



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

February 10, 1997

REFER TO OUR FILE

A-00111857

JAF

FRANKLIN D JENNINGS
T/A FRANK JENNINGS
RR2 BOX 320B WEST UNION ROAD
CANTON PA 17724

DOCKETED
MAR 1 1997

Application of Franklin D. Jennings, t/a Frank Jennings

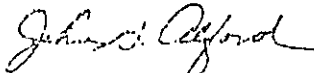
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To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on February 6, 1997 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,


John G. Alford
Secretary

Enclosure
Certified Mail
JEP

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held February 6, 1997

Commissioners Present:

John M. Quain, Chairman
Lisa Crutchfield, Vice Chairman
John Hanger
David W. Rolka
Robert K. Bloom

DOCKETED
MAR 1 1997

Franklin D. Jennings, t/a
Frank Jennings

A-00111857

OPINION AND ORDER

DOCUMENT
FOLDER

BY THE COMMISSION:

Before us for consideration is a Letter-Petition ("Letter-Petition") filed by Franklin D. Jennings, t/a Frank Jennings ("Petitioner"), on August 18, 1996, at Docket No. A-00111857. The Letter-Petition seeks reinstatement of the Petitioner's certificate of public convenience, which was cancelled on April 2, 1996, for failure to maintain proper evidence of current insurance in violation of the Public Utility Code.

History of the Proceeding

On May 24, 1995, the Petitioner was issued a certificate of public convenience to transport property, excluding household goods, between points in Pennsylvania. On October 5, 1995, the Petitioner was advised that his insurance had expired and that he was to cease operating until evidence of renewed insurance coverage was filed. A United States Postal Service Form 311 ("Green Card") indicates that an Alicia Jennings received the October 5, 1995 notice at the Petitioner's address.

On December 13, 1995, the Commission's Bureau of Transportation of Safety ("BT&S") filed a Complaint against the Petitioner, alleging the failure to maintain insurance. The Complaint was served on the Petitioner on December 21, 1995, with the notice that, if the Petitioner did not file a timely answer to the Complaint, the BT&S would request that the Commission revoke the Petitioner's certificate of public convenience. The Petitioner failed to file any answer, and the Commission subsequently sustained the Complaint by Order ("April Order") entered on April 2, 1996. The April Order revoked the Petitioner's certificate of public convenience and directed the Petitioner to cease and desist providing the service previously authorized by the subject certificate of public convenience.

On August 16, 1996, the Petitioner filed the instant Letter-Petition, with a copy of its "PRIMARY AUTO PACKAGE DECLARATIONS . . . NEW POLICY . . . SCHEDULE OF COVERAGES" ("Insurance Declaration"), indicating that the Petitioner had insurance coverage from October 9, 1995, through October 9, 1996.

Discussion

At this stage in the proceeding, the Petitioner has asked us to reinstate his certificate of public convenience, which was revoked for a failure to maintain insurance coverage. Section 512 of the Public Utility Code, 66 Pa. C.S. §512, provides that we may require motor carriers such as the Petitioner to maintain insurance coverage and to provide proof of insurance as a condition of operating within the Commonwealth. Our Regulations relative to such insurance coverage are codified at 52 Pa. Code §§32.1, et seq. Pertinent portions of our Regulations provide as follows:

§32.2. Insurance forms and procedures.

(a) Forms for certificates of insurance and others.
Endorsements for policies of insurance . . . shall be in the form^[1] prescribed and approved by the Commission.

¹ Forms "E" and "H" are designated forms for filing proof of insurance.

(b) *Surety bonds and certificates in effect continuously.*
[C]ertificates of insurance shall specify that coverage will remain in effect continuously until terminated, except under one of the following:

(1) When filed expressly to fill prior gaps or lapses in coverage or to cover grants of emergency temporary authority of unusually short duration and the filing clearly so indicates.

* * *

(h) *Compliance.* Failure to maintain evidence of insurance on file with the Commission in accordance with this chapter shall cause the immediate suspension of the rights and privileges conferred by a certificate of public convenience or permit held by the motor carrier. . .

Decisions whether to grant petitions for reinstatement are left to our discretion and will be reversed on appeal only if that discretion is abused. (Edan Transportation Corp. v. Pa. PUC, 623 A.2d 6 (Pa. Cmwlth. 1993).) In ruling upon a petition to reinstate, we examine all relevant factors to reach an equitable result. (Re Medical Transportation, Inc., 57 Pa. P.U.C. 79 (1983).) In reviewing a reinstatement petition, we consider:

1. The amount of time which elapsed between the cancellation of the certificate and the filing of the petition to reinstate;
2. The petitioner's record of compliance with the Public Utility Code and our Orders and Regulations; and
3. The reasonableness of the excuse given for the violation which caused the cancellation of the certificate.

(Re Bishop, 58 Pa. P.U.C. 519 (1984) ("Bishop").)

In reviewing the record before us and applying the criteria articulated in Bishop, *supra*, we note that the instant Letter-Petition was not filed until August 16, 1996, four months after the cancellation of the certificate of public convenience. Further, we note that the Petitioner attached to his Letter-Petition a copy of his Insurance Declaration, which

stated that the insurance coverage on his policy was valid for the period from October 9, 1995, until October 9, 1996, which dates span the date the certificate of public convenience was revoked. Additionally, the Petitioner asserts in his Letter-Petition that the failure to provide proof of the coverage was due to a "paperwork mixup between my agent and company." Thus, the Petitioner has arguably stated a case under Bishop meriting the exercise of our discretion to reinstate his certificate of public convenience.

Bishop, supra, however, is not controlling in this instance in that the Petitioner still does not have proof of insurance coverage on file with this Commission. It should be noted that as of the filing of the Complaint, the Petitioner was not in compliance with the Public Utility Code and our Regulations. While the Insurance Declaration filed with his Letter-Petition may be effective as a stop-gap measure, it is not effective after October 9, 1996. Thus, the Petitioner is now again without proof of insurance on file in compliance the Public Utility Code and our Regulations.

Accordingly, we shall deny the Petitioner's Letter-Petition for reinstatement.

Conclusion

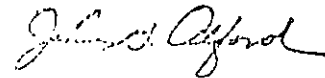
Our review of the record herein persuades us that the Petition is not in compliance with the Public Utility Code and our Regulations relative to mandatory insurance coverage. Thus, we shall deny his Letter-Petition for reinstatement; **THEREFORE,**

IT IS ORDERED:

1. That the Letter-Petition filed by Franklin D. Jennings, t/a Frank Jennings, on August 18, 1996, at Docket No. A-00111857, be, and hereby is, denied.

2. That this Commission's Order entered on April 2, 1996, at Docket No. A-00111857, shall remain in full force and effect.

By the Commission,



John G. Alford
Secretary

(Seal)

Order Adopted: February 6, 1997

Order Entered: FEB 10 1997