

Service Date: October 2, 2019

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TV-190809

PENALTY ~~\$6,200~~

RECORDS MANAGEMENT

OCT 14 2019

STATE OF WASH.

UTIL. & TRANSP. COMMISSION

James Moseley
d/b/a You Got It Movers
1824 Walnut St.
Everett, WA 98201

The Washington Utilities and Transportation Commission (Commission) believes James Moseley, d/b/a You Got It Movers (You Got It Movers or Company), violated Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees; WAC 480-15-560, Equipment Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 396 – Inspection, Repair and Maintenance; and WAC 480-15-570, Driver Safety Requirements, which adopts 49 CFR Part 391 – Qualification of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On September 23, 2019, Commission Motor Carrier Investigator Francine Gagne completed a routine safety investigation of You Got It Movers and documented the following violations:

- **Fifty-six violations of 49 CFR § 391.15(a) – Operating a commercial motor vehicle while disqualified.** You Got It Movers allowed Eric Shuler to drive with a suspended driver's license on 56 occasions between May 3 and August 13, 2019.
- **Four violations of 49 CFR § 391.51(a) – Failing to maintain driver qualification file on each driver employed.** The Company failed to maintain driver qualification files for Travis Walters, Eric Shuler, Cyrus Sheppele, and Shawn Green.
- **Three violations of 49 CFR § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** You Got It Movers failed to keep the minimum required vehicle maintenance records for its three commercial motor vehicles.
- **Three violations of 49 CFR § 396.17(a) – Using a commercial motor vehicle not periodically inspected.** The Company failed to have annual inspections performed on its three commercial motor vehicles.
- **One violation of WAC 480-15-555 – Failure to complete background check for every person the carrier intends to hire.** You Got It Movers failed to complete a criminal background check for employee Travis Walters.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violations are to the public.** The violations noted are serious and potentially harmful to the public. Household goods moving companies that: (1) use drivers who have suspended driver's licenses, (2) fail to conduct criminal background checks on their employees, (3) fail to maintain driver qualification files, (4) fail to keep minimum records of inspection and vehicle maintenance, and (5) use commercial motor vehicles without annual inspections put their customers, their customers' belongings, and the traveling public at risk. These violations present significant safety concerns.

2. **Whether the violations were intentional.** Considerations include:

- Whether the Company ignored Commission staff's (Staff) previous technical assistance; and
- Whether there is clear evidence through documentation or other means that shows the Company knew of and failed to correct the violation.

On June 3, 2015, the Commission received the Company's application for household goods moving authority. In the application, James Moseley, owner of You Got It Movers, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

On March 17, 2016, James Moseley attended household goods training provided by Staff, and acknowledged receiving training pertaining to motor carrier safety regulations.

On November 10, 2016, Commission Motor Carrier Investigator Alan Dickson completed a routine safety investigation of You Got It Movers. The Company was provided technical assistance during the safety investigation.

On October 25, 2017, and July 20, 2018, the Commission received the Company's application to reinstate its permit for household goods moving authority. In both applications James Moseley acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** You Got It Movers did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation, and expressed a desire to come into compliance.

5. **Whether the Company promptly corrected the violations and remedied the impacts.** You Got It Movers has not provided Staff with evidence that it has corrected the violations.
6. **The number of violations.** Staff identified 12 violation types with a total of 81 individual occurrences.
7. **The number of customers affected.** The Company employs four drivers and operates three commercial motor vehicles. You Got It Movers traveled 99,074 miles in 2018. These safety violations present a significant public safety risk.
8. **The likelihood of recurrence.** The Company committed repeat violations despite receiving past technical assistance. Absent a significant commitment to prioritize safe operations, the violations are likely to reoccur.
9. **The Company's past performance regarding compliance, violations, and penalties.** On June 27, 2016, You Got It Movers was penalized \$1,000 in Docket TV-160631 for failing to file a complete annual report and pay regulatory fees by May 2, 2016. The Company failed to pay the \$1,000 penalty, and the outstanding debt was forwarded to a collection agency.

On December 15, 2016, You Got It Movers was penalized \$1,500 in Docket TV-161255 for safety violations of 49 CFR § 391.45(a) and 49 CFR § 396.17(a). The Company paid the penalty in full after being issued a Notice of Intent to Send to Collections.

On January 20, 2017, the Commission canceled the Company's provisional permit and dismissed its application for permanent household goods authority in Docket TV-170049 for failing to submit acceptable proof of insurance by January 19, 2017.

On October 25, 2017, You Got It Movers was penalized \$5,000 in Docket TV-170812 for operating as a household goods carrier without the required household goods moving authority, a \$4,000 portion of which was suspended subject to certain conditions. The Company paid the \$1,000 unsuspended portion of the penalty in full.

On April 20, 2018, the Commission canceled the Company's provisional permit and dismissed its application for permanent household goods authority in Docket TV-180337 for failing to submit acceptable proof of insurance by April 16, 2018.

On August 7, 2018, You Got It Movers was penalized \$5,000 in Docket TV-180518 for operating as a household goods carrier without the required household goods moving authority, a \$4,750 portion of which was suspended subject to certain conditions. The Company paid the \$250 unsuspended portion of the penalty in full.

On October 15, 2018, the Commission entered a complaint in Docket TV-180772 against You Got It Movers for failing to file a complete annual report and pay regulatory fees. On December 5, 2018, the Commission dismissed the complaint against You Got It Movers after the Company filed its annual report and paid regulatory fees.

10. **The Company's existing compliance program.** James Moseley is responsible for the Company's safety compliance program.

11. **The size of the Company.** You Got It Movers currently operates three commercial motor vehicles and employs four drivers. The Company reported \$210,936 in gross revenue for 2018.

The Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation.¹ The Commission generally will assess penalties per type of violation, rather than per occurrence, for first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also for repeat violations of critical regulations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize You Got It Movers \$6,200, calculated as follows:

- Fifty-six violations of 49 CFR § 391.15(a) – Operating a commercial motor vehicle while disqualified. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$5,600.
- Four violations of 49 CFR § 391.51(a) – Failing to maintain driver qualification file on each driver employed. The Commission assesses a “per category” penalty of \$100 for these first-time violations.
- Three violations of 49 CFR § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. The Commission assesses a “per category” penalty of \$100 for these first-time violations.
- Three violations of 49 CFR § 396.17(a) – Using a commercial motor vehicle not periodically inspected. The Commission assesses a penalty of \$100 for each occurrence of this repeat violation, for a total of \$300.
- One violation of WAC 480-15-555 – Failure to complete background check for every person the carrier intends to hire. The Commission assesses a penalty of \$100 for this first-time violation.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at

¹ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

a hearing or in writing. Alternatively, if there is a reason for any or all of the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of the penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violation(s) or for mitigation of the penalty must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation(s) or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violation(s).
- Admit the violations but request mitigation of the penalty amount.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, PO Box 47250, Olympia, Washington 98504-7250.

If you do not act within 15 days, the Commission may take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Lacey, Washington, and effective October 2, 2019.

/s/Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-190809

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 violations occurred and enclose \$6,200 in payment of the penalty.

2. **Contest the violation(s).** I believe that the alleged violation(s) did not occur for the reasons I describe below (if you do not include reasons supporting your contest here, your request will be denied):

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 violations, but I believe that the penalty should be reduced for the reasons set out below (if you do not include reasons supporting your application here, your request will be denied):

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: 10/5/19 [month/day/year], at ARLINGTON, WA [city, state]

James Mosley, You GOT IT Moves [Signature of Applicant]
Name of Respondent (company) – please print Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class