

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Elwood M. Roberson,
Driver

Pennsylvania Commercial Driver's
License

)
) Order No.: DE-2022-5000-IMH
)

) Service Date: April 25, 2022
)

) Service Time: 12:45 PM
)
)

IMMINENT HAZARD OUT-OF-SERVICE ORDER

This is an Imminent Hazard Out-of-Service Order ("ORDER") issued by the Secretary of the United States Department of Transportation (the "Secretary") pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 31310(f), 49 CFR § 383.52, and 49 CFR § 386.72(b)(1), and pursuant to a delegation of authority to the Regional Field Administrator, Eastern Service Center, Federal Motor Carrier Safety Administration ("FMCSA"), United States Department of Transportation ("USDOT"), Baltimore, Maryland. This ORDER applies to Elwood M. Roberson, a commercial motor vehicle driver (also referred to as "you," "your," and/or "Roberson").

The Secretary and the FMCSA find that your continued operation of any commercial motor vehicle ("CMV"), as defined in 49 CFR § 390.5T,¹ in interstate commerce constitutes an **imminent hazard** to public safety. This finding means that

¹ Under 49 CFR § 390.5T, a commercial motor vehicle includes "any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—(1) [h]as a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or (2) [i]s designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) [i]s designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation."

based upon your present state of unacceptable safety compliance, your operation of any CMV substantially increases the likelihood of serious injury or death if not discontinued immediately.

In addition, pursuant to 49 CFR § 383.52, the determination that your operation of CMVs constitutes an imminent hazard results in you being disqualified from operating any CMV for which a commercial driver's license is required. The initial period of disqualification is for 30 days from the service date of this ORDER and is effective immediately. The Regional Field Administrator proposes a disqualification of one year from the service date of this ORDER, the maximum duration of disqualification under 49 CFR § 383.52(c). This one-year period of disqualification will take effect in 30 days unless you submit a request for administrative review, or the Regional Field Administrator rescinds this ORDER pursuant to Section IV below. This disqualification is separate from any other disqualification to which you may have been, or will be, subject. This disqualification will be transmitted to the jurisdiction where you are licensed and will become a part of your driving record maintained by that jurisdiction.

EFFECTIVE IMMEDIATELY YOU MUST CEASE OPERATING ANY COMMERCIAL MOTOR VEHICLE IN INTERSTATE COMMERCE.

YOU ARE PROHIBITED FROM OPERATING ANY COMMERCIAL MOTOR VEHICLE IN INTERSTATE COMMERCE AT ANY TIME DURING WHICH THIS ORDER IS IN EFFECT.

If you are served this ORDER while operating a CMV in interstate commerce, you must immediately park such vehicle and notify the operating motor carrier of this ORDER. You may not continue to operate the CMV.

I. JURISDICTION

You are a driver of CMVs in interstate commerce. You are subject to the Federal Motor Carrier Safety Regulations ("FMCSRs") in 49 CFR parts 350-399 as well as

Orders of the USDOT and FMCSA. See 49 U.S.C. §§ 506, 507, 13501, 31133, 31136 and 31306. You are required to comply with federal statutes and regulations including those pertaining to controlled substance and alcohol use and testing and driving of CMVs. (49 CFR parts 382, 383, and 392).

II. BASIS FOR ORDER

The basis for determining that your operation of a CMV poses an imminent hazard to the public is that you have failed to exercise an appropriate duty of care to the motoring public while operating a CMV that was transporting propane, a hazardous material. Specifically, you ignored FMCSRs relating to alcohol use and the safe operation of a CMV. These violations and blatant disregard for the safety of the motoring public demonstrated by these actions substantially increases the likelihood of serious injury or death to you and the motoring public if not discontinued immediately.

The specific deficiencies that substantially increase the likelihood of serious injury or death are as follows:

1. On February 11, 2022, you were operating a CMV for SharpGas Inc. dba Sharp Energy (USDOT No. 225304)² in interstate commerce on River Road in Manor Township, Pennsylvania. At approximately 3:22 p.m., while you were operating a CMV transporting propane, you crossed the center line of the road and side-swiped another vehicle.

2. You were taken into custody and, at approximately 5:18 p.m., you were administered a blood alcohol test by the Manor Township Police Department. The blood alcohol test revealed a Blood Alcohol Content (BAC) of 0.21, more than five times

² Motor carrier was previously JF Energy dba Diversified Energy which was purchased by Sharp Gas in December 2021.

the 0.04 legal limit for CMV drivers. Accordingly, you were performing a safety-sensitive function, driving a CMV, while having an alcohol concentration greater than 0.04 in violation of 49 CFR § 382.201 (reporting or remaining on duty to perform a safety sensitive function while having an alcohol concentration greater than 0.04) and 49 CFR §§ 382.207 (pre-duty use)/392.5(a)(1) and (2) (using alcohol within 4 hours before going on duty or having any measured alcohol concentration while on duty or operating or in physical control of a CMV).

3. The State of Pennsylvania charged you with Driving Under the Influence (Title 75 Pa.CSA § 3802), four counts of Recklessly Endangering Another Person (Title 18 Pa.CSA § 2705), Risking Catastrophe (Title 18 Pa.CSA § 3302), and Failure to Keep Right (Title 75 Pa.CSA § 3301). Operation of a commercial motor vehicle in violation of laws, ordinances, or regulations of the jurisdiction in which it is being operated is a violation of 49 CFR § 392.2.

III. REMEDIAL ACTION

To abate the imminent hazard, and before you may operate a CMV in interstate commerce, you must provide evidence to demonstrate compliance with the FMCSRs to the FMCSA Eastern Service Center Regional Field Administrator. **You may not operate a commercial motor vehicle in interstate commerce until you have fully complied with the Remedial Actions outlined in this section.**

1. You must complete the return to duty process. You must be evaluated by a substance abuse professional (SAP). You must provide an accurate account of your alcohol use history for the last five years and a copy of this ORDER at the initial SAP consultation. You must successfully complete the substance abuse education and/or treatment program as recommended by the SAP, pass return-to-duty testing, and otherwise satisfy all requirements set forth in 49 CFR §§ 382.503 and 382.605 and 49 CFR part 40, subpart O. The SAP evaluation, program completion, and return-to-duty testing must occur after the service date of this ORDER. You must demonstrate full compliance with all SAP assessments and evaluation recommendations

and return-to-duty testing. You must provide documentation that you have completed the SAP evaluation, required education, and return-to-duty process and otherwise complied with 49 CFR part 40, subpart O.

2. You must provide documentation that you possess a valid commercial driver's license and a valid medical certificate issued after the service date of this ORDER.
3. You must provide evidence that you are physically qualified to operate a CMV in accordance with 49 CFR § 391.11, 391.41, and 391.45, including evidence that you do not have a current clinical diagnosis of alcoholism in conformity with 49 CFR § 391.41(b)(13).
4. You must provide information regarding your current employment status, indicating whether you are currently employed as a driver or in any other safety-sensitive position regulated by FMCSA. This documentation must include the name, address and USDOT number of your current motor carrier employer(s), if any.
5. You must satisfactorily demonstrate that you have:
 - a. Completed a training course on the Federal Motor Carrier Safety Regulations (FMCSRs), specifically, training focused on Alcohol Use and Testing (49 CFR part 382) and Driver Qualification (49 CFR part 391); and
 - b. Acquired the requisite knowledge of the rules and safety practices to operate a commercial motor vehicle in accordance with the FMCSRs.
6. In accordance with 49 CFR §§ 382.201 and 207, you must demonstrate that you will not report for duty or remain on duty requiring the performance of safety-sensitive functions with an alcohol concentration of 0.04 or greater or within four hours of consuming alcohol.
7. You must comply with all Orders of FMCSA.

IV. RESCISSION OF ORDER

You are subject to this ORDER until the Order is rescinded in writing by the FMCSA. **Until the ORDER is rescinded, you are prohibited from operating any CMV, as defined by 49 CFR § 390.5T, in interstate commerce.** This ORDER will not be rescinded until the Regional Field Administrator for FMCSA's Eastern Service Center determines the remedial action requirements, specified in Section III of this ORDER, are fully satisfied and acceptable documentation is submitted.

Any request to rescind this ORDER and documentation demonstrating satisfactory completion of the remedial action requirements must be sent to the Regional Field Administrator, Eastern Service Center, with a copy to the Division Administrator, Pennsylvania Division, via electronic mail or to the following below addresses. To ensure your request is received and reviewed in an expedited manner, electronic mail is recommended.

Regional Field Administrator, Eastern Service Center
Federal Motor Carrier Safety Administration
31 Hopkins Plaza, Suite 800
Baltimore, MD 21201
Email: ESCEenforcement@dot.gov

Division Administrator, Delaware Division
Federal Motor Carrier Safety Administration
1203 College Park Drive
Dover, DE 19904
Email: MCDEOFF@dot.gov

V. FAILURE TO COMPLY

Failure to comply with the provisions of this ORDER will subject you to an action by the United States Attorney in the United States District Court for equitable and/or declaratory relief and civil penalties. You may be assessed civil penalties of up to \$2,072 for violations of this ORDER. Each day you operate in violation of this ORDER will constitute a separate violation and subject you to a separate penalty. See 49 U.S.C. §§ 521(b)(2)(A) and 49 CFR §§ 386.72(b)(6) and 386.82(a)(4)). Knowing and/or willful violation of the provisions of this ORDER may also subject you to criminal penalties. See 49 U.S.C. § 521(b)(6).

VI. ADDITIONAL PENALTIES FOR VIOLATIONS

Any driver who violates Federal requirements, including the FMCSRs, is subject to civil and/or criminal penalty provisions. Penalty provisions are separate and distinct

from this ORDER. Penalties may be assessed for violations of Federal requirements, including the FMCSRs and Orders of the FMCSA, previously discovered, discovered after service of this ORDER, and discovered during subsequent investigations.

VII. RIGHT TO REVIEW

You have the right to administrative review pursuant to 5 U.S.C. § 554 and 49 CFR §§ 383.52(c) and 386.72(b)(4). If requested, administrative review must be commenced within ten days after the petition for review is filed and must be concluded as expeditiously as practicable, but may run longer than ten days from the date of issuance of such ORDER or the filing of the petition for review. See 49 U.S.C. § 521(b)(5) and 49 CFR § 386.72(b)(4). A request for review must be addressed to the Assistant Administrator, United States Department of Transportation, Federal Motor Carrier Safety Administration, with a copy sent to Adjudications Counsel and the Regional Field Administrator, Eastern Service Center, via electronic mail or at the following addresses. To ensure your request is received and reviewed in an expedited manner, electronic mail is recommended.

Assistant Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Adjudications Counsel (MC-CCA)
Federal Motor Carrier Safety Administration
Office of the Chief Counsel
1200 New Jersey Avenue, S.E.
Washington, DC 20590
Email: FMCSA.Adjudication@dot.gov

Regional Field Administrator, Eastern Service Center
Federal Motor Carrier Safety Administration
31 Hopkins Plaza, Suite 800
Baltimore, MD 21201
Email: ESCEenforcement@dot.gov

The request for review must state the material facts which you believe dispute or contradict the finding that your operation of a commercial motor vehicle constitutes an **imminent hazard** to the public.

A REQUEST FOR ADMINISTRATIVE REVIEW DOES NOT SUSPEND OR DELAY YOUR DUTY TO COMPLY WITH THIS ORDER IMMEDIATELY. See 49 CFR § 386.72(b)(4). This ORDER is separate and independent from all other Orders or actions that may be issued by FMCSA or other jurisdiction and does not amend or modify any other Orders or actions. Any request for administrative review of this ORDER does not attach to or apply to any other Order or action.

Note that a copy of this ORDER will be posted on the FMCSA website.

TAFT DARRYL
KELLY

Digitally signed by TAFT
DARRYL KELLY
Date: 2022.04.22 09:21:04
-04'00'

Taft Kelly, Regional Field Administrator
U.S. Department of Transportation
Federal Motor Carrier Safety Administration
Eastern Service Center