

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 23-0007010 CAF**

**ITZEL GOMEZ,
Complainant** § **BEFORE THE OFFICE
OF
ADMINISTRATIVE HEARINGS**

v.

**FORD MOTOR COMPANY,
Respondent** §

DECISION AND ORDER

Itzel Gomez (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged warrantable defects in a vehicle manufactured by Ford Motor Company (Respondent). A preponderance of the evidence shows that the Complainant's vehicle qualifies for warranty repair relief.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

Notice and jurisdiction were not contested and are addressed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened electronically on August 3, 2023, before Chief Hearings Examiner Bennie Brown with the Department's Office of Administrative Hearings (OAH). The Complainant appeared and represented herself. Respondent appeared through its representative Anthony Gregory. The hearing concluded the same day, but the record was held open until August 10, 2023, to allow the submission of additional evidence by Complainant.¹

¹ Although the record was held open, Complainant did not submit any additional documents or evidence.

II. APPLICABLE LAW

The Texas Lemon Law and Warranty Performance Law require a manufacturer, converter, or distributor to make repairs necessary to conform a new motor vehicle to an applicable warranty.² If this cannot be accomplished, the owner of the vehicle may seek relief by filing a complaint with the Department.³ The case may be referred to OAH for a hearing on the merits to determine which type of relief, if any, is warranted pursuant to statute.⁴ The complaint filed with the Department identifies the relevant issues to address at the hearing.⁵ The Complainant has the burden of proof to prove, by a preponderance of the evidence, all facts required for relief.⁶ Failure to prove even one required fact results in denial of relief.

In this case Complainant is seeking repair of alleged warrantable defects. A vehicle may qualify for warranty repair relief if all the following conditions are met:

- 1) the vehicle has a “defect . . . that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle;”⁷
- 2) the vehicle owner provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty’s expiration;⁸ and
- 3) the vehicle owner filed a complaint with the Department specifying the defect.⁹

² Tex. Occ. Code § 2301.603(a).

³ Tex. Occ. Code § 2301.204(a); 43 Tex. Admin. Code § 215.202.

⁴ Tex. Occ. Code § 2301.204(d); 43 Tex. Admin. Code § 215.202(b)(4).

⁵ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent. *See Tex. Gov’t Code §§ 2001.051–052, .141(b)–(c); Tex. R. Civ. P. 301.*

⁶ 43 Tex. Admin. Code § 206.66(d); *see Vance v. My Apartment Steak House, Inc.*, 677 S.W. 2d 480, 482 (Tex. 1984) (“[A] civil litigant who asserts an affirmative claim of relief has the burden to persuade the finder of fact of the existence of each element of his cause of action.”).

⁷ Tex. Occ. Code § 2301.204(a).

⁸ Tex. Occ. Code § 2301.204(b); 43 Tex. Admin. Code § 215.202(b)(1), (3).

⁹ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1).

III. DISCUSSION

A. Summary of Complainant's Evidence and Arguments

On July 19, 2019, Complainant purchased a pre-owned 2018 Ford EcoSport S from Griffith Ford, a franchised dealer of Respondent, located in San Marcos, Texas. The vehicle had 10,425 miles on the odometer at the time of purchase.¹⁰ The vehicle's powertrain warranty provides coverage for 5 years or 60,000 miles, whichever occurs first.¹¹

On February 13, 2023, Complainant filed a complaint with the Department alleging that the vehicle's check engine light and oil light was on, the vehicle stalls, and the vehicle has decreased speed. The same day, Complainant sent written notice of the alleged defects to Respondent.

In relevant part, the vehicle was taken for repair of the alleged issues as follows:¹²

Date	Miles	Issue
04/16/2020	24,315	Oil light and engine light on; tpms light
12/01/2022- 01/30/23	56,169	Oil light on and ticking noise from engine
02/13/2023- 02/20/2023	56,175	Engine light on and loss of power
04/2023	---	Engine light on, stalling, loss of power

Complainant testified that around April 2020, at approximately 15,000 miles, the oil light and engine light came on the vehicle. Complainant took the vehicle in for repair. A faulty sensor was reprogrammed, and the issue was resolved at that time.

¹⁰ Complainant Ex. 13.

¹¹ Complainant Ex. 24.

¹² Complainant Exs. 1, 8, 14, 17; Respondent Ex. 1.

In October 2022, the engine oil light came on while Complainant was driving. The vehicle stalled, and Complainant was stranded on the road. The vehicle had to be towed home and then to the dealer for repair on November 21, 2022. The vehicle had 56,169 miles at that time. The dealer was not able to inspect the vehicle until December 1, 2022. The vehicle's engine was replaced under the powertrain warranty.

Around February 2023, approximately three days after picking up the vehicle, the vehicle's engine light came on. The vehicle would not go above 50 mph and stalled. The vehicle was taken for repair. Complainant was told that the coil pack and spark plugs from the old engine needed replacement. The repair was completed by the dealer.

Approximately one week later, in April 2023, the same issues presented with the vehicle stalling and the engine light on. The dealer sent someone to pick up the vehicle and take it back for repair. Complainant was advised that the transmission needed replacement, but there would be a wait for parts. At the time of the hearing, the vehicle had been at the dealership since April 2023.

Complainant testified that the powertrain warranty expired in March 2023, while the vehicle was in Respondent's care. She believes the warranty should be extended. The vehicle currently has the same issues that have not been resolved. Specifically, the engine light comes on, the vehicle cannot go above 50 mph without a knocking noise, and the vehicle stalls. If the engine stalls, it cannot be restarted. Complainant requests repurchase of the vehicle, but if that is not possible, she requests repair of the current issues.

B. Vehicle Inspection

The vehicle was not present for inspection at the hearing as it was at the dealership awaiting repair.

C. Summary of Respondent's Evidence and Arguments

Asad Bashir, Ford Technical Specialist, testified on behalf of Respondent. He explained that during the April 25, 2023, repair visit, the transmission torque converter was found to be faulty. The torque converter was repaired, but the concern was still present after the repair. It was determined that there could have been a couple of other issues contributing to the torque converter failure and that is why the transmission assembly replacement was recommended.

He also explained that the engine replacement was performed under the powertrain warranty and comes with a service parts warranty for 12 months or 12,000 miles from the date of installation, which was December 1, 2022. The transmission assembly replacement has a different service warranty depending on whether the vehicle owner pays for any portion of the repair. For example, if the owner pays any amount toward the repair, then a full service parts warranty is effective for 3 years with unlimited mileage from the date of installation. However, if the owner does not pay anything toward the repair, the 12 month/12,000 miles service parts warranty applies. He noted that only the components replaced qualify for the service parts warranty.

Mr. Bashir also explained that if a vehicle is beyond the bumper-to-bumper warranty, it may be eligible for a used vehicle extended service contract. In those cases, the vehicle must be inspected and any issues repaired before the contract applies to the vehicle.

Mr. Gregory confirmed that the subject vehicle's powertrain warranty provides coverage for 5 years or 60,000 miles, whichever occurs first. The warranty start date was March 14, 2018, and the expiration date was March 14, 2023. The powertrain warranty was effective at the time the complaint was filed, but the bumper-to-bumper warranty had expired. He testified that Respondent issued two checks totaling \$2,000 to Complainant for rental vehicle assistance. Mr. Gregory stated that Respondent has agreed to replace the vehicle's transmission within the parameters of the powertrain warranty.

D. Analysis

Complainant had the burden of proof to show that the subject vehicle qualified for relief pursuant to statute. Because the vehicle was purchased as a pre-owned vehicle, the only remedy provided by statute is warranty repair.¹³ To qualify for relief, Complainant must prove the required elements by a preponderance of the evidence. Based on the evidence presented, Complainant established the facts necessary for warranty repair relief.

To qualify for warranty repair, it must be shown that the vehicle has a “defect. . . covered by a manufacturer’s, converter’s, or distributor’s . . . warranty agreement applicable to the vehicle.”¹⁴ The evidence reveals that, despite several repair attempts, the vehicle’s engine light comes on, the vehicle cannot go above 50 mph without a knocking noise, and the vehicle stalls. The dealer recommended transmission assembly replacement to resolve the issues. The vehicle’s powertrain warranty was in effect at the time the complaint was filed with the Department. Respondent has agreed to replace the vehicle’s transmission pursuant to the powertrain warranty. Complainant has met the burden of showing the vehicle has a warrantable defect.

The second element required for relief is proof that written notice of the alleged defect was provided to Respondent prior to the warranty’s expiration.¹⁵ As noted earlier, Complainant sent written notice of the alleged defects to Respondent on February 13, 2023. The powertrain warranty expired on March 14, 2023. Therefore, written notice of the alleged defects was provided to Respondent prior to the warranty’s expiration.

The final element required for relief is proof that the vehicle owner filed a complaint with the Department specifying the defect.¹⁶ Complainant filed a complaint with the Department on February 13, 2023, alleging that the vehicle’s check engine light and oil light was on. The

¹³ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b).

¹⁴ Tex. Occ. Code § 2301.204(a).

¹⁵ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1), (3).

¹⁶ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1).

complaint also alleged that the vehicle stalls and has decreased speed. Thus, the third element required for relief has been proven by a preponderance of the evidence.

For the reasons listed above, the Hearings Examiner finds that Complainant has met its burden of proof and has established all elements required for relief pursuant to statute.¹⁷ Therefore, the subject vehicle qualifies for warranty repair relief.

IV. FINDINGS OF FACT

1. On July 19, 2019, Itzel Gomez (Complainant) purchased a pre-owned 2018 Ford EcoSport S from Griffith Ford, a franchised dealer of Ford Motor Company (Respondent), located in San Marcos, Texas. The vehicle had 10,425 miles on the odometer at the time of purchase.
2. The vehicle's powertrain warranty provided coverage for 5 years or 60,000 miles, whichever occurred first. The warranty start date was March 14, 2018, and the warranty expiration date was March 14, 2023.
3. Complainant took the vehicle for repair as shown below:

Date	Miles	Issue
04/16/2020	24,315	Oil light and engine light on; tpms light
12/01/2022- 01/30/2023	56,169	Oil light on and ticking noise from engine
02/13/2023- 02/20/2023	56,175	Engine light on and loss of power
04/2023	---	Engine light on, stalling, loss of power

4. On February 13, 2023, Complainant filed a complaint with the Texas Department of Motor Vehicles (Department) alleging that the vehicle's oil light and engine light was on, the vehicle stalls, and the vehicle has decreased speed.
5. On February 13, 2023, Complainant provided written notice of the alleged defects to Respondent.

¹⁷ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b).

6. On May 23, 2023, the Department's Office of Administrative Hearings (OAH) issued a Notice of Hearing directed to all parties, providing not less than 10 days' notice of the hearing date and advising the parties of their rights under the applicable rules and statutes.
7. The Notice of Hearing advised the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the Department.
8. On August 3, 2023, a hearing on the merits was convened electronically before OAH Chief Hearings Examiner Bennie Brown. Complainant appeared and represented herself. Respondent appeared through its representative Anthony Gregory. The hearing concluded the same day, but the record was held open until August 10, 2023, to allow the submission of additional evidence.
9. In April 2020, the subject vehicle's oil light and engine light came on. Complainant took the vehicle in for repair. A faulty sensor was reprogrammed, and the issue was resolved at that time.
10. In October 2022, the vehicle's engine light came on while Complainant was driving. The vehicle stalled and had to be towed.
11. The vehicle was taken in for service on November 21, 2022, at 56,169 miles.
12. The vehicle was inspected on December 1, 2022. The engine was replaced under the powertrain warranty.
13. In February 2023, vehicle's engine light came on. The vehicle would not go above 50 mph and stalled out.
14. The vehicle was taken in for repair on February 13, 2023, at 56,175 miles. A new coil pack and spark plugs were installed.
15. In April 2023, the vehicle's engine light came on, and the vehicle stalled.
16. The vehicle was taken in for repair. It was determined that the vehicle's transmission assembly needed replacement.
17. Respondent agreed to replace the transmission assembly pursuant to the powertrain warranty.
18. The subject vehicle has a warrantable defect.

V. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204, 601-.613.
2. A Hearings Examiner with 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 filed a sufficient complaint with the Department. 43 Tex. Admin. Code § 215.202.
4. Proper and timely notice of the hearing was provided. Tex. Gov't Code ch. 2001.051-.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this proceeding. 43 Tex. Admin. Code § 206.66(d).
6. Complainant proved, by a preponderance of the evidence, that the subject vehicle has a defect covered by Respondent's warranty. Tex. Occ. Code § 2301.204.
7. Complainant notified Respondent of the alleged defect(s) with the subject vehicle prior to the expiration of the warranty period. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(3).
8. Complainant filed a complaint with the Department specifying the defect(s). Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1).
9. Complainant is entitled to warranty repair relief pursuant to Texas Occupations Code § 2301.204 and 43 Texas Administrative Code § 215.202(b).

VI. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's request for warranty repair relief pursuant to Texas Occupations Code § 2301.204 is **GRANTED**.

It is **FURTHER ORDERED** that Respondent shall make any repairs needed to conform the subject vehicle to the applicable warranty; specifically, Respondent shall replace the transmission assembly and resolve the following issues: oil light and engine light, stalling, vehicle

unable to travel above 50 mph. Upon this Order becoming final under Texas Government Code § 2001.144:¹⁸ (1) Complainant shall deliver the vehicle to Respondent within 30 days; and (2) Respondent shall complete the repair of the vehicle within **60 days** after receiving it. 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 the Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED October 5, 2023



BENNIE BROWN
CHIEF HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES

¹⁸ This Order does not become final on the date this Order is signed, instead: (1) this Order becomes final if a party does not file a motion for rehearing within 25 days after the date this Order is signed, or (2) if a party files a motion for rehearing within 25 days after the date this Order is signed, this Order becomes final when: (A) an order overruling the motion for rehearing is signed, or (B) the Department has not acted on the motion within 55 days after the date this Order is signed. Accordingly, this Order cannot become final (1) while a motion for rehearing remains pending; or (2) after the grant of a motion for rehearing.