

Docket TV-220417 - Vol. II

In the Matter of: Mr. Muscles Moving Company, LLC

July 22, 2022



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the) DOCKET TV-220417
Investigation of)
))
MR. MUSCLES MOVING COMPANY)
LLC)
))
For Compliance with)
WAC 480-15-530, WAC 480-15-550,))
WAC 480-15-555, WAC 480-15-560,))
and WAC 480-15-570,)

VIRTUAL EVIDENTIARY HEARING, VOLUME II

Pages 9-50

ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

July 22, 2022

9:30 a.m.

Washington Utilities and Transportation Commission
621 Woodland Square Loop Southeast
Lacey, Washington 98503

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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

RAYNE PEARSON

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WITNESSES:

JASON SHARP
TRACY COBILE

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1 LACEY, WASHINGTON; JULY 22, 2022

2 9:30 A.M.

3 --o0o--

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

5

6 JUDGE PEARSON: Okay. Let's be on the
7 record in Docket TV-220321, which is captioned, In the
8 Matter of the Investigation of Mr. Muscles Moving
9 Company, LLC, for Compliance with Washington
10 Administrative Code 480-15.

11 Today is Friday, July 22nd, 2022, at
12 10:00 a.m., and we're here for an evidentiary hearing to
13 address the violations alleged in the notice of hearing,
14 which include operating as a household goods carrier
15 without the permit required for such operations on five
16 occasions and 40 violations of Commission safety rules.

17 My name is Rayne Pearson. I use she/her
18 pronouns, and I'm the administrative law judge presiding
19 over this case.

20 So let's begin by taking appearances,
21 beginning with Staff.

22 Please state your name, spell your last name
23 for the court reporter, feel free to share your
24 pronouns, and state who you represent.

25 MR. TEIMOURI: Thank you, Judge Pearson. My

1 name is Daniel Teimouri. I'm an assistant attorney
2 general, representing Commission Staff. I use he/him
3 pronouns. The last name is T-e-i-m, as in Mary,
4 o-u-r-i.

5 JUDGE PEARSON: Great. Thank you.

6 And for the company?

7 MR. CONNER: My name is Alexander Conner. I
8 represent Mr. Muscles Moving Company. I'm sorry; what
9 was the other things that I had to say?

10 JUDGE PEARSON: Spell your last name, and if
11 you wish to share your pronouns, you may.

12 MR. CONNER: Oh, C-o-n-n-e-r is my last
13 name. That's how it spelled. And then I use he
14 pronouns, he/him.

15 JUDGE PEARSON: Great. Thank you.

16 MR. CONNER: Yes, ma'am.

17 JUDGE PEARSON: All right. And it doesn't
18 look like there is anyone else who wishes to enter an
19 appearance because I can see everyone who is on the
20 call, so we can go ahead and get started.

21 We convened a prehearing conference on
22 July 8th, at which time the company had not yet obtained
23 approval of a safety management plan.

24 So we will hear from Staff first this
25 morning, and then we'll hear from the company. Once we

1 hear from the company, I will check back with Staff
2 about its final recommendations.

3 Mr. Teimouri, you may begin when you're
4 ready.

5 MR. TEIMOURI: Thank you, Judge. I'm going
6 to offer a quick opening statement, if that's
7 acceptable.

8 JUDGE PEARSON: Sure.

9 MR. TEIMOURI: So good morning, again. I'm
10 Daniel Teimouri, Assistant Attorney General,
11 representing the Utilities and Transportation
12 Commission, and I'm here on behalf of the Commission
13 Staff.

14 We're here today for a proceeding involving
15 Mr. Muscles Moving Company, LLC. RCW Chapter 81.80 and
16 Commission WAC 480-15-560 require carriers to comply
17 with various operational and safety requirements,
18 including standards adopted from 49 CFR.

19 Staff intends to introduce evidence that
20 shows that Mr. Muscles Moving Company, LLC, has violated
21 Commission operating and safety requirements based on
22 the results of a prior investigation conducted by
23 Special Investigator Tracy Cobile.

24 Staff will now -- will shortly introduce
25 evidence through the testimony of Tracy Cobile, the

1 testimony of Jason Sharp, as well as through documentary
2 evidence that we have provided to the record.

3 However, before I call Special Investigator
4 Cobile, I wanted to address one issue. We filed
5 Staff -- I think Staff -- three documents as proposed
6 exhibits last Friday, but they were inadvertently filed
7 as one exhibit. So it's just TC-1 as a proposed
8 exhibit.

9 For the sake of clarity and for the record,
10 I'm going to provide the pagination ranges for each
11 document. So if you have a pen handy, it might be
12 useful to write that down. But -- and then Staff would
13 also be happy to refile these exhibits, if the ALJ so
14 desires, with different labeling.

15 So pages 1 and 2 are the declaration of
16 Tracy Cobile, dated June 16th, 2022. Pages 3 to 7 are
17 bills of lading. Pages 8 to 25 comprise Commission
18 Staff's investigation report in this matter. And that
19 will be -- that's the entirety of proposed Exhibit TC-1.

20 So we'll get into more depth and explain
21 these documents through questioning, but just wanted to
22 flag that at the top.

23 So thank you and apologies for any
24 confusion. At this time, we'd like to -- Staff would
25 like to call Tracy Cobile as a witness.

1 JUDGE PEARSON: Okay. Thank you.
2 Ms. Cobile, if you could raise your right
3 hand.

4 (Tracy Cobile sworn.)

5 JUDGE PEARSON: All right. Thank you.
6 You can go ahead.

7 MR. TEIMOURI: Thank you.
8

9 E X A M I N A T I O N

10 BY MR. TEIMOURI:

11 Q. Would you please state your name and spell your
12 last name for the record.

13 A. Tracy Cobile, C-o-b, as in boy, i-l-e, and I use
14 she/her pronouns.

15 Q. Thank you.

16 And what is your current position?

17 A. Special investigator with the motor carrier
18 safety program for the UTC.

19 Q. And what are your responsibilities in that
20 position?

21 A. As a special investigator with the motor carrier
22 safety program for the Commission, I conduct compliance
23 investigations on regulated transportation companies,
24 which includes inspecting commercial motor vehicles and
25 company records.

1 Q. And what kind of training have you received for
2 your role as an investigator with the Commission?

3 A. I obtained an investigative safety analysis
4 certification from the Federal Motor Carrier Safety
5 Administration. I am also certified through the
6 Commercial Vehicle Safety Alliance to conduct commercial
7 vehicle inspections.

8 And prior to working for the UTC, I served as a
9 commercial vehicle enforcement officer with the
10 Washington State Patrol for a period of seven years, and
11 four of those years in conjunction with my regular
12 enforcement duties were spent conducting federal safety
13 audits.

14 Q. And how long have you been in your current
15 position with the Commission?

16 A. One and a half years as a special investigator
17 with the UTC.

18 Q. All right. Thank you.

19 I'd now like to ask you questions about the
20 matter at issue in today's hearing.

21 Are you familiar with the company, Mr. Muscles
22 Moving Company, LLC?

23 A. Yes.

24 Q. And how did you become aware of the present
25 matter today involving that company?

1 A. As part of my work, on April 18th, 2022,
2 Mr. Muscles Moving Company, LLC, a provisional household
3 goods company, was assigned to me to conduct a
4 comprehensive compliance review. And I met with the
5 carrier for an on-site investigation on
6 April 27th, 2022.

7 Q. Thank you.

8 And when you review a carrier's operations, do
9 you review its status and history at the Commission?

10 A. Yes.

11 Q. Did you do so for Mr. Muscles Moving Company?

12 A. Yes.

13 Q. And when you looked at the company's history at
14 the Commission, did anything seem significant to you?

15 A. Yes. As part of my investigation, I utilized
16 the Commission's SharePoint site to view the company's
17 profile and permit status, and I noticed the company's
18 permit had been cancelled previously by the Commission.

19 Q. Between what dates was Mr. Muscles Moving
20 Company's permit cancelled?

21 A. Between November 5th, 2021, which was for no
22 proof of insurance on file with the Commission, and
23 January 10th, 2022, when the company's provisional
24 permit was reinstated.

25 Q. Okay. And this is where I would normally show

1 you the exhibit, but since we're in the virtual world,
2 it's been provided in advance. So I would like to
3 direct you to Exhibit -- proposed Exhibit TC-1.

4 A. Yes, sir.

5 Q. Let's turn to pages 1 and 2 of the proposed
6 exhibit, which -- actually, what is this first document?

7 A. This is my declaration.

8 Q. Thank you.

9 And did you prepare and sign this declaration?

10 A. Yes.

11 Q. What is the signature date of this declaration?

12 A. June 16th, 2022.

13 Q. And in general, what is this -- what does your
14 declaration document?

15 A. The declaration documents my investigation
16 findings of the company's regulatory compliance with the
17 Commission's rules and standards. It discusses some
18 context around the opening of the investigation. I also
19 summarized the findings of my investigation with
20 reference to my comprehensive investigation report.

21 Q. Okay. And I'd like to hone in on one -- one
22 paragraph discussing your findings.

23 Could you please summarize, for the record here,
24 your findings in paragraph 7 of the declaration?

25 A. Yes. In -- so during the investigation, I

1 discovered that, between November 6th, 2021, and
2 January 9th, 2022, the company operated a total of five
3 times without a valid permit. The company bills of
4 ladings were provided by the carrier to determine when
5 the company conducted those household goods moves while
6 unpermitted.

7 Q. Are there any changes you would like to make to
8 your declaration?

9 A. No.

10 Q. And do you stand by all the statements you made
11 in your declaration?

12 A. Yes.

13 Q. Thank you.

14 Let's now turn to pages 3 to 7 of proposed
15 Exhibit TC-1, which we've discussed as bills of lading
16 before.

17 And I will just ask you, I guess, what is
18 contained in these pages?

19 A. These are copies of the bill of ladings that I
20 obtained during the course of my investigation into
21 Mr. Muscles Moving.

22 Q. And did you collect these bills of lading from
23 the company?

24 A. Yes.

25 Q. How were they obtained from the company?

1 A. They were provided to me in response to a
2 document request.

3 Q. And when were they obtained from the company?

4 A. On April 27th, 2022, during the on-site with the
5 company.

6 Q. Are the images contained in pages 3 to 7 of
7 proposed Exhibit TC-1 true and correct copies of the
8 bills of lading you obtained from the company during
9 your investigation?

10 A. Yes.

11 Q. And what do these bills of lading document?

12 A. The bills of lading document the company
13 operated without Commission authority and while its
14 permit was cancelled. The dates of the unpermitted
15 household goods moves, based on the bills of lading
16 provided by the company, were December 1st, 2021;
17 December 3rd, 2021; December 24th, 2021; and
18 January 2nd, 2022; and January 3rd, 2022.

19 Q. Thank you.

20 Let's now move to the final proposed -- document
21 in proposed Exhibit TC-1, comprising pages 8 to 25 of
22 that document.

23 What is contained in these pages?

24 A. This contains my -- the report of my
25 investigation. So this is the report of my

1 investigation into Mr. Muscles Moving Company.

2 Q. And did you complete this report?

3 A. Yes.

4 Q. What is the review date associated with this
5 report?

6 A. June 1st, 2022.

7 Q. And what does the report document?

8 A. The report documents my investigation of the
9 company's regulatory compliance with the Commission
10 rules and standards and the findings of my
11 investigation.

12 Q. Thank you.

13 So we've already covered the five violations
14 that are alleged in the complaint of RCW 81.80.075,
15 sub 1, that you discovered, but I would now like to walk
16 through the other violations you found, which are also
17 referenced in the complaint.

18 So when you review a carrier, do you look to see
19 if it has performed criminal background checks on each
20 of its employees?

21 A. Yes.

22 Q. And how do you do that?

23 A. Through a document request of the company
24 records in relation to those required criminal
25 background checks.

1 Q. And did you look for criminal background check
2 records here?

3 A. Yes.

4 Q. And did Mr. Muscles Moving Company have those
5 records for all of its employees?

6 A. No.

7 Q. How many instances were there of Mr. Muscles
8 Moving Company lacking records or other evidence that it
9 had performed criminal background checks on its
10 employees?

11 A. Three.

12 Q. And when you review operational records, do you
13 look at records -- look for records of duty status?

14 A. Yes.

15 Q. Can you explain what a record of duty status is?

16 A. A record of duty status is a means of recording
17 and maintaining commercial drivers' hours of service to
18 track the maximum amount of time drivers are permitted
19 to be on duty, which includes driving time.

20 Q. Do you use a specific sample size when looking
21 at records of duty status?

22 A. Yes.

23 Q. What is that sample size?

24 A. In this case, at the time of my investigation,
25 the company had one driver, so the sample size was one

1 driver. And the review period was 30 days of RODS or
2 hours of service.

3 Q. And did you look for records of duty status
4 during this review?

5 A. Yes.

6 Q. Did you find that Mr. Muscles Moving Company was
7 missing records of duty status?

8 A. Yes.

9 Q. How many records of duty status were missing in
10 the sample you examined?

11 A. Thirty days.

12 Q. Thank you.

13 When you review driver records, do you also look
14 at driver qualification files?

15 A. Yes.

16 Q. Did you look for driver qualification files for
17 this company?

18 A. Yes.

19 Q. Did the company have driver qualification files
20 for all of its drivers?

21 A. No, they did not.

22 Q. How many current drivers lacked a driver
23 qualification file when you investigated?

24 A. One.

25 Q. When you review company records, do you look to

1 see if a carrier has maintained the original lease
2 agreements for their term leased vehicles?

3 A. Yes.

4 Q. Did you look for those records in here?

5 A. Yes.

6 Q. Did you find any violations of this requirement
7 to maintain the original lease agreement for term leased
8 vehicles?

9 A. Yes.

10 Q. How many such violations did you discover?

11 A. Two.

12 Q. Now I want to ask you some questions about
13 medical certification.

14 When you look at driver records, do you look at
15 medical records?

16 A. Yes.

17 Q. What medical records do you review as a --
18 during the course?

19 A. I am reviewing the required medical examiner's
20 certificates. These medical cards are required to be
21 obtained as proof that the company drivers are
22 physically qualified to drive commercial motor vehicles.

23 Q. And did you look for those records here?

24 A. Yes.

25 Q. Did you find the necessary medical certificates

1 for all of Mr. Muscles Moving -- Moving Company's
2 drivers? Sorry.

3 A. No.

4 Q. How many drivers operated commercial motor
5 vehicles without the requisite certificate?

6 A. One.

7 Q. And how many trips did those drivers make during
8 the sample period?

9 A. There were 23 occasions that the driver drove a
10 commercial motor vehicle without a valid medical
11 examiner's certificate.

12 Q. When you review company records, do you look to
13 see if the carrier has filed the required annual reports
14 by the required date of May 1st of each year?

15 A. Yes.

16 Q. Did you look for such records here?

17 A. Yes.

18 Q. Did you find any violations of this requirement
19 to file annual reports with the Commission?

20 A. Yes.

21 Q. For which years did the company fail to file its
22 annual reports by the required date?

23 A. For the years 2020 and 2021.

24 Q. When you review a carrier's files, do you look
25 at vehicle maintenance records?

1 A. Yes.

2 Q. Do you look to see whether the carrier is using
3 vehicles that are periodically inspected?

4 A. Yes.

5 Q. Did you look to see if Mr. Muscles Moving
6 Company's vehicles were periodically inspected?

7 A. Yes.

8 Q. Were any of the company's vehicles not
9 periodically inspected?

10 A. Not -- yes.

11 Q. And how many vehicles were -- were not so
12 inspected?

13 A. One truck.

14 Q. Okay. Last violation here.

15 When you review a carrier's operations, do you
16 look to see if it keeps the minimum records of
17 inspection and vehicle maintenance?

18 A. Yes.

19 Q. Did you look for those records here?

20 A. Yes.

21 Q. Was Mr. Muscles Moving Company missing
22 maintenance files for any of its vehicles?

23 A. Yes.

24 Q. And how many?

25 A. One.

1 Q. Thank you.

2 Now, did your investigation result in a proposed
3 safety rating?

4 A. Yes.

5 Q. What was that rating?

6 A. Proposed conditional based on the critical
7 violations identified.

8 Q. And what violations -- so when you tallied up
9 the violations, which violations led to the conditional
10 rating?

11 A. There were two violations identified in the
12 report: one critical violation of 395.8(a)(1) and one
13 critical violation of WAC 480-15-555 that has a CFR
14 equivalent of 392.2.

15 Q. And in your assessment, what is the significance
16 of these critical violations?

17 A. Critical violations are those identified where
18 noncompliance is indicative of breakdowns in a company's
19 safety management controls and demonstrate a pattern of
20 noncompliance. These violations are serious and are
21 linked to higher than average accident rates.

22 Q. And how were the results of your investigation
23 communicated to the company?

24 A. On June 1st, 2022, I held a closing interview
25 with the owner of the company, Alexander Conner, where I

1 provided him a copy of the final report. We went over
2 the entire report in detail to include parts A, B, the
3 recommendations and requirements, the safety fitness
4 rating, the safety management plan, or the SMP, was also
5 provided to Mr. Conner and discussed in detail with him.

6 Q. Do you have any changes you would like to make
7 to your report?

8 A. No.

9 Q. Thank you.

10 MR. TEIMOURI: Your Honor, at this time, I
11 would like to move to admit proposed Exhibit TC-1,
12 including Tracy Cobile's declaration dated June 16th,
13 2022, again, pages 1 to 2, the bills of lading indicated
14 on pages 3 to 7, as well as Staff's investigation report
15 in this matter, comprising pages 8 to 25, into evidence.

16 JUDGE PEARSON: Mr. Conner, do you have any
17 objection to admitting these exhibits into evidence?

18 MR. CONNER: No, Your Honor.

19 JUDGE PEARSON: Okay. Thank you.

20 Then those are admitted into the record and
21 marked as Exhibit TC-1.

22 (Exhibit TC-1 admitted.)

23 MR. TEIMOURI: Thank you, Your Honor. Staff
24 has no further questions of Special Investigator Cobile
25 at this time.

1 JUDGE PEARSON: Great. Thank you.

2 Mr. Conner, did you have any questions for
3 Staff's witness?

4 MR. CONNER: Can you say that one more time?
5 Did you ask if I have any objection?

6 JUDGE PEARSON: No. Do you have any
7 questions for Ms. Cobile?

8 MR. CONNER: No questions at the moment.

9 JUDGE PEARSON: Okay. Thank you.

10 So at this point, Mr. Conner, we can hear
11 from you. If you will please raise your right hand and
12 I will swear you in.

13 (Alexander Conner sworn.)

14 JUDGE PEARSON: Okay. Thank you. So you
15 can just go ahead and respond to the allegations in
16 Staff's complaint and Ms. Cobile's testimony, if you
17 want to explain the circumstances that led to the
18 violations occurring, what you've done to correct the
19 violations, what is the status of your safety management
20 plan, anything that you think that I should consider in
21 making my decision.

22 MR. TEIMOURI: Quickly, I don't mean to
23 interrupt, Your Honor, Mr. Conner. But we also intend
24 to present Jason Sharp as a witness. Would that be --
25 would you like us to do that first, or after?

1 JUDGE PEARSON: Oh, typically, you do it
2 after, to give the final recommendation once you've
3 heard from the company.

4 MR. TEIMOURI: Thank you. Sorry again for
5 interrupting.

6 JUDGE PEARSON: That's okay.

7 Mr. Conner, you can go ahead.

8 MR. CONNER: So all the -- I admit to all
9 the violations that Tracy found. You know, obviously, I
10 did -- I don't dispute any of those.

11 I would like to say that I never had a
12 business before. This is -- you know, I -- I wasn't in
13 business -- I wasn't in the moving business before
14 COVID. Once COVID started, I kind of started helping
15 people move. It started as a thing of -- because it's
16 something that I've done in the past, and I know people
17 were still needing to move during COVID.

18 So it's something that I kind of started to
19 help people out, and because both my industries that I
20 was in, I was personal training and bartending at the
21 time, and both of those industries got hit really hard,
22 and I wasn't working.

23 So I started the moving company. What I
24 didn't know is, there's a big difference of, you know,
25 just doing jobs for people, you know, donation-based and

1 then running a real company.

2 I'm doing it by myself. That's not an
3 excuse. I don't -- I don't -- I take full
4 accountability for all the violations. But it is
5 something that I am really working towards, is getting
6 my paperwork right and getting my books right because
7 one thing that I noticed that it's -- it's enough to do
8 the job, you know, but doing the job -- a good job for
9 people isn't always enough.

10 And that's what I'm learning, is that
11 there's a lot of stuff that happens on the back end that
12 I'm really trying to, you know, put my sights towards
13 and really trying to correct.

14 And -- and yeah, I -- I don't have too much
15 else to say.

16 JUDGE PEARSON: Can you let me know the
17 status of your safety management plan? Have you been
18 able to provide that to the Staff to review?

19 MR. CONNER: Yeah. So with the safety
20 management plan, I was going back and forth with Jason.
21 And I thought I was getting close, but as I was getting
22 closer to the date, I realized that there was a lot more
23 stuff that I was missing. And I didn't think that --
24 well, I wasn't able to provide everything within the
25 time.

1 I'm more than willing to try to get -- my
2 driver qualification profile was the thing that I was
3 kind of struggling with -- you know, for the past day
4 that I wasn't able to get.

5 And yeah, so I don't know if there's any
6 leniency with still providing the safety management
7 plan. I don't know if that has anything to do at this
8 point or if it's beating a dead horse. But if there was
9 something that I can correct, I would be more than
10 willing to correct it, and -- if there was a time frame
11 given.

12 JUDGE PEARSON: Okay. Thank you.

13 I will just ask, Mr. Teimouri, can you
14 remind me what our deadline is in this case?

15 MR. TEIMOURI: For -- for cancellation?

16 JUDGE PEARSON: Yes.

17 MR. TEIMOURI: I believe it's August 1st.

18 JUDGE PEARSON: August 1st.

19 MR. TEIMOURI: Yeah.

20 JUDGE PEARSON: Which is a Monday.

21 MR. TEIMOURI: Yes. And Staff would need to
22 receive and approve it by July 29th, have it
23 realistically be available for the 1st before the
24 cancellation takes place.

25 JUDGE PEARSON: Right.

1 MR. TEIMOURI: July 29th is kind of the
2 informal deadline for that.

3 JUDGE PEARSON: Right. And that -- but
4 there would still have to be time for me to draft an
5 order as well.

6 MR. TEIMOURI: As well, yeah.

7 JUDGE PEARSON: Okay. So, Mr. Conner, to
8 answer your question, you have almost a week left to get
9 that finished. If you could get it filed by the close
10 of business on the 28th, that would give Staff time to
11 review it and me time to prepare an order.

12 Because we have until close of business on
13 August 1st, correct, Mr. Teimouri?

14 MR. TEIMOURI: That's correct.

15 JUDGE PEARSON: And I would assume that
16 Staff's review would be expeditious because they've been
17 working with the company, going back and forth, so that
18 should be sufficient time, you think?

19 MR. TEIMOURI: Yeah. Staff has stated to me
20 that July 29th would be workable for it. So if the
21 Court needs one day prior to that, then that should
22 still work. And my understanding is that midnight
23 August 1st is when the technical cancellation would take
24 place, so there's a little time there.

25 JUDGE PEARSON: Okay. So, Mr. Conner, if

1 that answers your question, you have until 5:00 p.m.
2 next Thursday, July 28th, to continue working with Staff
3 and submit an acceptable safety management plan.

4 MR. CONNER: Yes, ma'am.

5 JUDGE PEARSON: Okay. Is there anything
6 else that you'd like to add before we move on?

7 MR. CONNER: No, nothing at the moment.
8 Well, there is one more thing. I was talking to Tracy,
9 and she was saying -- she was talking about how serious
10 it was that I operated without -- without the permit,
11 when my permit got cancelled.

12 And that's one thing that I just really
13 wanted to clear up as well, is -- and this is not an
14 excuse. I'm not making an excuse, but my truck was
15 stolen July prior, in July 2021.

16 And when the truck was stolen, you know, I
17 didn't have the means to go out and buy another truck
18 right away. I had to kind of go through the insurance
19 process.

20 They -- you know, because they were in
21 COVID, it took a little bit longer. So I ended up
22 working for, actually, a friend who has another moving
23 company. And during that time, the only thing that I
24 was really focused on was, you know, trying to get
25 another truck and getting the truck insured.

1 I was aware that my permit was going to
2 cancel, but because I had the proper insurance -- and it
3 was getting cancelled because I didn't have the proper
4 insurance.

5 But because I had bought a truck, I still
6 had my cargo insurance, and I had -- I had my -- my
7 insurance for the truck, I thought that I was going to
8 be okay to operate under those conditions.

9 But I learned -- you know, ignorance in law
10 is no excuse, but I just wanted to say that I didn't
11 intentionally operate without a permit.

12 JUDGE PEARSON: Okay. Thank you. I
13 appreciate that.

14 Mr. Teimouri, do you have any questions for
15 Mr. Conner?

16 MR. TEIMOURI: Not at this time. Thank you.

17 JUDGE PEARSON: One moment. Sorry about
18 that. My dogs got excited.

19 All right. Mr. Teimouri, if you would like
20 to call Mr. Sharp, we can do that at this time.

21 MR. TEIMOURI: Yes. That would be great --
22 that would be great, Your Honor. Thank you.

23 JUDGE PEARSON: Good morning, Mr. Sharp. If
24 you could raise your right hand, I will swear you in.

25 (Jason Sharp sworn.)

1 JUDGE PEARSON: All right. Go ahead,
2 Mr. Teimouri.

3 MR. TEIMOURI: Thank you.
4

5 E X A M I N A T I O N

6 BY MR. TEIMOURI:

7 Q. Mr. Sharp, would you please state your name and
8 spell your last name for the record.

9 A. Jason Sharp, S-h-a-r-p.

10 Q. And what is your current position?

11 A. I'm the motor carrier safety supervisor at the
12 Washington Utilities and Transportation Commission.

13 Q. And what are your responsibilities in that
14 position?

15 A. I supervise or I assign safety investigations to
16 our investigations team. I review the investigative
17 reports, and issue recommendations based on the findings
18 of those reports, consistent with Federal and State
19 rules and the Commission's enforcement policy.

20 Q. And what kind of training have you received for
21 your role as motor carrier safety supervisor?

22 A. So prior to becoming the supervisor, I was also
23 a safety investigator, similar to Tracy Cobile,
24 receiving training through the Federal Motor Carrier
25 Safety Administration as well as the Commercial Vehicle

1 Safety Alliance to conduct commercial vehicle
2 inspections.

3 So I've been at this for nearly five years in
4 the commercial vehicle enforcement business.

5 Q. And how long have you been in your current
6 position?

7 A. Near five years.

8 Q. About five years. Okay.

9 I would now like to discuss the safety rating
10 determination in this case.

11 Are you familiar with Mr. Muscles Moving
12 Company, LLC?

13 A. Yes, I am.

14 Q. And how did you become aware of the present
15 matter today involving that company?

16 A. I had assigned the compliance investigation to
17 Investigator Coble and reviewed the report and issued
18 the follow-on recommendations as a result.

19 Q. And have you reviewed what's been labeled and
20 entered into evidence as Exhibit TC-1 in this matter?

21 A. TC-1, yes. I have it pulled up here.

22 Q. Okay. Great.

23 And are you familiar with how the safety rating
24 was determined in this case?

25 A. Yes. The company received a proposed

1 conditional safety rating, as Investigator Cobile
2 testified to. And the way that the Commission
3 determines safety fitness rating for the performance
4 that our -- the motor carriers have is based off of
5 adopting the safety fitness standards through the
6 Federal Motor Carrier Safety Administration and USDOT.

7 Those are adopted through reference in Title 49,
8 parts 385. And the way that an overall determination of
9 safety fitness is determined is based off of the motor
10 carrier's performance through six different factors.

11 So to kind of clarify, an ease of reference to
12 those that are on this call, if we look at pages 24 and
13 25 of Exhibit TC-1, that -- that page is titled "Safety
14 Fitness Rating Explanation." And so it highlights the
15 six factors that are reviewed.

16 So in general -- factor one is general, which
17 includes insurance requirements; factor two is driver
18 qualifications; factor three is operational and driving,
19 which contains drivers' hours of service rules; factor
20 four is related to vehicle maintenance; factor five is
21 for hazardous materials, which in this case is not
22 applicable because the carrier does not haul hazardous
23 materials; and then factor six is the accident ratio for
24 the carrier.

25 And if we look at that page on 24, you'll see

1 that factor three has two separate violations listed,
2 which gave that factor an overall rating of
3 unsatisfactory. Okay? The remaining of the six factors
4 are in an either nonapplicable or satisfactory rating.

5 And so when you look at the six factors all
6 together, there's a formula on page 25. So the next
7 page, which shows the overall safety fitness rate and
8 how that falls in.

9 So with one factor receiving an unsatisfactory
10 rating, no additional factors were negatively affected.
11 The overall rating of the carrier is determined to be
12 conditional.

13 Q. And so that -- that was -- thank you for that
14 helpful explanation. That process that you outlined was
15 followed, then, in making that determination through
16 FMCSA adopting UTC, those factors?

17 A. Yes.

18 Q. And since the date the company received a
19 notification of that proposed conditional rating, has
20 the company requested an upgrade to its safety rating by
21 way of submitting a safety management plan?

22 A. Yes. Mr. Conner has submitted a couple of
23 drafts of his plan, and as recently as Tuesday, he and I
24 had a technical assistance call, going over the
25 materials, to give him some clarity and pointing him to

1 some additional resources that he could utilize while
2 he's putting his plan together.

3 Q. And based on the testimony you provided, what is
4 the status recommendation as it relates to the company's
5 permit at this time?

6 A. At this time, Staff would recommend that the
7 Commission continue on with the cancellation process.
8 We are under a strict guideline of 60 days from the
9 notice of the proposed rating to cancel the operating
10 authority without -- that is the rule.

11 So we don't have any flexibility to wiggle
12 beyond that window. But Staff will continue to be
13 available and make timely responses to the company's
14 request for upgrade and acceptance of its safety plan.

15 Q. Thank you.

16 I'd now like to move to ask you some questions
17 about penalties in this case.

18 Does Staff have any recommendations about
19 whether the Commission should assess penalties against
20 Mr. Muscles Moving Company for the violations documented
21 by Special Investigator Cobile?

22 A. Yes.

23 Q. And what is that recommendation?

24 A. Let me look here, just so I don't try to shoot
25 from memory. So overall, Staff recommends that the

1 Commission impose a penalty of \$8,000, which is
2 consistent with the Commission's enforcement policy
3 broken down as follows:

4 There were five violations of RCW 81.80.075(1)
5 that were identified for operating as a household goods
6 mover after having its permit cancelled. Staff could
7 seek up to \$5,000 per occurrence; however, we will
8 recommend a \$1,000 per occurrence penalty, for a total
9 of 5,000 for the five identified violations.

10 For the safety violations associated with this
11 report, the company had three violations of
12 WAC 480-15-555 for failing to retain or maintain
13 criminal background checks for prospective employees.
14 Staff recommends a \$100 per occurrence penalty for these
15 critical-type violations, for a total of \$300.

16 For the 23 violations of 49 CFR, part 391.45(a),
17 for using a driver not medically certified, Staff
18 recommends a \$100 per occurrence penalty for these
19 critical-type violations, for a total of \$2,300.

20 For one violation of 49 CFR, part 391.51(a), for
21 failing to maintain a driver qualification file on its
22 commercial driver, Staff recommends a \$100 penalty for
23 this critical-type violation.

24 For the 30 violations of Title 49 CFR
25 395.8(a)(1), for failing to require a driver to prepare

1 a record of duty status, Staff recommends a \$100 per
2 category penalty of these critical violations.

3 For one violation of Title 49 CFR,
4 part 396.3(b), for failing to maintain a vehicle
5 maintenance file, Staff recommends a \$100 penalty for
6 this critical-type violation.

7 And finally, for one violation of Title 49 CFR,
8 part 396.17(a), for using a commercial motor vehicle not
9 periodically inspected, Staff recommends a \$100 penalty
10 for this critical-type violation.

11 So between the recommended \$5,000 for the
12 violations of RCW 81.80.075(1) and the safety violations
13 identified during the compliance review, that totals
14 \$8,000.

15 And so Staff would recommend that, if the
16 Commission were to cancel the company's permit due to
17 the company not submitting an acceptable safety
18 management plan, then Staff would recommend that the
19 entire \$8,000 penalty be suspended for a period of two
20 years and then waived, on condition that the company
21 cease and desist operations as a household goods moving
22 company without first obtaining a permit from the
23 Commission.

24 However, should the company submit an acceptable
25 safety management plan prior to its cancellation or have

1 its provisional authority cancelled and then reapply
2 for -- or apply for reinstatement after the fact within
3 the two-year period, then Staff would recommend that the
4 company would need to submit an acceptable safety
5 management plan still and pay 3,000 of the recommended
6 \$8,000 penalty, with a remaining \$5,000 suspended for
7 the remainder of the two-year period and then waived, on
8 the conditions that Staff perform a comprehensive safety
9 investigation at least six months after the date of the
10 order or the company's reinstatement; two, the company
11 maintains a conditional safety rating; or three, the
12 company does not receive any repeat critical violations
13 upon reinspection.

14 Q. Thank you for that detailed explanation.

15 Why does Staff recommend that the Commission
16 impose penalties in the manner you just described?

17 A. Staff recommends, you know, should the company
18 be cancelled, that there be a suspended penalty to
19 incentivize the company to -- to cease and desist and
20 not operate without a permit.

21 You know, we're looking for compliance, and we
22 feel that a penalty of that magnitude would incentivize
23 the company to comply with Commission regulations.

24 And then also, you know, considering if the
25 company is -- is able to maintain its provisional

1 permit, you know, we -- with still a large suspended
2 penalty of \$5,000, we think that that is, again, another
3 incentive to -- to the company to comply with our rules.

4 Q. And you mentioned that -- that if the company
5 were to get a safety management plan -- because they
6 don't currently have a safety management plan accepted
7 prior to cancellation, does Staff continue to be working
8 with the company between now and August 1st towards
9 reaching an acceptable plan?

10 A. Yes.

11 Q. Okay. And I'd like to ask you just a few
12 questions quickly on the company's -- in your view, the
13 company's awareness that it was operating without a
14 permit.

15 Have you reviewed the documents in the company's
16 reinstatement docket, which is TV-210917?

17 A. Yes.

18 Q. And these are not in the record, but I believe
19 they were just raised by some of the company's
20 statements.

21 When was the company's permit cancelled for lack
22 of insurance?

23 A. The permit was cancelled, I believe, on
24 November 5th. That was in a separate docket, however.
25 The cancellation for insurance was in Docket TV-210846

1 and --

2 Q. And when --

3 A. -- the date of that cancellation was the
4 5th of -- yeah, November, 2021.

5 Q. Okay. And when did the company apply for
6 reinstatement in Docket 210917? TV-210917?

7 A. The Commission received the company's
8 application to reinstate on November 24th, 2021.

9 Q. And did the company provide a letter in support
10 of its application in that docket?

11 A. Yes. There was a letter received on
12 December 29th, 2021.

13 Q. Okay. And do you remember the dates on which
14 the company alleged to have operated without a permit?

15 A. I'm going to refer to TC-1 again. I know that
16 those dates are listed in -- I'll reference the page
17 here once I get to it.

18 Q. It's all right. Take your time.

19 A. Yeah. On page 11 of TC-1, it's under
20 violation 7, and the dates that the company was cited
21 for operating without authority were December 1st, 2021,
22 December 3rd, and December 24th, as well as January 2nd
23 and 3rd of 2022.

24 Q. So in your opinion, based on your review of the
25 records in that docket, was the company aware of the

1 fact that it did not possess operating authority on the
2 dates it operated as alleged in the complaint?

3 A. What I see is that there was an application to
4 reinstate that was submitted through that time frame;
5 however, the company was not granted authority to
6 operate at that time. And the company should have known
7 that it was, you know, not eligible to operate as a
8 household goods company during that time.

9 Q. Thank you very much.

10 MR. TEIMOURI: I have no more questions for
11 Mr. Sharp at this time, Your Honor.

12 JUDGE PEARSON: Mr. Conner, do you have any
13 questions for Mr. Sharp?

14 MR. CONNER: No questions. No, Your Honor.

15 JUDGE PEARSON: Okay. Thank you. And I
16 would just ask, as with the last time we had a hearing
17 of this nature, Mr. Sharp, if you could send me an email
18 that contains your recommendation unless you would
19 rather wait until the 28th to see if the company is able
20 to come into compliance and also filing a memo in the
21 docket on the 29th.

22 MR. SHARP: Yes, Judge Pearson. I would --
23 I would ask that I just be able to file one evaluation
24 and recommendation to the docket for your review at the
25 end.

1 JUDGE PEARSON: Okay. That sounds great.
2 Then we will do that. I will hold off taking any action
3 or beginning to -- for my decision until after the close
4 of business on July 28th, to give the company an
5 opportunity to come into compliance.

6 So, Mr. Conner, the expectation is that you
7 will continue to work with Staff, which it sounds like
8 you are both agreeable to do, and continue trying to get
9 the safety management plan up to Staff's standards so
10 that it can be approved, and then I will make my
11 decision based on the recommendation that I receive from
12 Staff on Friday, July 29th.

13 MR. CONNER: Yes, Your Honor. Thank you.

14 JUDGE PEARSON: Okay. And thank you. I
15 appreciate everyone being here today. Is there anything
16 else that we need to discuss before we adjourn?

17 MR. CONNER: The only thing that I wanted to
18 ask is, as far as the paying the violation, is there any
19 type of payment plan? Is it all due up front? Or is
20 there -- what are the options that I can go about paying
21 it?

22 JUDGE PEARSON: Yes. You can set up a
23 payment plan with Staff that the Commission would then
24 approve by order. But we often encourage --

25 MR. CONNER: Thank you.

1 JUDGE PEARSON: Yes, we encourage small
2 businesses to work with Staff to set up payment plans
3 that will work with them.

4 MR. CONNER: Yes, ma'am.

5 JUDGE PEARSON: All right. Anything from
6 Staff?

7 MR. TEIMOURI: Nothing further from Staff.
8 If you would like a closing argument, but I don't think
9 we need to make that at this time unless you want it.

10 JUDGE PEARSON: No, that's okay. I
11 appreciate that, though.

12 All right. Well, thanks again, and we are
13 adjourned. Have a great day, everyone.

14 (Adjourned at 10:44 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF THURSTON

I, Tayler Garlinghouse, 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.



Tayler Garlinghouse
Tayler Garlinghouse, CCR 3358