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U.S. Department of Labor

Occupational Safety and Health Administration

J. C. Cleveland Federal Building
55 Pleasant St., Room 3901
Concord, New Hampshire 03301
Telephone: (603) 225-1629
FAX: (603) 225-1580



April 19, 2011

Field Administrator
Federal Motor Carrier Safety Administration
802 Cromwell Park Dr.
Glen Burnie, MD 21061

#74431

Re: Marten Transport, Ltd (b)(3) (b)(7)(D)

Dear Sir or Madam:

A complaint has been filed with this office under Section 405 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. §31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53. This STAA complainant alleges that he was fired because he refused to drive while sick. A copy of the complaint is enclosed.

Please feel free to contact me if you have any questions. I can be reached at (617) 947-5161 or at nohl.jennifer@dol.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Nohl".

Jennifer Nohl
Investigator

(b)(3) (b)(7)(D)

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Attn: Tom Farley

Filing of Discrimination Complaint
For Being Terminated For Not Violating
F.M.C.S.A.'s
Regulation 392.3 As Directed By D.O.T

From:

(b)(3) (b)(7)(D)

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Contents of Fax

Signed OSHA Complaint

Explanation of Three Incidents Signed

(b)(3) (b)(7)(D)

Termination Letter

**Copies of Actual Qualcomm Messages from
(b)(3) (b)(7)(D)**

Letter From Urgent Care (b)(3) (b)(7)(D)

List of Loads From February 25 - March 14

(b)(3) (b)(7)(D)

To: Tom Farley

(b)(3) (b)(7)(D)

Re: Termination from Marten Transport for not violating F.M.C.S.A. regulation 392.3

March 28, 2011

Dear Mr. Farley,

(b)(3) (b)(7)(D) I was terminated from Marten Transport for not violating the Federal Motor Carrier Safety Administration's safety regulation 392.3. The reason given to me by Employee Relations Coordinator Melissa Rubin was insubordination stemming from a write up I received (b)(3) (b)(7)(D) for calling off a load (b)(3) (b)(7)(D) because I was sick and an incident (b)(3) (b)(7)(D) when I turned down a load pick up until the next morning because had been up all day, was tired, and was dealing with the clean up from a snow storm that dropped over a foot of snow with strong winds. I

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(b)(3) (b)(7)(D) (b)(3) (b)(7)(D)
(b)(3) (b)(7)(D). I believe this termination is a violation of F.M.C.S.A regulation 392.3. according to the interpretation given by the F.M.C.S.A on it's website.

I have included copies of safety regulation 392.3 and it's interpretation taken directly from D.O.T.'s website, a thorough write up about the three incidents, a copy of my

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Thank you for your time

(b)(3) (b)(7)(D)

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Ill or fatigued operator.

Search FOR

Examples: Medical Form, 391.53, 391

◀ All Regulations & Part 392

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§ 392.3 Ill or fatigued operator.

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No driver shall operate a commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a commercial motor vehicle, while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle. However, in a case of grave emergency where the hazard to occupants of the commercial motor vehicle or other users of the highway would be increased by compliance with this section, the driver may continue to operate the commercial motor vehicle to the nearest place at which that hazard is removed.

[25 FR 7800, May 21, 1970, as amended at 60 FR 35740, July 26, 1995]



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Federal Motor Carrier Safety Administration

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Example: Medical Form, 391.53, 391

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§392.3 Ill or fatigued operator.

Question 1: What protection is afforded a driver for refusing to violate the Federal Motor Carrier Safety Regulations (FMCSRs)?

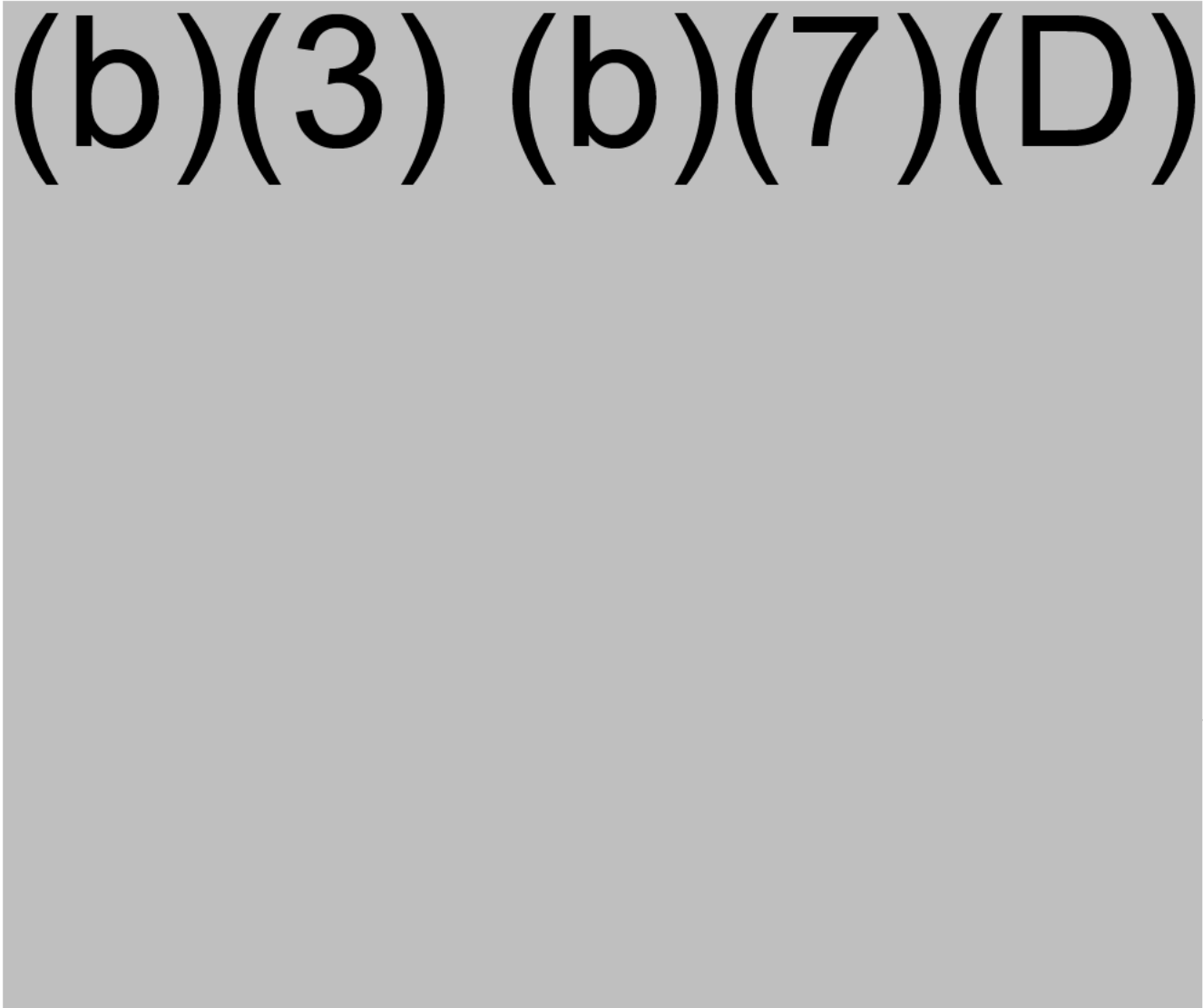
Guidance: Section 406 of the Surface Transportation Assistance Act of 1982 (STAA) (49 U.S.C. 31106) states, in part, that no person shall discharge, discipline, or in any manner discriminate against an employee with respect to the employee's compensation, terms, conditions, or privileges of employment for refusing to operate a vehicle when such operation constitutes a violation of any Federal rule, regulation, standard, or order applicable to Commercial Motor Vehicle (CMV) safety. In such a case, a driver may submit a signed complaint to the Occupational Safety and Health Administration.

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(b)(3) (b)(7)(D)

Three Incidents Involved With Termination

(b)(3) (b)(7)(D)



(b)(3) (b)(7)(D)

I had a conference call with Employee Relations Coordinator Melissa Rubin in Indianapolis IN. My Driver Manager Paul Walker was present. (b)(3) (b)(7)(D)

(b)(3) (b)(7)(D) I was being put on Final Warning. Write up is enclosed. Final Warning in this instance involved skipping two other write up steps as I had no previous write ups from Human resources or my Driver Manager. I have also enclosed a copy of the write up policy directly taken from Marten Transport's Driver Handbook. (b)(3) (b)(7)(D)

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PA then PA to MI then to IL then to MD then had a driver bring me his load to MD for delivery in CT so I could get home to NH for time off there for the first time in over 7 months. I was home from (b)(3) (b)(7)(D) I came back out on a load picking up in Marlborough MA delivering to Harrisburg PA on the 9th. While I was under this load I was assigned 2 more loads. The first one picking up in Manchester PA and delivering in Disputanta VA. The second load picking up in Williamsburg VA and delivering in Auburn MA. This brings me up to (b)(3) (b)(7)(D) and Marten still hasn't brought up the (b)(3) (b)(7)(D) incident in any way. If they wanted to terminate me for this incident they had ample time to do so including after Disputanta delivery. I have to pass a mile from the terminal to deliver to the final and the final is only about 26 miles from the terminal. Instead was assigned a load taking me back out of the area into MA. They also had multiple times after the incident while under those loads to get me to a number of different terminals including Chester VA, Indianapolis IN or Mondovi WI. They didn't. Instead it brings me to the final incident on March 9, 2011.

(b)(3) (b)(7)(D)

After delivering my load from Marlborough MA in Harrisburg PA I went on my 10 hour break. A few hours later I woke up sick to my stomach and vomiting blood. I had to call off from the loads assigned to me. I did so over the Qualcomm telling them I was sick. I immediately began to be given a hard time by extended coverage dispatch, including Dustin Loomis, the same dispatcher from the (b)(3) (b)(7)(D) incident of harassment. I was taken off the second assignment picking up in Williamsburg VA but was left on the load picking up that night in Manchester PA going to Disputanta VA for the morning. It took me reminding Dustin of regulation 392.3 to get him to take me off the load and not begin harassing me like before. In the morning I went to Urgent Care and was seen by a doctor, given three prescriptions, and a three page write up including a note for Marten Transport. I faxed the letter for Marten to my Driver Manager Paul Walker who verified receiving it in a message over the Qualcomm. I came back to work on Friday and was set up with two loads bringing me into the Chester VA terminal. First load was from the railyard in Rutherford PA to Hatfield PA for that afternoon. Then back to the Harrisburg PA area to pick up the second load in Mechanicsburg PA delivering in Fredericksburg VA. About 70 miles from the Chester VA terminal where I was brought immediately after delivering on (b)(3) (b)(7)(D) and terminated for insubordination for not picking up the load at night on (b)(3) (b)(7)(D) because was fatigued and for calling off my load on (b)(3) (b)(7)(D) because was ill. I was informed by Employee Relations Coordinator Melissa Rubin in that meeting that Marten Transport is a forced dispatch company and it was best to terminate me.

Just a side note. In between delivering my last two assignments I was asked to pick up a load out of Downingtown PA and give to another driver as the driver who was supposed to pick it up ran out of hours, the shipper closed for the weekend at 2100, the load had to be in Illinois for the beginning of the week, and according to the driver the next morning helped him get home to GA in a timely manner due to the freight lanes in Illinois being better to get him home. I (b)(3) (b)(7)(D)

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CORPORATE OFFICE
129 MARTEN STREET
MONDOVI, WISCONSIN 54755
Telephone (715) 926-4216
(800) 395-3000
Fax (715) 926-4530

(b)(3) (b)(7)(D)

(b)(3) (b)(7)(D)

Dear Mr. (b)(3) (b)(7)(D)

Due to the violation of company policy regarding, unsatisfactory performance, Marten Transport, Ltd. is placing you on a **Final Warning**. The Final Warning will be in place for twelve months.

Any violations of company policy during this time frame may lead to further disciplinary actions up to and including termination of employment.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa A. Rubin".

Melissa A. Rubin
Employee Relations Coordinator

marub

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(b)(3) (b)(7)(D)



CORPORATE OFFICE
129 MARTEN STREET
MONDOVI, WISCONSIN 54755
Telephone (715) 926-4216
(800) 395-3000
Fax (715) 926-4530

(b)(3) (b)(7)(D)

(b)(3) (b)(7)(D)

Dear Mr. (b)(3) (b)(7)(D)

Due to the violation of company policy regarding, insubordination including forced dispatch refusal, Marten Transport, Ltd. feels it is in the best interest of both parties to terminate our employee/employer relationship effective today.

We wish you luck in your future endeavors.

Sincerely,

A handwritten signature in black ink that reads "Melissa A. Rubin". The signature is written in a cursive, flowing style.

Melissa A. Rubin
Employee Relations Coordinator

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Virginia Department of Labor & Industry

(804) 371-4995

thomas.farley@doli.virginia.gov

Susan B. Owen, Regional Investigator

U.S. Department of Labor/OSHA

Curtis Center, Suite 740 W

170 S. Independence Mall West

Philadelphia, PA 19106-3309

215/680-6201

215/861-4904 Facsimile

owen.susan@dol.gov

From: Farley, Thomas (DOLI) [mailto:Thomas.Farley@doli.virginia.gov]

Sent: Wed 3/30/2011 9:45 AM

To: Owen, Susan - OSHA

Subject: Possible STAA referral

Susan-

One of our regions forwarded this complaint to me, we do not have jurisdiction.

I emailed the complainant advising him of this referral, see the attached fax complaint.

Thomas Farley

VOSH Discrimination Investigator



