

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

BLESSED LIMOUSINE, INC.,

Respondent.

DOCKETS TE-200016 and TE-200272
(*Consolidated*)

ORDER 03/02

INITIAL ORDER CANCELLING
CERTIFICATE

BACKGROUND

- 1 On February 7, 2020, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel Certificate; Notice of Opportunity for Hearing (Notice) in Docket TE-200016. The Notice gave Blessed Limousine, Inc., (Blessed Limo or Company) the opportunity to request a hearing to contest the factual allegations set out in the Notice, which included a claim that Blessed Limo continued to operate despite being placed out-of-service by the Federal Motor Carrier Safety Administration (FMCSA).
- 2 On March 30, 2020, the Commission issued a letter (Cancellation Letter) in Docket TE-200272 notifying Blessed Limo that the Commission had canceled the Company's charter and excursion certificate due to insufficient proof of insurance. The Cancellation Letter gave Blessed Limo the opportunity to request a hearing to contest the allegation that it failed to submit sufficient proof of insurance.
- 3 On April 6, 2020, Blessed Limo requested a hearing to challenge the allegations set forth in both dockets.
- 4 On April 7, 2020, the Commission issued an order consolidating Dockets TE-200016 and TE-200272. That same day, the Commission also issued a Notice of Virtual Brief Adjudicative Proceeding, set for May 1, 2020, at 9:30 a.m.

- 5 At the hearing, Commission staff (Staff)¹ presented documentary evidence and the testimony of motor carrier safety supervisor Jason Sharp. Blessed Limo presented documentary evidence and the testimony of Company owner Clussie Bagby.
- 6 Sharp testified that the Commission sent the Company a notice of cancellation by mail and email, indicating that its certificate may be canceled due to lack of proof of insurance. Sharp testified that Blessed Limo did not submit proof of insurance by March 24, 2020, as directed, and that it did not have proof of insurance on file with the Commission by the day of the hearing.
- 7 Regarding the alleged violations of safety regulations, Sharp testified that the FMCSA performed a safety inspection of Blessed Limo in October 2019. This safety inspection was admitted into the record as Exhibit JS-1. Sharp testified that the inspection found two acute violation types and three separate critical violations. Sharp explained that both acute and critical regulations are considered “more serious as they are linked to inadequate safety management controls and higher than average accident rates.”² The Company incurred three acute violations of 49 C.F.R. § 383.37(a) for allowing a driver to operate a commercial motor vehicle without a valid license or learners’ permit. The Company also violated 49 C.F.R. § 396.9(c)(2) by operating a vehicle placed out-of-service before repairs were made.
- 8 Sharp testified that the Company also received four critical violations of 49 C.F.R. § 391.51(b)(2) for failing to maintain inquiries into a driver’s driving record in the driver qualification file, 49 critical violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status using the appropriate method, and two critical violations of 49 CFR 396.17(a) for using a commercial motor vehicle not periodically inspected. The FMCSA issued a notice to Blessed Limo proposing an “unsatisfactory” safety rating.
- 9 In terms of the Company’s compliance history, Sharp testified that Staff identified critical violations committed by Blessed Limo in Commission Docket TE-190072. These

¹ In adjudications the Commission’s regulatory staff participates like any other party, while the Administrative Law Judge or the Commissioners make the decision. To assure fairness, the Commissioners and the presiding administrative law judge do not discuss the merits of the proceeding with regulatory staff or any other party without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

² Sharp, TR 15:17-19.

violations included failing to require drivers to make a record of duty status. Blessed Limo was assessed a penalty for those violations.

- 10 Sharp agreed with the FMCSA's unsatisfactory safety rating, noting that the Commission rules incorporate FMCSA regulations. Sharp testified that Blessed Limo was placed out-of-service as of January 4, 2020, and that the Company was still out-of-service as of day of the hearing.
- 11 Staff recommends that the Company's certificate be cancelled due to its failure to maintain proper insurance. In the alternative, Staff recommends that the Company's certificate be cancelled due to the results of the FMCSA safety inspection.
- 12 Bagby testified that Blessed Limo was not able to maintain insurance after the Company was placed out-of-service by the FMCSA. Bagby testified that his insurance company was looking forward to renewing the Company's insurance policy once the out-of-service status is corrected.
- 13 Bagby testified that his Company was operating for approximately 16 years and that there were seven vehicles in the Company's fleet. Bagby testified that Company corrected two of the violations. With respect to the violation of 49 C.F.R. § 391.51(b)(2) the Company received for failing to maintain inquiries into a driver's driving record in a driver's qualification file, Bagby explained that Blessed Limo now runs motor vehicle reports (MVRs) on every driver. Blessed Limo also hired Foley Services to assist with compliance issues and to obtain MVRs for drivers. Regarding 49 C.F.R. § 396.9(c)(2), allowing the operation of a vehicle placed out-of-service, Bagby explained that that the Company now sends vehicles to a mechanic every 90 days for a 5,000 mile checkup. Bagby noted that the only way an out-of-service vehicle would be moved now is on a tow truck. Bagby noted that the FMCSA changed these two violations from "unsatisfactory" to "satisfactory."
- 14 Bagby testified that he has hired Foley Services to assist in correcting the remaining violations at issue in the FMCSA notices. Bagby explained that both the Company and Foley Services perform additional background checks and MVRs on drivers' records.
- 15 Regarding the 49 violations of 49 C.F.R. § 395.8(a)(1), Bagby testified that some of the Company's drivers did not include the end time of their shifts on their forms, leading to the violations at issue. Bagby claims he has since hired the services of a company, Keep on Trucking, so that drivers can complete these reports on their phones. The forms are then retained for a period of six to seven months.

- 16 Regarding the violation of 49 C.F.R. § 396.17(a), for using a commercial motor vehicle not periodically inspected, Bagby admitted that the vehicle at issue was not marked as it should have been. Bagby testified that the Company now marked vehicles to reflect inspections and that every vehicle in the Company's fleet now had 5,000 mile and 15,000 mile checkups with A Plus Bus Maintenance.
- 17 Bagby testified that he requested an upgrade to Blessed Limo's safety rating from the FMCSA. Bagby stated that he "should have an answer back by May 7th" from the FMCSA.³
- 18 On cross-examination, Bagby testified that he does not contest the violations found in the October 2019 FMCSA report, and that he is focused on bringing the Company into compliance. Bagby testified that the Company's insurance lapsed on March 24, 2020. Bagby maintained that the Company currently is not operating.
- 19 Blessed Limo requested that the Commission hold the record open until May 10, 2020, to allow the Company to submit evidence of an upgraded safety rating from the FMCSA.
- 20 The Commission allowed the Company until May 15, 2020, to submit evidence of its upgraded FMCSA safety rating and allowed Staff until May 22, 2020, to submit a brief response.
- 21 On May 19, 2020, Blessed Limo filed a declaration from Bagby. Bagby stated that he had spoken to Traci Johnson at the FMCSA and that she told him the Company should have an upgraded safety rating on or before May 25, 2020.
- 22 On May 22, 2020, Staff filed a letter responding to Bagby's declaration. Staff noted that Blessed Limo did not provide any evidence of an upgraded safety rating. Staff maintained the recommendations it made at the hearing.
- 23 Harry Fukano, Assistant Attorney General, Olympia, Washington, represents Staff. Mark Kimball and James Ware, MDK Law, Bellevue, Washington, represent Blessed Limo.

DISCUSSION AND DECISION

- 24 "It is the Commission's duty to regulate charter party carriers and excursion service carriers with respect to safety of equipment, driver qualifications, and safety of

³ Bagby, TR 38:2.

operations.”⁴ The Commission may cancel, revoke, or suspend a charter party and excursion service carrier’s certificate on the following grounds: failure to maintain required insurance coverage in full force and effect; violations of RCW Chapter 81.70; failure to timely pay a fee; or the violation of an order, decision, rule, regulation, or requirement established by the Commission.⁵

- 25 The Commission considers several factors when deciding on the type of enforcement action to take or the level of penalty to be imposed.⁶ These include how serious or harmful the violation is to the public; whether the violation was intentional; whether the company self-reported the violation; whether the company promptly corrected the violation; the number of violations; the number of customers affected; the company’s past performance regarding compliance; the company’s existing compliance program; and the size of the company.⁷ We address each of Staff’s bases for seeking cancellation of Blessed Limo’s certificate in turn.

1. Failure to maintain proof of insurance

- 26 The Commission “shall require” charter party and excursion service carriers to maintain liability and property damage insurance.⁸ These insurance policies “must be filed with the commission and kept in effect.”⁹ The Commission determines the amounts of insurance coverage required and the acceptable forms of proof of insurance in WAC 480-30-191.
- 27 Staff recommends that the Company’s certificate be cancelled due to its failure to maintain proper insurance. The Commission’s notice of cancellation in Docket TE-200272 gave the Company until March 24, 2020, to submit proof of insurance. Bagby, the owner of Blessed Limo, testified that the Company’s insurance was cancelled on March 24, 2020, after the Company was placed out-of-service by the FMCSA.
- 28 We agree with Staff’s recommendation. The Company admits that its insurance coverage was cancelled on March 24, 2020, and has not yet been reinstated. Accordingly, Blessed

⁴ RCW 81.70.270.

⁵ RCW 81.70.250.

⁶ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

⁷ Enforcement Policy ¶ 15.

⁸ RCW 81.70.280(1).

⁹ RCW 81.70.280(2).

Limo's certificate is cancelled due to its failure to maintain insurance as required by WAC 480-30-191.

2. FMCSA out-of-service order

- 29 The FMCSA is a division of the U.S. Department of Transportation.¹⁰ Following a compliance review, the FMCSA determines whether a motor carrier's operations are consistent with federal safety regulations.¹¹ If the FMCSA proposes an "unsatisfactory" safety rating, that rating becomes final 45 days later.¹²
- 30 FMCSA will issue an order placing out-of-service any motor carrier that receives an unsatisfactory safety rating. A motor carrier that has been placed out-of-service is prohibited from operating until such time as it requests and receives an upgraded safety rating based on evidence that it has taken appropriate corrective action, and that its operations currently meet applicable safety standards.¹³
- 31 Washington law requires charter and excursion service carriers to obtain appropriate authority from the U.S. Department of Transportation.¹⁴
- 32 Sharp testified that Blessed Limo was placed out-of-service by the FMCSA on January 4, 2020. Although the Commission allowed the Company until May 15, 2020, to submit evidence of an upgraded safety rating, the Company submitted a declaration indicating merely that it hoped the FMCSA would issue an upgrade by May 25, 2020.
- 33 The Commission must cancel Blessed Limo's charter party and excursion service carrier permit due to the Company being placed out-of-service by the FMCSA. Although the Commission held the record open for two weeks after the hearing, Blessed Limo has not yet obtained an upgraded safety rating from the FMCSA. Blessed Limo cannot operate in Washington state without having first obtained authority from the FMCSA.

3. Acute and critical safety regulation violations

- 34 Pursuant to RCW 81.70.270, the Commission regulates charter party and excursion service carriers with respect to safety and driver qualifications. WAC 480-30-221 adopts

¹⁰ 49 U.S.C. § 113(a).

¹¹ 49 C.F.R. § 385.9(a).

¹² 49 C.F.R. § 385.11(c)(1).

¹³ 49 C.F.R. § 385.13(a)(1).

¹⁴ RCW 81.70.370.

by reference a number of the federal regulations in Title 49 of the Code of Federal Regulations (C.F.R.), including the entirety of 49 C.F.R. Part 385.

- 35 Staff recommends cancelling Blessed Limo's operating authority due to the safety violations documented in the October 2019 FMCSA safety inspection. Sharp testified that several of the violations were alarming, and that the Commission already assessed a penalty against the Company for critical violations in Docket TE-190072.
- 36 Bagby admitted he did not contest the violations identified during the October 2019 FMCSA safety inspection. He testified that the FMCSA found the Company corrected two of the violations, specifically the violation of 49 C.F.R. § 391.51 for failing to maintain inquiries into a driver's driving record in the driver qualification file, and 49 C.F.R. § 396.6 for operating a vehicle placed out-of-service. Bagby testified regarding the various measures Blessed Limo instituted to correct the violations, which included running MVRs every 90 days, hiring the services of Foley Services, and using a mobile application from Keep on Trucking.
- 37 We nevertheless agree with Staff's recommendation that Blessed Limo's certificate should be cancelled due to the safety violations documented by the FMCSA, which the Commission accepts as conclusive evidence,¹⁵ and which the Company does not dispute. Although the FMCSA found that Blessed Limo has taken required action to correct its violations of 49 C.F.R. § 391.51(b)(2) and 49 C.F.R. § 396.9(c)(2), the FMCSA found that Blessed Limo was not taking the necessary action to correct the remaining violations.¹⁶
- 38 For example, the FMCSA found that Blessed Limo's upgrade requests did not sufficiently address its acute violation of 49 C.F.R. § 383.37(a) for allowing a driver to operate a commercial motor vehicle without the required license or permit. The FMCSA found Blessed Limo's plan to run MVRs every 90 days inadequate, noting among other facts that Blessed Limo was not aware its drivers were operating interstate and that the Company submitted an undated driver record for Bagby. Notably, the FMCSA observed that Blessed Limo allowed Gary Miller to operate a passenger-carrying vehicle despite having an MVR in Miller's file indicating that he did not have a passenger endorsement. The FMCSA's finding on this issue is persuasive. It is not evident that Blessed Limo's plan to run MVRs on drivers every 90 days and to hire Foley Services sufficiently addresses this acute violation.

¹⁵ *In re Application of Go VIP LLC d/b/a Go VIP Seattle*, Docket TE-161295, Order 02 (June 13, 2017).

¹⁶ Exhibit JS-3. *See also* Exhibit CB-7 (duplicate).

39 Likewise, the FMCSA found that Blessed Limo did not take adequate action to address the 49 critical violations of 49 C.F.R. § 395.8(a)(1), failing to require a driver to prepare a record of duty status. Among other concerns, the FMCSA found that Blessed Limo failed to address how it would review supporting documents to ensure the Company requires drivers to prepare a record of duty status using the appropriate method. During the October 2019 compliance review, the Company stated that a driver did not have a record of duty status because she was not working, but the investigator found supporting documents showing the driver should have recorded hours. The FMCSA's determination on this issue is also persuasive. Although Bagby testified that he hired the services of Keep on Trucking, which would allow drivers to complete records of duty status on their phones, it was not apparent that this service would prevent this critical violation from recurring. Because the FMCSA identified 49 critical violations of this regulation, this is an area of significant concern.

40 Finally, the FMCSA found that Blessed Limo did not take adequate measures to address the critical violation of 49 C.F.R. § 396.17(a), using a commercial motor vehicle not periodically inspected. Among other issues, the FMCSA noted that Blessed Limo submitted a January 25, 2020, inspection of a vehicle that did not pass inspection due to having several defective components. The FMCSA noted that Blessed Limo did not include copies of annual inspections for its vehicles with VIN numbers ending in 6594 and 7229 in the Company's upgrade requests. We again conclude that the FMCSA's finding is persuasive. While Bagby testified that the Company now marks vehicles to reflect inspections, and that every vehicle in the Company's fleet now has 5,000 mile and 15,000 mile checkups, this does not sufficiently address the issues identified in the FMCSA's March 20, 2020, response to the Company. The Company's submissions in its upgrade requests showed vehicles with defective components and failed to include copies of inspections for other vehicles.

41 We agree with Staff's recommendation to cancel Blessed Limo's certificate in light of these acute and critical violations. WAC 480-30-171(2) provides that the Commission may cancel a certificate for cause. Here, Blessed Limo has still not taken sufficient action to address each of the acute and critical violations identified in the FMCSA's October 2019 safety inspection. The Company's failure to obtain an upgraded safety rating from the FMCSA in more than six months indicates that the Company's compliance program is not sufficient, and that the violations are likely to recur. As such, the Commission finds cause to cancel Blessed Limo's certificate pursuant to WAC 480-30-171(2).

FINDINGS AND CONCLUSIONS

42 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service

companies, including charter party and excursion service carriers, and has jurisdiction over the parties and subject matter of this proceeding.

- 43 (2) The FMCSA performed a safety inspection of Blessed Limo in October 2019, which found two acute violation types and three separate critical violations.
- 44 (3) Blessed Limo admits the violations identified in the FMCSA's October 2019 safety inspection.
- 45 (4) Blessed Limo's insurance coverage was cancelled on March 24, 2020.
- 46 (5) Pursuant to RCW 81.70.280(1) and WAC 480-30-191, Blessed Limo may not operate as a charter party and excursion service carrier without appropriate insurance coverage and proof of insurance on file with the Commission.
- 47 (6) The Commission should cancel Blessed Limo's Certificate for failure to maintain adequate proof of insurance in violation of RCW 81.70.280(1) and Commission rules.
- 48 (7) Commission rules that govern safety regulations for charter and excursion carriers, WAC 480-30-221, adopt by reference each of the federal safety regulations violated by Blessed Limo.
- 49 (8) Blessed Limo has not taken required action to correct the violations of 49 C.F.R. § 383.37(a), 49 C.F.R. § 395.8(a)(1), and 49 C.F.R. § 396.17(a), identified by the FMCSA.
- 50 (9) In January 4, 2020, Blessed was placed out-of-service by the FMCSA for violating federal safety regulations.
- 51 (10) Pursuant to RCW 81.70.370, Blessed Limo may not operate in Washington State while being placed out-of-service by the FMCSA.
- 52 (11) The Commission should cancel Blessed Limo's certificate for operating in violation of RCW 81.70.370.
- 53 (12) The Commission should find good cause to cancel Blessed Limo's certificate pursuant to WAC 480-30-171(2) due to the Company's continued violation of Commission rules.

ORDER

THE COMMISSION ORDERS THAT:

54 Blessed Limousine, Inc.'s certificate to operate as a charter party and excursion service carrier in the state of Washington is CANCELLED.

DATED at Lacey, Washington, and effective May 27, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Michael Howard
MICHAEL HOWARD
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).