

Decision No. R14-0534

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0230EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

DENNIS LAWSON DOING BUSINESS AS DPL CAR SERVICE INC.,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
ASSESSING CIVIL PENALTY
AND CLOSING PROCEEDING**

Mailed Date: May 19, 2014

I. STATEMENT

1. On March 14, 2014, Trial Staff (Complainant or Staff) of the Commission served, Dennis Lawson, doing business as DPL Car Service Inc. (Respondent or DPL) with Civil Penalty Assessment Notice (CPAN) No. 108399 arising out of alleged violations of *Rule 6102(a)(I) of the Rules Regulating Transportation by Motor Vehicle, 4 Code of Colorado Regulations (CCR) 723-6* and *49 Code of Federal Regulations (CFR) § 391.21(a)*, and *Rule 6102(a)(I), 49 CFR § 396.17(a)*.

2. On April 9, 2014, this matter was referred to an administrative law judge (ALJ) by minute entry of the Colorado Public Utilities Commission (Commission or PUC).

3. Pursuant to Decision No. R14-0391-I, issued on April 11, 2014, an evidentiary hearing was convened in the Commission offices on May 15, 2014. Staff appeared through its counsel, the Respondent failed to appear. A recess was taken for 15 minutes to allow additional time for the Respondent to appear. At 9:15 a.m. the proceeding was again called to order and the Respondent failed to appear. During the course of the hearing, testimony was received from Ms. Nancy Brandt a Criminal Investigator (CI) with the PUC. Hearing Exhibits 1 through 7 were offered and admitted into evidence. At the conclusion of the hearing the matter was taken under advisement by the ALJ.

4. Pursuant to § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record of the hearing and a written recommended decision in this matter.

II. FINDINGS OF FACT

5. Ms. Nancy Brandt is a CI employed by the Commission's Transportation Investigation and Enforcement Section. Her duties include performing safety and compliance reviews (SCRs) on transportation carriers that are regulated by the Commission.

6. Respondent is a luxury limousine carrier operating with Commission Permit No. LL-01520.

7. D is a sole proprietorship. *Hearing Exhibit 1, p. 3.*

8. The vehicle used by Respondent in his transportation service is a 1999 Ford Crown Victoria. The vehicle has been in service for the Respondent in excess of 30 days.

9. SCRs entail reviewing any applicable PUC files on the carrier, driver qualifications files, vehicle maintenance files, and inspecting the vehicles.

10. During the week of December 2, 2013, CI Brandt contacted the Respondent by telephone to schedule an SCR. During the conversation CI Brandt instructed the Respondent as

to what would be required for the Respondent to provide for the SCR.¹ The SCR was then scheduled for December 10, 2013.

11. On December 10, 2013, CI Brandt conducted the SCR at the Respondent's place of business.

12. During the SCR, CI Brandt discovered that Mr. Dennis Lawson was hired as a driver for the Respondent in November 2006; Mr. Lawson is the only driver for the Respondent and had driven for the Respondent on December 7, 2013. *Hearing Exhibit 7.*

13. The Respondent was unable to produce an employment application for Dennis Lawson or records of periodic inspections of its vehicle.

14. As a result of the SCR, CI Brandt found a total of eight violations. Among the violations was failure of the Respondent to have vehicles periodically inspected and failure to require drivers to provide an employment application. *See Hearing Exhibit 4.*

15. An SCR had previously been performed at DPL in 2007 and in 2008. In the 2008 SCR, CI Williams found four violations including failure to have vehicles periodically inspected and failure to require drivers to provide an employment application. *Hearing Exhibit 2.*

16. The 2008 SCR led to the issuance of CPAN No. 87607 to Respondent on May 3, 2008 for failure to have vehicles periodically inspected.

17. The Respondent paid the reduced civil penalty within ten days of issuance.²

¹ CI Brandt did not send an e-mail to the Respondent with the information about the SCR due to Mr. Lawson stating he did not have an e-mail address during the phone conversation.

² A Respondent may have a civil penalty reduced by 50 percent if that amount is paid within ten days of the issuance of the CPAN.

18. In December of 2013, CI Brandt prepared a CPAN to be served upon the Respondent. CI Brandt mailed the CPAN, by certified mail, to Ms. Sheila Schaar, the registered agent for the Respondent. *Hearing Exhibit 1, p. 4.*

19. The CPAN was returned as unclaimed.

20. CI Brandt later contacted Ms. Schaar and was advised that Ms. Schaar no longer served as the registered agent for the Respondent.

21. On March 14, 2014, CI Chesher accompanied by CI Brandt personally served the Respondent with the CPAN at his residence. *Hearing Exhibit 6.*

III. DISCUSSION AND CONCLUSION

22. As the proponent of a Commission order, Complainant has the burden of persuasion in this proceeding pursuant to 4 CCR 723-1-1500 of the Rules of Practice and Procedure.

23. Section 40-7-116, C.R.S., mandates a number of procedures for the imposition of civil penalties by the Commission: After specifying that the listed officials are the ones authorized to issue civil penalty assessments for violations of law, § 116(1)(a) states that, “When a person is cited for the violation, the person operating the motor vehicle involved shall be given notice of the violation in the form of a civil penalty assessment notice.” Section 116 further directs that the civil penalty assessment notice “shall be tendered by the enforcement official, either in person or by certified mail, or by personal service by a person authorized to serve process under rule 4(d) of the Colorado rules of civil procedure.” § 40-7-116(1)(b), C.R.S.

24. Except as otherwise provided by statute, the Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon "the proponent of an order." § 24-4-105(7), C.R.S. As provided in Commission Rule 4 CCR 723-1-1500, “[t]he

proponent of the order is that party commencing a proceeding.” Here, Staff is the proponent since it commenced the proceeding through issuance of the CPAN. Complainant bears the burden of proof by a preponderance of the evidence. *See*, § 13-25-127(1), C.R.S.; 4 CCR 723-1-1500. The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985). While the quantum of evidence that constitutes a preponderance cannot be reduced to a simple formula, a party has met this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

25. The evidence is unchallenged that an SCR took place at the place of business of the Respondent on December 10, 2013. During the SCR the Respondent did not produce the paperwork to show that periodic inspections had been performed on his vehicle.

26. The evidence is unchallenged that the vehicle used by the Respondent, a 1999 Ford Crown Victoria, had been in service for over 30 days at the time of the SCR.

27. The evidence is unchallenged that during the SCR the Respondent did not provide an employment application for Dennis Lawson, the only driver for Respondent. Dennis Lawson has been employed as a driver for the Respondent since November 2006.

28. The evidence is unchallenged that Dennis Lawson drove for Respondent on December 7, 2013.

29. Staff has met its burden of proof by a preponderance of the evidence to show that, the Respondent failed to have periodic inspections performed on its vehicle and failed to require its driver to provide an employment application.

30. Proper service of the CPAN is vital. “The mandatory requirements for valid service of process are fundamental because of the due process requirements of notice. *Bush v. Winker*, 892 P.2d 328, 332 (Colo. App. 1994).

31. In the instant case, CI Brandt originally sent the CPAN by certified mail to the registered agent listed with the Commission for the Respondent. The letter was returned and it was determined that the person listed was no longer the agent for the Respondent. Personal service was then made upon Mr. Lawson. These actions are all consistent with proper service under § 40-7-116, C.R.S.

32. Service was made in accordance with § 40-7-116, C.R.S.

33. Having found violations of the cited regulations, it is necessary to determine the amount of the civil penalty to be assessed for these violations. The Commission is authorized to consider aggravating or mitigating circumstances surrounding particular violations in order to fashion a penalty assessment that promotes the underlying purpose of such assessment. § 40-7-113, C.R.S.

34. Pursuant to Commission Rule 4 CCR 723-1-1302(b):

- (b) The Commission may impose a civil penalty, when provided by law. ... The Commission will consider any evidence concerning some or all of the following factors:
 - (I) the nature, circumstances, and gravity of the violation;
 - (II) the degree of the respondent’s culpability;
 - (III) the respondent’s history of prior offenses;
 - (IV) the respondent’s ability to pay;
 - (V) any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
 - (VI) the effect on the respondent’s ability to continue in business;
 - (VII) the size of the respondent’s business; and

(VIII) such other factors as equity and fairness may require.

35. During an SCR in 2008 Respondent was given a warning for the same violations contained in the CPAN issued in this proceeding.

36. In 2008 the Respondent was issued a CPAN for one of the violations contained in the CPAN in this proceeding.

37. The Respondent has failed to rectify these violations after repeated warnings and a previous civil penalty assessment.

38. The Respondent failed to appear for the hearing in this proceeding and provide any mitigation.

39. The undersigned ALJ finds no mitigation.

40. The welfare of the public is at stake with the safety and compliance review. It is through these reviews that the Commission can ensure the proper level of safety for all those on the roads of Colorado. These are important regulations and cannot be ignored or deemed unimportant.

41. For the foregoing reasons, the undersigned ALJ concludes that Respondent committed the violations as listed on CPAN No. 108399 on December 7, 2013 and December 10, 2013, and that the assessment of a \$1,350 civil penalty, plus a \$135.00 surcharge is warranted for a total assessment of \$1,485.00.

42. Pursuant to § 40-6-109(2), C.R.S., the ALJ recommends that the Commission enter the following order.

IV. ORDER**A. The Commission Orders That:**

1. As alleged in Civil Penalty Assessment Notice No. 108399, Respondent, Dennis Lawson, doing business as DPL Car Service (Respondent), violated 4 *Code of Colorado Regulations* (CCR), 723-6-6102(a)(I) and 49 *Code of Federal Regulations* (CFR) 396.21(a); and *Rule 6102(a)(I)*, 4 CCR 723-6, and 49 CFR 396.17(a).

2. Respondent is ordered to pay to the Commission within 30 days of the date that this Recommended Decision becomes the decision of the Commission, the sum of \$1,485.00. This amount represents the total of the civil penalty assessed for the violations found in Ordering Paragraph No. 1 plus the mandatory surcharge imposed by § 24-34-108, C.R.S.

3. Proceeding No. 14G-0230EC is now closed.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the

administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director