

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of PENALTY ASSESSMENT
AGAINST Chipman Moving & Storage,
Inc., in the amount of \$1,000

DOCKET NO. TV-061927

COMMISSION STAFF'S
RESPONSE TO CHIPMAN
MOVING & STORAGE, INC.'S
APPLICATION FOR
MITIGATION OF PENALTIES

1 Pursuant to WAC 480-07-370(1)(c), Commission Staff submits this response to
Chipman Moving & Storage, Inc.'s Application for Mitigation.

I. BACKGROUND

2 The Washington Utilities and Transportation Commission ("Commission") assessed
a penalty of \$1,000 against Chipman Moving & Storage, Inc ("Chipman" or "Company") on
January 12, 2007. The penalty was assessed for alleged violations of WAC 480-15-570 and
49 C.F.R. § 382.301(a), which require that no employer shall allow a driver, who the
employer intends to hire or use, to perform safety-sensitive functions unless the employer
has received a negative pre-employment controlled substances test result for that driver.

3 Chipman Moving & Storage operates in the state of Washington as a household
goods carrier under Permit No. HG-6985.¹ On October 30-31, 2006, the Motor Carrier
Safety Section Staff (Staff) conducted a carrier review of Chipman's terminal safety records
and equipment.² As a result of the inspection, Staff found that Chipman had not received
negative pre-employment controlled substance test results for two drivers who were

¹ Appendix A at 1.

² See Declaration of Leon Macomber at ¶ 5 and Appendix A.

operating company vehicles.³ One driver was hired on February 5, 2006, made his first trip as a driver on February 10, 2006, and there was no controlled substances test found at the time of inspection. Another driver was hired on December 9, 2005, made his first trip as a driver on December 27, 2005, and there was no controlled substance test result found at the time of inspection.⁴ Under the authority of RCW 81.04.530, which allows the Commission to assess penalties of \$500 per violation against companies that use drivers without first receiving a negative pre-employment controlled substance test result, the Commission issued a \$1,000 penalty.⁵ On January 30, 2007, Chipman filed an Application for Mitigation of Penalties (Application), waiving a hearing and asking for an administrative decision on the information it presented.⁶

II. ARGUMENT

A. **The Company's Statement that it was not Aware of the Legal Requirement of a Negative Pre-Employment Controlled Substance Test Result does not Excuse it from Ensuring that its Drivers Undergo Controlled Substance Testing.**

4 In its Application, Chipman does not dispute that the violations occurred. Chipman states that it was not aware of the requirement to obtain negative pre-employment controlled substances test results from drivers.⁷ The Company asks for reconsideration of the penalties due to the operations manager's ignorance of the law at the time the violations occurred.⁸ Mitigation for these reasons is inappropriate. The testing requirements apply to every person and to all employers of such persons who operate commercial motor vehicles in the state of Washington. 49 C.F.R. § 382.103(a). Under 49 C.F.R. § 382.301(a), prior to the first time a driver performs safety-sensitive functions for an employer and as a condition to

³ *Id.*

⁴ *Id.*

⁵ See Penalty Assessment.

⁶ See Application for Mitigation of Penalties.

⁷ *Id.*

⁸ *Id.*

being hired, the driver shall undergo testing for controlled substances. The employer must receive a negative test result for the driver. This federal requirement expressly applies to all household goods carriers in the state of Washington by incorporation. WAC 480-15-570(3), WAC 480-15-999. There are no exceptions for ignorance of the law, and Chipman is responsible for understanding, and complying with, the regulations that apply to it as a household goods carrier. This includes ensuring that all of its drivers, prior to performing safety-sensitive functions, undergo pre-employment controlled substance testing with a negative test result. Additionally, and most importantly, this regulation serves to protect passenger safety and the safety of the driving public. Mitigation of the penalty for the reasons stated is not warranted, and the penalty is appropriate.

III. CONCLUSION

5 Staff does not support mitigating the assessed penalty based on Chipman Moving & Storage, Inc.'s Application. Accordingly, Staff requests that the Commission deny Chipman's Application for Mitigation of Penalties.

DATED this 5th day of February, 2007.

Respectfully submitted,

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