

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**STEVE MARTINEZ dba
M STEVE LOGISTICS,**

USDOT# 782857

Petitioner.

**Docket No. FMCSA-2013-0461
(Western Service Center)**

**FINAL ORDER ON PETITION FOR ADMINISTRATIVE REVIEW
OF CONDITIONAL SAFETY RATING**

I. Background

On November 5, 2013, Steve Martinez dba M Steve Logistics (Petitioner), petitioned for administrative review of a Conditional safety rating under 49 CFR 385.15. Petitioner's Conditional safety rating became effective December 16, 2013, based on an October 16, 2013 compliance review (CR) conducted by the Texas Division (Division) of the Federal Motor Carrier Safety Administration (FMCSA).¹ The Division calculated Petitioner's recordable accident rate as 5.95 accidents per million miles, based on two recordable accidents and 336,360 miles. Because Petitioner's recordable accident rate exceeded 1.5 accidents per million miles, it received an unsatisfactory Factor 6 rating.² The unsatisfactory Factor 6 rating resulted in the assignment of Petitioner's overall Conditional safety rating.³

Petitioner requested review of both accidents and argued that they were non-preventable. In an Interim Order served December 3, 2013, I directed the Field Administrator of FMCSA's

¹ Petition, Exhibit 2.

² 49 CFR pt. 385, Appendix B.II.B.(d).

³ Petitioner received a satisfactory rating in each of the other factors measured for the safety fitness determination.

Western Service Center to respond to Petitioner's allegations of error. The Field Administrator responded on December 18, 2013, stating that Petitioner did not request review of the accidents by the Division Administrator prior to the completion of the compliance review.

II. Decision

Appendix B to Part 385 states that the Agency will "consider preventability when a motor carrier contests a rating by presenting compelling evidence that a recordable rate is not a fair means of evaluating its accident factor."⁴ To satisfy this standard a motor carrier must submit a signed police report containing the investigating officer's badge number and an insurance report—if one was generated—signed by the investigator. If no police report was prepared, an insurance investigation report alone is acceptable. All reports submitted, however, must demonstrate that the accident was not preventable by the motor carrier under the following standard, which is contained in Appendix B to Part 385:

If a driver, who exercises normal judgment and foresight, could have foreseen the possibility of the accident that in fact occurred and avoided it by taking steps within his/ her control which would not have risked causing another kind of mishap, the accident was preventable.⁵

April 18, 2013 Accident

Petitioner asserts that the April 2013 accident was non-preventable. In support of its position, Petitioner submitted a copy of the police report and an insurance loss letter. The police report indicates that the accident occurred northbound on U.S. Highway 69 in Stringtown, Oklahoma.⁶ The police report states that "the refrigerator motor then caught on fire on the

⁴ Appendix B to 49 CFR Pt. 385, Sec. II.B(e).

⁵ *Id.*

⁶ Petition, Enclosure B.

trailer...[the vehicle] then pulled of the shoulder of United State Highway 69.”⁷ The cause of the accident is not provided in the police report. The insurance claim letter from Penobscot Group, Inc. states that Petitioner suffered a total loss as a result of a fire.⁸ The letter also does not provide the cause of the fire. Petitioner stated that its insurance provider would not release the original investigative report to Petitioner.⁹

The Field Administrator asserted that Petitioner has not established that it could not have anticipated the possibility of the fire through the exercise of normal judgment and foresight and avoided it by taking steps within its control. Therefore, the Field Administrator concluded, Petitioner did not satisfy its burden to demonstrate by compelling evidence that the fire was non-preventable.

The Field Administrator is correct. It is Petitioner’s burden to present compelling evidence that an accident was non-preventable. The documentation Petitioner provided regarding this accident failed to meet this standard. Petitioner fails to provide any explanation for the cause of the fire, nor did it include evidence of the vehicle’s inspection and maintenance history. An unexpected and unexplained mechanical failure does not necessarily mean that the accident was non-preventable, particularly where there is no evidence that the vehicle had been properly inspected and maintained.¹⁰ I therefore find the accident to be preventable.

⁷ *Id.*

⁸ Petition, Enclosure C and D.

⁹ Petition at 2.

¹⁰ *In the Matter of Road Runner Transport, Inc.*, FMCSA-2009-0366, Decision on Petition for Review of Safety Rating (Jan. 15, 2010).

July 9, 2013 Accident

Petitioner asserts that the July 9, 2013 accident was non-preventable. According to the police report, Petitioner's driver was traveling eastbound on Interstate 44 in the right lane when the driver in the left lane crossed into his lane to avoid debris from a tire blow out in the left lane. The other driver went onto the right shoulder, began to skid, returned to the roadway and was struck by Petitioner's driver. The driver stated that a dump truck lost a tire and the other driver came across the lane to miss the dump truck, lost control, and hit him.¹¹ The driver of the other vehicle also admitted losing control of her vehicle.¹²

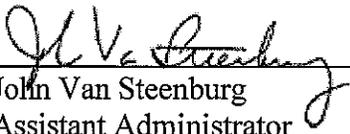
The Field Administrator concluded that if this documentation had been submitted to her prior to the conclusion of the compliance review, she would have agreed that the accident was non-preventable and would not have included the accident in calculating Petitioner's recordable accident rate. The Field Administrator did not object to the removal of this accident as non-preventable. There is no evidence that Petitioner's driver could have or should have taken any other steps to avoid the accident or that he could have reasonably anticipated that a dump truck would lose its tire in the left lane, or that the driver in the left lane would lose control and cross over into his lane. Therefore, I conclude this accident was non-preventable.

After removing the July 2013 accident, Petitioner had only one preventable accident during the 12 months preceding the compliance review. Appendix B to Part 385, Section B.(d) states that the recordable accident rate will be used to rate Factor 6 only when the motor carrier incurs two or more recordable accidents during the 12 months preceding the compliance review. Therefore, the accident factor is not included in the calculation of Petitioner's safety rating.

¹¹ Petition, Enclosure E.

¹² *Id.*

Accordingly, it is ORDERED that the petition for administrative review is granted and
Petitioner's overall safety rating is upgraded to Satisfactory.



John Van Steenburg
Assistant Administrator
Federal Motor Carrier Safety Administration

1/9/14
Date

CERTIFICATE OF SERVICE

This is to certify that on this 10 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.

Steve Martinez dba M Steve Logistics
HC 34 Box 100 7A
Uvalde, TX 78801

One Copy
U.S. Mail

Nancy Jackson
Office of Chief Counsel
Federal Motor Carrier Safety Administration
12600 West Colfax Avenue, Suite B-300
Lakewood, CO 80215

One Copy
U.S. Mail

U.S. Department of Transportation
Docket Operations, M-30
West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590

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