

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO BENCH REQUEST

DATE PREPARED: May 31, 2018
DOCKET: TV-180213
REQUESTER: Bench

WITNESS: Michael Dotson
RESPONDER: Michael Dotson
TELEPHONE: (360) 664-1223

BENCH REQUEST NO. 1:

Washington Administrative Code (WAC) 480-15-302 provides in relevant part:

The commission will grant provisional authority to any applicant that meets the following criteria:

...

(2) The application does not contain any indication of fraud, misrepresentation, or erroneous information.

...

(8) Commission staff has completed a criminal background check on each person named in the application associated with the proposed moving company.

(a) The commission will not grant provisional authority if any named person has, within the past five years, 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.

WAC 480-07-110(1) provides that the Commission “may grant an exemption from, or modify the application of, any of its rules in individual circumstances if the exemption or modification is consistent with the public interest, the purposes underlying regulation, and applicable statutes.”

WAC 480-07-110(2)(c) describes the standard for determination, as follows:

Standard for determination. The commission uses the public interest standard to determine whether to grant an exemption from, or modification to, a commission rule. Factors the commission may consider in making this determination include whether the rule imposes an undue hardship on the requesting person of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule to the requesting person would be contrary to the underlying purposes of the rule and the public interest.

See also WAC 480-15-035.

Please explain in detail why Commission Staff is recommending an exemption from WAC 480-15-302(2) and (8)(a) in this case, and how the circumstances satisfy the standard in WAC 480-07-110 and WAC 480-15-035 for granting the exemption.

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RESPONSE:

In March 2018, Cameron Brewer applied for authority to engage in business as a household goods mover under the trade name Reliance Moving. Commission Staff, when processing the application, discovered that Mr. Brewer failed to list a California petty theft conviction entered in August 2017. Mr. Brewer remedied that error by amending the application to include the conviction, telling Staff that he had simply forgot about it.

Staff recommended that the Commission deny the application based on WAC 480-15-302(8)(a) and WAC 480-15-305(2), which both provide for the denial of any application where a named person has been convicted of certain crimes within five years of the date of the application. Theft is one of these crimes.

Mr. Brewer asked for a hearing on the denial, and, at that hearing, he essentially requested an exemption to the relevant WACs. He explained that he only received notice of the petty theft charge against him by mail after moving to Washington.¹ He testified that he had not committed the crime,² which he believed involved the theft of a bottle of alcohol from a store,³ and that he plead guilty to the offense because it was not financially feasible to return to California and contest the matter.⁴ Mr. Brewer, on cross, testified that he had received no jail time or probation for the offense.⁵

Based on Mr. Brewer's representations about the crime, his conviction, and the effects of that conviction, Staff recommended that the Commission grant Mr. Brewer's request for an exemption.

The Commission has asked Staff to "explain in detail why Commission Staff is recommending an exemption from WAC 480-15-302(2) and (8)(a) in this case, and how the circumstances satisfy the standard in WAC 480-07-110 and WAC 480-15-035 for granting the exemption."

After receiving the Commission's Bench Request, Staff looked anew at Mr. Brewer's criminal history to prepare its response. Based on this deeper look, and in light of Mr. Brewer's testimony at hearing, Staff revises its recommendation: the Commission should deny Mr. Brewer's application. Mr. Brewer was convicted of a theft offense within 5 years of the date of his application and appears to have testified inaccurately about several matters related to that conviction.

¹ Brewer, TR. at 7:8-13.

² See Brewer, TR. at 7:12-13.

³ Brewer, TR. at 9:9-18.

⁴ Brewer, TR. at 7:14-21.

⁵ Brewer, TR. at 10:4-18.

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Mr. Brewer testified accurately about the offense for which he was convicted. The State of California charged him for a May 22, 2015, theft of some amount of alcohol from a store in Corona, California.

Mr. Brewer also may have testified truthfully about a lack of notice of the charge. The Riverside Superior Court provided notice of his arraignment by mail. Mr. Brewer failed to appear at that arraignment, and the Commission may infer that he did not receive the mailed notice from that failure.

Mr. Brewer, however, appears to have provided inaccurate testimony about the consequences of his guilty plea. The Riverside County Superior Court placed him on a three-year term of summary probation on August 1, 2017, meaning that he is currently on, and will remain on, probation until July 31, 2020. Staff cannot reconcile that fact with Mr. Brewer's testimony that he was not on probation. The sentencing court also imposed a probation condition requiring his commitment to custody of the Riverside County Sheriff for 10 days. Mr. Brewer thus appears to have served jail time for the theft offense, which is inconsistent with his testimony that he had not.

Mr. Brewer's probation raises another concern for Staff. As Staff noted in its recommendation that the Commission deny Mr. Brewer's application, he initially failed to note the petty theft conviction on his application. While Mr. Brewer testified that he did not remember the conviction at the time of his application, the Riverside Superior Court ordered a term of electronic monitoring in August 2017. This electronic monitoring thus occurred within one year of Mr. Brewer filing his household goods application. Staff is troubled by Mr. Brewer's inability to remember his conviction, especially in light of the timing of the electronic monitoring condition of his probation, which Staff considers memorable.

Staff recommended at hearing that the Commission grant Mr. Brewer the requested exemption because it was concerned about depriving Mr. Brewer of a means of making a living based on a shoplifting offense.⁶ But a more extensive look at his criminal history gives Staff pause. Staff cannot say that Mr. Brewer committed fraud or made deliberate misrepresentations in his application or his testimony, but Staff also cannot say that he did not do so. Under those facts, Staff rescinds its recommendation for an exemption to WAC 480-07-302(8)(a) or WAC 480-07-305(2).

⁶ Dotson, TR. at 14:4-10; *cf.* Brewer, TR. at 7:14-17, 11:22-24.