respondent Ex. 1 and 2).

{¶ 16} In addition, we note with significance Inspector Robison's testimony that "at the time of the stop, it [CDLIS] showed his medical was on file and current," but not suspended; and that, when Respondent contacted MDR during the inspection and MDR then corrected the CDL's status to "valid," Inspector Robison did not check CDLIS further to confirm that the CDL's status had changed. Inspector Robison assumed that Respondent was truthful in reporting that the CDL's status had been changed to "valid." (Tr. at 24-25).

{¶ 17} Finally, we contrast our conclusion in this case to prior cases in which a CDL was invalid because issues had arisen with filing a medical examiner's certificate. First, we note *In re Hamze Dheini, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case 19-1967-TR-CVF (*Dheini*), Opinion and Order (July 28, 2021), in which Mr. Dheini's certificate was current at the time of inspection, but there was no evidence that the certificate had been filed prior to the inspection with the Michigan Secretary of State, which issued the CDL. Second, we note *In re Amandeep Singh, Notice of Apparent Violation and Intent to Assess Forfeiture (Singh)*, Case 19-2115-TR-CVF, Opinion and Order (Jan. 12, 2022), in which Mr.

Singh did not produce evidence of having a current medical examiner's certificate at the time of inspection, nor did he produce as evidence CDL records to prove his CDL's validity. Third, we note *In re Cowburn, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case 20-36-TR-CVF (*Cowburn*), Opinion and Order (July 14, 2021), in which Mr. Cowburn's certificate was current at the time of inspection, but there was no evidence that the certificate had been filed with the Pennsylvania Bureau of Driver Licensing, which issued the CDL. In contrast to the facts in *Dheini, Singh, and Cowburn*, Inspector Robison testified that CDLIS indicated Respondent's certificate was "on file and current" and was not suspended (Tr. at 24-25). In addition, when Mr. Medina Perales contacted MDR during the inspection, informed MDR staff that he had paid the filing fee, and he then told Inspector Robison that the CDL's status had been corrected to "valid," Inspector Robison did not contact MDR to verify that the CDL was indeed "valid." Consequently, Staff did not prove by a preponderance of the evidence that Respondent violated 49 C.F.R. 391.15(a) (operating a CMV while CDL is disqualified).

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 18} On November 12, 2021, Inspector Robison of the Ohio State Highway Patrol stopped and inspected a CMV operated by Werner Enterprises Inc. and driven by Mr. Medina Perales. At the time of the inspection, Inspector Robison prepared a report indicating a violation of the FMCSR, specifically, 49 C.F.R. 391.15(a) (operating a CMV while CDL is disqualified) (Staff Ex. 1.)

{¶ 19} On November 15, 2021, Staff served an NPD upon Respondent in accordance with Ohio Adm.Code 4901:2-7-07, alleging a violation of the Commission's Transportation regulations.

{¶ 20} On May 4, 2022, Respondent requested an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 21} On November 15, 2022, an Entry was issued scheduling a January 18, 2023, hearing. However, on January 11, 2023, counsel for Respondent requested a continuance. The continuance was granted in a January 20, 2023 Entry that rescheduled the hearing to February 17, 2023.

{¶ 22} At the hearing on February 17, 2023, Inspector Robison testified in support of the violations identified by Staff. Mr. Medina Perales testified on his own behalf and was represented by counsel Howard Elliott.

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

{¶ 24} Based on the record in this proceeding, the Commission finds that Staff has not proven, by a preponderance of the evidence, that Mr. Medina Perales violated 49 C.F.R. 391.15 (operating CMV while CDL is disqualified). Further, the Commission finds that the alleged violation should be deleted from Respondent's Safety-Net record and the civil forfeiture deleted.

VIII. ORDER

{¶ 25} It is, therefore,

{¶ 26} ORDERED, That the alleged violation be deleted from Respondent's Safety-Net record and the civil forfeiture be deleted. It is, further,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair

Daniel R. Conway

Lawrence K. Friedeman

Recusal:

John D. Williams

JML/mef

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

5/3/2023 2:53:35 PM

in

Case No(s). 22-0481-TR-CVF

Summary: Opinion & Order that the Commission finds that Staff has not demonstrated, by a preponderance of the evidence, that Anibal Medina Perales violated 49 C.F.R. 391.15(a) (operating commercial motor vehicle while CDL is disqualified) electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio.