

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF DORCELLA L.
WASHINGTON, NOTICE OF APPARENT
VIOLATION AND INTENT TO ASSESS
FORFEITURE.

CASE NO. 21-304-TR-CVF
(OH3280006921D)

ENTRY

Entered in the Journal on January 24, 2024

I. SUMMARY

{¶ 1} The Commission grants Staff's motion for default judgment against Dorcella L. Washington.

II. DISCUSSION

{¶ 2} 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 adopted the Federal Motor Carrier Safety Regulations, as published in the Code of Federal Regulations (CFR), for purposes of governing transportation by motor vehicle in the state of Ohio. 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.

{¶ 3} On August 20, 2020, the Ohio State Highway Patrol investigated a collision which involved a commercial motor vehicle (CMV) driven by Dorcella L. Washington (Respondent). As part of the investigation, Respondent's blood alcohol content was tested.

{¶ 4} On March 3, 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 regulation 49 CFR 392.5A, operating a CMV while under

the influence of an intoxicating beverage regardless of its alcohol content. Respondent was assessed a civil forfeiture of \$1,000 for the alleged violation. (Staff Ex. 8.)

{¶ 5} On March 31, 2021, Respondent requested an administrative hearing regarding the alleged violation in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 6} On May 13, 2021, a prehearing conference was held but no settlement resulted from the conference.

{¶ 7} On May 14, 2021, Respondent filed an unopposed motion to stay the proceeding. Respondent explained that this case stems from an August 20, 2020, motor vehicle accident that is also the subject of a criminal complaint in Eaton Municipal Court, Preble County, Ohio. To avoid any prejudice to her defense in the criminal case, Respondent requested that this proceeding be stayed until the pending criminal matter was fully adjudicated. According to Respondent's motion, Staff and its counsel indicated that they did not oppose this request.

{¶ 8} By Entry issued May 19, 2021, the attorney examiner granted the motion to stay the proceeding and ordered that this case be stayed pending resolution of Respondent's criminal case in Eaton Municipal Court relating to the August 20, 2020, motor vehicle accident. The Entry further directed the parties to file a case update on this docket upon resolution of the criminal case or if the criminal case had not been resolved within six months.

{¶ 9} On December 15, 2022, the attorney examiner filed an entry directing the parties to file a case update in the docket within 30 days of the date of the entry.

{¶ 10} On January 17, 2023, the parties filed a case update, as directed, and stated that Staff is ready to proceed in this case. Additionally, as part of this filing, Respondent's attorney withdrew as counsel for Respondent in this proceeding.

{¶ 11} By Entry issued January 18, 2023, the attorney examiner scheduled this case for an evidentiary hearing to be held on March 14, 2023, at the offices of the Commission.

{¶ 12} On February 28, 2023, Staff filed a motion for continuance of the scheduled March 14, 2023, hearing. In its motion, Staff stated that it needed additional time to contact material witnesses. In addition to seeking a continuance, Staff requested that a conference be held among the parties prior to the evidentiary hearing.

{¶ 13} By Entry issued March 8, 2023, the attorney examiner granted Staff's motion for continuance and continued the evidentiary hearing scheduled for March 14, 2023, indicating that a new procedural schedule would be set via subsequent entry.

{¶ 14} By Entry issued May 24, 2023, the attorney examiner scheduled a prehearing conference for June 14, 2023.

{¶ 15} A prehearing conference was held by telephone on June 14, 2023. Respondent did not attend the teleconference. Staff participated and recommended dates that would be convenient for a rescheduled evidentiary hearing.

{¶ 16} By Entry dated September 27, 2023, the attorney examiner scheduled an evidentiary hearing for November 16, 2023, at 2:00 p.m. at the offices of the Commission. Notice of the hearing was served upon all parties.

{¶ 17} An evidentiary hearing convened on November 16, 2023, at 2:00 p.m. Respondent did not appear or present any evidence as to why she should not be held liable for the violations alleged in the NPD (Tr. at 5-6). In response, Staff moved for a default judgment against Respondent (Tr. at 6, 33). Further, Staff also presented evidence from (1) Daniel Nadolsky, a motor carrier enforcement inspector for the Ohio State Highway Patrol, who inspected Respondent's vehicle on August 20, 2020; (2) Trooper Osama Hamed, who assisted with the investigation of the traffic accident on August 20, 2020, and collected a urine sample from the Respondent; (3) Heidi Tincher, a Laboratory Technician who tested the Respondent's urine sample for alcohol content; and (4) Rod Moser, Chief of

Transportation and Compliance, Transportation Department, at the Commission, who reviewed the allegation and urine test results for possible violations and forfeiture. Collectively, these witnesses described the transportation violations at issue and the resulting forfeiture recommendation. Further, the test results concerning Respondent's blood alcohol level at the time of the collision were provided to the Commission in support of the cited violation. (Tr. at 6-32; Staff Ex. 6.)

{¶ 18} Ohio Adm.Code 4901:2-7-14(E) provides that a respondent who has requested an administrative hearing and fails to participate in the evidentiary hearing is in default. The rule further states that a respondent in default is deemed to have committed the occurrence of the violation and waived all further right to contest liability to the state for the forfeiture described in the notice.

{¶ 19} The Commission finds Staff's motion for default judgment to be reasonable. Respondent did not attend the hearing on November 16, 2023, and did not respond to Staff's motion for default judgment presented at hearing. Therefore, Staff's motion for default judgment should be granted.

{¶ 20} Accordingly, the Commission finds Respondent in violation of 49 CFR 392.5A, operating a CMV while under the influence of an intoxicating beverage regardless of its alcohol content. Pursuant to R.C. 4923.99, Respondent is liable to the state of Ohio for payment of the assessed civil forfeiture of \$1,000. Ohio Adm.Code 4901:2-7-22 provides that payment of such forfeitures be made via the Commission website or by certified check or money order made payable to: "Treasurer, State of Ohio" and shall be mailed or delivered to: PUCO, Transportation Compliance Division, Attn: CF Processing, 180 E. Broad St., Columbus, Ohio 43215-3793. To ensure proper credit, Case No. 21-304-TR-CVF and inspection number OH3280006921D should appear on the face of the check or money order. Respondent shall have 30 days from the date of this Entry to pay the assessed forfeiture of \$1,000.

III. ORDER

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That Staff's motion for default judgment be granted. It is, further,

{¶ 23} ORDERED, That Respondent shall pay the assessed forfeiture as described in Paragraph 19. It is, further,

{¶ 24} ORDERED, That a copy of this Entry be served upon all parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman

Recusal:

John D. Williams

JWT/dr

**This foregoing document was electronically filed with the Public Utilities
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in

Case No(s). 21-0304-TR-CVF

Summary: Entry granting Staff's motion for default judgment against Dorcella L. Washington electronically filed by Debbie S. Ryan on behalf of Public Utilities Commission of Ohio.