

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 21-0015070 CAF**

CECILY JACKSON, Complainant	§ § § § § § §	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
FORD MOTOR COMPANY, Respondent		

DECISION AND ORDER

Cecily Jackson (Complainant) seeks repair relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in her 2019 Ford F-250 King Ranch pickup truck. Complainant asserts that the vehicle has a defect or nonconformity which has caused the vehicle to lose power in certain situations when towing a trailer. Ford Motor Company (Respondent) argued that the vehicle does not have any defects, is operating as designed, and that no relief is warranted. The hearings examiner concludes that the vehicle does have an existing warrantable defect and Complainant is eligible for repair relief.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened originally at the Texas Department of Transportation District Office in Lubbock, Texas on November 17, 2021, before Hearings Examiner Edward Sandoval. Cecily Jackson, Complainant, was represented by her husband, Jeffery Jackson, at the hearing. In addition, Monte Chitwood, Complainant's father, appeared to provide testimony. Ford Motor Company, Respondent, was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Also present and offering testimony for Respondent was Sayyed Asad Bashir, Automotive Technical Consultant. After a discussion with the parties, Complainant agreed to allow Respondent a final opportunity to repair the vehicle rather than complete the hearing, since repair was the only remedy available for Complainant. The parties were advised to have the repairs performed before the next hearing date. However, the repairs were not performed within the requested time frame.

The hearing continuance was conducted via Microsoft Teams by Hearings Examiner Edward Sandoval on January 27, 2022. Jeffery Jackson represented Complainant at the continuance. Ford Motor Company, Respondent, was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, also appeared and provided testimony for Respondent. The hearing record closed on January 27, 2022.

II. DISCUSSION

A. Applicable Law

Texas Occupations Code § 2301.002(24) provides that a “[n]ew motor vehicle” means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.”

Texas Occupations Code § 2301.604 provides that “[a] manufacturer, converter, or distributor that is unable to conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts shall reimburse the owner for reasonable incidental costs resulting from loss of use of the motor vehicle because of the nonconformity or defect and:

- (1) replace the motor vehicle with a comparable motor vehicle; or
- (2) accept return of the vehicle from the owner and refund to the owner the full purchase price, less a reasonable allowance for the owner’s use of the vehicle, and any other allowances or refunds payable to the owner.”

Texas Occupations Code § 2301.606 provides that in order to have the options of repurchase or replacement available as remedies, Complainant must commence the Lemon Law proceeding “not later than six months after the earliest of:

- (1) The expiration date of the express warranty term; or
- (2) The dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.”

For Complainants who fail to meet the timelines described above repair relief is available under Occupations Code § 2301.204(a) which provides that “[t]he owner of a motor vehicle or the owner’s designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle.” The relief available under this section of the Code is repair of the vehicle in question.

B. Complainant's Evidence and Arguments

Complainant purchased a new 2019 Ford F-250 King Ranch pickup truck on December 4, 2019, from David McDavid Ford (McDavid) in Fort Worth, Texas.¹ The vehicle's mileage at the time of delivery was 75.² Respondent provided a new vehicle limited bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, from the in service date, whichever comes first.³ In addition, Respondent provided a five (5) year or 60,000 mile for the vehicle's powertrain.⁴ On the date of the original hearing the vehicle's mileage was 48,551. At the time of the original hearing the vehicle's new vehicle limited warranty had expired. However, the powertrain warranty was still in effect.

Jeffery Jackson, Complainant's husband, testified in the hearing. He is the primary driver of the vehicle. On November 2, 2020, the vehicle's mileage reached 24,000.

Mr. Jackson stated that he was present when Complainant purchased the vehicle. He took a test drive in the vehicle at the time of purchase and did not notice anything unusual in the vehicle's performance.

Mr. Jackson testified that in April or May of 2020, he was driving the vehicle while towing a boat to a nearby lake when he noticed that the vehicle had no throttle response when driving up hills. The vehicle wouldn't accelerate over 50 mph (the speed limit was 75 mph on the highway) while going uphill. Mr. Jackson testified that on this occasion the vehicle would not accelerate over 65 mph even when driving on flat terrain. No warning lights or messages appeared on the vehicle's dashboard. In addition, the engine RPMs would not go above 2300 and the transmission wouldn't shift. Mr. Jackson testified that this is a common occurrence when towing either his boat or his UTV up hills or into a headwind.

Mr. Jackson took the vehicle to Pollard Friendly Ford (Pollard) for repair for the lack of power issue on January 25, 2021. Pollard's service technician was unable to duplicate the issue.⁵ However, the technician replaced the vehicle's fuel filter in an attempt to resolve the issue.⁶ The vehicle's mileage on this occasion was 28,697.⁷ The vehicle was in Pollard's possession for the day on this occasion. Complainant was not provided a loaner vehicle while the vehicle was being repaired.

¹ Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated December 4, 2019.

² Complainant Ex. 3, Odometer Disclosure Statement dated December 4, 2019.

³ Complainant Ex. 11, 2019 Ford Car LT Truck Warranty.

⁴ *Id.*

⁵ Complainant Ex. 5, Repair Order dated January 25, 2021.

⁶ *Id.*

⁷ *Id.*

After getting the vehicle back from Pollard, Mr. Jackson took it on a test drive to see if the problem was resolved. During the test drive, the lack of power problem occurred again. On January 30, 2021, Complainant took the vehicle to Pollard for repair for the issue. Pollard's service technician reprogrammed the vehicle's powertrain control module (PCM) in order to resolve the issue.⁸ The vehicle's mileage at the time was 29,022.⁹ The vehicle was in Pollard's possession until February 17, 2021. Complainant was not provided a loaner vehicle while her vehicle was being repaired.

Mr. Jackson testified that when he got the vehicle back, he took it for another test drive. The lack of power problem occurred again. Mr. Jackson contacted Respondent's consumer affairs division to discuss the matter with one of the representatives. Mr. Jackson stated that he was told to take the vehicle to a different dealer to see if they could repair the lack of power issue. On March 17, 2021, Mr. Jackson took the vehicle to Gene Messer Ford (Messer) in Lubbock, Texas for repair. Messer's service technician verified the concern and found that the vehicle's transmission was slipping.¹⁰ He overhauled the transmission, replacing the overdrive drum and pump, and the overdrive clutches and steels.¹¹ The vehicle's mileage on this occasion was 32,471.¹² The vehicle was in Messer's possession until March 29, 2021. Complainant was not provided a loaner vehicle while her vehicle was being repaired.

Mr. Jackson testified that after the transmission was overhauled, he took it on a test drive. The lack of power problem occurred again on the test drive. On April 15, 2021, Complainant sent a letter to Respondent advising them that she was dissatisfied with the vehicle.¹³ Mr. Jackson testified that Anthony Gregory, Consumer Affairs Legal Analyst, contacted him after Respondent received the letter to schedule an inspection of the vehicle by Respondent's field service engineer (FSE).

Respondent's FSE, Daniel Reynolds, inspected the vehicle on May 11, 2021, at the Messer dealership. Mr. Jackson testified that Mr. Reynolds was not able to recreate the issue. However, the inspection took place without towing a trailer. Mr. Reynolds did recommend installing a flight recorder in the vehicle though. The vehicle's mileage on this occasion was 34,600.¹⁴ Mr. Jackson testified that the vehicle was in Messer's possession for three (3) days on this occasion. Complainant was not provided a loaner vehicle during the inspection.

⁸ Complainant Ex. 6, Repair Order dated January 30, 2021.

⁹ *Id.*

¹⁰ Complainant Ex. 7, Repair Order dated March 17, 2021.

¹¹ *Id.*

¹² *Id.*

¹³ Complainant Ex. 8, Letter to Ford Motor Company dated April 15, 2021.

¹⁴ Respondent Ex. 1, FSE Inspection Report dated May 11, 2021.

Mr. Jackson testified that the lack of power problem continued to occur. As a result, he took the vehicle to Messer for repair on June 2, 2021. Messer's service technician verified the concern and replaced the vehicle's accelerator pedal assembly in an attempt to resolve the issue.¹⁵ The vehicle's mileage on this occasion was 32,471.¹⁶ The vehicle was in Messer's possession until July 15, 2021 on this occasion. Complainant was not provided a loaner vehicle while her vehicle was being repaired.

Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles (Department) on July 26, 2021.¹⁷

Mr. Jackson testified that he continues to experience a lack of power when driving the vehicle while towing a trailer. The last time it occurred was in November of 2021 when the vehicle lost power while going up some hills.

C. Respondent's Evidence and Arguments

1. Anthony Gregory's Testimony

Anthony Gregory, Consumer Affairs Legal Analyst, represented Respondent and testified at the hearing. Mr. Gregory stated that Respondent had received Complainant's April 15, 2021 letter of complaint. He testified that he scheduled an inspection of the subject vehicle by one of Respondent's field service engineers. The inspection took place on May 11, 2021, at the Messer dealership in Lubbock, Texas. The inspection was performed by Respondent's FSE, Daniel Reynolds.

On May 11, 2021, Mr. Reynolds inspected the vehicle to determine whether repairs were needed. He was unable to find any current or stored diagnostic trouble codes (DTCs) on the vehicle's computers.¹⁸ Mr. Reynolds also took a 30 mile test drive in the vehicle and was unable to duplicate any concerns with the vehicle.¹⁹ However, Mr. Reynolds did specify in his report that he was not able to perform the test drive with a trailer attached to the vehicle.²⁰ Mr. Reynolds did

¹⁵ Complainant Ex. 9, Repair Order dated June 2, 2021.

¹⁶ *Id.*

¹⁷ Complainant Ex. 4, Warranty Performance Complaint dated July 26, 2021.

¹⁸ Respondent Ex. 1, FSE Inspection Report dated May 11, 2021.

¹⁹ *Id.*

²⁰ *Id.*

not recommend any repairs for the vehicle at the time.²¹ However, he did suggest attaching a flight recorder to the vehicle to try to diagnose any potential issues with vehicle's transmission.²²

2. Sayyed Asad Bashir's Testimony

Sayyed Asad Bashir, Automotive Technical Consultant, testified for Respondent at the hearing. Mr. Bashir testified that he has worked in the automotive industry for 22 years. For the first eight (8) years of his career, Mr. Bashir worked for various independent automotive repair shops. He was hired by Respondent in 2007, as a claims adjuster in their warranty department. In 2009, Mr. Bashir was hired in his present position. He is an Automotive Service Excellence (ASE) Master Certified Technician and is enrolled in Respondent's senior master technician certification program.

Mr. Bashir testified that he has not inspected the vehicle. He has information about the vehicle only from the repair orders and warranty claims. Mr. Bashir stated that there may be a fault condition in the vehicle which is causing the transmission to derate power to protect the vehicle's engine or transmission. Mr. Bashir thought that there may be an issue with the vehicle's oil cooler and that replacing the part could possibly resolve the issues with the vehicle.

D. Analysis

The issue to be addressed is whether Complainant's vehicle has a defect or condition that causes the vehicle to lose power in certain situation when towing trailers. The evidence establishes that there have been several incidents of the vehicle losing power when towing a trailer when driving up a hill or when driving into a headwind. The issue has continued to arise, even after Respondent's authorized dealers have made several attempts to repair the vehicle. Given the evidence and Complainant's firsthand testimony, the hearings examiner must hold that the vehicle does not currently conform to Respondent's warranty and should be repaired to ensure that the vehicle is able to adequately tow trailers without a loss of power. Respondent will be ordered to repair the vehicle so that it meets their warranties.

Complainant's request for repair relief is granted. Such repairs must be completed within the time frame indicated below.

²¹ *Id.*

²² *Id.*

III. FINDINGS OF FACT

1. Cecily Jackson (Complainant) purchased a new 2019 Ford F-250 King Ranch pickup truck on December 4, 2019, from David McDavid Ford (McDavid) in Fort Worth, Texas with mileage of 75 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Ford Motor Company (Respondent), issued a new vehicle limited warranty for the vehicle providing bumper-to-bumper coverage for three (3) years or 36,000 miles, whichever comes first, from the in service date. In addition, Respondent provided a powertrain limited warranty for the vehicle providing coverage for the vehicle's powertrain for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of the original hearing was 48,551.
4. At the time of the original hearing the vehicle's new vehicle limited warranty had expired. However, the powertrain limited warranty was still in effect.
5. In the spring of 2020, Complainant began to notice that the vehicle lacked power while towing trailers up hills or into headwinds. In those situations, the vehicle had no throttle response and would not accelerate above 65 mph.
6. Prior to filing the Warranty Performance complaint, Complainant took the vehicle for repair to Respondent's authorized dealers to address his concerns with the vehicle's lack of power on the following dates:
 - a. January 25, 2021, at 28,697 miles;
 - b. January 30, 2021, at 29,022 miles;
 - c. March 17, 2021, at 32,471 miles;
 - d. May 11, 2021, at 34,600 miles; and
 - e. June 2, 2021 at 35,871 miles.
7. On January 25, 2021, Complainant took the vehicle to Pollard Friendly Ford (Pollard) located in Lubbock, Texas for repair.
8. During the repair visit described in Findings of Fact #7, Complainant informed the dealer's service advisor that the vehicle was not accelerating when towing his boat up a hill and that the vehicle's RPMs would not go above 2300. The service technician was unable to duplicate the issue during a test drive.

9. In an effort to resolve the issue, Pollard's service technician replaced the vehicle's fuel filter during the January 25, 2021 repair visit.
10. On January 30, 2021, Pollard's service technician reprogrammed the vehicle's powertrain control module (PCM) in order to resolve Complainant's concerns with the vehicle.
11. On March 17, 2021, Complainant took the vehicle to Gene Messer (Messer) Ford in Lubbock, Texas for repair.
12. During the repair visit described in Findings of Fact #11, Messer's service technician overhauled the vehicle's transmission replacing the overdrive drum and pump, clutches and steels in order to address the lack of power issue.
13. On April 15, 2021, Complainant sent a letter to Respondent advising them that they were dissatisfied with the vehicle.
14. Respondent scheduled an inspection of the vehicle for May 11, 2021 at the Messer dealership. The vehicle's mileage was 34,600 on this occasion.
15. During the repair visit described in Findings of Fact #14, Respondent's field service engineer (FSE) was unable to duplicate the issue and did not find any stored diagnostic trouble codes (DTCs). As a result, no repairs were suggested or performed.
16. On June 2, 2021, Messer's service technician replaced the vehicle's accelerator pedal assembly in an attempt to address Complainant's concerns with the vehicle's lack of power.
17. On July 26, 2021, Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles (Department).
18. Complainant is still having issues with the vehicle losing power when towing a trailer up hills or into headwinds.
19. The only remedy available to Complainant is repair of the vehicle, since she filed the complaint on July 26, 2021, more than six (6) months after the vehicle had been driven 24,000 miles (November 2, 2020).
20. On August 25, 2021, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice

stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.

21. The hearing in this case convened originally at the Texas Department of Transportation District Office in Lubbock, Texas on November 17, 2021, before Hearings Examiner Edward Sandoval. Cecily Jackson, Complainant, was represented by her husband, Jeffery Jackson, at the hearing. In addition, Monte Chitwood, Complainant's father, appeared to provide testimony. Ford Motor Company, Respondent, was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Also present and offering testimony for Respondent was Sayyed Asad Bashir, Automotive Technical Consultant. After a discussion with the parties, Complainant agreed to allow Respondent a final opportunity to repair the vehicle rather than complete the hearing, since repair was the only remedy available for Complainant. The parties were advised to have the repairs performed before the next hearing date. However, the repairs were not performed within the requested time frame.
22. The hearing continuance was conducted via Microsoft Teams by Hearings Examiner Edward Sandoval on January 27, 2022. Jeffery Jackson represented Complainant at the continuance. Ford Motor Company, Respondent, was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, also appeared and provided testimony for Respondent. The hearing record closed on January 27, 2022.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code § 2301.204 (Warranty Performance) and §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.

4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant proved by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition in the vehicle, *i.e.*, the vehicle losing power when towing a trailer up a hill. Tex. Occ. Code § 2301.204.
7. Complainant is entitled to repair relief under the terms of Respondent's warranty. Tex. Occ. Code § 2301.204.
8. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **GRANTED**. Respondent shall make any repairs needed to conform the vehicle to the applicable warranty. (The specific issues to be addressed is the vehicle losing power when towing a trailer up a hill or into a headwind.) Complainant shall deliver the subject vehicle to Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.²³ Within 40 days after receiving the vehicle from Complainant, Respondent shall complete repair of the subject vehicle. However, if the Department determines Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210.

SIGNED February 11, 2022



**EDWARD SANDOVAL
CHIEF HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARING
TEXAS DEPARTMENT OF MOTOR VEHICLES**

²³ (1) This Order becomes final if a party does not file a motion for rehearing within 20 days after receiving a copy of this Order, or (2) if a party files a motion for rehearing within 20 days after receiving a copy of this Order, this Order becomes final when: (A) the Department renders an order overruling the motion for rehearing, or (B) the Department has not acted on the motion within 45 days after the party receives a copy of this Order.