

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

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DISTRICT OF COLUMBIA
TAXICAB COMMISSION

Petitioner,

v.

GETACHEW B. AFEWORK
Respondent.

Case No.: 2011-TAXI-V200002

FINAL ORDER

I. Introduction

A. Summary of this Final Order

This Final Order denies Respondent's Motion to Dismiss, but dismisses the charge of refusing to haul a passenger in violation of 31 DCMR 819.4, for reasons other than those presented in Respondent's Motion to Dismiss. Additionally, this Final Order holds that Respondent is liable for violating 31 DCMR 814.3, for failing to display his identification card, and 31 DCMR 823.4, for failing to provide his manifest, as charged, and assesses him fines in the total amount of \$50.

B. Procedural History

This case arises under Title 31, Chapter 8 of the District of Columbia Municipal Regulations ("DCMR"). Petitioner, the District of Columbia Taxicab Commission ("Petitioner")

or the “Government” or the “Commission”), issued Notice of Infraction No. V200002 (the “NOI”) to Respondent Getachew B. Afework, charging him with violating 31 DCMR 819.4, for refusing to haul a passenger, and 31 DCMR 814.3, for failing to display his identification card, and 31 DCMR 823.4, for failing to provide his manifest. The NOI alleged that the infractions occurred on September 18, 2011¹, in the 3400 block of Nebraska Avenue, NW. The Government seeks a \$250 fine for the refusal to haul charge and \$25 fines for the failure to display identification card and failure to provide manifest, for a total fine amount of \$300.

On November 29, 2011, Respondent answered the NOI with pleas of Deny to all three charges and requested a hearing. Consequently, on December 2, 2011, the Office of Administrative Hearings (“OAH”) issued a Scheduling Order, scheduling an evidentiary hearing for January 11, 2012.

On January 11, 2012, the evidentiary hearing was convened as scheduled. David Person, paralegal specialist for the District of Columbia Taxicab Commission, appeared on behalf of the Government. Respondent appeared and represented himself. At the onset of the hearing, the Government made an oral motion to amend the NOI to list May 7, 2011, as the “Date of Infraction” for the refusal to haul and failure to display identification charges, which motion Respondent did not oppose and which I granted. At Respondent’s request, and over objection from the Government, the evidentiary hearing was continued because Respondent had not received the Government’s proposed exhibits, including the passenger complaint, and upon his assertion that he required time to prepare for the hearing after receiving the exhibits. This administrative court provided both parties with a copy of the proposed exhibits filed by the

¹ At the January 11, 2012 hearing, the Government made an oral motion to amend the NOI to list May 7, 2011, as the “Date of Infraction” for the refusal to haul and failure to display identification charges, which motion Respondent did not oppose and which I granted.

Government. With the agreement of the parties with respect to the continued date, the evidentiary hearing was re-scheduled for January 27, 2012.

On January 27, 2012, the evidentiary hearing was convened as scheduled. David Person appeared on behalf of the Government. Respondent appeared and represented himself. At the onset of the hearing Respondent made an oral motion to dismiss the case. In support of his motion, Respondent argued that the Commission does not have authority to prosecute cases involving passenger complaints. I denied Respondent's motion. Respondent then asked for a continuance to allow him time to seek legal representation. Over the Government's objection, I granted Respondent's request for a continuance, but informed him that I would grant no further continuances. With the agreement of the parties with respect to the continued date, the evidentiary hearing was re-scheduled for February 22, 2012.

On February 16, 2012, Respondent filed Respondent's Motion for Stay and Respondent's Motion to Dismiss Notice of Infraction.

On February 22, 2012, the hearing proceeded as scheduled. David Person appeared again on behalf of the Government. Respondent appeared and represented himself. At the onset of the hearing, I denied Respondent's Motion for Stay because the motion did not comply with OAH Rule 2813.5. Also at the onset of the hearing, I informed the parties that I would take Respondent's Motion to Dismiss Notice of Infraction under advisement, allowing the parties to elicit evidence relevant to the Motion to Dismiss during the hearing, and then allowing the Government to file a written opposition after the hearing. The evidentiary hearing then proceeded, with testimony from the complaining witness and Respondent.

At the conclusion of the evidentiary hearing, I requested that Respondent file a supplement to his Motion to Dismiss with argument and citations to legal authority on two issues

raised at the hearing: (1) what the appropriate remedy or sanction is if the Commission violates 31 DCMR 701.6, by failing to notify the taxi owner or operator of a violation within 10 days; and (2) why the Commission lacks authority to prosecute infractions that are based on passenger complaints. Because the Commission indicated that it wished to oppose Respondent's Motion to Dismiss with written argument that 31 DCMR 701.6 is inapplicable to proceedings before OAH, in addition to scheduling a deadline for the Government's opposition, I also scheduled a deadline for Respondent's reply to the Government's opposition.

On February 27, 2012, I issued an Order that denied Respondent's Motion for A Stay and scheduled deadlines of March 22, 2012 for Petitioner to file a supplement to his Motion to Dismiss, of April 23, 2012 for the Government's opposition, and of May 7, 2012 for Respondent's reply.

On March 21, 2012, Respondent filed a second Motion for A Stay. In his Motion, Respondent asked for a stay and that he be allowed until April 10, 2012 to file a brief. On March 26, 2012, I issued an Order denying Respondent's Motion for Stay, but granting Respondent's request for additional time in which to file a brief.

The March 26, 2012 Order allowed Respondent until April 10, 2012 to file a supplement to his Motion to Dismiss, the Government until May 10, 2012 to file an opposition, and Respondent until May 24, 2012 to file a reply to the Government's opposition.

On April 10, 2012, Respondent filed a Brief Requesting Dismissal. On May 10, 2012, the Government filed its opposition.

II. Respondent's Motion to Dismiss is Denied

Respondent has requested dismissal of the charges on two grounds. First, Respondent argues that the Commission lacks authority to file and prosecute notices of infraction. Secondly, Respondent argues that the Government's failure to notify him of its receipt of a complaint about him within 10 days violated 31 DCMR 701.6, and mandates dismissal of the charges.

Respondent's argument that the Commission lacks authority to file and prosecute notices of infractions is not persuasive. The District of Columbia Council granted the Commission authority to regulate taxicabs. D.C. Official Code § 50-307(a). The District of Columbia Council charged the Commission with certain responsibilities, among them the responsibility to "establish reasonable civil fines and penalties for violations of rules issued by the Commission...." D.C. Official Code § 50-307(b)(1)(I). Among the rules issued by the Commission concerning taxicabs are the regulations at issue in this case, 31 DCMR 819.4, 31 DCMR 814.3, and 31 DCMR 823.4. The Final Rulemaking for these three regulations was published at 37 DCR 3595, 37 DCR 3620 (June 1, 1990). At one time, the Commission's Panel on Adjudication had the jurisdiction, power and duty to adjudicate complaints lodged against taxicab operators. D.C. Official Code § 50-307(b)(1)(I). However, jurisdiction to adjudicate complaints was transferred to OAH as of October 1, 2004. D.C. Official Code § 2-1801.03(b)(3).

Respondent's argument that the charges should be dismissed because the Commission did not give him notice of the complaint within 10 days under 31 DCMR 701.6 is also not persuasive. Section 701.6 requires the Office of Taxicabs to notify the taxicab operator, by certified mail, of a complaint within ten days its receipt of a complaint. The Government admittedly did not follow this procedure. The Government is of the view that 701.6 no longer

applies, 701.6 and related regulations having been supplanted by adjudication procedures applicable to OAH when jurisdiction to adjudicate complaints was transferred to OAH in October 1, 2004. D.C. Official Code § 2-1801.03(b)(3). In any event, even if 701.6 remains in effect, the regulation provides no remedy for the Commission's violation of it. As a general rule, a statutory or regulatory time period is not presumed to be mandatory unless it both expressly requires an agency to act within a particular time period and specifies a consequence for failure to comply with the provision. *Teamsters Local Union 1714 v. PERB*, 579 A.2d 706 (D.C. 1990); *Hughes v. District of Columbia Dep't of Employment Servs.*, 498 A.2d 567, 571 (D.C. 1985). See also *Thomas v. Barry*, 234 U.S. App. D.C. 378, 379, 729 F.2d 1469, 1470 (1984). Although the regulation requires notice within ten days, it specifies no consequence for failure to comply with the requirement. There is no indication that non-compliance with the ten-day requirement would *per se* invalidate agency action.

For the foregoing reasons, Respondent's motion to dismiss is denied and I will now proceed to decide this case on the merits.

Based on the testimony of the witnesses, my assessment of their credibility, the exhibits admitted into evidence, and the entire record herein, I hereby make the following findings of fact and conclusions of law:

III. Findings of Fact

Respondent is a licensed taxicab driver in the District of Columbia.

On May 7, 2011, at approximately 7:30 p.m., Respondent picked-up the complaining witness, Lane Hudson, and his companion in the 3400 block of Nebraska Avenue, NW. Respondent drove a few blocks, during which time he and the complaining witness exchanged words. Respondent asked the complaining witness his destination, to which the complainant responded “just drive.” Respondent smelled alcohol on the complaining witness. For unclear reasons, the complainant yelled at Respondent to stop the taxicab. Respondent and the complaining witness dispute what words were exchanged, but during that exchange the complainant yelled and cursed. The complaining witness and his companion exited the taxicab at Respondent’s insistence. Before doing so, the complainant looked around the inside of the taxicab for Respondent’s identification card, but the identification card was not visible anywhere in the taxicab. The complainant obtained the taxicab’s license plate number after exiting the taxicab. Neither the complaining witness nor his companion paid any fare to Respondent.

Approximately two days after the incident, the complaining witness sent a complaint to the Commission.

Some weeks or months later, Respondent met with Mr. Person concerning the refusal to haul complaint filed by the complaining witness. Mr. Person asked that Respondent bring him his May 2011 manifest. Respondent met with Mr. Person, but did not provide his May 2011 manifest then or at any time up through the date the Government issued the NOI to Respondent.

IV. Conclusions of Law

A. Liability for violating 31 DCMR 819.4

Petitioner has charged Respondent with refusing to haul a passenger in violation of 31 DCMR 819.4 and 819.5, which state:

819.4: Taxicab operators shall, at all times when on duty and not engaged, furnish service on demand to any person, except as provided for in section 819.5.

819.5: No taxicab operator shall refuse to transport a person while holding his or her taxicab for hire, unless:

- (a) Previously engaged;
- (b) Unable or forbidden by the provisions of this title to do so;
- (c) The operator has reason to believe the person is engaged in a violation of law; or
- (d) The operator has cause to fear injury to his or her person, property or taxicab.

Petitioner bears the burden of proof by a preponderance of the evidence. D.C. Official Code § 2-509(b). A preponderance of the evidence means that the disputed fact is more likely true than untrue; the evidence must be convincing. 29 Am. Jr. 2d Evidence § 157 (1994). To prove that Respondent violated the regulation, the Government must prove that Respondent refused to transport the complainant following his demand to be hauled while Respondent was on duty and not already engaged.

Respondent did not dispute that he was on duty and not already engaged on May 7, 2011. However, Respondent asserted that an exception under 819.5 exempted him from the requirements of 819.4. Respondent asserted that he refused to haul the complainant because he feared injury to his person or taxicab. 819.5 (c). Based on Respondent's credible and unrebutted testimony, he feared for himself and his taxicab. He was outnumbered two to one. The complainant was loud, argumentative, and disrespectful. He appeared to Respondent to have been drinking alcohol. When the complainant got out of Respondent's taxicab, he kicked the taxicab. The Government did not discredit Respondent's assertions, either on cross-examination or with rebuttal testimony, despite having opportunity to do so. Accordingly, on this record,

based on Respondent's unrefuted testimony that he feared injury to his person or taxicab, the Government did not meet its burden of proof. The Government failed to refute Respondent's testimony that established an exemption to refusal to haul. Accordingly, Respondent is not liable for violating 31 DCMR 819.4, as charged.

B. Liability for violating 31 DCMR 814.3

Respondent is charged with a violation of 31 DCMR 814.3, which states as follows:

The operator identification card (face) issued to the driver pursuant to Section 31(e) of the License Act (D.C. Official Code Section 47-2829(e)(1) (2001) shall be displayed in a bracket or receptacle of a type approved by the Commission and shall be firmly attached to the right sun visor so as to be visible to any passenger in the vehicle.

Here, too, Petitioner bears the burden of proof by a preponderance of the evidence. D.C. Official Code § 2-509(b). Petitioner met its burden. Undisputed evidence established that Respondent violated this regulation as charged. Both Respondent's testimony and that of the complainant show that Respondent's identification card was not displayed in the taxicab. The prescribed fine for a violation of this regulation is \$25, 31 DCMR 825.1, which is the fine amount requested by the Government and which will be assessed to Respondent.

C. Liability for violating 31 DCMR 823.4

Respondent is also charged with violating of 31 DCMR 823.4, which states as follows:

The manifest shall be kept on file and available for a period of two (2) years. The manifest shall be provided to the Commission upon demand and to any authorized agency of the District of Columbia or United States Government.

Here, too, Petitioner bears the burden of proof by a preponderance of the evidence. D.C. Official Code § 2-509(b). Petitioner met its burden. Undisputed evidence established that Respondent violated this regulation as charged. The Government demanded Respondent's manifest for the month of May 2011. Respondent did not provide Petitioner the manifest and offered no explanation for his failure to do so. Therefore, Respondent is liable for violating 823.4. The prescribed fine for a violation of this regulation is \$25, 31 DCMR 825.1, which is the fine amount requested by the Government and which will be assessed to Respondent.

V. Order

Upon consideration of Respondent's Motion to Dismiss and Petitioner's Opposition, and based on the foregoing findings of fact and conclusions of law and the entire record in this matter, it is, this 25th day of May 2012:

ORDERED, that Respondent's Motion to Dismiss is **DENIED**; and it is further

ORDERED, that Respondent is **NOT LIABLE** for violating 31 DCMR 819.4, as charged in the Notice of Infraction (V200002)), and, accordingly, this charge is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that Respondent is **LIABLE** for violating 31 DCMR 814.3 and 31 DCMR 823.4, as charged in the Notice of Infraction (V200002); and it is further

ORDERED, that Respondent shall pay fines in the total amount of **FIFTY DOLLARS (\$50)** for his violations of 31 DCMR 814.3 and 31 DCMR 823.4, in accordance with the attached instructions **within 35 days** of the mailing date of this Order (30 days plus 5 days service time pursuant to 31 DCMR 702.5 and 1 DCMR 2811.5), unless the time period is extended; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the non-renewal of Respondent's identification card and/or taxicab license, pursuant to 31 DCMR 702.6; and it is further

ORDERED, that the reconsideration and appeal rights of any party aggrieved by this order are attached below.

Dated: May 25, 2012

_____/s/_____
Elizabeth Figueroa
Administrative Law Judge

