



STATE OF WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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September 21, 2020

Mark L. Johnson, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. Avatar Movers – Vancouver, LLC, d/b/a Two Men and a Truck - Vancouver*  
Commission Staff's Response to Application for Mitigation of Penalties  
Docket TV-200737

Dear Mr. Johnson:

On August 31, 2020, the Washington Utilities and Transportation Commission (Commission) issued a penalty assessment against Avatar Movers – Vancouver, LLC, d/b/a Two Men and a Truck – Vancouver, (Avatar Movers or Company) in the amount of \$2,400 for violations of Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees, and WAC 480-15-570, Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 390 – General Safety Regulations and 49 CFR Part 391 – Qualification of Drivers, as follows:

- **One violation of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.** Avatar Movers failed to conduct a criminal background check on employee Gregory Machiniak.
- **One violation of 49 CFR § 390.35 – Making or causing to make fraudulent or intentionally false entry on a required medical examiner's certificate.** The Company provided a falsified medical certificate with an altered expiration date.
- **One violation of 49 CFR § 391.15(a) – Using a disqualified driver.** Avatar Movers allowed driver Zakkary Lueck to operate a commercial motor vehicle with a suspended driver's license.

- **Twenty-one violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed driver Gregory Machiniak to operate a commercial motor vehicle without a valid medical certificate on 21 occasions between January 29 and June 5, 2020.

On August 19, 2020, Avatar Movers submitted to Commission staff (Staff) a corrective action safety plan in which the Company acknowledges the violations and describes steps it took to prevent future occurrences.

On September 2, 2020, Avatar Movers filed with the Commission its application for mitigation of penalties. In the request for mitigation, Adrian Mandujano, representative of Avatar Movers, admits the violations and believes the penalties should be reduced. Staff addresses the Company's corrective action safety plan and request for mitigation, as follows.

**Mitigation Request: WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.** Avatar Movers states that background checks are already a standard procedure when hiring new employees. Avatar Movers states that audits will be performed on new hires to verify background checks were completed and that documentation of completed criminal background checks is maintained.

**Staff response:** Employees with unknown criminal histories raise serious concerns about the security of the customer's belongings, as well as the customer's personal safety.

The background check was performed on employee Gregory Machiniak, but not before the employee operated under the Company's authority. The Company has implemented an auditing procedure to ensure it does not repeat this violation. The assessed penalty is \$100 for one occurrence of this violation. Staff recommends the penalty be reduced to \$50.

**Mitigation Request: 49 CFR § 390.35 – Making or causing to make fraudulent or intentionally false entry on a required medical examiner's certificate.** Avatar Movers states it now reviews all medical certificates after drivers return from their medical examinations.

**Staff response:** The intent to deceive by providing falsified documents to avoid regulatory compliance on behalf of any member of Avatar Movers is extremely concerning. Staff acknowledges that Avatar Movers has implemented a new procedure to prevent reoccurrence of this violation. The Company states it will examine and review each medical certificate when a driver returns from a medical examination. The assessed penalty is \$100 for one occurrence of this violation. Staff recommends that due to the seriousness of the violation, the penalty remain at \$100.

**Mitigation Request: 49 CFR § 391.15(a) – Using a disqualified driver.** Avatar Movers states it notified employees of its current policy that drivers must notify the Company of traffic infractions or driver's license suspensions. The Company states that failure to oblige with the policy will result in termination of employment.

**Staff response:** Avatar Movers implemented a policy that states a driver will be terminated if the Company is not made aware of a traffic infraction or driver's license suspension. The Company states it has notified its employees of this requirement. The assessed penalty is \$100 for one occurrence of this violation. Staff recommends the penalty be reduced to \$50.

**Mitigation Request: 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** Avatar Movers states it implemented a new policy and calendaring system to notify management monthly of any expiring medical certificates or driver's licenses.

**Staff response:** Avatar Movers implemented new procedures and an alert system that will inform management of expiring medical certificates and driver's licenses to prevent reoccurrence of this violation. The assessed penalty is \$2,100 for 21 occurrences of this violation. Staff recommends the penalty be reduced to \$1,050.

Avatar Movers operates four commercial motor vehicles, employs six drivers, and reported \$654,552 in gross revenue for 2019. Staff recommends the penalty of \$2,400 be reduced to \$1,250.

If you have any questions, please contact Michael Dotson, Compliance Investigator, Transportation Safety, at (360) 480-5420, or by email at Michael.Dotson@utc.wa.gov.

Sincerely,



Digitally signed by Sharp,  
Jason (UTC)  
Date: 2020.09.21  
08:57:51 -07'00'

Jason Sharp  
Motor Carrier Safety Supervisor, Transportation Safety