



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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 COMMISSION

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Received
 Records Management

Date: April 8, 2022

To: Rayne Pearson, Administrative Law Judge, Administrative Law Division

From: Jason Sharp, Motor Carrier Safety Supervisor, Transportation Safety Division

Re: **TV-220149 and TV-220150 David Lu d/b/a Grandma's Boy Moving Co.**
 Evaluation of Safety Management Plan, Recommendations regarding the company's safety rating, and the cancellation of provisional household goods mover operating authority (THG-069740)

On March 2, 2022, Commission staff (Staff) completed a routine safety investigation of David Lu d/b/a Grandma's Boy Moving Co. (David Lu or Company) which resulted in a proposed conditional safety rating.

Provisional household goods companies must achieve a satisfactory safety rating prior to receiving permanent status. As the Company has yet to achieve a satisfactory safety rating, the Commission afforded David Lu the same opportunity as companies that receive a proposed unsatisfactory safety rating to provide evidence, in the form of an approved safety management plan, showing that the company took corrective action to address the identified violations.

Commission rules prohibit motor carriers from operating beginning on the 61st day after the date of the notice of a proposed unsatisfactory rating. A company may request a change in its safety rating based on evidence that it has taken corrective actions to address the identified violations, and that its operations currently meet the safety standard and factors in 49 C.F.R. § 385.5 and 385.7. In this case, David Lu has until May 1, 2022, to come into compliance with applicable laws and rules by obtaining commission approval of a safety management plan.

The proposed critical safety rating was based on one violation of critical regulations - 49 C.F.R. § 395.8(a)(1).

“Critical” regulations are those identified as such where non-compliance relates to management and operational controls. These are indicative of breakdowns in a company's management controls. Patterns of non-compliance with a critical regulation are linked to inadequate safety management controls and higher than average accident rates.

Critical violations discovered during investigation:

1. Thirty violations of 49 C.F.R. § 395.8(a)(1) – Failing to require driver to make a record of duty status.

In a March 22, 2022, Notice of Intent to Cancel, the Commission instructed David Lu to submit its proposed safety management plan no later than April 4, 2022.

On April 4, 2022, the Commission issued a penalty assessment against the Company in the amount of \$8,900 because of violations discovered during the safety investigation. The penalty includes:

1. A \$100 penalty for one violation of WAC 480-15-555 for failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.
2. A \$8,400 penalty for 84 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
3. A \$100 penalty for one violation of 49 C.F.R. § 391.51(a) for failing to maintain driver qualification file on each driver employed.
4. A \$100 penalty for 30 violations of 49 C.F.R. § 395.8(a)(1) for failing to require driver to make a record of duty status.
5. A \$100 penalty for one violation of 49 C.F.R. § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance.
6. A \$100 penalty for one violation of 49 C.F.R. § 396.17(a) for using a commercial motor vehicle not periodically inspected.

On April 7, 2022, David Lu filed with the Commission its application for mitigation of penalties. In the request for mitigation, the Company admitted the violations and requested that the penalty be reduced.

On April 7, 2022, David Lu submitted a safety management plan addressing each violation noted during the investigation. Staff only recommends approving a safety management plan that addresses the following seven items:

1. The plan must address each acute, critical, or serious violation discovered during the most recent investigation. It must also include corrective actions that address other violations noted during the investigation.
2. Identify why the violations were permitted to occur.
3. Discuss the actions taken to correct the deficiency or deficiencies that allowed the violations to occur. Include actual documentation of this corrective action.

4. Outline actions taken to ensure that similar violations do not reoccur in the future. The plan must demonstrate that the company's operations currently meet the safety standard and factors specified in 49 C.F.R. § 385.5 and 385.7. To do so, the plan must demonstrate the company now has adequate safety management controls in place which function effectively to ensure acceptable compliance with applicable safety requirements.
5. If the request includes actions that will be conducted in the near future, such as training, reorganization of departments, purchasing of computer programs, etc., companies must include a detailed description of the activity or training and a schedule of when that activity will commence and when it will be completed.
6. Include any additional documentation relating to motor carrier safety and the prevention of crashes that the company believes supports its request.
7. Include a written statement certifying the company will operate within federal and state regulations and the company's operation currently meets the safety standard and factors specific in 49 C.F.R. § 385.5 and 385.7. A corporate officer, partner, or the owner of the company must sign the statement.

Summary and Recommendations

Staff reviewed David Lu's safety management plan and concludes it is acceptable and meets the requirements of 49 C.F.R. § 385. The plan demonstrates that the Company has taken appropriate action to develop a compliant safety program and implemented a system, that if followed, should prevent repeat violations.

Staff recommends that Dockets TV-220149 and TV-220150 be consolidated.

Documentation of driver qualifications, maintenance, criminal background, and hours of service records were included in the plan.

The Company took the required steps to bring its safety operations into compliance with Commission regulations. David Lu submitted a safety management plan that addresses each violation, identifies how the violations occurred, describes the steps taken to correct them, and put controls in place to ensure the Company maintains compliance.

Staff recommends the Commission not cancel the David Lu's permit and extend the provisional operating authority for good cause, until such a time that the Company receives a satisfactory safety rating.

In response to the application for mitigation, the Company corrected each violation and took steps to prevent future occurrences. Staff recommends reducing the assessed penalty of \$8,900 to \$4,700. Staff further recommends that \$2,700 of the reduced penalty be suspended for a period of two years before being waived, on the conditions that: (1) Staff conducts a follow-up safety investigation at least six months from the date of the Order, (2) David Lu may not incur any repeat critical violations, (3) the Company maintains a conditional safety rating, and (4) David

Lu pays the \$2,000 portion of the penalty that is not suspended within 10 days of the Order or enters into a mutually agreeable payment arrangement with Staff.

Staff confirmed with the Company that it waives its right to a hearing and recommends that the brief adjudicative proceeding scheduled for April 18, 2022, be cancelled.