

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment	)	DOCKET TV-061927
Against	)	
	)	ORDER 01
CHIPMAN MOVING & STORAGE, INC.	)	
	)	
in the Amount of \$1,000	)	ORDER GRANTING
	)	MITIGATION IN PART
	)	
.....	)	

1     **Penalty:** On January 12, 2007, the Washington Utilities and Transportation Commission (Commission) assessed a penalty in the amount of \$1,000 against Chipman Moving & Storage, Inc. (“Chipman”) for alleged violations of WAC 480-15-570 and 49 C.F.R. § 382.301(a), which require that no employer shall allow a driver, whom the employer intends to hire or use, to perform safety-sensitive functions unless the employer has received a negative pre-employment controlled substances test result for that driver. Specifically, the Commission alleged that Chipman failed to receive negative pre-employment controlled substance test results for two drivers who were operating company vehicle.

2     **Factual Basis:** On October 30 and 31, 2006, the Motor Carrier Safety Section Staff (Staff) conducted a routine carrier review of Chipman’s terminal safety records and equipment. As a result of this review, Staff found that there was no record of a negative pre-employment controlled substance test result for two drivers who were operating motor vehicles for the company. One driver had been hired on February 5, 2006, and his first drive was February 10, 2006. The second driver was hired December 9, 2005, and his first trip was December 27, 2005. As a result of these alleged violations, Staff recommended assessment of a penalty of \$1,000.

3     **Petition for Mitigation:** On January 30, 2007, Mr. Jeff Suth, Chipman’s current general manager, filed a request for mitigation and waiver of hearing. Mr. Suth stated that he had hired both of the employees in question, but was unaware of the legal requirement for a preemployment substance abuse screening. He asserts that he was

new to the operations manager position and had previously been doing sales in another state. He asked that the Commission reconsider the penalty assessment due to his ignorance of the legal requirement.

- 4 **Answer:** On February 5, 2007, Commission Staff responds that the Commission should deny the petition for mitigation. Staff asserts that the application should be denied because Chipman did not deny that the violations occurred and because there are no exceptions to the pre-employment testing requirement for ignorance of the law. Staff asserts that Chipman is responsible for understanding and complying with regulations that apply to it as a household goods carrier, including the testing requirement. Moreover, Staff points out that this regulation serves to protect passengers and the public.
- 5 **Bench Request:** On March 7, 2007, the Commission issued a bench request for information from the parties about Chipman's history of compliance with Commission motor carrier safety rules over the last three years. Staff responded that it had conducted no other compliance review for Chipman since May 15, 2001. Attached to the bench request response were responses Chipman made to the most recent audit results. These responses showed that Mr. Suth was new to the position of General Manager with the company and did not know about the pre-driving controlled substance testing requirement; that Chipman had no reportable accidents during 2006 up until the time of the review; and that Mr. Suth had put in place several safeguards to improve the company's motor carrier safety rule compliance.
- 6 **Payment:** On February 22, 2007, Chipman paid the penalty assessment in full, but did not withdraw its request for mitigation.
- 7 **Commission Decision:** The Commission grants the application for mitigation in part.
- 8 The Commission generally regards ignorance of motor carrier safety rules as inadequate to support mitigation of penalties for violation of the rules. The applicable portion of 49 CFR §382.103 states that the pre-employment substance abuse testing applies to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any state. In addition, that section states that prior to the first time a driver performs safety sensitive functions for an employer,

the driver shall undergo testing for controlled substances as a condition prior to being used.

- 9 However, the circumstances in this case warrant some mitigation of the penalty. Chipman's manager, Mr. Suth, acknowledged that the violations occurred, but he provided a full report of the actions the company is taking under his newly assumed management role to ensure future compliance and he advised that the company's actual safety record over the year prior to the Staff review was a good one. In addition, the Commission has no evidence of a lengthy history of continuing violations of the type alleged in this penalty assessment case, because the last review occurred in May 2001.
- 10 The Commission concludes that the facts in this case support mitigation of \$300 of the penalty. Partial mitigation takes into account Mr. Suth's newness to management as well as the efforts the company is making to improve its compliance, while continuing to impose a significant penalty that registers the seriousness with which the Commission takes its mandate to protect the safety of the traveling public.

**ORDER**

- 11 The Commission orders that the penalty of \$1,000 assessed against Chipman be reduced to \$700 and will refund \$300 of the \$1,000 penalty paid by Chipman on February 22, 2007.

DATED at Olympia, Washington, and effective March 14, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN  
Executive Secretary