

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES**

PENALTY ASSESSMENT: TV-210641

PENALTY AMOUNT: \$4,300

Ed's Moving & Storage, Inc.
P.O. Box 39340
Lakewood, WA 98496

The Washington Utilities and Transportation Commission (Commission) believes Ed's Moving & Storage, Inc., (Ed's Moving or Company) violated Washington Administrative Code (WAC) 480-15-530, Public Liability and Property Damage Insurance; WAC 480-15-555, Criminal Background Checks for Prospective Employees; and WAC 480-15-570, Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 391 – Qualification of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On August 26, 2021, Commission Motor Carrier Investigator Edward Steiner completed a follow-up safety investigation of Ed's Moving and documented the following violations:

- **One violation of 49 CFR § 391.15(a) – Using a disqualified driver.** Ed's Moving allowed disqualified driver Talamoa Tupua to operate a commercial motor vehicle on August 10, 2020.
- **Thirty-two violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** The Company utilized drivers who were not medically examined or certified. Philip Faamama drove 31 times between May 3, 2021, and June 23, 2021, and Toetu Gasetoto drove one time on May 13, 2021.
- **Four violations of 49 CFR § 391.51(a) – Failing to maintain driver qualification file on each driver employed.** Ed's Moving failed to maintain driver qualification files for Philip Faamama, Richard Augkhopinee, Toetu Gasetoto, and Talamoa Tupua.
- **One violation of WAC 480-15-530(3) – Public liability and property damage insurance.** The Company failed to have a current Form E on file with the Commission.
- **Four violations of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check prior to hiring employees for a household goods carrier in the state of Washington as required.** The Company failed to conduct criminal background checks on employees it intended to hire. Jackie Johnson was hired on November 15, 2018, and a criminal background check was not conducted until June 24, 2021; Eric Branch was hired on June 8, 2021, and a criminal background check was

not conducted until June 23, 2021; Janae Baker was hired April 19, 2021, and a criminal background check was not completed until June 23, 2021; and Antonio Roa was hired March 10, 2021, and a criminal background check was not conducted until June 23, 2021.

- **One violation of WAC 480-15-555(3) - No carrier may hire a person who has been convicted of any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance within the past five years.** The Company hired Nicholas Lund, who was convicted of felony assault within the past five years.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violations are to the public.** The violations noted are serious and potentially harmful to the public. Household goods moving companies that: (1) use disqualified drivers, (2) use drivers not medically examined and certified, (3) fail to maintain driver qualification files, (4) fail to keep proper liability and property damage insurance on file, (5) fail to conduct background checks on employees, and (6) hire employees who have been convicted of assault in the last five years put their customers, their customers' belongings, and the traveling public at risk. These violations present significant safety concerns.
2. **Whether the violations were intentional.** Considerations include:
 - Whether the Company ignored Commission staff's (Staff) previous technical assistance; and
 - Whether there is clear evidence through documentation or other means that shows the Company knew of and failed to correct the violation.

On February 29, 2016, the Commission received the Company's application for acquisition of Ed's Moving's household goods moving authority. In the application, Robert Bloom, General Manager of Ed's Moving, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On November 17, 2016, Robert Bloom attended household goods training provided by Staff and acknowledged receiving training pertaining to motor carrier safety regulations.

On April 17, 2019, and October 27, 2020, Jackie Johnson attended household goods training provided by Staff and acknowledged receiving training pertaining to motor carrier safety regulations.

On October 12, 2020, Staff completed a routine safety investigation of Ed's Moving and documented three violations of 49 CFR § 391.45(a), five violations of 49 CFR § 391.51(a), one violation of WAC 480-15-530(3), and 13 violations of WAC 480-15-555.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Ed's Moving did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company has not provided Staff with evidence that the violations have been corrected.
6. **The number of violations.** Staff identified 10 violation types with a total of 47 individual occurrences during the follow-up safety investigation of Ed's Moving. Of those violations, Staff identified six violation types with 43 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Ed's Moving traveled 42,405 miles in 2020. These safety violations presented a public safety risk.
8. **The likelihood of recurrence** Staff provided technical assistance with specific remedies to help the Company assess how well its safety management controls support safe operations and how to begin improving its safety performance. While the Company was cooperative with Staff and expressed a desire to come into compliance, four of the violation types discovered in the follow-up safety investigation were repeat violations identified in 2020. Absent a commitment to prioritize safe operations, the violations are likely to reoccur.
9. **The Company's past performance regarding compliance, violations, and penalties.** On December 5, 2018, the Commission cancelled the Company's household goods moving authority for failing to file an annual report and pay regulatory fees in Docket TV-180772. The Company filed its annual report and paid regulatory fees on December 1, 2018. On March 25, 2019, Ed's Moving's household goods moving authority was reinstated in Docket TV-190189.

On November 16, 2020, the Commission issued a Notice of Intent to Cancel and Notice of Brief Adjudicative Proceeding in Docket TV-200875. On October 28, 2020, the Commission assessed a \$17,500 penalty against Ed's Moving in Docket TV-200876 for safety violations of WAC 480-15-555, WAC 480-15-560, and WAC 480-15-570. On December 9, 2020, the Commission entered Order 01, which consolidated Dockets TV-200875 and TV-200876, upgraded the Company's safety rating to "Conditional," assessed a \$7,600 penalty against Ed's Moving, and suspended a \$3,800 portion of the penalty for a period of two years, subject to conditions. On January 15, 2021, the Company paid the \$3,800 portion of the penalty in full.

10. **The Company's existing compliance program.** Jackie Johnson, General Manager of Ed's Moving, is responsible for the Company's safety compliance program.

11. **The size of the Company.** Ed's Moving currently operates five commercial motor vehicles and employs three drivers. The Company reported \$1,331,004 in gross revenue for 2020.

The Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation.¹ The Commission generally will assess penalties by violation category, rather than per occurrence, for first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also for repeat violations of critical regulations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Ed's Moving \$4,300, calculated as follows:

- One violation of 49 CFR § 391.15(a) – Using a disqualified driver. The Commission assesses a penalty of \$100 for this violation.
- Thirty-two violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this repeat violation, for a total of \$3,200.
- Four violations of 49 CFR § 391.51(a) – Failing to maintain driver qualification file on each driver employed. The Commission assesses a penalty of \$100 for each occurrence of this repeat violation, for a total of \$400.
- One violation of WAC 480-15-530(3) – Public liability and property damage insurance. The Commission assesses a penalty of \$100 for this repeat violation.
- Four violations of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check prior to hiring employees for a household goods carrier in the state of Washington as required. The Commission assesses a penalty of \$100 for each occurrence of this repeat violation, for a total of \$400.
- One violation of WAC 480-15-555(3) - No carrier may hire a person who has been convicted of any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance within the past five years. The Commission assesses a penalty of \$100 for this violation.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

¹ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

Your penalty is due and payable now. If you believe any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for any or all of the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of the penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violation(s) or for mitigation of the penalty must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. *See* RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation(s) or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of their decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violation(s).
- Admit the violations but request mitigation of the penalty amount.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, PO Box 47250, Olympia, Washington 98504-7250.

If you do not act within 15 days, the Commission may take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Lacey, Washington, and effective September 23, 2021.

/s/Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-210641

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed. I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violations occurred and enclose \$4,300 in payment of the penalty.

2. **Contest the violation(s).** I believe that the alleged violation(s) did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR b) I ask for a Commission decision based solely on the information I provide above.

3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”