

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

Eric G. Burke,)	Order No.: PA-2022-5000-IMH
Driver)	
)	Service Date: <u>5/13/2022</u>
Pennsylvania Commercial)	
Driver’s License)	Service Time: <u>3:11 PM ET</u>
)	

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 Eric G. Burke, a commercial motor vehicle driver (also referred to as “you,” “your,” and/or “Burke”).

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

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.”

imminent hazard to public safety. This finding means that 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. Specifically, you ignored FMCSRs relating to alcohol and controlled substances use and possession, medical certification, 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 May 18, 2020, you submitted to a pre-employment controlled substances test while seeking employment with Lentzcaping, Inc. On May 29, 2020, the Medical Review Officer (“MRO”) notified you that your test results had been verified as positive for Marijuana Metabolites and that you were prohibited from operating CMVs. You were also referred to a Substance Abuse Professional (“SAP”) for evaluation, education, and treatment pursuant to 49 CFR Part 40. Your status as prohibited was entered into the Drug and Alcohol Clearinghouse (“DACH”).

2. You ignored the prohibition on your operation of CMVs and the requirement that you undergo a SAP evaluation, and instead continued to drive in interstate commerce. On October 11, 2020, you were subject to a roadside inspection after a single vehicle CMV crash. You were placed out-of-service for possession of marijuana while operating a CMV, a violation of 49 CFR § 392.4(a). Your operation of a CMV for which a CDL is required after your positive

test result but before completing the SAP evaluation and return-to-duty process is a violation of 49 CFR §§ 382.215, 503, and 391.11(a)/391.41(b)(12).

3. On June 14, 2021, you were subject to a roadside inspection while operating a CMV in interstate commerce for Sinop Trucking, Inc. (USDOT #2640225). You were placed out-of-service for performing a safety-sensitive function while prohibited in the DACH for having a positive controlled substances test result, a violation of 49 CFR §§ 382.501(a) and 392.15. You were also placed out-of-service for possession of alcohol while on-duty, or operating, or in physical control of a CMV, a violation of 49 CFR § 392.5(a)(3).

4. On December 15, 2021, you were subject to a roadside inspection while operating a CMV in interstate commerce for Sinop Trucking, Inc. You were again placed out-of-service for performing a safety-sensitive function while prohibited in the DACH for having a positive controlled substances test result, a violation of 49 CFR § 382.501(a).

5. On January 24, 2022, the Pennsylvania Department of Transportation suspended your CDL because you are prohibited from operating a CMV.

6. You have not undergone the SAP evaluation or received a negative return-to-duty test result.

7. Between March 12, 2022 and April 21, 2022, you made at least 7 additional trips in interstate commerce in a CMV for which a CDL is required despite the prohibition on your operation of CMVs, a violation of 49 U.S.C. § 31302.

8. On April 21, 2022, you were subject to a roadside inspection while operating a CMV in interstate commerce for Sinop Trucking, Inc. You were again placed out-of-service for performing a safety-sensitive function while prohibited in the DACH for having a positive controlled substances test result, a violation of 49 CFR § 382.501(a). You were also placed out-

of-service for operating a CMV without a CDL, a violation of 49 U.S.C. § 31302 and 49 CFR § 383.23(a)(2). You ignored this out-of-service order and completed your trip.

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 and controlled substances 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 satisfactory to the Regional Field Administrator 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: (a) you do not use any drug or substance identified in 21 CFR § 1308.11 Schedule 1, an amphetamine, a narcotic, or other habit-forming drug in conformity with 49 CFR § 391.41(b)(12)(i); (b) you do not use any non-Schedule 1 drug or substance that is identified in the other schedules in 21 part 1308 except when the use is prescribed by a licensed medical practitioner in conformity with 49 CFR § 391.41(b)(12)(ii); and 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 and Controlled Substances 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. 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, Pennsylvania Division
Federal Motor Carrier Safety Administration
215 Limekiln Road, Suite 200
New Cumberland, PA 17070
Email: mcpaoff@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: 2022.05.10 16:12:17 -04'00'

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