

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0327**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 23, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 132831). The employer filed a timely request for hearing. On March 5, 2015, ALJ Vincent conducted a hearing, and on March 11, 2015 issued Hearing Decision 15-UI-34952, affirming the Department's decision. On March 21, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Oregon Outback Freight Movers, Inc. employed claimant as a truck driver from April 15, 2013 until November 28, 2014.

(2) Claimant customarily drove a roundtrip route between Bend, Oregon and Portland, Oregon. In the winter months, this route was often snowy and icy. Several of the trucks in the employer's fleet were equipped with "Detroit lockers," making them rear wheel drive. Transcript at 5. The employer considered rear wheel drive trucks safer to drive in snowy and icy conditions.

(3) On November 26, 2014, claimant drove one of the employer's trucks with a "Detroit Locker" from Bend to Portland. On November 27, 2014, Thanksgiving Day, claimant drove the truck back to Bend. On the return trip, the truck began to sporadically decelerate or accelerate for no reason, and consistently pulled very hard to the left. On one occasion during the return trip, the truck pulled so hard to the left that claimant could not stop it from entering into the lane of oncoming traffic. Claimant very nearly had a head-on collision. Although claimant had driven the same truck before, and perceived that it pulled to the left "a little bit," he had experienced nothing before like the truck's performance this day. Transcript at 12. Claimant attributed the problem with the truck to its "Detroit lockers." When claimant arrived at the workplace in Bend, he completed a report that "red-tagged" the truck as unsafe to drive, which meant

that an inspection by a certified mechanic needed to be completed before the truck could again be put into service. Transcript at 12, 17. Although November 27, 2014 was the Thanksgiving holiday, claimant called the employer's chief executive officer (CEO) and left him a message stating he needed to speak with him about the truck.

(4) The next day, November 28, 2014, claimant and the CEO spoke by phone and discussed the performance of the truck. At some point, the CEO commented "so the truck can't run tonight?" and claimant replied that it could not. Transcript at 13. Claimant told the CEO that he was not going to drive the truck that he had driven on November 27 2014 or any other truck that was equipped with "Detroit lockers" because they were unsafe. Transcript at 15, 19, 23. The CEO told claimant that if he refused to drive any truck with "Detroit lockers" he was refusing the drive most of the vehicles in the employer's fleet and the CEO would consider claimant to have quit work. Transcript at 13. Claimant and the CEO disagreed about the safety of the trucks. After several back-and-forth exchanges, claimant told the CEO that he quit. Later on November 28, 2014, claimant sent a text message to the CEO stating that he "wouldn't drive any truck with a Detroit locker on it." Transcript at 20-21, 23, 24.

(5) After November 28, 2014, claimant did not return to the workplace.

(6) On November 29, 2014, the CEO arranged for Diesel Power Products to inspect the truck that claimant had driven on November 27, 2014. Diesel Power Products found no reason to take the truck out of service.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without 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). "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) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

Claimant's testimony appeared at times to be contradictory about whether he quit because he refused to drive any truck equipped with "Detroit lockers," or whether he limited his unwillingness to the one truck that he drove on November 27, 2014. However, in his questioning of the CEO, claimant conceded that he had told the CEO that he would not drive any truck with that equipment. *See and compare* Transcript at 14, 15, 23, 24. Accordingly, it is most likely that claimant quit because he refused to drive any of the trucks in the employer's fleet that had a "Detroit locker." As claimant described it, the unsafe performance of the particular truck he drove on November 27, 2014 would likely have caused a reasonable person to leave work rather than drive it until it was repaired. However, claimant did not present any evidence showing that, if the problems with the truck on November 27, 2014 were attributable to a faulty "Detroit locker," that a well-functioning "Detroit locker," performing as intended, made all trucks on which it was installed inherently unsafe or dangerous. Absent this evidence, it appears that the reason that claimant decided to quit work, his refusal to drive any trucks with a "Detroit

locker," regardless of the condition or state of repair of the piece of equipment, was not based on objective safety considerations. On these facts, a reasonable and prudent truck driver, exercising ordinary common sense, would not have objectively concluded that driving a truck with a "Detroit locker" in good repair constituted a grave reason to leave work.

Claimant did not show that he had good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 15-UI-34952 is affirmed.

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

**DATE of Service:** May 12, 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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