

Docket No. TV-170039 - Vol. I

In the Matter of the Investigation of MVP
Moving and Storage, LLC

April 4, 2017



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the)
Investigation of)
MVP MOVING AND STORAGE, LLC) Docket No. TV-170039
For Compliance with WAC)
480-15-560 and WAC 480-15-570)

BRIEF ADJUDICATIVE PROCEEDING, VOLUME I
Pages 1 - 24
ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

1:30 p.m.

April 4, 2017

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest
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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

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FOR MVP MOVING AND STORAGE:

Erik Hawkins
Jason Garcia

ALSO PRESENT:

Sandi Yeomans
Dave Pratt

* * * * *

HEARING
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4

1 OLYMPIA, WASHINGTON; APRIL 4, 2017

2 1:30 p.m.

3
4 P R O C E E D I N G S

5
6 JUDGE PEARSON: So let's be on the record.

7 Good afternoon. This is Docket TV-170039,
8 which is captioned In the Matter of the Investigation of
9 MVP Moving and Storage, LLC, for Compliance with WAC
10 480-15-560 and 570.

11 My name is Rayne Pearson. I'm the
12 administrative law judge presiding over today's brief
13 adjudicative proceeding, and today is Tuesday,
14 April 4th, 2017, at approximately 1:30 p.m.

15 So we are here today because, on
16 February 21st, 2017, the Commission issued a Notice of
17 Intent to Cancel Certificate and a Notice of Brief
18 Adjudicative Proceeding setting today as the time for
19 oral statements.

20 The Commission issued the Notice of Intent
21 to Cancel following a compliance review conducted by
22 Commission Staff in December 2016, which resulted in a
23 proposed unsatisfactory safety rating for MVP Moving.

24 The Company had until March 21st, 2017, to
25 file a proposed safety management plan, which I

5

1 understand it has done, and we will be addressing how
2 that affects the Company's safety rating today.

3 And also there was a penalty assessment in
4 Docket TV-170038 in the amount of \$6,100. And
5 Mr. Hawkins, you filed an application for mitigation --

6 MR. HAWKINS: Yes.

7 JUDGE PEARSON: -- in that docket and
8 requested a hearing.

9 So I'm assuming that neither party has any
10 objection to consolidating Dockets TV-170039 and
11 TV-170038 so that we can address all of the issues here
12 today?

13 MR. ROBERSON: No objection.

14 MR. HAWKINS: No.

15 JUDGE PEARSON: Okay. Then those matters
16 are consolidated and we will hear from the parties on
17 both dockets this afternoon.

18 So when I call on each of you to testify, I
19 will swear you in with the oath of witness, which means
20 that everything that you tell me today will be under
21 oath and be considered sworn testimony.

22 And for the court reporter's benefit, please
23 speak slowly and clearly and into the microphone that's
24 on the table. And once you're sworn in, you can present
25 your testimony and call witnesses, provided that the

6

1 Commission was notified about the witnesses in advance.
2 And you can also introduce any exhibits that you have
3 pre-filed, which I believe only Staff has done in this
4 instance.

5 So what we'll do is we'll first have Staff
6 address the proposed safety management plan and the
7 safety rating. And following Staff's presentation, the
8 Company will have the opportunity to ask Staff's
9 witnesses any questions and then present testimony if
10 you choose to. And at that time, you can address the
11 violations in the penalty assessment and what corrective
12 measures you've taken to prevent those from reoccurring
13 going forward. And then once you're done testifying,
14 Staff's attorney may have some questions for you, and
15 then Staff will make a recommendation on the penalty.

16 Do you have any questions before we get
17 started?

18 MR. HAWKINS: I don't think so, no.

19 JUDGE PEARSON: Okay. So first, let's take
20 an appearance from Commission Staff.

21 MR. ROBERSON: Assistant Attorney [sic] Jeff
22 Roberson appearing on behalf of Commission Staff.

23 JUDGE PEARSON: Okay. Thank you.

24 And then let's just start with you,
25 Mr. Hawkins, if you could state your name, spelling your

7

1 last name, and give us your address and telephone
2 number.

3 MR. HAWKINS: Erik Hawkins, H-A-W-K-I-N-S.
4 Street address or --

5 JUDGE PEARSON: Yes, please.

6 MR. HAWKINS: 10930 SE 172nd Street, that's
7 Apartment A-204, Renton 98055.

8 JUDGE PEARSON: Okay. And a phone number
9 and email for you?

10 MR. HAWKINS: (425) 505-3144. Email is
11 erik@mvpmove.com.

12 JUDGE PEARSON: Okay. Great.
13 And if you would go ahead and do the same
14 thing.

15 MR. GARCIA: Jason Garcia, last name
16 G-A-R-C-I-A. Address is 236 Jericho Avenue NE, and
17 that's J-E-R-I-C-H-O, and that's Renton, Washington
18 98059. Phone number, (206) 660-4291. Email would be
19 jason@mvpmove.com.

20 JUDGE PEARSON: Okay. Thank you.

21 So Mr. Roberson, you may proceed with the
22 issue of the Company's proposed safety management plan
23 and safety rating whenever you're ready.

24 MR. ROBERSON: Staff would call Sandi
25 Yeomans.

DIRECT EXAMINATION BY MR. ROBERSON / YEOMANS 8

1 JUDGE PEARSON: Ms. Yeomans, if you would
2 stand and raise your right hand.

3
4 SANDI YEOMANS, witness herein, having been
5 first duly sworn on oath,
6 was examined and testified
7 as follows:

8
9 JUDGE PEARSON: Okay. You may be seated.

10
11 DIRECT EXAMINATION

12 BY MR. ROBERSON:

13 Q. Good afternoon. Could you state your name and
14 spell it for the record?

15 **A. Name is Sandra Yeomans. Last name is**
16 **Y-E-O-M-A-N-S.**

17 Q. And who is your employer?

18 **A. Washington State Utilities and Transportation**
19 **Commission.**

20 Q. And in what capacity does the Commission employ
21 you?

22 **A. I am a motor carrier special investigator.**

23 Q. And how long have you been a special
24 investigator?

25 **A. Almost two years.**

DIRECT EXAMINATION BY MR. ROBERSON / YEOMANS 9

1 Q. Did you perform the compliance audit of MVP
2 Moving?

3 **A. I did.**

4 Q. And did you uncover violations during the course
5 of that audit?

6 **A. I did.**

7 Q. Did you write a report detailing those
8 violations?

9 **A. I did.**

10 Q. Did you write that report contemporaneously with
11 your audit?

12 **A. I did.**

13 Q. And could you turn to Exhibit SY-1. Could you
14 identify that document?

15 **A. Yes, I can.**

16 Q. And what is it?

17 **A. This is my Assignment Report and a Pre-Report**
18 **for MVP Moving and Storage.**

19 Q. And is that a true and accurate copy of that
20 report?

21 **A. Yes, it is.**

22 MR. ROBERSON: Thank you. I have no further
23 questions.

24 JUDGE PEARSON: Okay. Thank you.

25 Mr. Hawkins, did you have any questions for

DIRECT EXAMINATION BY MR. ROBERSON / YEOMANS 10

1 Mr. Yeomans?

2 MR. HAWKINS: I don't have any questions,
3 no.

4 JUDGE PEARSON: Okay. So at this point we
5 can move on to the Company's response and walk through
6 the violations. Which of you would like to speak first?

7 MR. HAWKINS: I will.

8 JUDGE PEARSON: So if you could stand and
9 raise your right hand.

10

11 ERIK HAWKINS, witness herein, having been
12 first duly sworn on oath,
13 was examined and testified
14 as follows:

15

16 JUDGE PEARSON: Okay. Go ahead and be
17 seated. So let's just walk through each of the
18 violations in the penalty assessment and you can briefly
19 explain --

20 MR. HAWKINS: Sure.

21 JUDGE PEARSON: -- why the violation
22 occurred, and then any steps you've taken to correct the
23 violation and prevent the violations from happening
24 again.

25 MR. HAWKINS: Sure.

1 JUDGE PEARSON: So we'll start with 49 CFR
2 Part 391.45(a), failing to require employees to be
3 medically examined and certified prior to driving
4 company vehicles on 55 occasions.

5 DIRECT TESTIMONY BY MR. HAWKINS

6 MR. HAWKINS: So basically what we've done
7 to not have that happen again is, with hiring, we
8 basically use the background -- well, the Guide to
9 Achieving a Satisfactory Safety Record for, you know,
10 the forms to do our checklist to make sure this doesn't
11 happen, essentially. I'm sorry. I'm a little bit
12 nervous.

13 JUDGE PEARSON: That's okay.

14 MR. HAWKINS: I'm trying to --

15 JUDGE PEARSON: So can I just ask you, did
16 this happen because you weren't aware of this
17 requirement?

18 MR. HAWKINS: This happened -- we were aware
19 of the requirement. We did at one point, in fact,
20 follow the requirements, and it got laxed [sic] and it
21 fell by the wayside, I guess, is -- to put it in a
22 summed-up form.

23 JUDGE PEARSON: Okay. So now you use the
24 checklist?

25 MR. HAWKINS: Basically, yes. So -- well,

1 not basically -- 100 percent, yes. On the course of
2 hiring a driver, what we do is let them know what we
3 need from them, essentially clear background, we need a
4 medical card for operating the vehicle, and basically
5 just go down the checklist provided by the UTC to ensure
6 that we're following the public safety guidelines to not
7 have these happen again.

8 JUDGE PEARSON: Okay. And have all of the
9 drivers -- I think -- how many were there?

10 MR. HAWKINS: Currently we have three
11 drivers, and everybody currently is 100 percent in
12 compliance with the checklist and the UTC requirements.

13 JUDGE PEARSON: Okay. So they all now have
14 valid --

15 MR. HAWKINS: Everybody, yes.

16 JUDGE PEARSON: -- medical cards? Okay.

17 MR. HAWKINS: Yep.

18 JUDGE PEARSON: Okay. Thank you.

19 So let's move on to the second violation,
20 which is 49 CFR Part 395.8(a), failing to require
21 drivers to make a record of duty status on 58 occasions.

22 MR. HAWKINS: This came down to not filling
23 out driver's logs and us not ensuring that this was
24 completed. We did have a system of tracking time. It
25 wasn't separated out in terms of drivers and laborers,

1 so that is something that we have adjusted.

2 We use the driver time record as supplied,
3 Section 8 of the -- page 169 of the Guide to Achieving a
4 Satisfactory Safety Record. Basically, now they will
5 not be paid unless this is turned in. So this is turned
6 in on a weekly basis, and then at a monthly -- once it's
7 completed, their complete month is turned into us and
8 filed in their employee file.

9 JUDGE PEARSON: Okay. Thank you.

10 And then finally there is WAC 480-15-555,
11 failing to obtain criminal background checks prior to
12 hiring five of your employees.

13 MR. HAWKINS: Everybody is currently
14 checked, background, before employment. Essentially,
15 once we take an application and even consider them in
16 for training, that's the first thing that happens. Once
17 we receive the application, the background is checked,
18 and we use IntelliCorp background screening.

19 We did -- this is another thing that we did
20 do in the beginning, and it fell again by the wayside,
21 and so there was a handful that had them and a handful
22 that didn't. Everything is up-to-date now. Every
23 current employee's background has been checked.

24 JUDGE PEARSON: Okay. So when you ran the
25 background checks on those five employees, did anything

CROSS-EXAMINATION BY MR. ROBERSON / HAWKINS 14

1 turn up?

2 MR. HAWKINS: I believe the five
3 employees -- I believe there's only two of them that are
4 current employees still, and nothing came up. So
5 nothing has changed in terms of employment for those
6 guys that were on -- current employees anyway.

7 JUDGE PEARSON: Okay.

8 Does Staff have any questions for
9 Mr. Hawkins? I'll give Mr. Roberson a minute.

10 MR. ROBERSON: Sorry, your Honor. I just
11 had a quick question.

12 CROSS-EXAMINATION

13 BY MR. ROBERSON:

14 Q. You mentioned that several of the problems that
15 we're discussing resulted from laxness or things falling
16 by the wayside. Have you put in place any systems that
17 will prevent similar laxness or things falling through
18 the cracks?

19 **A. Basic -- yes, we have. So Jason and I have --**
20 **basically, we are the one -- we're the ones that decide**
21 **essentially, that are the overseers of this. What we've**
22 **done is we've hired help in our office to help keep**
23 **things, I guess, more organized, so when we get -- so**
24 **when we get busy again, things like this don't happen.**

25 **This is a focus now for when it comes to**

CROSS-EXAMINATION BY MR. ROBERSON / HAWKINS 15

1 paperwork and hiring. It's something that I personally
2 oversee, go through the checklist and make sure that our
3 drivers -- list of eligible drivers is updated and, you
4 know, we have a running list on our white board of our
5 guys that are current. And if they go away, they're
6 taken off the list and the new driver is added. But
7 yes, we hit all the specific checklist [sic].

8 So visuals for staff that are in the office, and
9 then also visuals for Jason and I, reminders on
10 calendars for, you know, checking drivers' yearly -- I
11 think for getting the yearly checks for licensing and
12 the accidents and whatnot, all those reminders are
13 listed on a Google calendar that we share, and a
14 reminder will pop up and say, Carlos is ready for his
15 yearly check in terms of the accident reports and
16 driver's history and whatnot.

17 So we're doing basically what was -- what was
18 recommended to us in a way that we think will work for
19 us, and in a way that will remind us and make sure it
20 doesn't happen.

21 MR. ROBERSON: Thank you. That's all I
22 have.

23 JUDGE PEARSON: Okay.

24 So does Staff want to make a recommendation
25 at this point both with respect to the penalty and the

DIRECT EXAMINATION BY MR. ROBERSON / PRATT 16

1 safety rating?

2 MR. ROBERSON: Yes. Staff would like to
3 call Dave Pratt.

4 JUDGE PEARSON: Okay. Mr. Pratt, if you
5 could stand and raise your right hand.

6
7 DAVE PRATT, witness herein, having been
8 first duly sworn on oath,
9 was examined and testified
10 as follows:

11
12 JUDGE PEARSON: Okay. Please be seated.

13
14 DIRECT EXAMINATION

15 BY MR. ROBERSON:

16 Q. Can you please state your name and spell it for
17 the record?

18 **A. My name is David Pratt, P-R-A-T-T.**

19 Q. And who is your employer?

20 **A. I work for the Washington Utilities and
21 Transportation Commission.**

22 Q. And in what capacity do you work for the
23 Commission?

24 **A. I currently am the assistant director for
25 transportation safety, which means I oversee motor**

DIRECT EXAMINATION BY MR. ROBERSON / PRATT 17

1 carrier safety.

2 Q. And how long have you been employed in that
3 position?

4 **A. Ten years.**

5 Q. Are you familiar with the safety audit of MVP
6 Moving?

7 **A. Yes, I am.**

8 Q. Do you know what the proposed safety rating was
9 that resulted from that audit?

10 **A. Yes. It was an unsatisfactory safety rating.**

11 Q. And does a carrier that is given a proposed
12 unsatisfactory rating have a chance to improve that
13 rating?

14 **A. Yes. In the terms of a household goods carrier,**
15 **for that industry, the carrier has 60 days from the date**
16 **that a proposed safety rating is issued to develop a**
17 **plan and have it approved by the Commission in order to**
18 **get that rating upgraded. If they do not have that done**
19 **within the 60 days, their permit is cancelled. If they**
20 **do get that approved within the 60 days, which is what**
21 **we're here for today, the permit status would be**
22 **upgraded to conditional and stay that way until the next**
23 **rated review.**

24 Q. And did MVP Moving submit a safety management
25 plan?

DIRECT EXAMINATION BY MR. ROBERSON / PRATT 18

1 **A. Yes, they did.**

2 Q. Have you reviewed that plan?

3 **A. Yes, I have.**

4 Q. And do you find that it addresses the problems
5 that resulted in the proposed unsatisfactory safety
6 rating?

7 **A. I do. I would say that Ms. Yeomans and I
8 reviewed it. She gave me her initial recommendations.**

9 **And I guess I would give Mr. Hawkins a little
10 more credit. I know it's tough being in here, and it's
11 kind of -- we're here all the time, so we're used to it,
12 so I understand it. But I think he did undersell
13 himself a little bit. I do think that the plan
14 contained a lot of details about how they had put some
15 systems in place and how they had taken personal
16 responsibility for the violations.**

17 **So based on that, I believe that they submitted
18 an appropriate safety plan. It did address the
19 violations. It talked about how they occurred, talked
20 about what they did to correct them, and how they were
21 going to keep them in compliance in the future. And
22 they also provided documentation, which we require for
23 medical certification, and particularly important in
24 this case, the documentation on the criminal background
25 checks for employees.**

DIRECT EXAMINATION BY MR. ROBERSON / PRATT 19

1 So I believe that the plan does meet the
2 criteria that we have under CFR 49, Part 385, and I do
3 believe my recommendation would be that this company's
4 operating authority be upgraded to conditional effective
5 today.

6 And that Staff also be instructed to conduct a
7 follow-up, non-rated review in one year of this company
8 to make sure they're still in compliance. And then we
9 do another rated review a year after that, which would
10 be approximately April 2019.

11 The reason I lay this schedule out is, according
12 to the federal guidelines, which we follow, we don't
13 issue rated reviews generally more often than every two
14 years. So we come back in one year and do a non-rated
15 review, and then the second year it would be rated. So
16 the Company would have to live with the conditional
17 rating for the two years, but have a chance to upgrade
18 it in April of '19.

19 Also in this case, this company is still in
20 provisional status. When the Commission issues a permit
21 for household goods, it starts off in provisional
22 status, and it's usually required to be a minimum of six
23 months and a maximum of 18 months. One of the criteria
24 for becoming permanent is that you achieve a
25 satisfactory safety rating. So in this case, since they

DIRECT EXAMINATION BY MR. ROBERSON / PRATT 20

1 haven't done that yet, my recommendation would also be
2 to continue to leave them in provisional status until
3 the time that they do receive that upgrade.

4 This is kind of a judgment call by me to
5 determine how long they can go past the 18 months. And
6 in this case, it would be a full two years beyond it. I
7 still would recommend that, but I would caution the
8 Company to say, if in two years from now, if we come
9 back, if we're not able to upgrade it at that time,
10 there would probably some tougher consequences, because
11 then it would have been approximately a three-year
12 period. So I just encourage you to stay on top of this.

13 So based on everything that I've said and based
14 on the Company's actions that they've taken, I believe
15 that the \$6,100 penalty, which is broken down by the
16 different violations, I am willing to mitigate -- I
17 could recommend mitigation of a good portion of this.

18 And so because of their actions, I would
19 recommend that we only issue a penalty of \$3,000, that
20 we suspend \$3,100 of that penalty for the period of two
21 years. And the condition is that, as long as we don't
22 come back and find any repeat violations of critical
23 rules, the penalty would be eliminated at the end of two
24 years.

25 If we do find repeat violations, I would ask the

1 Commission to impose the entire suspended penalty and
2 potentially new penalties for new violations.

3 MR. ROBERSON: That covers it, I think.

4 JUDGE PEARSON: Okay.

5 Mr. Hawkins or Mr. Garcia, do you have any
6 questions for Mr. Pratt?

7 MR. HAWKINS: No questions.

8 MR. GARCIA: No questions.

9 JUDGE PEARSON: Okay. Well, thank you all
10 for coming here today. When is the 60-day deadline?

11 MR. ROBERSON: I think it's tomorrow.

12 MS. YEOMANS: I think it is tomorrow.

13 MR. ROBERSON: It's been a while.

14 JUDGE PEARSON: So in light of that, I will
15 tell you today from the bench, I'll issue my ruling that
16 I will be upgrading your safety rating to conditional,
17 but I won't have a written order out -- most likely, not
18 by tomorrow. Maybe. We'll see if I can do it. It will
19 be out this week. But with that ruling from the bench,
20 then you're assured that your safety rating has been
21 upgraded and you have to maintain your permit. Okay?

22 So is there anything else before we go off
23 the record?

24 MR. ROBERSON: It occurs to me that I did
25 not move to admit any of the exhibits we talked about,

22

1 so I would -- I think the only exhibit we really talked
2 about was Exhibit SY-1. I would move to --

3 JUDGE PEARSON: Which exhibit is that?

4 MR. ROBERSON: It's the report. It's SY-1.

5 JUDGE PEARSON: Oh, okay. And is there -- I
6 don't have the exhibit list in front of me. Do you have
7 a copy of it, so I can look at it to see if there's
8 anything else that would be useful?

9 MR. ROBERSON: Absolutely.

10 JUDGE PEARSON: Okay.

11 And does the Company have a copy of this?

12 MR. ROBERSON: They do.

13 JUDGE PEARSON: Okay.

14 So do you have an objection to admitting any
15 of these --

16 MR. HAWKINS: I mean --

17 JUDGE PEARSON: -- into the record?

18 MR. HAWKINS: No, I don't think so.

19 JUDGE PEARSON: Okay. So what it is is,
20 SY-1 is the safety compliance report, which you received
21 a copy of; DP-1 is the safety rating memorandum, which I
22 believe would just tell me in detail what Staff's
23 recommendation is, and which would be helpful to me --

24 MR. HAWKINS: And actually, I removed that
25 one because it's been replaced with the DP-4, which is

23

1 the proposed conditional --

2 JUDGE PEARSON: Oh, okay. So that one I
3 should cross out?

4 MR. HAWKINS: (Nods head.)

5 JUDGE PEARSON: Okay. Never mind then.

6 So DP-2 is the memo in connection with the
7 penalty assessment; and then DP-3 is actually your
8 Company's proposed safety management plan; and DP-4 is
9 the Staff evaluation of your safety plan.

10 Are you okay with those? Okay. I will go
11 ahead and admit them all into the record then.

12 (Exhibits SY-1, DP-2, DP-3 & DP-4 were
13 admitted into evidence.)

14 MR. ROBERSON: Should I bring this to the
15 records center or --

16 JUDGE PEARSON: Yeah. Or I think I take it
17 to Paige. I'll take it. Okay. If that's all then,
18 thank you very much for coming here today.

19 MR. HAWKINS: Thank you.

20 MR. GARCIA: Thank you.

21 MR. HAWKINS: Appreciate it.

22 JUDGE PEARSON: We are adjourned.

23 (Hearing concluded at 1:55 p.m.)

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CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, ANITA W. SELF, a Certified Shorthand Reporter
in and for the State of Washington, do hereby certify
that the foregoing transcript is true and accurate to
the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this 11th day of April, 2017.

ANITA W. SELF, RPR, CCR #3032