

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of

MIRACLE MAN MOVERS LLC

For Compliance with WAC 480-15-555,
WAC 480-15-560, WAC 480-15-570, and
480-15-590

DOCKETS TV-220511 & TV-230503

STAFF'S PETITION FOR
ADMINISTRATIVE REVIEW

I. INTRODUCTION

1 In Order 04/02 in these dockets the Commission extended Miracle Man Movers LLC's provisional period for a third time and imposed penalties, basically allowing the company to keep its permit, subject to conditions. Commission staff seeks review of Order 04/02 to address what it perceives as two errors. First, the presiding ALJ upgraded Miracle Man Movers LLC's proposed safety rating from conditional to satisfactory despite the lack of any request or recommendation that he do so. That upgrade runs contrary to the Commission's consistent treatment of similarly situated carriers, including previous treatment of this carrier, and the Commission should reverse it on review. Second, the presiding ALJ mitigated a penalty for violations of WAC 480-15-560 and 49 C.F.R. § 391.45(a) based on erroneous testimony from Miracle Man witness Bullock. On review, the Commission should reverse the finding that mitigation is warranted and impose the \$300 penalty recommended by Staff.

II. BACKGROUND

2 This case arises out of Miracle Man's third safety review in as many years. In the 2021 review, the company's first, Staff documented a number of violations of WAC 480-15-570 based

on the company's failure to require drivers to make a record of duty status.¹ Those violations produced a proposed conditional safety rating, and the Commission notified the company that it intended to cancel the company's permit absent action on its part.² The Commission ultimately kept the company in provisional status with a conditional safety rating after it submitted an acceptable safety management plan (SMP).³

3 In the 2022 review, Miracle Man's second, Staff documented more than 200 violations, some involving critical safety regulations.⁴ None of those violations, however, concerned the failure to require medical examination and certification of a driver as required by WAC 480-15-570's incorporation of 49 C.F.R. § 391.45(a).⁵ The violations discovered through the review produced another proposed conditional safety rating, and the Commission again notified the company of its intent to cancel the company's permit.⁶ But, again, the company submitted an acceptable safety management plan,⁷ and the Commission maintained it in provisional status with a conditional safety rating.⁸

4 In the 2023 review, the one at issue here, Staff again discovered a number of violations, some of them critical, some of them repeat, and some of them repeat critical violations.⁹ Three of these violations concerned violations of WAC 480-15-560 for failing to use a medically

¹ *In re Penalty Assessment Against Miracle Man Movers, LLC*, Docket TV-210129, Notice of Penalties Incurred & Due for Violations of Laws & Rules, 1 (Mar. 16, 2021).

² *In re Investigation of Miracle Man Movers, LLC*, Docket TV-210128, Order 01, 1 ¶ 1 (Apr. 19, 2021).

³ *In re Investigation of Miracle Man Movers, LLC*, Docket TV-210128, Order 01, 2-3 ¶¶ 8-10, 3 ¶ 13.

⁴ *In re Investigation of Miracle Man Movers, LLC*, Docket TV-220511, Revised Notice of Intent to Cancel Permit as a Household Goods Carrier; Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements, 2 ¶ 11 (Sept. 13, 2022) ("Revised Notice").

⁵ *In re Investigation of Miracle Man Movers, LLC*, Docket TV-220511, Notice of Penalties Incurred & Due for Violations of Laws & Rules, 1-2 (Sept. 9, 2022).

⁶ Revised Notice at 2 ¶ 11, 3 ¶ 16.

⁷ *In re Investigation of Miracle Man Movers, LLC*, Docket TV-220511, 4 ¶¶ 11-12, Order 02, (Oct. 11, 2002).

⁸ *In re Investigation of Miracle Man Movers, LLC*, Docket TV-220511, Order 02, 4 ¶ 12, 8 ¶ 37.

⁹ *In re Investigation of Miracle Man Movers, LLC*, Dockets TV-220511 & TV-220503, Notice of Intent to Cancel, Notice of Prehearing Conference, Complaint for Penalties, & Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements, 3-4 ¶ 10 (July 13, 2023) ("Complaint").

examined and certified driver.¹⁰ The review produced another proposed conditional safety rating,¹¹ and the Commission again notified the company of its intent to cancel Miracle Man’s permit absent corrective action on its part.¹²

5 That notice resulted in a hearing. At hearing, Staff testified as to its discovery of each of the violations,¹³ as well as the appropriate penalty, which amounted to \$48,500.¹⁴ That total penalty included \$300 for the three violations (\$100 per violation) for using a driver who lacked medical examination and certification.¹⁵ The presiding ALJ ordered Staff to work with the company on a safety management plan and authorized Staff to revisit its penalty recommendation when it submitted its review of the company’s SMP.¹⁶

6 Miracle Man offered testimony from witness Bullock discussing the various violations. With regard to the violations for the use of a driver who had not been medically examined and certified, witness Bullock testified that

I’m on number 8, use of a driver not medically certified. I agree with that. But I have sent in the last reported process that I would review medical cards and I would review driver[s]’ license abstract[s] every year in July. That was agreed on in the last one. This audit was done prior to July. But everybody is ran in July, and that was part of the safety plan that was accepted in the last review.¹⁷

7 The company ultimately submitted an acceptable SMP. In its letter to the Commission, Staff recommended that “the Commission accept Miracle Man Movers[’s] SMP.”¹⁸ It further recommended “that the Commission not cancel the Company’s provisional permit and extend the

¹⁰ Complaint at 4 ¶ 10.

¹¹ Complaint at 5 ¶ 11.

¹² Complaint at 6-7 ¶¶ 25-26.

¹³ Yeomans, TR. at 12:8 – 25:4.

¹⁴ Sharp, TR. at 39:11 – 42:7.

¹⁵ Sharp, TR. at 41:4-8.

¹⁶ Sharp, TR. at 48:6 – 53:2.

¹⁷ Bullock, TR. at 31:6-14.

¹⁸ See *in re Investigation of Miracle Man Movers, LLC*, Dockets TV-220511 & TV-220503, Staff Letter re: Safety Management Plan, 4-5 (Aug. 25, 2023) (“Staff Letter”).

provisional period a third time,” subject to conditions.¹⁹ With regard to the appropriate penalty, Staff adhered to the penalty it recommended at hearing.²⁰

8 The presiding ALJ later entered Order 04/02 in these dockets, the initial order. In the order the ALJ upgraded Miracle Man’s safety rating from conditional to satisfactory.²¹ He also found that mitigating circumstances existed with regard to the penalty for using a driver who was not medically examined and certified, namely, Ms. Bullock’s testimony that Staff had agreed to a July review of medical certification.²² Accordingly, the ALJ rejected Staff’s recommendation that he impose a \$300 penalty for those violations, mitigating the penalty associated with them completely, and thus ordered Miracle Man to pay a penalty of \$48,200.²³

III. ASSIGNMENTS OF ERROR

9 The ALJ upgraded Miracle Man’s safety rating to satisfactory despite the fact that the company made no request that he do so, Staff did not recommend that he do so, and such an upgrade differs from the Commission’s treatment of similarly situated carriers. Should the Commission reverse the order to upgrade Miracle Man’s safety rating?

10 The ALJ mitigated a \$300 portion of the penalty based on Miracle Man witness Bullock’s testimony that the company’s active safety management plan allowed it to check medical certifications in July despite the fact that the company’s active plan would have no reason for such a provision and such provisions tacitly authorize violations of the law. Should the Commission reverse the ALJ’s finding of mitigating circumstances and the order requiring the company to pay a penalty of \$48,200 rather than the \$48,500 recommended by Staff?

¹⁹ Staff Letter at 4.

²⁰ Staff Letter at 5.

²¹ *In re Investigation of Miracle Man Movers, LLC*, Dockets TV-220511 & TV-220503, Order 04/02, 5 ¶¶ 14-15 (Sept. 11, 2023) (“Order 04/02”).

²² Order 04/02 at 8 ¶¶ 26, 28, 9 ¶ 43.

²³ Order 04/02 at 8 ¶¶ 26, 28, 9 ¶ 43.

IV. ARGUMENT

11 The Commission should grant this petition for review and reverse the ALJ’s initial order in two respects. First, the ALJ upgraded Miracle Man’s safety rating to satisfactory in spite of no request or recommendation that he do so, and in stark contrast to the Commission’s previous treatment of similarly situated carriers. Second, the ALJ accepted witness testimony from Miracle Man witness Bullock that is at odds with the administrative record concerning what was in the company’s active safety management plans, and he mitigated a portion of the penalty based on that erroneous testimony. The Commission should, accordingly, order that Miracle Man’s safety rating remain as conditional and that Miracle Man pay a penalty of \$48,500.

A. **Governing Legal Principles**

12 Any party may petition the Commission to seek review of an initial order entered in a brief adjudicative proceeding.²⁴ Any such petition “must identify the errors the party alleges in the order and must provide an explanation of the reasons why the party contends the initial order is incorrect.”²⁵ In response to a petition, “[t]he [C]ommission may adopt, modify, or reject the initial order or may remand the initial order for further proceedings.”²⁶

B. **The Commission Should Modify the Initial Order to Maintain Miracle Man’s Satisfactory Safety Rating**

13 Staff first seeks review of the ALJ’s decision to upgrade Miracle Man’s safety rating from conditional to satisfactory. That upgrade was unrequested, unrecommended, contrary to precedent, and contrary to the manner in which the regulatory scheme in chapter 480-15 WAC is intended to function. The Commission should modify the order to maintain the conditional safety rating.

²⁴ WAC 480-07-610(7)(a).

²⁵ WAC 480-07-610(7)(b).

²⁶ WAC 480-07-610(8).

14 Federal regulations incorporated into state law require motor carriers, including household goods carriers, to demonstrate their fitness to operate.²⁷ That fitness process begins with routine inspections of the carrier’s operations by the Commission’s staff.²⁸ Those reviews produce data concerning violations and accident rates that Staff feeds into an algorithm that produces a safety rating,²⁹ either permanent (for satisfactory ratings) or proposed (for conditional or unsatisfactory ratings).³⁰ A proposed rating for a household goods carrier becomes permanent 60 days after the carrier receives it,³¹ unless the carrier successfully requests a change in the proposed rating and submits documentary evidence showing that it has taken corrective action regarding the circumstances that produced the rating.³²

15 While the safety fitness review process is generally aimed at ensuring the safe operation of motor carriers, it has implications for the licensing of new carriers in Washington. The Commission requires new applicants for household goods carrier operating authority to pass through a provisional period before it will grant the carrier permanent authority. Obtaining a satisfactory safety rating after a Staff review is a key milestone in that process. A carrier that does so within 18 months of obtaining a provisional permit may graduate on to permanent authority.³³ But a carrier that does not faces the likelihood that “the [C]ommission will cancel the provisional permit and dismiss the application for permanent authority unless” it “determines that for good cause the provisional period should be extended.”³⁴

²⁷ WAC 480-15-560; *see generally* 49 C.F.R. Part 385.

²⁸ *E.g.*, Yeomans, TR. at 7:18-21.

²⁹ 49 C.F.R. § 385.7, .9; 49 C.F.R. Part 385 Appx. B.

³⁰ 49 C.F.R. § 385.11(b), (c).

³¹ 49 C.F.R. § 385.11(c)(2).

³² 49 C.F.R. § 385.17.

³³ WAC 480-15-305(1)(c).

³⁴ WAC 480-15-305(3).

16 In recent years, the Commission has frequently relied on a provisional carrier’s receipt of a proposed conditional safety rating as a basis for extending the provisional period rather than cancelling the carrier’s permit and dismissing the application for permanent authority.³⁵ But in doing so, it has consistently used the submission as an acceptable SMP as the predicate “good cause” and refrained from upgrading the company’s safety rating, and, indeed, has already twice done this with Miracle Man.³⁶

17 Here, Miracle Man held a provisional permit. Its most recent safety review resulted in a proposed conditional safety rating. Miracle Man submitted a safety management plan, but it did not request an upgrade to its safety rating.³⁷ And Staff, after reviewing the plan, opined that it was acceptable, but did not recommend an upgrade to the company’s safety rating.³⁸ Specifically, Staff recommended that “the Commission accept Miracle Man’s Movers[’] SMP” and “that the Commission not cancel the Company’s provisional permit and extend the provisional period a third time with conditions,” the violation of which would constitute grounds for cancelling the company’s permit.³⁹

18 Given that record, the ALJ erred by concluding that the Commission should upgrade the company’s safety rating at Miracle Man’s urging and Staff’s recommendation. While Staff did not explicitly state that the Commission should maintain the company’s conditional safety rating, it did not recommend upgrading it either.⁴⁰ Maintaining the rating as “conditional” would accord

³⁵ *E.g., In re Investigation of David Lu d/b/a Grandma’s Boy Moving Co.*, Docket TV-230198, Order 01 (May 8, 2023); *In re Investigation of, & Penalty Assessment Against Marsik Movers, LLC*, Docket TV-230061, Order 01 (Mar. 24, 2023); *In re Investigation of Tetris Moving Co., LLC*, Docket TV-220659, Order 01 (Oct. 21, 2022); *In re Investigation of, & Penalty Assessment Against, Pac. Quality Movers LLC d/b/a Perfect Quality Mover; PQ Movers*, Order 01 (Oct. 12, 2022).

³⁶ *In re Investigation of Miracle Man Movers, LLC*, Docket TV-220511, Order 02, 4 ¶ 12, 8 ¶ 37; *In re Investigation of Miracle Man Movers, LLC*, Docket TV-210128, Order 01, 2-3 ¶¶ 8-10, 3 ¶ 13.

³⁷ Staff Letter at 4-5.

³⁸ Staff Letter at 4-5.

³⁹ Staff Letter at 4-5.

⁴⁰ Staff Letter at 4-5.

with the Commission’s recent treatment of similarly situated carriers.⁴¹ It would also prevent tension between the Commission’s manifest intent (maintaining Miracle Man in provisional status until the company comes through a safety review with a satisfactory rating) and the regulatory scheme (which allows Miracle Man to obtain permanent authority now given the upgraded safety rating).

C. The Commission Should Modify the Initial Order to Impose the \$300 Penalty for Allowing a Driver Who was not Medically Examined and Certified to Operate a Commercial Motor Vehicle

19 Staff next seeks review of the ALJ’s decision to mitigate the \$300 penalty for allowing a driver to operate a commercial motor vehicle without medical examination or certification. The testimony relied on for this mitigation was simply incorrect, and the mitigation sets a troubling precedent. The Commission should modify the order to impose the \$300 penalty.

20 The Commission has promulgated a regulation governing the safe operation of household goods carriers.⁴² The regulation incorporates by reference 49 C.F.R. Part 391.⁴³ That part contains a rule requiring that drivers be “medically examined and certified as physically qualified to operate a commercial motor vehicle.”⁴⁴

21 Miracle Man allowed one of its drivers to operate a commercial motor vehicle on three separate occasions despite the driver lacking the requisite medical examination and certification.⁴⁵ Given the nature of the violation, Staff recommended a \$100 penalty for each

⁴¹ *Stericycle of Wash., Inc. v. Wash. Utils. & Transp. Comm’n*, 190 Wn. App. 74, 93, 359 P.3d 894 (2015) (“[a]gencies should not treat similar situations differently and should strive for equal treatment.”).

⁴² WAC 480-15-560.

⁴³ WAC 480-15-560(1).

⁴⁴ 49 C.F.R. 391.45(a).

⁴⁵ Yeomans, TR. at 21:3-23.

occurrence.⁴⁶ The ALJ, however, mitigated that penalty fully based on testimony offered by Miracle Man at hearing.⁴⁷

22 The Commission should reverse the ALJ’s decision to mitigate the penalty and order the company to pay the \$100-per-violation penalty recommended by Staff (which results in a \$300 penalty for the violations at issue and a total penalty of \$48,500), for two reasons.

23 First, witness Bullock is incorrect about the provisions in Miracle Man’s safety management plan. Staff did not allege in the penalty assessment in the previous Miracle Man docket that the company had allowed a driver to operate a commercial motor vehicle without medical certification,⁴⁸ nor did it allege as much at hearing.⁴⁹ Nor were such violations at issue in Miracle Man’s 2021 safety review.⁵⁰ Because such violations were not at issue, the safety management plan would not have had provisions addressing them.⁵¹

24 Second, Staff is extremely concerned about the mitigation applied here. As noted in the complaint, the medical certification for the driver at issue expired in September.⁵² Accordingly, every trip that driver made between September 2022 and July 2023, a ten-month period, violated a regulation intended to minimize risk to the public. Miracle Man’s argument thus creates a body of law that allows companies to ignore the law, in some cases for sustained periods of time, without sanction. The Commission should not accept that kind of safe harbor for violations of safety regulations.

⁴⁶ Sharp, TR. at 41:4-8.

⁴⁷ Order 04/02 at 8 ¶ 26.

⁴⁸ *In re Investigation of Miracle Man Movers, LLC*, Docket TV-220511, Notice of Penalties Incurred & Due for Violations of Laws & Rules, at 1-2.

⁴⁹ *See generally In re Investigation of Miracle Man Movers, LLC*, Docket TV-220511, TR (Vol. I) (Oct. 5, 2022).

⁵⁰ *In re Penalty Assessment Against Miracle Man Movers, LLC*, Docket TV-210129, Notice of Penalties Incurred & Due for Violations of Laws & Rules, at 1.

⁵¹ See 49 C.F.R. § 385.17(c).

⁵² Complaint at 4 ¶ 10.

IV. CONCLUSION

25 For the reasons stated above, the Commission should grant Staff's petition and modify Order 04/02.

DATED this 19th day of September 2023.

Respectfully submitted,

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