



**CITY OF**  
**PORTLAND, OREGON**  
**OFFICE OF THE CITY AUDITOR**  
**Hearings Office**

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**HEARINGS OFFICER'S ORDER**

**APPEAL OF ABDALLA D. GUTALE**

**CASE NO. 1100060**

**DESCRIPTION OF VEHICLE: Lincoln Continental (OR BPJ488)**

**DATE OF HEARING: April 15, 2010**

**APPEARANCES:**

**Mr. Abdalla D. Gutale, Appellant**

**HEARINGS OFFICER: Ms. Christina A. Austin-Smith**

Mr. Gutale appeared at the hearing and testified on his own behalf. No one appeared on behalf of the City. The Hearings Officer makes this decision based on substantial evidence upon the record as a whole, which includes the testimony of Mr. Gutale and the documents admitted into evidence (Exhibits 1 through and including 16). Mr. Gutale did object to the Hearings Officer considering portions of some exhibits that did not relate specifically to the fact that his car was towed and/or that he was uninsured. The Hearings Officer admitted all the documents, however, did agree that any matters outside the narrow focus of why his vehicle was towed and whether or not he was insured would not be considered when deciding whether it was a valid tow.

**Summary of Evidence:**

Mr. Gutale submitted Exhibits 13-16 for the Hearings Officer's consideration. Mr. Gutale testified that he was pulled over around 1 a.m. on March 28, 2010, in downtown Portland. Previous to this, he had stopped at a Safeway in Beaverton around 11 p.m. and provided a copy of a receipt as evidence of this fact (Exhibit 13). Mr. Gutale testified that after he was pulled over and asked for proof of insurance, he handed the officer Exhibit 15, which is a verification of insurance coverage from Geico Insurance in his cousin's name, Abdulqadir Moalim. Mr. Gutale stated he had handwritten his new policy number on the bottom of the document. Mr. Gutale also admitted Exhibit 16, a proof of coverage form from Geico Insurance in his name, effective March 29, 2010 through September 29, 2010. Mr. Gutale testified that he understood his insurance effective date to be March 29, 2010, but that the insurance company told him it was okay to drive prior to that time. Mr. Gutale also submitted Exhibit 14, a computer print out of his credit card account. Mr. Gutale testified that he paid Geico insurance \$344.45 on March 28, 2010 for the policy, via the phone, and explained that even though the date on the exhibit is listed as "3/29/2010" it is because it was not processed until that date, similar to his Safeway transaction for \$11.49. Mr. Gutale testified that he believed when the police officer called Geico after pulling him over he gave them the wrong insurance number and did not check the new policy numbers. Mr. Gutale conceded he did not

have proof of his insurance with him, other than the policy numbers he had written on his cousin's proof of insurance card.

Officer Randy Stowe, Portland Police Bureau, ordered Mr. Gutale's vehicle towed at 12:58 a.m. on March 28, 2010, after having initiated a traffic stop for failure to drive within the lane and failure to signal. Officer Stowe submitted a tow report (Exhibit 5 and 6) that indicates he had the car towed because Mr. Gutale did not have insurance. He reports that he contacted Mr. Gutale's insurance company, Geico, and they advised him that the policy had been canceled on January 2, 2010.

**Applicable Law:**

The Hearings Officer must find a tow is valid if the person ordering the tow followed the relevant laws/rules. In this case, the relevant laws/rules can be found in the Portland City Code ("PCC") Title 16. PCC 16.30.220K1 permits a police officer, without prior notice, to order a vehicle towed when the officer has probable cause to believe that the vehicle's operator has committed the offense of driving uninsured in violation of ORS 806.010. ORS 806.010 requires any person who operates a motor vehicle in the state on any highway or public premises to be insured. ORS 806.011 requires proof of insurance be carried in each motor vehicle operating in the State. In addition, it states, "Failure of the driver of a motor vehicle to show a valid card or other proof of compliance when asked to do so by a police officer is reasonable grounds for the officer to believe that the person is operating the vehicle in violation of ORS 806.010."

**Findings of Fact and Conclusions of Law:**

The Hearings Officer finds that Mr. Gutale was pulled over by Officer Stowe at 12:58 a.m. on March 28, 2010. The Hearings Officer finds that Mr. Gutale provided the officer a copy of a Geico Insurance proof of policy with his cousin's name on it and some handwritten policy numbers. When the officer called Geico to confirm the policy, the officer was informed that the policy had been cancelled on January 2, 2010. The Hearings Officer also finds, per Mr. Gutale's testimony, that Mr. Gutale did make a payment to Geico on March 28, 2010 and did produce a document from Geico with his name on it, indicating coverage for his vehicle, effective March 29, 2010 (Exhibit 16).

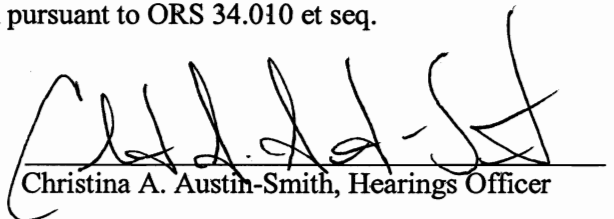
Accordingly, the Hearings Officer finds that Officer Stowe did have probable cause to believe Mr. Gutale was driving uninsured at 12:58 a.m. on March 28, 2010 because he failed to produce a valid proof of insurance card upon request. When Officer Stowe called to verify the proof of insurance card that Mr. Gutale handed him that night, the officer was informed by Geico that the policy had been cancelled on January 2, 2010. The Hearings Officer finds that even if the officer had inquired about the handwritten numbers on the policy card that night, that it is more probable than not he would have been told the policy was not yet in place or effective, given that Mr. Gutale did not pay Geico until March 28, 2010 and the policy effective date was not until March 29, 2010.

**Order:**

Therefore, it is ordered that all towing and storage charges against the vehicle shall remain the responsibility of the vehicle's owner.

This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: April 16, 2010  
CAAS:cb



Christina A. Austin-Smith, Hearings Officer

Enclosure

Bureau: Police  
Tow Number: 5647

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Hearing request letter	Gutale, Abdalla D.	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Tow Hearings Process Info. sheet	Hearings Office	Received
5	Traffic Violation Tow Report	Police Bureau	Received
6	Narrative	Police Bureau	Received
7	Notice of Impoundment	Police Bureau	Received
8	Copies of Citations & Complaints	Police Bureau	Received
9	Issuing Officer's Affidavit	Police Bureau	Received
10	Property/Evidence Receipt	Police Bureau	Received
11	Towed Vehicle Record	Police Bureau	Received
12	Custody Report	Police Bureau	Received
13	Receipts on 1 page	Gutale, Abdalla D.	Received
14	Copy of "Personal Accounts" from bank statement (2 pgs)	Gutale, Abdalla D.	Received
15	Geico Verification of Coverage document #1	Gutale, Abdalla D.	Received
16	Geico Verification of Coverage document #2	Gutale, Abdalla D.	Received