

April 25, 2019

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: King County For-Hire Licensing file no. **75532**

STEVEN HOLZGRAF

For-Hire Driver Enforcement Appeal

Permit no.: 75532

Appellant: **Steven Holzgraf**
8906 112th Avenue NE
Kirkland, WA 98033
Telephone: (425) 876-8964
Email: smh8564@yahoo.com

King County: King County For-Hire Licensing
represented by **Tyson Taylor**
500 Fourth Avenue Room 403
Seattle, WA 98104
Telephone: (206) 263-1373
Email: ttaylor@kingcounty.gov

RECOMMENDATIONS/DECISION:

Department's Recommendation:

Deny appeal

Examiner's Decision:

Grant appeal, in part, and reduce penalty

FINDINGS AND CONCLUSIONS:

1. Steven Holzgraf is a licensed for-hire driver. During our February snows, he picked up passengers in his Hummer, instead of in his sanctioned Honda Civic. He was fined \$1,000 and appealed. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we partially grant his appeal, reducing the penalty from \$1,000 to \$100.

2. At some point in the past, Mr. Holzgraf’s Hummer was endorsed as a for-hire vehicle. However, in recent years only his Civic has been endorsed. That worked fine until what our Executive called “February’s unprecedented snowstorm,”¹ where, in the words of one councilmember, we were “hammered with one of the worst snowstorms the region has seen.”² Our Governor declared a state of emergency.³ King County Metro Transit activated its emergency snow network for the first time ever.⁴
3. Mr. Holzgraf was not able to get his Civic out, but was able to get his Hummer going. King County For-Hire Licensing (Licensing) observed him picking up passengers at the airport. Licensing issued him a \$1,000 penalty, which he timely appealed.
4. We went to hearing last week. For those matters or issues raised in an appeal statement, Licensing bears “the burden of proving by a preponderance of the evidence both the violation and the appropriateness of the remedy it has imposed.” KCC 20.22.080.G; .210. Unless directed to by law—and no special directive applies here—the examiner does not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. Ours is a *de novo* hearing, so we sit in the same position as Licensing.
5. There is no question there was a violation; it is unlawful to operate a for-hire vehicle without a transportation network company vehicle endorsement. KCC 6.64.300.
6. Instead, our issue is the appropriate monetary penalty here. Section 300 is on a list of 17 code violations for which Licensing can issue a penalty of up to \$1,000. KCC 6.64.800.A.1.b.5. Section 300 is also on a shorter list of three violations for which Licensing can, as an alternative, issue a Class 1 civil infraction with “a maximum monetary penalty and default amount” of \$1,000. At hearing we asked Licensing how the snow emergency played into Licensing’s decision. We were surprised to hear that it had not. That simply ignores reality.
7. Desperate times call for desperate measures. One imagines that when the Allied troops were stranded on the beaches of Dunkirk in 1940, encircled by Germans, and fishing boats, speedboats, pleasure craft, and lifeboats arrived to ferry them across the Channel to safety,⁵ the military brass looked a little differently at troop transport rules, boat inspections, and insurance than it would have at almost any other time.
8. Our February scenario was not so stark, but again, this was no ordinary snow dusting. Our Executive deemed it “one of the biggest winter storms we’ve seen in decades” and observed that in many parts of the County it was a “once in a generation event.”⁶ Would a passenger needing to get to a medical appointment or to the airport to avoid missing a dream vacation feel relatively safer if the licensed driver pulled up in: (a) a two-

¹ *Message from the Executive*, April 19, 2019.

² *County to consider waiving Metro bus fares on snow days*, SEATTLE TIMES, April 23, 2019 at B1 (statement of Councilmember Jeanne Kohl-Wells).

³ <https://www.cnn.com/2019/02/08/us/seattle-snow-whether-friday-wxc/index.html>.

⁴ *County to consider waiving Metro bus fares on snow days*, SEATTLE TIMES, April 23, 2019 at B1.

⁵ https://en.wikipedia.org/wiki/Dunkirk_evacuation.

⁶ <https://vimeo.com/322091313>.

wheel drive Civic, knowing it had an endorsement and full insurance; or (b) a Hummer, knowing it did *not* have an endorsement and full insurance?

9. The answer may be debatable, but there is undeniably a tradeoff, a *comparative* risk calculation to undertake in reaching that answer. The Civic, no doubt, would have better insurance coverage *if* something went wrong. Yet assuming that a Civic could have even made it to the pickup—and Mr. Holzgraf’s Civic was irretrievably stuck in his driveway—the Civic would have a far greater chance that something *would* go wrong, as all the cars involved in accidents or stranded in (or sliding off) the road during that period attest to.
10. That comparison even understates the relative risk profiles, because in freezing road conditions other drivers present their own hazard; a Hummer is one step removed from a tank, better able (than a Civic) to absorb an in-coming vehicle. And Mr. Holzgraf noted that for the previous two years he has carried extra insurance to cover his passengers; thus, even the insurance issue is not all-or-nothing.
11. None of this completely exonerates Mr. Holzgraf. That desperate times call for desperate measures does not mean those desperate measures have no consequences. To his credit, Mr. Holzgraf did not argue that he should not receive no penalty, only that “the punishment should fit the crime.” Mr. Holzgraf explained that, given the circumstances, he should not be fined what amounts to a whole week’s worth of income.
12. In contrast, Licensing did not believe that the circumstances made a difference, continuing to argue for the maximum \$1,000. Assuming that \$1,000 would have been the correct penalty, were Mr. Holzgraf to have ferried passengers in the Hummer on, say, January 7, it does not track that \$1,000 was the correct penalty for February 7. We do not know what reduction we might have found warranted, if Licensing had made a more measured argument. In the absence of a reasoned alternative, we reduce the penalty to \$100.

DECISION:

1. We PARTIALLY GRANT Mr. Holzgraf’s appeal, shaving \$900 off the \$1,000 penalty.
2. Mr. Holzgraf shall pay the remaining \$100 penalty by **June 24, 2019**.

ORDERED April 25, 2019.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County’s final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *May*

28, 2019. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

**MINUTES OF THE APRIL 18, 2019, HEARING IN THE APPEAL OF STEVEN
HOLZGRAF, KING COUNTY FOR-HIRE LICENSING FILE NO. 75532**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Tyson Taylor and Steven Holzgraf. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were offered and entered into the record:

Exhibit no. 1	King County For-Hire Licensing staff report to the Hearing Examiner
Exhibit no. 2	For-hire inspector text message correspondence, dated February 7, 2019
Exhibit no. 3	Copy of for-hire permit no. 75532, expiration date of February 22, 2019
Exhibit no. 4	“Want to drive for a TNC?” brochure, dated May 2018
Exhibit no. 5	Notice and order of violation, issued February 13, 2019
Exhibit no. 6	Appeal, received March 1, 2019
Exhibit no. 7	Uber passenger rider safety information

DS/ld

April 25, 2019

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

CERTIFICATE OF SERVICE

SUBJECT: King County For-Hire Licensing file no. **75532**

STEVEN HOLZGRAF
For-Hire Driver Enforcement Appeal

I, Liz Dop, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED April 25, 2019.



Liz Dop
Legislative Secretary

Cantu, Eddie

King County For-Hire Licensing

Holzgraf, Steven

Hardcopy

Kham, Joanna

Finance and Admin Svcs, Consumer Protection Div

MacLeod, Cherie

Finance and Admin Svcs, Consumer Protection Div

Megow, John

Finance and Admin Svcs, Consumer Protection Div

Shapiro, Ken

Finance and Admin Svcs, Consumer Protection Div

Taylor, Tyson

King County For-Hire Licensing