

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**BRIGGS TRANSPORT, INC.,
(U.S. DOT No. 1427973)**

Petitioner.

**Docket No. FMCSA-2013-0507¹
(Midwest Service Center)**

ORDER DENYING PETITION FOR RECONSIDERATION

1. Background

On December 5, 2013, Petitioner Briggs Transport, Inc. served a Petition for Reconsideration of a Notice of Default and Final Agency Order (NDFAO) issued by the Field Administrator for the Midwest Service Center, Federal Motor Carrier Safety Administration (FMCSA) on October 4, 2013. The NDFAO was issued after Petitioner failed to timely reply to a Notice of Claim (NOC) served August 29, 2013 proposing a civil penalty of \$2,000 based on one alleged violation of 49 CFR 385.13(a)(2), operating a commercial motor vehicle after the effective date of an “unsatisfactory” safety rating.² The NDFAO advised Petitioner that the NOC would become the Final Agency Order in this proceeding effective October 9, 2013, with the civil penalty immediately due and payable on that date.³

The Petition for Reconsideration was filed on Petitioner’s behalf by Master Safety, Inc., a safety consultant hired by Petitioner to “assist in the submission of their Sample Management Plan & assistance in the fine reduction process.”

¹ The prior case number was IL-2013-0226-US1441.

² See Exhibit 3 to Field Administrator’s Answer to Petition for Reconsideration (Answer).

³ See Exhibit 4 to Answer.

On December 13, 2013, the Field Administrator served his answer to the Petition for Reconsideration. The Field Administrator argued that the Petition for Reconsideration should be denied because it was not timely served and, in any event, did not meet the standards for vacating a properly issued NDFAO.

2. Decision

Under 49 CFR 386.64(a), any party may petition the Assistant Administrator for reconsideration of a Final Agency Order within 20 days following service of that order. Section 386.64(b) provides that an NDFAO issued by a Field Administrator may be vacated where a respondent can demonstrate excusable neglect, a meritorious defense, or due diligence in seeking relief.

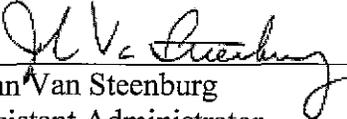
The Petition for Reconsideration was served on December 5, 2013, 37 days after the deadline established by § 386.64(a), and is therefore denied.⁴ Even if Petitioner had submitted a timely petition, it would have failed to meet its burden of demonstrating that the Final Agency Order should be vacated. Because Petitioner did not deny that it failed to timely reply to the NOC and provided no explanation for its noncompliance, there are no grounds for finding excusable neglect. Moreover, the Petition did provide any defenses to the charges alleged in the NOC. Although Petitioner requested a reduction in the proposed penalty, apparently based on the fact that it had hired a safety consultant, the term “meritorious defense” in § 386.64 does not apply to requests to reduce a civil penalty where the Petitioner does not contest the substantive

⁴ The deadline for filing a Petition for Reconsideration of the NDFAO was October 29, 2013. This date was calculated by adding 20 days to the October 4, 2013 service date of the NDFAO and an additional five days, because the NDFAO was served by mail. *See* 49 CFR 386.8(c)(3).

violations set forth in the NOC.⁵ Petitioner also did not act with due diligence in seeking relief because it served its Petition for Reconsideration 37 days after the regulatory deadline.

The Petition for Reconsideration is denied because it was untimely served, in violation of 49 CFR 386.64(a). The Notice of Claim is the Final Agency Order in this proceeding and the civil penalty of \$2,000 is due and payable immediately. Payment may be made electronically through FMCSA's registration site at <http://safersys.org/> by selecting "Online Fine Payment" under the "FMCSA Services" category. In the alternative, payment by cashier's check, certified check, or money order may be remitted to the Field Administrator at the address shown in the Certificate of Service.

It Is So Ordered.



John Van Steenburg
Assistant Administrator
Federal Motor Carrier Safety Administration

1/7/14
Date

⁵ See *In the Matter of Curtis R. Lunney dba L & F Transport*, Docket No. FMCSA-2007-28487, Order Denying Petition for Reconsideration, May 5, 2009, at 3.

CERTIFICATE OF SERVICE

This is to certify that on this 8 day of January, 2014, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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