



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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Date: October 21, 2021

To: Samantha Doyle, Administrative Law Judge, Administrative Law Division

From: Mathew Perkinson, Assistant Director, Transportation Safety Division

Re: TV-210640 and TV-210641 Ed's Moving and Storage Inc.

Evaluation of Safety Management Plan, Recommendations regarding the company's safety rating, and the cancellation of household goods operating authority (THG019094)

On December 9, 2020, the Commission issued Order 01 Consolidating Dockets; Approving Safety Management Plan; Maintaining Safety Rating; Extending Provisional Period; Imposing and Suspending Penalties in dockets TV-200875 and TV-200876 (Consolidated). Order 01 extended Ed's Moving and Storage Inc.'s (Ed's Moving or Company) provisional household goods authority for good cause following Commission staff's (Staff) acceptance of the company's safety management plan. Ed's Moving maintained the conditional safety rating it received following staff's investigation and was penalized \$7,600.

On August 26, 2021, Staff completed a follow-up safety investigation of Ed's Moving which resulted in a proposed conditional safety rating.

Provisional household goods companies must achieve a satisfactory safety rating prior to receiving permanent status. As the Company has yet to achieve a satisfactory safety rating, the Commission afforded Ed's Moving the same opportunity as companies that receive a proposed unsatisfactory safety rating to provide evidence, in the form of an approved safety management plan, showing that the Company took corrective action to address the identified violations.

Commission rules prohibit motor carriers from operating beginning on the 61st day after the date of the notice of a proposed unsatisfactory rating. A company may request a change in its safety rating based on evidence that it has taken corrective actions to address the identified violations, and that its operations currently meet the safety standard and factors in 49 CFR 385.5 and 385.7. In this case, Ed's Moving has until October 25, 2021, to come into compliance with applicable laws and rules by obtaining commission approval of a safety management plan.

The proposed conditional safety rating was based on three violations of acute and critical regulations – 49 C.F.R. § 391.15(a), 391.45(a), and 391.51(a).

“**Acute**” regulations are those identified as such where non-compliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier.

“Critical” regulations are those identified as such where non-compliance relates to management and operational controls. These are indicative of breakdowns in a company’s management controls. Patterns of non-compliance with a critical regulation are linked to inadequate safety management controls and higher than average accident rates.

Acute violations discovered during investigation:

1. One violation of Title 49 CFR § 391.15(a) – Using a disqualified driver.

Critical violations discovered during investigation:

1. Thirty-two violations of Title 49 CFR § 391.45(a) – Using a driver not medically examined and certified.
2. Four violations of Title 49 CFR § 391.51 (a) – Failing to maintain driver qualification file on each driver employed.

In an August 31, 2021, Notice of Intent to Cancel Permit, the Commission instructed Ed’s Moving to submit its proposed safety management plan no later than October 5, 2021.

On September 9, 2021, Ed’s Moving submitted a safety management plan for Staff to review. Staff did not accept the plan and provided Ed’s Moving with a breakdown of where the safety plan was deficient.

On October 12, 2021, Ed’s Moving and Staff participated in the scheduled brief adjudicative proceeding (BAP). During the BAP, Staff testified that the Company had not submitted an acceptable safety plan but would continue to work with the Company up to the point of the cancellation of its permit. Following the BAP, Staff contacted Ed’s Moving’s general manager, Jackie Johnson, to notify the Company that it would need to have the final submission of its safety management plan no later than end of business on October 18, 2021, to have time to review and submit an evaluation to the docket.

On October 18, 2021, Ed’s Moving submitted a safety management plan addressing each violation noted during the investigation. Staff only recommends approving a safety management plan that addresses the following seven items:

1. The plan must address each acute, critical, or serious violation discovered during the most recent investigation. It must also include corrective actions that address other violations noted during the investigation.
2. Identify why the violations were permitted to occur.
3. Discuss the actions taken to correct the deficiency or deficiencies that allowed the violations to occur. Include actual documentation of this corrective action.
4. Outline actions taken to ensure that similar violations do not reoccur in the future. The plan must demonstrate that the company’s operations currently meet the safety standard and factors specified in 49 CFR § 385.5 and 385.7. To do so, the plan must demonstrate the company now has adequate safety management controls in place which function effectively to ensure acceptable compliance with applicable safety requirements.

5. If the request includes actions that will be conducted in the near future, such as training, reorganization of departments, purchasing of computer programs, etc., companies must include a detailed description of the activity or training and a schedule of when that activity will commence and when it will be completed.
6. Include any additional documentation relating to motor carrier safety and the prevention of crashes that the company believes supports its request.
7. Include a written statement certifying the company will operate within federal and state regulations and the company's operation currently meets the safety standard and factors specific in 49 CFR § 385.5 and 385.7. A corporate officer, partner, or the owner of the company must sign the statement.

Summary and Recommendations

Staff reviewed Ed's Moving's safety management plan and concludes it is not sufficient to justify an upgrade to the company's safety rating, and it fails to demonstrate that adequate corrective actions have been taken to address the violations cited during the safety investigation. As required by 49 CFR § 385.17(c), a motor carrier must base its request for upgrade upon evidence that it has taken corrective actions and that its operations currently meet the safety standard and factors specified in 49 CFR § 385.5 and 385.7. The plan must include a written description of corrective actions taken and other documentation that may be relied upon as a basis for the requested change to the proposed rating.

Ed's Moving's plan fails to demonstrate that the Company understands each of the safety regulations that it was found to be in violation of or how to ensure future compliance. Ed's Moving addressed each violation discovered and explains why the Company allowed the violations to occur. The plan fails to demonstrate that each violation has been corrected or that the Company has sufficient safety management controls in place to ensure that violations do not occur in the future. Because the Company failed to submit an acceptable safety management plan, staff recommends that the Company's proposed safety rating of conditional remain, and the provisional permit be cancelled.

In response to the request for mitigation, the Company provided documents related to criminal background checks for two of its employees, along with a medical certificate and driver qualification file for driver Phillip Faamama. Due to the company taking these corrective actions, Staff recommends reducing the assessed penalty of \$4,300 penalty to \$2,500.

The Company made several attempts to bring its safety operations into compliance with Commission regulations by way of a safety management plan. Ed's Moving submitted a safety management plan that did not demonstrate that the Company has put controls in place to ensure the Company maintains future compliance with the violations identified during the safety fitness investigation.

Documentation of driver qualifications, insurance, calendar reminders, and criminal background check information were included in the plan.