

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against SHUTTLE EXPRESS, INC. in the amount of \$400	DOCKET TC-160991 ORDER 01 ORDER DENYING REQUEST FOR HEARING; DENYING CONTEST OF VIOLATIONS; DENYING MITIGATION
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BACKGROUND

- 1 On August 15, 2016, the Washington Utilities and Transportation Commission (Commission) assessed a \$400 penalty (Penalty Assessment) against Shuttle Express, Inc. (Shuttle Express or Company) for four violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 383 related to commercial driver’s license (CDL) standards.
- 2 On August 23, 2016, Shuttle Express responded to the Penalty Assessment contesting the violations and requesting a hearing. In its response, Shuttle Express explains that its employee, Laurie Eriks-Gowin, failed to notify the Company that her CDL was downgraded for failure to submit an updated medical certificate to the Department of Licensing (DOL). The Company contends it relied on Ms. Eriks-Gowin to timely update her medical certificate, and believes it complied with Commission rules and federal regulations by obtaining her CDL Information System (CDLIS) record within 15 days of receiving her updated medical certificate. Shuttle Express contends that Ms. Eriks-Gowin, not the Company, is responsible for the violations.
- 3 On September 29, 2016, Commission staff (Staff) filed a response recommending the Commission deny the Company’s request for mitigation. Staff explains that although all four violations cited in the Penalty Assessment are first-time offenses, each warrants a penalty because it presents a risk of serious harm to the public. Staff disagrees with the Company’s position that Ms. Eriks-Gowin is solely responsible for the violations, and notes that Commission rules apply only to auto transportation companies, not their employees. Staff notes that it is neither practical nor advisable for the Commission to create rules that govern every detail of a regulated company’s safety program.

Rather, Staff contends, each carrier must develop its own policies, procedures, and management controls to ensure compliance with Commission rules.

DISCUSSION AND DECISION

4 Washington law requires auto transportation carriers to comply with federal safety requirements and undergo routine safety inspections. Violations discovered during safety inspections are subject to penalties of \$100 per violation.¹ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.² Violations defined by federal law as “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.³ The Penalty Assessment includes a \$400 penalty for four critical violations of 49 C.F.R. Part 383 because Ms. Eriks-Gowin drove on four occasions with an invalid CDL.

5 As a preliminary matter, we deny the Company’s request for a hearing. The Commission’s penalty assessment advised the Company that a request for hearing will only be granted if material issues of fact require consideration of evidence and resolution in hearing. Here, Shuttle Express does not dispute that the violations occurred, but contends that 49 C.F.R. Part 383 applies to its employees rather than the Company. This is an issue of law that does not require a hearing to resolve.

6 We also deny the Company’s contest of the violations. Shuttle Express argues that because Ms. Eriks-Gowin did not notify the Company that her CDL was invalid, the Company is not responsible for the violations. Shuttle Express relies on 49 C.F.R Part 383.37, which states that a carrier may not allow a driver to operate its vehicles if it “knows or should reasonably know” that the driver’s CDL has been downgraded. Shuttle Express does not believe, given the circumstances, that it reasonably should have known that Ms. Eriks-Gowin’s license was invalid. We disagree.

7 Staff is correct that the Company, not Ms. Eriks-Gowin, is responsible for complying with Commission rules. Just as carriers are legally responsible for employees who drive

¹ See RCW 81.04.405.

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

³ 49 C.F.R. § 385, Appendix B.

without valid medical certificates, carriers are also legally responsible for employees who drive without valid CDLs. The Company may not, under any circumstances, abdicate its responsibility to ensure its vehicles are operated by qualified drivers.

8 Shuttle Express nevertheless argues that it complied with 49 C.F.R. Part 391.51(b)(7)(ii) by requesting a copy of Ms. Eriks-Gowin's CDLIS record within 15 days of the date the Company received her updated medical certificate. That regulation provides, in pertinent part, that "a motor carrier may use a copy of the driver's current medical examiner's certificate *that was submitted to the State* for up to 15 days from the date it was issued as proof of medical certification." (Emphasis added). The rule does not support the Company's position.

9 The plain language of 49 C.F.R. Part 391.51(b)(7)(ii) allows Shuttle Express to maintain a copy of a medical certificate in lieu of a CDLIS record for up to 15 days if – and only if – the certificate was submitted to DOL as required. Contrary to the Company's assertion that this provision relieves it of any obligation to ensure medical certificates are submitted to DOL, the rule requires the Company to do exactly that. Accordingly, the Company reasonably should have known that Ms. Eriks-Gowin's medical certificate was not submitted to DOL.

10 The undisputed facts demonstrate that on four occasions in July 2016, Ms. Eriks-Gowin drove without a valid CDL. Shuttle Express does not dispute that the violations occurred. Accordingly, we find that the Company committed four violations of 49 C.F.R. Part 383, and turn now to the issue of mitigation.

11 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.⁴

12 We agree with Staff that mitigation is not appropriate here. It is the Company's responsibility to ensure compliance with Commission rules. The Company should implement appropriate policies and procedures to ensure its drivers are properly licensed

⁴ Enforcement Policy ¶19.

at all times. As noted in the Penalty Assessment, companies that allow a driver with an invalid CDL to operate a vehicle put the traveling public at risk.

13 Finally, the Company did not introduce any new information that warrants a penalty reduction. Although the Company noted in its response that it now obtains CDLIS records within seven days from the date it receives an updated medical certificate, this measure fails to address Shuttle Express's obligation to ensure the medical certificate was submitted to DOL if the Company chooses to wait any period of time before obtaining a CDLIS record.

14 We find that Shuttle Express violated 49 C.F.R. Part 383 on four occasions, and conclude that the Company was appropriately penalized \$400 for those violations.

ORDER

THE COMMISSION ORDERS:

15 (1) Shuttle Express, Inc.'s request for mitigation of the \$400 penalty is DENIED.

16 (2) The penalty is due and payable no later than November 1, 2016.

17 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective October 18, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.