

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

**STATE ROAD AND TOLLWAY
AUTHORITY,**

Petitioner,

v.

**LEIGH FITZGERALD HARRIS,
Respondent.**

Docket No.:

OSAH-TA-X-1512405-60-Miller

Agency Reference No.: 10164855



Kacie Griffin
Kacie Griffin, Legal Assistant

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Petitioner,

v.

**LEIGH FITZGERALD HARRIS,
Respondent.**

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OSAH-TA-X-1512406-60-Miller

Agency Reference No.: 75578

FINAL DECISION

I. SUMMARY OF PROCEEDINGS

The Petitioner, the State Road and Tollway Authority (“SRTA”), brought this action seeking an order requiring the Respondent, Leigh Fitzgerald Harris, to pay tolls, administrative fees, and civil monetary penalties incurred based on her alleged failure to pay required tolls on Georgia Highway 400. The evidentiary hearing took place on December 10, 2014,¹ before the undersigned administrative law judge of the Office of State Administrative Hearings. SRTA was represented by Assistant Attorney General Alkash B. Patel. The Respondent appeared *pro se*.

After consideration of the evidence and the arguments of the parties, the Respondent is **ORDERED** to pay the sum of \$6,883.50 to SRTA within thirty days of the date of entry of this Final Decision. If the Respondent should fail to make the required payment, the Respondent’s

¹ The record closed on January 14, 2015, after both parties’ post-hearing briefs were received.

vehicle registration shall be immediately suspended by operation of law, as provided in O.C.G.A. § 32-10-64(c)(1).

II. FINDINGS OF FACT

1.

SRTA formerly operated a toll facility on Georgia Highway 400. Prior to the closure of the facility in November 2013, drivers were required to pay a toll of \$ 0.50 each time they passed through the toll checkpoint. (Testimony of Nicole Crawford.)

2.

The Georgia Highway 400 toll facility offered an optional cruise lane to drivers utilizing a "Peach Pass." A Peach Pass is a small, thin, electronic transponder that is attached to a vehicle's windshield or bumper. When the driver of a Peach Pass-registered vehicle travels through a toll, the amount of the toll is automatically deducted from the vehicle's Peach Pass account. (Testimony of Ms. Crawford; Exhibit P-D.)

3.

To obtain a Peach Pass, a driver completes an application and provides SRTA with his or her name, address, and telephone number, as well as the license plate number and description of the vehicle(s) associated with the account. The driver then executes a Customer Agreement with SRTA and opens a prepaid Peach Pass account, funded by an initial payment of \$20.00. The driver may also choose to supply SRTA with a credit or debit card number to be used for future transactions. In that event, SRTA charges the card on file to replenish the account whenever it reaches a low balance threshold of \$10.00. (Testimony of Ms. Crawford; Exhibit P-D.)

4.

The Customer Agreement specifically informs each Peach Pass account holder of his or her responsibility to ensure that all account information is current, as follows:

Before using any Toll Facility, you must notify SRTA of any changes to the information that you previously provided for all vehicles associated with your Account, including changes to your **credit/debit card number and expiration date**, name or address changes, and vehicular information changes (make, model, **license plate information**). Failure to update this information may result in a Toll Violation.

Account information may be updated online or by telephone. (Testimony of Ms. Crawford; Exhibit P-D at § 2.2 [emphasis added].)

5.

SRTA is unable to replenish the funds in a Peach Pass account if the credit or debit card on file has expired. In that case, when a Peach Pass-registered vehicle travels through the cruise card lane and the account has a zero balance, the toll cannot be paid. The account holder is then responsible for the unpaid toll plus an administrative fee of \$25.00.² (Testimony of Ms. Crawford; Exhibit P-D at §§ 1.7, 4.1.)

6.

Additionally, SRTA does not presume that a vehicle is connected to a Peach Pass account if the vehicle's license plate number is not listed on the account. When a vehicle travels through the cruise card lane without paying the toll, either because its transponder cannot be read or because its Peach Pass account has a zero balance, an image of the license plate is transmitted to SRTA. At that point, if the license plate is not listed on a Peach Pass account, SRTA attempts to locate the vehicle's owner through records of the Motor Vehicle Division of the Georgia Department of Revenue. (Testimony of Ms. Crawford; Exhibit P-D at § 5.5.)

² A toll violation is not considered final until ninety days have elapsed since the transaction was posted to the account and the account holder has not contacted SRTA. (Exhibit P-D at § 7.3.)

7.

The Respondent has held a Peach Pass account since 2007. Between May 10, 2012 and October 25, 2013, she failed to pay the toll on Georgia Highway 400 on 177 separate occasions. These violations occurred for two reasons. First, the Respondent allowed the balance on her account to reach zero, and SRTA was unable to replenish the funds because the credit card linked to her account had expired. Second, when the Respondent received a new license plate for her vehicle, she failed to update her account with the new license plate number. (Testimony of Ms. Crawford and Respondent; Exhibits P-A, P-B.)

8.

The Respondent has been the registered owner of the vehicle in question, a 2010 Mercedes Benz C300, since June 3, 2011. When she initially acquired the vehicle, its license plate number was 694REM. Subsequently, on August 2, 2012, she obtained a new license plate number—PFZ7421—for the same vehicle. She did not provide SRTA with the vehicle's new license plate number. (Testimony of Ms. Crawford and Respondent; Exhibit P-C.)

9.

Between May 10, 2012 and August 2, 2012, the Respondent incurred 26 toll violations under license plate number 694REM. These violations occurred because her account balance was zero and her credit card had expired, which left SRTA unable to replenish her account. (Testimony of Ms. Crawford; Exhibit P-A.)

10.

On May 16, 2012³ and August 8, 2012, SRTA mailed initial notices of the toll violations to the Respondent at the address of record on her Peach Pass account: 634 Wilson Road, N.W.,

³ SRTA generates an initial notice when a vehicle has incurred a minimum of three toll violations. (Testimony of Ms. Crawford.)

Atlanta, Georgia 30318. However, because the Respondent moved from that residence in 2008, she never received the notices. The Respondent did not notify STRA of her change of address at any time. (Testimony of Ms. Crawford and Respondent.)

11.

Between August 9, 2012 and October 25, 2013, the Respondent incurred 151 toll violations under license plate number PFZ7421. These violations occurred because the Respondent failed to notify SRTA that she had received a new license plate number,⁴ yet she continued to travel in the cruise lane at the Georgia Highway 400 toll facility. (Testimony of Ms. Crawford; Exhibit P-B.)

12.

On October 9, 2012, November 8, 2012, and November 25, 2013, SRTA mailed initial notices of the toll violations to the Respondent at the address it obtained from the Motor Vehicle Division of the Georgia Department of Revenue: 1820 Peachtree Road, Atlanta, Georgia 30309.⁵ Although this was the Respondent's correct address, it did not include a unit number for her apartment. As a result, the Respondent did not receive these notices. (Testimony of Ms. Crawford and Respondent.)

13.

The October 9, 2012 notice was returned to SRTA marked "undeliverable." When SRTA receives returned mail, its customary practice is to perform an Equifax search for the account holder's most recent address. However, the return of the October 9, 2012 notice did not trigger

⁴ Additionally, even if SRTA had tied the license plate to the Respondent's Peach Pass account through the vehicle's transponder, the tolls could not be paid because her account had a zero balance. (Testimony of Ms. Crawford.)

⁵ At this time, SRTA was not aware that the vehicle bearing license plate number PFZ7421 was the same vehicle that had formerly borne license plate number 694REM. (Testimony of Ms. Crawford.)

an Equifax search. Rather, SRTA continued to mail subsequent notices to the incomplete address it had obtained from motor vehicle registration records. (Testimony of Ms. Crawford.)

14.

In January 2014, SRTA filed an action against the Respondent with the Office of State Administrative Hearings (“OSAH”),⁶ seeking payment of the unpaid tolls, statutory administrative fees, and civil penalties. Subsequently, SRTA ran an Equifax search for the Respondent, discovered her apartment number, and on February 2, 2014, sent copies of the pleadings to her updated, complete address. It was at this time that the Respondent first learned of the alleged toll violations. SRTA, recognizing that the Respondent had not received proper notice prior to the commencement of litigation, dismissed the pending action against the Respondent without prejudice. (Testimony of Ms. Crawford, Tannyka Bent, and Respondent; Exhibit R-1.)

15.

On May 21, 2014, SRTA issued separate Final Notices for license plate numbers 694REM and PFZ7421, which were mailed to the Respondent at her correct address.⁷ The Final Notices listed the date and time of each alleged toll violation and informed the Respondent that in each instance, she owed \$0.50 for the toll plus a \$25.00 administrative fee. For license plate number 694REM, the Final Notice advised the Respondent that she was required to pay a total of \$663.00 on or before June 21, 2014. For license plate number PFZ7421, the total owed was \$3,850.50, with the same due date. (Testimony of Ms. Crawford; Exhibits P-A, P-B.)

⁶ The earlier action is State Rd. and Tollway Auth. v. Harris, Docket No. OSAH-TA-X-1430055-60-Woodard (2014).

⁷ The Respondent argued in her post-hearing brief that she did not receive the May 2014 notices until October 2014. However, the record contains no testimony or other evidence to support this argument. Moreover, this issue is immaterial, given that the Respondent has made no payments to SRTA and has not sought an extension of the payment deadline. (Respondent’s Response to Petitioner’s Post Trial Brief, at 2.)

16.

The Respondent has received the Final Notices but has not made any payments to SRTA. On September 23, 2014, SRTA filed the present action with OSAH, seeking an order for the Respondent to pay a total of \$16,903.50, or \$95.50 for each of the 177 alleged toll violations (\$0.50 for the toll plus a \$25.00 administrative fee and a \$70.00 civil penalty). (Testimony of Ms. Crawford; Exhibit P-A.)

17.

At the hearing, the Respondent did not dispute the violations but argued that she should not be required to pay more than the amount of the unpaid tolls, or \$88.50, because she was unaware of the violations until February 2014. She believes that SRTA should have attempted to contact her by telephone or email, rather than relying on the mailing address associated with her Peach Pass account. She testified that she did not notice the absence of toll charges on her credit card because she only used the Georgia Highway 400 toll facility approximately once per week, when she drove to weekly medical treatments. The Respondent further testified that her ability to pay is limited, at present, because she is a single parent and has been unemployed for the past sixteen months. (Testimony of Ms. Crawford and Respondent.)

III. CONCLUSIONS OF LAW

1.

SRTA bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

When a contested case is referred to OSAH, the administrative law judge assigned to the case "has all the powers of the referring agency" O.C.G.A. § 50-13-41(b); see Ga. Comp.

R. & Regs. 616-1-2-.21(1). The evidentiary hearing is *de novo*, and the administrative law judge “shall make an independent determination on the basis of the competent evidence presented at the hearing.” Ga. Comp. R. & Regs. 616-1-2-.21(1), (3); see also Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, 298 Ga. App. 753, 768 (2009) (the administrative law judge is required “to consider the applicable facts and law anew, without according deference or presumption of correctness to the [agency]’s decision, and to render an independent decision”).

3.

Prior to the closure of the toll facility, SRTA was authorized to collect tolls on Georgia Highway 400. O.C.G.A. § 32-10-64(a); see O.C.G.A. § 32-10-60(5) (defining “project”). All vehicles passing through the Georgia 400 toll facility were required to pay the toll. O.C.G.A. § 32-10-64(c)(1). Further, “[i]n the event of nonpayment of the proper toll, as evidenced by video or electronic recording, the registered owner of such vehicle shall be liable to make prompt payment to SRTA of the proper toll and an administrative fee of \$25.00 per violation to recover the cost of collecting the toll.” Id.

4.

In this case, it is undisputed that the Respondent is the registered owner of a vehicle that passed through the Georgia Highway 400 toll facility on 177 occasions without paying the required toll. Therefore, the Respondent owes SRTA \$4,513.50 in outstanding unpaid tolls and statutory administrative fees. The only issue in dispute, then, is whether the Respondent should be subject to additional civil penalties as provided in O.C.G.A. § 32-10-64(c)(1).

5.

Upon “multiple failures by a registered owner of a vehicle to pay the proper toll and administrative fee after notice thereof and within the time designated in such notice,” SRTA may elect to refer the matter to OSAH for a hearing. Id. The scope of the hearing is limited, by

statute, to evidence regarding “whether the registered owner has failed to pay, after notice thereof and within the time designated in such notice, the proper toll and administrative fee.”⁸

Id. If multiple violations are proven at the hearing, the administrative law judge is authorized to impose a civil penalty of up to \$70.00 per violation, in addition to the amount owed for unpaid tolls and administrative fees. Id.

6.

At the hearing, SRTA proved, by a preponderance of the evidence and as detailed in the Findings of Fact, above, that the Respondent has failed to pay multiple tolls and administrative fees after proper notice and within the time designated, in violation of O.C.G.A. § 32-10-64(c)(1). More specifically, the Respondent failed to pay required tolls on 177 occasions between May 1, 2012 and October 25, 2013. SRTA sent multiple violation notices to the Respondent’s address of record demanding payment of the tolls and administrative fees. Although the Respondent was not in actual receipt of the first five notices that were mailed to her, she did receive the two Final Notices dated May 21, 2014, and she has been aware of the violations since February 2014. She has not made any payments toward the amount owed, either within the time designated in the Final Notices or thereafter. Accordingly, the Respondent is subject to an additional civil penalty of not more than \$70.00 per violation, or up to a total of \$12,390.00.

7.

In assessing the appropriate amount of civil penalties, courts have considered factors including: (1) the party’s financial ability to pay; (2) the willfulness of the violation, or the degree of good faith or bad faith; (3) the degree of harm caused to the public; (4) the benefits

⁸ The only authorized affirmative defense is “theft of the vehicle, as evidenced by presentation at the hearing of a copy of a police report showing that the vehicle has been reported to the police as stolen prior to the time of the alleged violation.” O.C.G.A. § 32-10-64(c)(1). The Respondent did not present such evidence at the hearing.

received by the violator; and (5) the deterrent effect of the penalty. See, e.g., United States v. Mac's Muffler Shop, Inc., No. C85-138R, 1986 U.S. Dist. LEXIS 18108, at *22-24 (N.D. Ga. Nov. 4, 1986) (reducing a fine from \$2,500 per violation to \$1,500 for violations of the Clean Air Act); United States v. Papercraft Corp., 426 F. Supp. 916, 918 (W.D. Pa. 1977); FTC v. Consol. Foods Corp., 396 F. Supp. 1353, 1356-57 (S.D.N.Y. 1975); United States v. Beatrice Foods Co., 351 F. Supp. 969, 970-72 (D. Minn. 1972), aff'd, 493 F.2d 1259 (8th Cir. 1974).

8.

In this case, several mitigating factors are present. First, the Respondent is experiencing financial hardship at this time. Second, although the Respondent is culpable for the violations based on her failure to update her address, register her new license plate, and ensure that a balance remained on her Peach Pass account, there is no evidence that she willfully failed to pay the toll.⁹ Finally, the degree of harm to the public and the benefits received by the Respondent are minimal, and the statutory administrative fees alone are sufficient to provide a deterrent effect.

9.

After consideration of the mitigating factors present in this case and the statutory administrative fees that have already been assessed, the undersigned finds it unnecessary to impose an additional civil penalty against the Respondent.

⁹ The evidence showed that SRTA could have made further efforts to contact the Respondent, especially when it became aware that its October 2012 notice could not be delivered as addressed; and, if contact had been made earlier, many of the violations might not have occurred.

IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Respondent is **ORDERED** to pay the sum of **\$4,513.50** to SRTA, as follows:

- (1) \$88.50 in unpaid tolls; and
- (2) \$4,425.00 in statutory administrative fees.

Said payment shall be due within **thirty days** of the date of entry of this Final Decision. If the Respondent should fail to make the required payment, the Respondent's vehicle registration shall be immediately suspended by operation of law, as provided in O.C.G.A. § 32-10-64(c)(1).

SO ORDERED, this 2nd day of February, 2015.



KRISTIN L. MILLER
Administrative Law Judge