



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

March 22, 2016

Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. SW  
P. O. Box 47250  
Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. Jimmy's Discount Muffler Brake and Radiator, d/b/a Jimmy's Limousine*  
Commission Staff's Response to Application for Mitigation of Penalties  
Docket TE-160224

Dear Mr. King:

On February 26, 2016, the Washington Utilities and Transportation Commission (commission) issued Penalty Assessment TE-160224 against Jimmy's Discount Muffler Brake and Radiator d/b/a Jimmy's Limousine in the amount of \$2,600 for twelve violations of WAC 480-30-221 Vehicle and Driver Safety Requirements, which requires charter and excursion carriers to comply with Title 49 CFR Part 382 – Controlled Substance and Alcohol Use and Testing, Part 383 – Commercial Driver's License Standards, Part 391 – Qualifications of Drivers, and Part 396 – Inspection, Repair and Maintenance, as follows:

- **One violation of CFR Part 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program.** At the time of the compliance review, Jimmy's Limousine had no drug and alcohol testing program in place.
- **Four violations of CFR Part 383.37(b) – Allowing disqualified driver to operate a commercial motor vehicle.** Jimmy's Limousine allowed driver Robert DeHart to operate a commercial motor vehicle on four occasions while his commercial driver's license was inactive.

- **Six violations of CFR Part 391.45(a) – Using a driver not medically examined and certified.** Jimmy’s Limousine used three drivers on six occasions who were not medically examined and certified.
- **One violation of CFR Part 396.3 – Failure to maintain vehicle inspection and maintenance records.** Jimmy’s limousine kept no records of vehicle inspections or maintenance.

RCW 81.04.530 allows a penalty of one thousand five hundred dollars for failing to comply with the controlled substances and alcohol use and testing requirements of Title 49 CFR Part 382. RCW 81.04.405 allows penalties of one hundred dollars for each of the other violations of Parts 383, 391 and 396. In the case of ongoing violations, every day's continuance is considered a separate and distinct violation.

On March 15, 2016 Jimmy’s Limousine filed with the commission its application for mitigation of penalties. James Palmer, owner of Jimmy’s Limousine, admitted the violations but asked that the penalties be reduced for the reasons set out in the response.

Jimmy’s Limousine operates as a charter and excursion carrier under permit number CH-000472, which was granted on December 7, 2005. On January 13, 2016 Motor Carrier Safety Investigator Wayne Gilbert conducted a compliance review inspection, an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as “acute” or “critical.”<sup>1</sup> Acute regulations are identified where noncompliance is so severe as to require immediate corrective action regardless of the overall safety posture of the motor carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls. Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and unusually higher than average accident rates.<sup>2</sup> Mr. Gilbert found 22 total violations, all of which were first-time violations.

The commission’s Enforcement Policy provides that some commission requirements are so essential to safe operations that the commission may issue penalties for a first-time violation, even if staff has not previously provided technical assistance on specific issues.<sup>3</sup> These types of violations are categorized as “acute” or “critical” under federal standards. Of the 22 violations found, 12 violations were of acute or critical regulations.

In the mitigation request, Mr. Palmer requests the penalties be dismissed or reduced for the reasons noted below. Staff’s response follows.

---

<sup>1</sup> Code of Federal Regulations, [Appendix B to Part 385—Explanation of safety rating process](#)

<sup>2</sup> *Id.*

<sup>3</sup> Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- **Mitigation Request: CFR Part 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program.** Jimmy's Limousine states that it is in communication with US Health Center regarding drug and alcohol testing.

**Staff response:** Company's response is vague and non-conclusive. Staff is not familiar with "US Health Center". The company may be referring to the US Department of Health and Human Services, which certifies labs for participation in USDOT drug and alcohol programs under CFR Part 40. Regardless, the company failed to provide evidence that it has implemented the required testing program and corrected the violation. The assessed penalty is \$1,500 for one violation of this type. Staff recommends no mitigation of this penalty.

- **Mitigation Request: CFR Part 383.37(b) – Allowing disqualified driver to operate a commercial motor vehicle.** Jimmy's Limousine states that all of its drivers are now completely qualified under the provisions of the WUTC.

**Staff response:** During the compliance review, staff learned that driver Robert DeHart was allowed to operate a commercial motor vehicle on four occasions while his commercial driver's license was invalid. In correspondence to staff received February 18, 2016, the company stated that DeHart is no longer employed by the company and it considered the violation corrected. In its request for mitigation the company failed to explain how the violations occurred, provide documentation of the steps it has taken to avoid reoccurrence, or mention that the offending driver is no longer employed. The company's response is incomplete and somewhat misleading.

The assessed penalty is \$400 for four occurrences of this violation. Staff recommends no mitigation of this penalty.

- **Mitigation Request: Six violations of CFR Part 391.45(a) – Using a driver not medically examined and certified.** Jimmy's Limousine states that all drivers are "currently certified by medically examined personal and will maintain annual certification."

**Staff response:** In correspondence to staff received February 18, 2016, the company stated that driver Robert DeHart is no longer employed, driver Herman Johnson is deceased, and driver Cliff Runyon is currently out of the state and will be in compliance when he returns. In its request for mitigation the company failed to explain how the violations occurred, provide documentation of the steps it has taken to avoid reoccurrence, or mention that two of the three offending drivers are no longer employed. The company's response is incomplete and somewhat misleading.

The company completed two previous compliance reviews and received technical assistance, however the verbiage in its request for mitigation suggests the company is not



Steven King  
March 22, 2015  
Page 4

clear on the requirement that drivers be medically examined and certified by a qualified examiner every 24 months.

The assessed penalty is \$600 for six occurrences of this violations. Staff recommends no mitigation of this penalty.

- **Mitigation Request: CFR Part 396.3 – Failure to maintain vehicle inspection and maintenance records.** The company states that all records of its commercial vehicles are maintained as each is performed.

**Staff response:** In its request for mitigation the company failed to explain how the violations occurred or provide documentation of the steps it has taken to avoid reoccurrence. The company's response is vague and incomplete.

The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty.

Jimmy's Limousine is a small company with one vehicle under UTC authority and four drivers. The company reported 8,308 miles travelled in 2014 and \$39,675 in revenue. The company appears to be cooperative and willing to correct the violations noted, however has failed to explain how the violations were allowed to occur, or provide documentation that the violations have been corrected and a plan to avoid repeated occurrences of these violations. Staff recommends the penalty remain at \$2,600.

If you have any questions, please contact Mike Turcott, Compliance Investigator, Transportation Safety, at 360-664-1174, or by e-mail at [miturcot@utc.wa.gov](mailto:miturcot@utc.wa.gov).

Sincerely,



David Pratt  
Assistant Director, Transportation Safety

Enclosures