

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0110**

*Modified*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 22, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 131335). Claimant filed a timely request for hearing. On February 3, 2015, ALJ Wipperman conducted a hearing, and on February 4, 2015 issued Hearing Decision 15-UI-32911, concluding that claimant quit work without good cause within 15 days of his planned quit with good cause. On February 6, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Stark Trucking employed claimant as a commercial truck driver from June 20 to October 27, 2014.

(2) As a commercial truck driver, claimant was required to maintain a commercial driver license (CDL). To maintain his CDL, claimant was required to have a medical card certifying that he was healthy enough to work as a commercial driver. Claimant's medical card was going to expire on November 5, 2014. Claimant suffered from diabetes and was unable to pass a medical examination and renew his medical card. Claimant therefore was unable to maintain his CDL or continue working for the employer after November 5, 2014. He therefore planned to quit work on that date.

(3) On or shortly before October 26, 2014, claimant burned his feet and was unable to drive. On October 27, 2014, claimant determined that he was unable to return to work for the employer before his CDL expired. Claimant quit work for that reason.

(4) Claimant was unable to drive before his CDL expired.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that claimant quit work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Leaving work without good cause includes a willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occupation involved, so long as such failure is reasonably attributable to the individual. OAR 471-030-0038(5)(b)(E) (August 3, 2011). Otherwise, “good cause” is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant had diabetes, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for his employer for an additional period of time.

When an individual has notified an employer that he will quit work on a specific date and it is determined that the quit would be for good cause, and that the individual quit work without good cause no more than 15 days prior to the date of the impending quit with good cause, then the work separation shall be adjudicated as if the actual quit had not occurred and the planned quit had occurred. ORS 657.176(6). However, the individual shall be ineligible for benefits for the period including the week in which the actual voluntary leaving occurred through the week prior to the week of the planned good cause voluntary leaving date. *Id.*

In Hearing Decision 15-UI-32911, the ALJ concluded that claimant’s planned quit on November 5, 2014 due to the impending loss of his CDL would have been with good cause.<sup>1</sup> However, the ALJ concluded that claimant’s actual quit in late October 2014 was without good cause, asserting that “[w]hile claimant was temporarily unable to drive because of the burns to his feet, he could reasonably have waited the remaining period to determine whether his feet would improve enough to allow him to continue working up until his medical card expired on November 5, 2014.”<sup>2</sup> The ALJ therefore applied ORS 657.176(6) and concluded that claimant is not disqualified from receiving benefits based on his work separation from the employer, but is ineligible for benefits from October 19 through November 1, 2014 (weeks 43-14 and 44-14).<sup>3</sup>

We disagree with the ALJ’s conclusion that claimant’s actual quit on October 27, 2014 was without good cause. Claimant could not have continued working for the employer after November 5, 2014 because he could not pass a medical examination and renew his medical card, and therefore could not maintain his CDL. The ALJ’s analysis overlooks that on October 27, 2014, claimant correctly determined that he was unable to return to work for the employer before his CDL expired on November 5. Waiting to determine whether his feet would improve enough to allow him to return to work until his medical card expired therefore would have been futile, and therefore was not a reasonable alternative to

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<sup>1</sup> Hearing Decision 15-UI-32911 at 2-3.

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.*

quitting work. Absent evidence that delaying his inevitable quit 9 days would have benefited claimant, we conclude that he quit work with good cause.

Claimant therefore is not disqualified from receiving benefits based on his work separation from the employer. Because claimant quit work with good cause, ORS 657.176(6) does not apply to his work separation, and he is not ineligible for weeks 43-14 or 44-14 under that provision.

**DECISION:** Hearing Decision 15-UI-32911 is modified, as outlined above.

Tony Corcoran and J. S. Cromwell;  
Susan Rossiter, not participating.

**DATE of Service:** March 20, 2015

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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