

IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

COLT & JOE TRUCKING LLC,

*Petitioner,*

v.

U.S. DEPARTMENT OF  
TRANSPORTATION, FEDERAL  
MOTOR CARRIER SAFETY  
ADMINISTRATION,

*Respondent.*

CASE NO: \_\_\_\_\_

**PETITION FOR REVIEW**

Pursuant to 49 U.S.C. § 521(b)(9), Federal Rule of Appellate Procedure 15, and Tenth Circuit Rule 15, Petitioner Colt & Joe Trucking LLC hereby petitions the Court for review of the Order Denying Petition for Reconsideration in *In the Matter of: Colt & Joe Trucking LLC*, FMCSA-2020-0230 (“Order”), issued by the Department of Transportation, Federal Motor Carrier Safety Administration, on June 6, 2023. A copy of the Order, which assesses a \$5,732 civil penalty against Petitioner, is attached to this petition as required under 10th Cir. R. 15.1.

Jurisdiction and venue are proper under 49 U.S.C. § 521(b)(9) because Petitioner’s principal place of business is in Albuquerque, New Mexico. This Petition is timely, being filed “within 30 days” of the Order. *Id.*

Respectfully Submitted,

July 05, 2022

/s/ Sheng Li

SHENG LI

Litigation Counsel

Zhonette Brown

Senior Litigation Counsel

New Civil Liberties Alliance

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*Attorneys for Petitioner*

**CERTIFICATE OF NOTICE**

I hereby inform the Clerk of the Court that the Respondent may be served through:

U.S. Department of Transportation,  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

and

Merrick Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530

On information and belief there are no other known parties who would be required to participate at this time.

/s/ Sheng Li

**EXHIBIT A**

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

**In the Matter of:**

**COLT & JOE TRUCKING LLC,  
U.S. DOT No. 926258**

**Petitioner.**

**Docket No. FMCSA-2020-0230<sup>1</sup>  
(Western Service Center)**

**ORDER DENYING PETITION FOR RECONSIDERATION**

**I. Background**

On October 2, 2020, the Arizona Division Administrator for the Federal Motor Carrier Safety Administration (FMCSA or Agency) issued a Notice of Claim to Colt & Joe Trucking LLC (Petitioner), proposing a civil penalty of \$5,590.<sup>2</sup> The Notice of Claim charged Petitioner with one violation of 49 CFR 383.37(a), for allowing, requiring, permitting, or authorizing a driver to operate a commercial motor vehicle (CMV) during any period in which the driver does not have a current commercial learner's permit (CLP) or commercial driver's license (CDL) or does not have a CLP or CDL with the proper class or endorsements. The Notice of Claim stated that the civil penalty was proposed under section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA).<sup>3</sup>

On October 13, 2020, Petitioner served a timely reply to the Notice of Claim (Reply), contesting the violation and requesting an informal hearing.<sup>4</sup> On December 14, 2020, the Field Administrator for FMCSA's Western Service Center (Claimant) served his Objection to Informal

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<sup>1</sup> The prior case number of this matter was AZ-2020-0135-US1623.

<sup>2</sup> See Field Administrator's Notice of Receipt of Correspondence and Answer and Opposition to Petition for Reconsideration of the Final Order (Claimant's Opposition), Attachment A.

<sup>3</sup> See 49 U.S.C. § 521, note.

<sup>4</sup> See Claimant's Motion, Attachment B.

Hearing. On January 28, 2021, Claimant stated that he received correspondence from Petitioner and submitted a copy of the correspondence.<sup>5</sup> In Petitioner's undated correspondence, Petitioner stated its grounds for contesting the violation and civil penalty.

By Order issued March 25, 2021, I denied Petitioner's request for an informal hearing because there were no material facts in dispute that required a hearing. I directed Claimant to serve a Motion for Final Order stating the reasons why he is entitled to judgment as a matter of law. On May 24, 2021, Claimant served his Motion for Final Agency Order Pursuant to 49 CFR 386.36 and Memorandum of Law in Support (Motion), arguing that Petitioner admitted the violations and he is entitled to judgment as a matter of law. Petitioner did not reply to Claimant's Motion.

By Final Order issued April 20, 2022, I found the violation and applied section 222 of MCSIA, assessing a civil penalty of \$5,732, the maximum civil penalty amount that could be assessed when the violation occurred. On May 9, 2022, Petitioner submitted a petition for reconsideration (Petition), restating its arguments and requesting that the civil penalty be dismissed.<sup>6</sup> On May 18, 2022, Claimant submitted his Answer and Opposition to the Petition, arguing that the Petition should be denied because Petitioner's arguments are reiterations of those previously heard and ruled on in the Final Order.

## **II. Decision**

A party seeking reconsideration must demonstrate that the final order was not supported by evidence in the record or that there has been a misapplication of law.<sup>7</sup> In the Final Order, I found that Petitioner violated 49 CFR 383.37(a) because Petitioner admitted that it used driver

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<sup>5</sup> See *id.*, Attachment B.

<sup>6</sup> See *id.*, Attachment D.

<sup>7</sup> See *Medford Moving & Storage, Inc.*, FMCSA-2011-0180-0006, at 3, Order Denying Petition for Reconsideration (May 21, 2013) (citing *Dillenburg Trucking, LLC*, FMCSA-2007-28900-0004, at 4, Order Denying Petition for Reconsideration (Dec. 31, 2012)).

James Hill to drive a CMV in commerce on May 21, 2021, when he had a suspended CDL. I found Petitioner's arguments regarding the COVID-19 pandemic to be without merit.

Petitioner restated the arguments that it made in its Reply. Petitioner admitted that its driver's CDL was suspended, but argued that it should not be held liable because its driver was unable to address his citation due to the lack of personnel in government offices during the COVID-19 pandemic. However, as stated in the Final Order, the Agency explicitly stated that the waivers applicable to CDL drivers did not apply if the driver's privileges have been suspended or withdrawn for traffic offenses.<sup>8</sup> Thus, Petitioner's arguments continue to be without merit.

Furthermore, I assessed the maximum civil penalty for a violation of 49 CFR 383.37(a) under section 222 of MCSIA. As explained in the Final Order, section 222 of MCSIA requires that the maximum civil penalty for the violation be assessed. Therefore, any mitigating circumstances surrounding this violation, including the COVID-19 pandemic, are not considered when determining the amount of the civil penalty. Nor can the civil penalty be dismissed. Therefore, Petitioner failed to demonstrate that the Final Order was not supported by evidence or that there was a misapplication of law. Thus, the Petition is denied and this is the Final Agency Order in the proceeding.

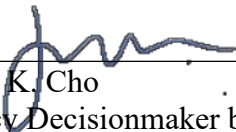
Accordingly, it is hereby ORDERED that Petitioner pay to the Field Administrator for the Western Service Center, within 30 days of the service date of this Final Order, the total amount of \$5,732 for one violation of 49 CFR 383.37(a).<sup>9</sup> Payment may be made by selecting "Online

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<sup>8</sup> See Waiver in Response to the COVID-19 National Emergency – For States, CDL Holders, CLP Holders, and Interstate Drivers Operating Commercial Motor Vehicles (Mar. 24, 2020), available at: [www.fmcsa.dot.gov/emergency/covid-19-archives](http://www.fmcsa.dot.gov/emergency/covid-19-archives).

<sup>9</sup> Civil penalties assessed by FMCSA that are not paid as required by a final agency order are subject to late fees, which include interest, penalties and administrative fees. Interest will accrue on unpaid civil penalties at the Treasury Current Value of Funds Rate. Accrued interest will be waived if payment is made within 30 days of the payment due date. A monthly administrative fee of \$12 is charged for all unpaid civil penalties. In addition, if the civil penalty is not paid within 90 days of the payment due date, an annual penalty rate of 6% will apply.

Fine Payment” under the “FMCSA Services” category. In the alternative, payment by cashier’s check, certified check, or money order payable to FMCSA may be mailed to FMCSA’s Western Service Center, 12600 West Colfax Avenue, Suite B-300, Lakewood, CO 80215.

  
\_\_\_\_\_  
Jackie K. Cho  
Agency Decisionmaker by Delegation  
Federal Motor Carrier Safety Administration

6/6/23

Date



**CERTIFICATE OF SERVICE**

This is to certify that on this 6th day of June, 2023, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Stanley Pettingill, Organizer  
Colt & Joe Trucking LLC  
801 Nikanda Road, NE  
Albuquerque, NM 87107  
*Petitioner*

One Copy  
U.S. Mail

Stanley Pettingill, Organizer  
Colt & Joe Trucking LLC  
PO Box 46284  
Rio Rancho, NM 87174  
*Petitioner*

One Copy  
U.S. Mail

Amanda Slater Burgie, Esq.  
Office of Chief Counsel  
Federal Motor Carrier Safety Administration  
Western Service Center  
12600 West Colfax Avenue, Suite B-300  
Lakewood, CO 80215  
*Counsel for Field Administrator*

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U.S. Department of Transportation  
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Room W12-140  
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