

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment  
Against

BLESSED LIMOUSINE, INC.

in the amount of \$2,200

DOCKET TE-190072

ORDER 01

DENYING MITIGATION;  
IMPOSING AND SUSPENDING  
PENALTY

**BACKGROUND**

1 On February 19, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$2,200 penalty (Penalty Assessment) against Blessed Limousine, Inc. (Blessed Limo or Company) for 127 violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).<sup>1</sup> The Penalty Assessment includes:

- a \$1,500 penalty for one violation of 49 C.F.R. Part 382.115(a) for failing to implement an alcohol and/or controlled substances testing program on the date it began commercial motor vehicle operations;
- a \$100 penalty for one violation of 49 C.F.R. Part 393.51 for having a commercial motor vehicle with an inoperable air pressure gauge, a brake warning device;
- a \$300 penalty for three violations of 49 C.F.R. Part 393.62(a) for having a commercial motor vehicle with defective emergency exits: windows that either do not open or do not close;
- a \$100 penalty for one violation of 49 C.F.R. Part 393.83(d) for having a commercial motor vehicle with an improper exhaust pipe.

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<sup>1</sup> WAC 480-30-221 adopts by reference sections of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of Title 49 C.F.R.

- a \$100 penalty for one violation of 49 C.F.R. Part 393.205(c) for having a commercial motor vehicle with loose or missing wheel fasteners; and,
- a \$100 penalty for 120 violations of 49 C.F.R. Part 395.8(a) for failing to require its drivers to make records of duty status.

The Penalty Assessment also explains that the Company must act within 15 days after receiving and choose to either pay the amount due, contest the occurrence of the violations, or request mitigation to contest the amount of the penalty. If the Company chooses not to take any of the actions, the Penalty Assessment explained that the Company may be subject to additional enforcement action.

- 2 On April 23, 2019, Blessed Limo responded to the Penalty Assessment admitting the violations and requesting mitigation of the penalty based on the written information provided. In its response, the Company stated that it has made improvements and created new infrastructure to prevent future violations. It did not specifically address any of the violations. The Company noted that it is a small business, and that it would be difficult for it to pay the penalty amount in full. The Company did not provide any additional details or supporting documentation.
- 3 On April 30, 2019, the Company submitted to Commission staff (Staff) a corrective action safety plan in which the Company acknowledged some of the violations identified in the Penalty Assessment and also described the steps it had taken to correct those violations.
- 4 On May 2, 2019, Staff filed a response recommending the Commission affirm the \$2,200 penalty amount but suspend a \$1,100 portion of that penalty for a period of two years, and then waive it, subject to the conditions that (1) Staff will conduct a follow-up investigation within two years, or as soon thereafter as practicable, (2) the Company must not incur any repeat acute or critical violations during those two years, and (3) the Company must pay the \$1,100 portion of the penalty that is not suspended. Staff explained that it believed no mitigation was appropriate in this case because of the severity of the violations, the Company's late response to the Penalty Assessment, and the Company's failure to address a majority of the violations identified in the Penalty Assessment. Staff also explained, however, that it believed suspension was appropriate, in part, because the Company provided a corrective action safety plan that addressed some of the violations in the Penalty Assessment, and because Blessed Limo is a small company with six commercial motor vehicles, six drivers, and a reported gross revenue in 2017 of \$217,000.

## DISCUSSION AND DECISION

- 5 Washington law requires charter and excursion carriers to comply with federal safety requirements and undergo routine safety inspections. In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations. Violations defined by federal law as “acute” or “critical” meet this standard.
- 6 Violations are considered “acute” when non-compliance is so severe that immediate corrective action is required regardless of the overall safety posture of the company. Violations classified as “critical” are indicative of a breakdown in a carrier’s management controls.
- 7 The Commission will, however, consider 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. The Commission also considers whether the violations were promptly corrected, a company’s history of compliance, and the likelihood the violation will recur. We address each violation category below.
- 8 **49 C.F.R. Part 382.115(a).** The Penalty Assessment assessed a \$1,500 penalty for one violation of 49 C.F.R. Part 382.115(a) because the Company failed to implement a controlled substance and alcohol testing program on the date it began commercial motor vehicle operations. RCW 81.04.530 allows a penalty of up to \$1,500 for this violation.
- 9 Staff recommends the Commission affirm the \$1,500 penalty because this violation is acute, and “[n]on-compliance with acute regulations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates.”<sup>2</sup> We agree with Staff’s recommendation. The Company did not address why it failed to implement a controlled substance and alcohol testing program prior to commencing commercial motor vehicle operations. This violation is serious because it could result in permitting drivers with positive drug test results to operate commercial motor vehicles, which poses a danger to any passengers in those vehicles and to the travelling public.

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<sup>2</sup> Staff’s Response to Mitigation Request at 3 (citations omitted).

Accordingly, we conclude that a \$1,500 penalty for one violation of 49 C.F.R. Part 382.115(a) is appropriate.

- 10 **49 C.F.R. Part 393.51.** The Penalty Assessment assessed a \$100 penalty for one violation of 49 C.F.R. Part 393.51 because the Company had a commercial motor vehicle with a defective brake warning device. In this instance, the device was identified as an inoperable air pressure gauge.
- 11 The Company did not address this violation in its request for mitigation or its corrective action safety plan. Staff recommends no mitigation of this portion of the penalty. We agree with Staff's recommendation. Accordingly, we conclude that a \$100 penalty for this violation is appropriate.
- 12 **49 C.F.R. Part 393.62(a).** The Penalty Assessment assessed a \$300 penalty for three violations of 49 C.F.R. Part 393.62(a) because three of the Company's commercial motor vehicles had defective emergency exits; the windows of those vehicles either would not open or would not close.
- 13 The Company did not address these violations in its request for mitigation or its corrective action safety plan. Staff recommends no mitigation of this portion of the penalty. We agree with Staff's recommendation. Accordingly, we conclude that a \$300 penalty for three violations of 49 C.F.R. Part 393.62(a) is appropriate.
- 14 **49 C.F.R. Part 393.83(d).** The Penalty Assessment assessed a \$100 penalty for one violation of 49 C.F.R. Part 393.83(d) because the Company had a commercial motor vehicle with an improper exhaust pipe.
- 15 The Company did not address this violation in its request for mitigation or its corrective action safety plan. Staff recommends no mitigation of this portion of the penalty. We agree with Staff's recommendation. Accordingly, we conclude that a \$100 penalty for this violation is appropriate.
- 16 **49 C.F.R. Part 393.205(c).** The Penalty Assessment assessed a \$100 penalty for one violation of 49 C.F.R. Part 393.205(c) because the Company had a commercial motor vehicle with loose or missing wheel fasteners.
- 17 The Company did not address this violation in its request for mitigation or its corrective action safety plan. Staff recommends no mitigation of this portion of the penalty. We

agree with Staff's recommendation. Accordingly, we conclude that a \$100 penalty for this violation is appropriate.

18 **49 C.F.R. Part 395.8(a).** The Penalty Assessment assessed a \$100 penalty for 120 violations of 49 C.F.R. Part 395.8(a) because the Company allowed its drivers to drive on 120 occasions without requiring its drivers to make records of duty status.

19 Staff recommends no mitigation of this portion of the penalty. We agree with Staff's recommendation. While the Company may have addressed this violation in its corrective action safety plan and set in place a remedy to prevent future violations, the penalty assessed is not per violation, but by violation category. Accordingly, we conclude that a \$100 penalty assessment for these 120 violations is appropriate.

20 We also agree with Staff that suspending a portion of the penalty is appropriate in light of the circumstances. The Company provided a corrective safety plan that addressed some of the violations and the Company is a small business. Our goal here, as in any enforcement proceeding, is to increase compliance, not create an insurmountable financial burden for a regulated company. Accordingly, we suspend a \$1,100 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: (1) Staff will conduct a follow-up investigation within two years, or as soon thereafter as practicable, (2) the Company must not incur any repeat violations of critical regulations during those two years, and (3) the Company must pay the \$1,100 portion of the penalty that is not suspended within 10 days of the date of this Order.

### FINDINGS AND CONCLUSIONS

- 21 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including charter and excursion carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 22 (2) Blessed Limo is a charter and excursion carrier subject to Commission regulation.
- 23 (3) Blessed Limo violated 49 C.F.R. Part 382.115(a) when it failed to implement a controlled substance and alcohol testing program.
- 24 (4) RCW 81.04.530 allows a penalty of up to \$1,500 for a failure to implement a controlled substance and alcohol testing program.

- 25 (5) Blessed Limo should be penalized \$1,500 for one violation of 49 C.F.R. Part 382.115(a).
- 26 (6) Blessed Limo violated 49 C.F.R. Part 393.51 because one of its commercial motor vehicles had a defective brake warning system, identified as an inoperable air pressure gauge.
- 27 (7) Blessed Limo should be penalized \$100 for one violation of 49 C.F.R. Part 393.51.
- 28 (8) Blessed Limo violated 49 C.F.R. Part 393.62(a) by having commercial motor vehicles with defective emergency exits, with windows that either would not open or would not close.
- 29 (9) Blessed Limo should be penalized \$300 for three violations of 49 C.F.R. Part 393.62(a).
- 30 (10) Blessed Limo violated 49 C.F.R. Part 393.83(d) by having a commercial motor vehicle with an improper exhaust pipe.
- 31 (11) Blessed Limo should be penalized \$100 for one violation of 49 C.F.R. Part 393.83(d).
- 32 (12) Blessed Limo violated 49 C.F.R. Part 393.205(c) by having a commercial motor vehicle with loose or missing wheel fasteners.
- 33 (13) Blessed Limo should be penalized \$100 for one violation of 49 C.F.R. Part 393.205(c).
- 34 (14) Blessed Limo violated 49 C.F.R. Part 395.8(a) when it failed to require its drivers to make records of duty status on 120 occasions.
- 35 (15) Blessed Limo should be penalized \$100 for 120 violations of 49 C.F.R. Part 395.8(a).
- 36 (16) The Commission should assess a total penalty of \$2,200 for 127 violations of Chapter 480-30 WAC and Title 49 C.F.R.
- 37 (17) The Commission should suspend a \$1,100 portion of the penalty for a period of two years, and then waive it subject to the conditions set out in paragraph 20.

**ORDER**

THE COMMISSION ORDERS:

- 38 (1) Blessed Limousine, Inc.'s request for mitigation is DENIED. The penalty amount  
of \$2,200 is affirmed, but the Commission exercises its discretion to suspend a  
portion of the penalty amount subject to conditions.
- 39 (2) The Commission suspends a \$1,100 portion of the penalty for a period of two  
years, and then waives it, subject to the conditions set out in paragraph 20.
- 40 (3) Blessed Limousine, Inc. must pay the \$1,100 portion of the penalty that is not  
suspended within 10 days of the effective date of this Order.
- 41 The Secretary has been delegated authority to enter this order on behalf of the  
Commission under WAC 480-07-903(2)(e).

DATED at Olympia, Washington, and effective May 15, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON  
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.**