

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of PENALTY
ASSESSMENT AGAINST Chipman
Moving & Storage, Inc. in the amount of
\$1,000.00

DOCKET NO. TV-061927

DECLARATION OF
LEON MACOMBER

I, LEON MACOMBER, under penalty of perjury under the laws of the state of Washington, declares as follows:

1. I am over 18 years of age, a citizen of the United States, a resident of the state of Washington, and competent to be a witness.
2. I am employed by the Washington Utilities and Transportation Commission (Commission) as a Special Investigator in the Motor Carrier Safety Section. I have been employed at the Commission for over 30 years, holding various positions. As a Special Investigator, my responsibilities include conducting investigations regarding the motor carrier safety practices of regulated transportation companies. As part of those duties, I conduct in-depth and complex audits, perform carrier reviews of terminal safety records and equipment, including driver and vehicle safety requirements and issue safety ratings.
3. On January 30, 2007 Chipman Moving & Storage, Inc. filed with the Commission an Application for Mitigation of Penalties (Mitigation Request) in Docket No. TV-061927. I have read the Mitigation Request.
4. This Mitigation Request arises from a Notice of Penalties Incurred and Due for Violations of Laws, Rules and Regulations issued by the Commission on January 12, 2007, in Docket No. TV-061927. In that Notice, the Commission issued penalties of \$1,000.00 for one or more violations of RCW 81.04.380 and WAC 480.15.570, which adopts by reference Title 49, Code of Federal Regulations, 382.301(a), using a driver before receiving a negative pre-employment controlled substance test result. RCW 81.04.530 allows penalties of five hundred dollars for every such violation.

5. Before recommending the Commission issue penalties, I, Leon Macomber, as part of my job, conducted a carrier review on October 30th and 31st, 2006 of Chipman Moving & Storage, Inc.'s terminal safety records and equipment. I found the following two drivers were operating a vehicle, although the company did not receive a negative pre-employment controlled substance test result. See Appendix A for a true and correct copy of the Compliance Review report.

1) Failauga Helu. His first trip as a driver was on February 10, 2006. He was hired on February 5, 2006. No pre-employment controlled substance test result found.

2) Nofoao Filimaua. His first trip as a driver was on December 27, 2005. He was hired on December 9, 2005. No pre-employment controlled substance test result found.

Specific Issues Addressed by Chipman Moving & Storage, Inc. in their Mitigation Request:

Unaware of legal requirement of needing a pre-employment drug screen to be completed before driving.

6. In this mitigation request, Mr. Jeff Suth, General Manager, states that he was the individual who hired both drivers and that he was not aware of the legal requirement of needing a pre-employment drug screen to be complete before driving.

7. Code of Federal Regulations Title 49, Part 382.103(a) states that Part 382 applies to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State. In addition, Code of Federal Regulations Title 49, Part 382.301(a) states that prior to the first time a driver performs safety sensitive functions for an employer, the driver shall undergo testing for controlled substances as a condition prior to being used.

New to the Operations Manager position, thus requesting reconsideration of fines.

8. In addition, Mr. Jeff Suth, General Manager, stated that he was new to the the Operations Manager position at the time and prior to that he was doing sales in another state. He further states, he has since taken on the role as General Manager but would appreciate a reconsideration of these fines due to his ignorance at the time.
9. The violations associated with this matter are appropriate.

Staff Recommendation

10. Staff does not recommend mitigation based on Chipman Moving & Storage, Inc.'s request.

DATED this 5th day of February, 2007 at Olympia, Washington.

LEON MACOMBER

