

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TC-160991

**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 violation occurred and enclose \$ \_\_\_\_\_ in payment of the penalty.

[ ] 2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below:  
*Please see attached letter.*

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 violation, but I believe that the penalty should be reduced for the reasons set out below:

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

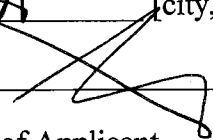
OR [ ] b) I ask for a Commission decision based solely on the information I provide above.

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: 8/22/2016 [month/day/year], at Renton, WA [city, state]

Wesley Marks (Shuttle Express)

Name of Respondent (company) – please print



Signature of Applicant

2016 AUG 23 PM 1:39

RECEIVED  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



August 22, 2016

Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, WA 98504-7250

RE: TC-160991 Penalty Assessment

Please allow this letter to act as Shuttle Express' written statement supporting our request to contest the violation in the above named docket. Additional statements and documentation may be provided at the requested hearing if granted.

Shuttle Express respectfully denies responsibility for the listed violations of WAC 480-30-221 which references 49 CFR 382.23(a)(2). The listed rule states in part "...no person may legally operate a CMV unless such person possesses a CDL..." This rule reflects the requirements on the driver, not on the obligations of the employer to comply.

Subpart C of 49 CFR 383 alternatively does provide the requirements and direction that an employer and employee must abide by:

#### Employee Responsibilities

49 CFR 383.33, which is similarly adopted by WAC 480-30-221, states that "Each employee who has a driver's license suspended, revoked, or canceled by a State or jurisdiction, who loses the right to operate a commercial motor vehicle in a State or jurisdiction for any period, shall notify his/her current employer of such suspension, revocation, cancellation, lost privilege, or disqualification. The notification must be made before the end of the business day following the day the employee received notice of suspension, revocation, cancellation, lost privilege, or disqualification." In this case, notification was not provided by Laurie Eriks-Gowin and such she personally violated 383.33.

#### Employer Responsibilities

49 CFR 383.37 provides "No employer may allow, require, permit, or authorize a driver to operate a CMV in the United States if he or she knows or should reasonably know that any of the following circumstances exist:" and goes on in sub-section (b) "During any period in which the driver has a CLP or CDL disqualified by a State, has lost the right to operate a CMV in a State, or has been disqualified from operating a CMV." As the employee did not notify Shuttle Express of the license action, Shuttle Express was not aware of the change in status. As outlined in several paragraphs below, Shuttle Express performed its due diligence under DOT and WAC requirements to annually review the driver's status, as well as within the time frames prescribed by the law in regards to renewals of medical certification.

#### Penalties

49 CFR 383.53 lists the penalties for violations of that part. For a violation of 383.23, the penalty information listed in part 386, Appendix B applies. In Appendix B subsection (b) it states "Any **person** who violates 49 CFR part 383, subparts B, C, E, F, G, or H is subject to a civil penalty not to exceed \$4,750; except;" Shuttle Express believes this is intended to be a civil penalty on the actual driver/employee, not the employer. To further this claim, note subsection (b)(2) and (b)(3) which describe penalties for the **employer** of a CDL-holder, thus furthering the belief that provided the employer didn't knowingly allow the driver to operate when actually restricted, or should reasonably know that a license action has occurred.

Based on the rules above, a driver who is notified of a suspension or reduction of their driving privileges is obligated to notify their employer of the change. At that point, having reason and actual knowledge to believe the license has been restricted, the employer is then required to not allow the employee to operate a CMV and would be in violation to allow it.

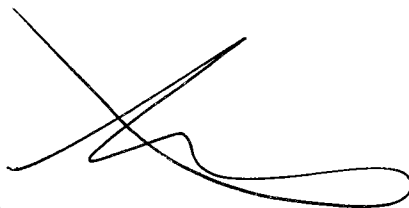
In this case, driver Laurie Eriks-Gowin did not notify Shuttle Express of the notice and change in her license status. Shuttle Express allowed Ms. Eriks-Gowin to continue to operate a vehicle as we had a good-faith belief that the expiring medical qualification information was updated with the state which would have prevented a downgrade or any licensure action. As the notice of penalty assessment states in factor 8: "Shuttle Express complied with CFR Part 391.51(b)(7)(ii) by obtaining Laurie Eriks-Gowin's commercial driver's license information system (CDLIS) record within the required fifteen days of updating her medical certification..."

The requirements adopted by WAC 480-30-221 through 49 CFR Part 391 describe further what a motor carrier must do to qualify and maintain as qualified drivers operating under its authority. As stated above, Shuttle Express complied with 49 CFR 391.51(b)(7)(ii) by maintaining all records of qualification regarding medical certification and CDLIS records to verify as such. 391.51(b)(7)(ii) states "...until June 22, 2018, a motor carrier may use a copy of the driver's current medical examiner's certificate that was submitted to the state for up to 15 days from the date it was issued as proof of medical certification." Further, 391.51(b)(4) requires the annual request and storage of the motor vehicle record, which Shuttle Express complied with up until the request for a new motor vehicle record was required as stated above.

Based on the statements, rules, and previous documentation provided to Special Investigator Perkinson, Shuttle Express believes that it acted in good faith in allowing Laurie Eriks-Gowin to operate a commercial motor vehicle, believes that it complied with all reporting and authorizations to operate as required by law, and believes that it should not be held accountable for the violations listed in the penalty assessment as it did not knowingly allow the operation of a commercial motor vehicle, nor did it have reason to believe or should have known based on the information available to it that the driver had their CDL licensure rights suspended for a period while the remainder of the license was still valid. Had Shuttle Express run an additional motor vehicle report between July 16<sup>th</sup> and July 20<sup>th</sup>, 2016 (although not required under the regulations), been notified by the employee of their change in license status, or had other reason to believe that the medical certification would still expire despite the valid replacement received in advance of the previous card's expiration, we would have immediately removed that driver from service as is required by law, and did so once notified of the violation during the roadside inspection.

Shuttle Express looks forward to the opportunity to speak on its behalf in front of an administrative law judge at the hearing that was requested under this docket.

Regards,



8-22-16

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