



Issue Date: 08 May 2018

Case Number: 2016-STA-00029

In the Matter of:

KEITH JETER
Complainant,

v.

PREMIER TRANSPORTATION
Respondent

Appearances: Richard E. Steck, Esq.
Richard E. Steck and Associates
Chicago, Illinois
For the Complainant

Bradley J. Smith, Esq.
Keefe Campbell Biery & Associates, LLC
Chicago, Illinois
For the Respondent

DECISION AND ORDER DISMISSING THE COMPLAINT

This matter arises under the employee-protection provisions of 49 U.S.C. § 31105 of the Surface Transportation Assistance Act of 1982 (“STAA”), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, and the regulations of the Secretary of Labor published at 29 C.F.R. Part 1978. The STAA, in part, prohibits an employer from discharging an employee for refusing to operate a vehicle because such operation would violate a regulation, standard, or order of the United States related to commercial motor vehicle safety, health, or security or because the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle’s hazardous safety or security condition. 49 U.S.C. § 3110(a)(1)(B)(i) and (ii).

I begin with a brief procedural history; followed by a summary of the evidence, to include testimony and evidentiary exhibits; and the parties’ stipulations. I then present the issues to be decided and my analysis of those issues, including essential findings of fact and conclusions of law. I base my decision on all of the evidence admitted, relevant controlling statutory and regulatory authority, and the arguments of the parties. As explained in greater

detail below, because I find that Mr. Keith Jeter (“Complainant”) has not proven that he engaged in activity protected under the STAA, I dismiss his complaint.

Procedural History

Keith Jeter filed a complaint with the Occupational Safety and Health Administration (“OSHA”) on March 3, 2015 alleging that Premier Transportation (“Respondent” or “Premier”) terminated his employment on January 12, 2015 in retaliation for refusing to drive his truck in unsafe weather conditions. 49 U.S.C. § 3110(a)(1)(B)(ii).¹ OSHA’s Regional Supervisory Investigator dismissed the complaint on February 22, 2016, finding no violation of the STAA. By letter dated March 10, 2016, Complainant timely filed objections to the findings and requested a hearing before the Office of Administrative Law Judges (“OALJ”). The matter was then assigned to me for hearing.

The parties filed a number of prehearing motions, most of which were resolved by written orders.² I presided over telephonic prehearing conferences with counsel for both parties on July 7, 2016; January 31, 2017; and March 13, 2017 and ruled on additional prehearing motions.³

Following two continuances, I presided over a de novo hearing in Chicago, Illinois on March 28, 2017.⁴ Complainant and Respondent, and counsel for both, attended. At the outset, I memorialized the following rulings that were made during the prehearing conferences: (i) denial of a motion by Respondent to exclude testimony from Complainant regarding a conversation with another trucker on January 12, 2015 about the weather conditions that day, (Tr. 5-6); (ii) denial of a motion by Respondent for partial summary decision as moot,⁵ (Tr. 6-7); (iii) a finding that Complainant’s responses to Respondent’s discovery requests were sufficient, (Tr. 7); (iv) denial of Respondent’s motion to certify a subpoena to District Court to compel the Illinois Department of Employment Services to produce records, (Tr. 7-8); and (v) grant of Respondent’s

¹ While Complainant initially complained Respondent terminated him in violation of both Sections 31105(a)(1)(B)(i) and (ii), he withdrew that part of his complaint alleging Respondent terminated him for refusing to operate a vehicle “because the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety or health.” § 31105(a)(1)(B)(i). (Tr. 6-7.)

² I issued the following orders: an order granting a motion by Respondent to compel discovery (September 13, 2016); an order denying a request for sanctions by Respondent (November 18, 2016); an order extending the prehearing deadlines (January 6, 2017); and an order granting leave to Respondent to depose two witnesses in lieu of testimony during the hearing (February 14, 2017).

³ Those rulings, discussed below, were memorialized during the formal hearing.

⁴ I use the following abbreviations in this decision: “Tr.” for the official hearing transcript; “CX” for a Complainant’s Exhibit; “RX” for a Respondent’s Exhibit; and “ALJX” for an Administrative Law Judge’s Exhibit.

⁵ The motion for summary decision requested dismissal of claims regarding Complainant’s refusal to work due to violation of hours of service. The parties agreed that the hours of service rules are not relevant to these proceedings and that Complainant is not claiming protected activity related to hours of service violations.

motion to admit GPS data on Complainant's truck from January 12, 2015,⁶ (Tr. 8-9). Respondent's Exhibits 1-8, 12-14, and 16-17 were admitted into evidence.⁷ (Tr. 16, 273, 15, 99, 177, 278.) Complainant's Exhibits 1-5 and 7 were admitted into evidence.⁸ (Tr. 258, 13.) Four witnesses testified, including Complainant.⁹ (Tr. 34-256.)

On June 6, 2017, I issued an order establishing a post-hearing briefing schedule. Complainant was given until June 30, 2017 to file his brief; Respondent was given until July 31, 2017; and Complainant's reply was due August 14, 2017. On July 5, 2017, Complainant filed the *Closing Argument of Keith Jeter* ("Compl. Brief"). On July 31, 2017, Respondent filed *Proposed Findings and Conclusions of Law* ("Resp. Brief"). On August 14, 2017, Complainant filed *Rebuttal Closing Argument of Keith Jeter* ("Compl. Reply").

Summary of the Evidence¹⁰

Hearing Testimony

Keith Jeter (Tr. 34-168)

I began working as a truck driver in February 2005. I received cold weather and snow training with Schneider National's safety program, which I passed in February 2005. (Tr. 35-36.) After training, I worked for Schneider for a year driving long-haul freight to Mexico and Canada. (Tr. 36.) After that I drove for Werner Enterprises for four years in Omaha, Nebraska. (Tr. 36, 37.) I drove a "53-foot dry van tractor" for both Schneider and Werner. (Tr. 37.) My next job was with Baldwin Transfer, driving a tractor-trailer. (Tr. 37, 38.) I held that job for two or three years before commencing employment with Premier. (Tr. 37.) I drove long-haul, cross-

⁶ I admitted the GPS data but did not require Complainant to certify as to how or under what circumstances the data was collected. I overruled Complainant's objection to the use of the GPS data beyond demonstrative evidence.

⁷ RX-9 and RX-15 were withdrawn. (Tr. 269, 274, 278.) I declined to admit RX-11 based on Complainant's objection that it was cumulative. (Tr. 269, 273-74.) RX-16 was not admitted into the record. RX-8 was admitted over Complainant's objections, but only for consideration of the first four columns on pages 1-2 and all of page 3. (Tr. 266-68, 273-74.)

⁸ I initially deferred ruling on the admissibility of CX-1 and CX-6. (Tr. 13.) CX-1 is a January 12, 2015 article from the *Chicago Tribune*. Complainant requested that CX-1 be admitted to reflect the weather reports he received before starting his route on January 12, 2015. (Tr. 12.) Respondent objected to CX-1 as hearsay. (Tr. 12-13.) I overruled Respondent's objection and admitted CX-1 for consideration as to Complainant's requested purpose: to corroborate Complainant's testimony about his knowledge of the weather the morning of January 12, 2015. (Tr. 257-58.) CX-6 is a determination by the Illinois Department of Employment Security (IDES) that Complainant was entitled to unemployment benefits because no misconduct was found. (Tr. 9.) The parties agreed that its only potential use was for the calculation of damages and I deferred ruling on its admissibility in order to allow the parties to provide briefing on the subject. *See* Tr. 261-66. After reviewing the parties' briefing, I find that unemployment compensation is not deducted from awards of back pay under the STAA and therefore DECLINE to admit CX-6. *See Dutkiewicz v. Clean Harbors Envtl. Servs., Inc.*, ARB No. 97-090, ALJ No. 1995-STA-034, pdf at 8 (ARB Aug. 8, 1997) (stating that unemployment compensation "is not deducted from the amount of back pay owed").

⁹ Respondent submits additional deposition testimony of two other witnesses.

¹⁰ The summary of the evidence is not intended to provide a comprehensive account of all the evidence.

country routes for Werner Enterprises and Baldwin Transfer. I also encountered inclement weather because I spent 90% of my time driving in northern states through all seasons of the year. (Tr. 38.)

January 11, 2015

On Sunday, January 11, 2015, I spent over four hours removing snow from my home in Calumet City, Illinois. (Tr. 38, 39.) There was over five feet of snow in drifts after it had snowed on Friday, Saturday, and Sunday. The wind was terrible, covering the driveway with snow within an hour of having cleared it. (Tr. 39.) I was scheduled to work the next day, January 12, 2015. I watched the weather report Sunday night on Channel 5, which said “that there would be an accumulation of snow, whiteout conditions in Indiana.”

The Events of January 12, 2015

I watched the news the morning of January 12, 2015. There “was an accumulation, a foot or more, I believe, for the Chicago area, towards Indiana.” (Tr. 40.) I got up at 2:30 or 3:00 and checked the Weather Channel and Channel 5. “They said it would be an accumulation of a couple of inches, but it was a lot more from what I saw.”¹¹ (Tr. 41.) They also shut down the Indiana toll road (I-90) to trucks due to fierce winds. (Tr. 41-42.) I-90 runs from Chicago into Indiana going eastbound through Gary and Hammond. (Tr. 42.)

The morning was “very windy,” with winds of 25 miles an hour and the gusts were “a lot more than just 25 miles an hour.” The accumulation “appeared to be more” than three inches.

My initial work location that morning was at Premier Transportation’s terminal in University Park, Illinois, a half hour from Calumet City on normal days. (Tr. 43.) When I arrived at University Park I did my pre-trip inspection, consisting of “checking the tire pressure, fluids, [and] mak[ing] sure nothing’s broke[n], loose, or missing on the tractor itself.” (Tr. 47.) After the inspection I picked up my trailer. (Tr. 44.) I expected to do the K-1 route as I had done from September to January, every trip, five days a week. (Tr. 45.) I picked up the bill of lading from the security guard, “found the trailer, checked the seal, pulled to the gate, and the security guard comes out before he cuts that seal and puts another seal on.” (Tr. 45-46.) At the next door, two people must “verify that was the seal that the security guard put on the trailer.” (Tr. 46.)

I spoke with employees of Premier on Friday, January 9, 2015. “I can’t remember if it was Heath or Tori, but as far as my route would be K-1 for Monday.” During that conversation, the subject of Valparaiso did not come up. (Tr. 47.)

The first stop that morning was 47th and Kedzie, 20 miles from the terminal. (Tr. 47.) I experienced “horrible” weather conditions. There were “several spin-outs along the way, tractors off the road.” (Tr. 48.) “I unloaded the trailer and went on to my next stop,” 47th and

¹¹ Complainant stated during cross examination that he listened to traffic and weather reports on the radio on January 12, 2015, station 105.9, 780, but that he forgot to include it in an interrogatory. (Tr. 111-117.)

Bishop, which is less than 10 miles away from the first stop. I traveled east on 47th Street to get there. I encountered “heavy snow . . . wet snow causing a lot of havoc on 47th Street.” (Tr. 48.) After that I went onto my third stop, at 87th and the Dan Ryan. (Tr. 49.) It was “less than 10 miles away from 47th Street to 87th Street.” I took “47th Street to the Dan Ryan, exit[ed] at 87th Street, and pulled around to the rear of the store to be unloaded.” (Tr. 49.) The weather was “about the same, if not worse. And I say it’s worse because there’s more traffic on the Dan Ryan at this time, because the later it gets in the day, [the] more traffic is on the expressways.” (Tr. 50.)

My fourth stop was at 95th and Stony Island. I took 95th Street over to Stony Island. 87th to 95th, and 95th eastbound. “The roads [were] starting to get a lot worse . . . [with] more accumulation of snow.” There was also more traffic. That stop was 10 or 15 miles from the Lansing, Illinois airport.¹² (Tr. 50.)

My fifth stop was in Avenue O, “just south of East Chicago.” I think I took 95th east to Colfax and Colfax to 103rd. (Tr. 50.) “The bridge was out at 106th so I had to go around to Avenue M, I believe, and then come back to I.” (Tr. 50-51.) More snow was accumulating and “[i]t was definitely less plows near Avenue O than there were in the inner city on the expressway.” (Tr. 51.)

I assumed that my next stop was Bourbonnais, Illinois, “because I had been doing it for five months and it had never changed, and I’d been doing it five days a week. So after doing the first five stops, it never dawned on me to check the sixth.” (Tr. 51.) I took 94, 294/80 to 80 westbound to 57 southbound and 57th south to Bourbonnais. (Tr. 54.) The Bourbonnais stop is 30 miles from the Avenue O stop. On the way to Bourbonnais I went past “a squall line where you could see the trucks coming out of a – looked like a time warp. They were [in Lansing, Illinois] coming through the snow heading westbound on 80, and they were just covered. The trucks that were headed eastbound are hardly anything on them, but they were headed into . . . a wall of snow. And they were backed up for at least 10 miles from the state line all the way back past Halsted.” I visually observed a five-mile backup in the eastbound traffic into Indiana. (Tr. 52, 53.) The plows were more concentrated on the interstates than on the side roads, so conditions “were better on 294 going to Interstate 80.” There was snow all the way to Bourbonnais. (Tr. 54.)

I did not realize until I arrived at Bourbonnais and the supervisor looked at the bill of lading that it was not the sixth stop and I was supposed to be in Valparaiso, Indiana. (Tr. 52, 54.) I was not concerned about having gone to Bourbonnais instead of Valparaiso. (Tr. 134-36.) At that point, I called Premier and “spoke with Heath and I told him at that time that the roads were bad, what I had encountered along the way, what I saw with my own eyes . . . going to Bourbonnais. And I told him that the roads are terrible.” (Tr. 54-55.) I told Heath that I intended “[t]o park the trailer and actually take it the next day.” “I told him that I thought it would be better to drive the next day because watching the weather report that morning, the snow actually tapered off, I believe, for – it wasn’t snowing as bad the next day.” Heath told me

¹² Complainant clarified after reviewing his log sheet that the Marshalls on 95th Street closed that week and that prior to January 12, 2015 he made five stops in Chicago. (Tr. 158.) Complainant further clarified that he did not show up at the Marshalls on 95th Street on January 12 and only made four stops that day. (Tr. 159.)

that I had to take the truck “over to Valparaiso and if I didn’t, the repercussions would be information put on my DAC report that [wasn’t] true.” I also “tried to let him know . . . that the wind was gusting, that I had encountered a wall of snow.” In windy conditions, a loaded trailer would have been safer than having the back of the trailer empty. (Tr. 55.)

I didn’t feel safe going down the road with basically an empty trailer. There [were] only like two kayaks, and I knew this because I had just emptied the trailer at Avenue O and there wasn’t much on there. There [were] two or three kayaks and – I think it was five items. . . . It wasn’t enough to drive in windy conditions on the expressway. It wasn’t safe.

(Tr. 55-56.) I did not tell Heath that my trailer was almost empty. However, he would have known “if I was in Bourbonnais that my trailer was basically empty.” (Tr. 56.) Heath did not “pause and come back” to discuss “weather or anything else or disciplinary actions if I didn’t take the load to Indiana.” The conversation “ended with me basically getting off the phone.” (Tr. 57.)

“I had no problem driving in inclement weather in the first five stops because I felt comfortable doing it. It wasn’t – I could still see in front of me. My visibility was clear. The roads were maybe a little hazardous, but I took my time. When you’re on Interstate 80, I don’t have the option. You’ve got more traffic, more conditions. A lot of other elements come into play when you’re on Interstate 80.” (Tr. 140.)

Next I called Mr. Haney, the safety director. At that time “I was on my way back from Bourbonnais,” between the Bourbonnais stop and a fueling station less than a mile from the Premier terminal. (Tr. 58-59.) After speaking with a secretary, I eventually spoke with Mr. Haney. (Tr. 58-60.) “Mr. Haney told me that he could no longer speak with me because he had spoke[n] with . . . Heath,” who told Mr. Haney that I had quit. (Tr. 60.) I told Mr. Haney “that I had not quit, and that I had actually spoken with Michelle and I was . . . preparing to fuel up for the next day.” Mr. Haney told me that he “couldn’t say anything else because I was no longer an employee” and referred me to the VP of operations, Bill Laing. (Tr. 61.)

I called Mr. Laing, who also got Heath on the telephone line before speaking to me. (Tr. 62-63.) Mr. Laing spoke and said to Heath, “What do you want to do with this guy.” However, Heath had hung up. I explained to Mr. Laing “what the weather conditions were and I did not feel safe carrying the empty trailer to Valparaiso, Indiana under windy conditions.” Mr. Laing told me “that he did not like my attitude” and said “I’m letting you go.” (Tr. 63.) I did not have any further conversations with Mr. Laing, Heath, Mr. Haney, Tori, or Michelle on that day. “I drove the trailer to University Park and parked” it. (Tr. 64.) I did not quit on January 12, 2015. I did not have an exit interview on January 12, 2015. (Tr. 78.)

I refused to go to Valparaiso on January 12, 2015 “because I did not feel safe taking an empty trailer to Valparaiso under windy conditions, in whiteout conditions.” (Tr. 80.) There was no requirement for me to be home at any particular time on January 12, 2015. I did not tell anybody that I had to be home to relieve the caretaker for my mother-in-law on January 12, 2015. (Tr. 80.)

CX-2

CX-2 is a report that I made to record “any adverse job situation that I deemed wasn’t proper.” (Tr. 64-65.) I made the entries for September 26, September 29, and January 12 on the same day that they took place. (Tr. 65.)

The September 26 entry reflects a conversation that I had with “people in the dispatch office”: Doug, Tori, and Heath, with the final decision being made by Heath. I went to the office to give two weeks’ notice. “I was told that I could be given another route and if I would stay if I could be off earlier, and I’d stated that I would.” (Tr. 66.)

I had put in my notice “so that I could be home with my mother-in-law,” to provide her with companionship.¹³ (Tr. 66.) A neighbor also provided her with companionship Monday through Friday. (Tr. 67, 86.) It was not caretaking. My wife was responsible for all the caretaking responsibilities, (Tr. 67), and my mother-in-law required care seven days a week, (Tr. 86), but not constantly, (Tr. 89-90). She was bedridden but was able to do some things for herself. (Tr. 86.) My mother-in-law was living with my wife and me and “I took it upon myself . . . to be home.”

The routes that I had been on required “very long days,” sometimes 16-hour days. (Tr. 68.) I also wanted to be able to help the neighbor get her brother off of the bus around 2:00. There was “never a requirement” that I be there when the bus arrived. (Tr. 69.) There was never a requirement that I had to relieve the neighbor in watching my mother-in-law. (Tr. 88.) “There was never a set time” that the neighbor would leave; sometimes she would stay until 3:00; “[s]ome days if she left early she would come back . . . [and] stay there until 6:00.” (Tr. 108.) “I wanted to make my wife happy, so I wanted to be home to help her.” (Tr. 72.) My mother-in-law did not have to live with us; she could have been placed in a nursing home instead. (Tr. 90-91.)

My wife did not want my mother-in-law left alone, (Tr. 107), but I did not have a set time to relieve the neighbor. “Whenever I made it home it was great. That way she could take care of her brother. But there was never a set time.” I made it home “anywhere from noon, 1:00, 2.” (Tr. 76.) I was required to do runs beyond my bill of lading schedule once or twice a week. (Tr. 157.) Extra runs would delay my arrival home by two to four hours. Neither my wife nor the neighbor were upset when I was delayed. (Tr. 158.)

The next day after the September 26 discussion with the dispatch office, I was given the K-1 route, which I was on until January 12, 2015. (Tr. 70.)

The January 12, 2015 entry reflects the conversation recounted above. I wrote it “when I arrived home January 12.” (Tr. 71.)

¹³ On cross examination, Complainant stated that he wanted to get home earlier for himself and that “[i]t had nothing to do with” his mother-in-law. (Tr. 95.) After his memory was refreshed by his deposition, Complainant stated that being able to relieve the neighbor early was “part of the reason” he put in his two weeks’ notice. (Tr. 99-102.)

CX-4

CX-4 is my January 12, 2015 log sheet. (Tr. 72.) It reflects that I was in Bourbonnais at 10:30; at University Park, the Premier terminal, at 11:30, and I went home at noon. (Tr. 73.)

* * *

I estimate that it would take an hour or an hour and a half to drive from University Park to Valparaiso, in normal conditions. It normally took me a half hour to drive from University Park to my home. On January 12, 2015 it took me an hour and a half. (Tr. 74.) I could have gone to Valparaiso and been home by 2:00 or 2:30, under normal conditions. (Tr. 75.) I would have been traveling from Bourbonnais to Valparaiso, had I made the trip, around 11:30 or 12:00. (Tr. 118.) “I don’t know what the visibility was that day. I can’t remember.” (Tr. 119.) I do not know what the conditions were like in Valparaiso. However, “[a]s far as the Gary area, I knew what the weather was like.” A driver told me that he “just came from that direction” and told me “I don’t know who you’re talking to on the other end of that phone, but they don’t know what they’re talking about. And the gentleman’s wife even came over to me and she said she’s beating on him trying to tell him to stop. He’s like, I don’t know who you’re talking to on the other end of that phone, but they don’t know what they’re talking about that.” (Tr. 120.)

CX-3 is my K-1 driver route report, or bill of lading, for January 12, 2015. (Tr. 76.)

CX-6 “is a determination for me to gain unemployment.” There was a hearing held that Heath and I participated in. Heath said during the hearing that I had quit. (Tr. 79.)

CX-7 “is my route that was given to me daily and weekly and my amount of pay for each week.” It is accurate to the best of my knowledge.

Alternative Routes to Valparaiso

There are alternative routes to taking 80/94 to get to Valparaiso, including Route 30 off of Interstate 65 and Route 2 off of 65/north on 49. (Tr. 127-28.) Heath and Bill and I did not speak of “routes, alternate routes”; “[w]e never spoke of back roads.” (Tr. 128.)

The locations on the map of RX-12 are accurate as to where I made my stops at on January 12, 2015. (Tr. 131.) RX-12 accurately reflects my locations and stops on January 12, 2015, including the timing of those stops. (Tr. 134.)

Subsequent Employment

I received income of about \$33,000 while working for Echo Limousine, from around June 2015 to December 2015. (Tr. 144-46.) I have continued to work at Echo Limousine. I also began working for UberBlack in June 2015. I don’t know if I made \$300 per week for Uber in since June 2015; it “[m]ight have been less.” (Tr. 154.) I made “a lot less” than \$400 per week for Uber in 2016; “I don’t know.” (Tr. 155.) In 2017, “I don’t know” how much I’m making; “[r]oughly, I’m guessing here, maybe a hundred, \$200 a week.” (Tr. 155.)

Uber was my sole source of income in 2016. I made about \$300 a week while working for Uber. (Tr. 165.) In 2015 I made about \$3,000 total. (Tr. 165.) In 2017 I am making “anywhere from two to three hundred dollars” a week, mostly \$200 a week.” (Tr. 165.)

I have not tried to find employment with another trucking company “[b]ecause I don’t want to go through the whole thing of the DAC report and false information and demands being placed upon me. . . . I prefer to drive cars. I don’t have to worry about low bridges in the car. But it’s demanding with the trucking industry right now, driving for Premier, driving for anyone.” (Tr. 166.) I wanted to go back to work for Premier in 2015, but not now. (Tr. 167.)

Dorothy R. McKeever Jeter (Tr. 169-76)

I have been employed as the Principal of Washington Elementary and Washington Junior High in Riverdale, Illinois for about 23 years. (Tr. 170-71.) I have been married to Keith for five years. (Tr. 169.)

In September 2014, Keith, my mother, and I lived at my home. At that time, “[m]y mother was somewhat mobile, but more so bedridden because of her arthritis.” I had not made any arrangements for special care for her. (Tr. 171.) Keith “helped out by talking to my mother, fixing dinner or lunch, anything she needed.” My neighbor also helped out. “I asked my neighbor if she would come over and just chat with my mother so she wouldn’t just be listening to the television.” (Tr. 172.)

My usual working hours were “roughly 8:00 to sometimes about 5.” I got back around 5:00 or 6:00. If I had a board meeting I wouldn’t get home until around 8:45 or 9:00. (Tr. 172-73.) My neighbor did not have any particular hours that she was supposed to help out; she would come around 11:00. There was no particular time that my neighbor left each day; “sometimes she would leave around 3:00, roughly, but it varies. Sometimes she [would] leave before and sometimes after, depending on if my mother was asleep or not.” (Tr. 173.) “We talked about from 11 to 3. . . . But it was not on black and white.” (Tr. 181.) I paid the neighbor \$200 a month. (Tr. 173.) I did not require her to be at my home any particular hours on particular days “because actually, she was doing it for a favor for me.” She was acting more as a companion than a caretaker, to give my mother somebody to talk to.” (Tr. 174.)

Keith did not have any special duties with respect to my mother; “I took care of the washing her up, changer her diaper.” Keith would “fix food sometime[s].” (Tr. 174.) He was not required to be home to take care of my mother at particular times of the day. “I wouldn’t say required. It wasn’t mandated, you know.” He also was not required to replace the neighbor as a companion at any particular time. (Tr. 175.) I did not ask Keith to change his hours with Premier at any point. (Tr. 176.)

There were times after my mother moved in with my husband and me that the neighbor would leave my house before my husband or I came home. “I can’t say for sure” how often. (Tr. 186.)

Tori Lengel (Tr. 188-206)

I entered the trucking industry in 2001 as a dispatcher. (Tr. 188.) I began working for Premier in 2011 as a dispatcher. I dispatch drivers within Department of Transportation guidelines to deliver loads to stores. (Tr. 189.) “I am in charge of about 30 drivers. [I keep] them within DOT guidelines, making sure they’re safe out there, making sure their equipment is running properly.” My duties include dealing with weather issues, employee discipline, and termination discussions. (Tr. 190.) Premier has routes in “the entire Chicagoland area,” into Wisconsin and Indiana. Premier routinely investigates weather issues if a driver brings the weather to its attention. (Tr. 192.) Premier investigates by checking with other drivers in the area, viewing online radar, and checking cameras “on the different highways.” (Tr. 192-93.) Based on my experience, Premier trusts but verifies the weather conditions brought to its attention. (Tr. 193.) Drivers receive their route information when I call them, they call in, or I text them. The route information is also sent to the computer in their truck and is provided on the bill of lading that is picked up from the security officer before beginning their route. (Tr. 194.) Drivers are required to use the bill of lading to “[f]ind out what trailer they’re supposed to take, verify the trailer number, verify the seal number, and make sure they know where they’re going.” (Tr. 194-95.)

In January 2015, I lived in Manteno, Illinois and traveled to work in Kankakee, Illinois, 15 miles away.¹⁴ (Tr. 195.) I did not see any precipitation or accumulation on the roadways on my way in on January 12, 2015. (Tr. 196.)

Mr. Jeter’s last stop on January 12, 2015 was supposed to be Valparaiso, Indiana. (Tr. 196.) Mr. Jeter called me from Bourbonnais, (Tr. 198), “probably about 10:30” a.m., (Tr. 211), “very flustered and upset that he had gone to the wrong store and that he now did not have time to drive all the way to Valparaiso, Indiana because he had to get home to take care of his mother,” (Tr. 197). He did not mention anything about the weather, ice, or snow during that conversation, or anything about weather on Interstate 80 or 94 on the route to Valparaiso. (Tr. 197.) “I told him I would talk to Heath, because we had made the agreement, you know, that we would try to get him home with Route K-1. I talked to Heath and he said that he needed to take it to Valparaiso, and that’s what I told Keith.” (Tr. 197-98.) Mr. Jeter “got very upset and said that he did not have time, he was worried about his mother being put in a nursing home and that he had to get home to relieve the caregiver.” Nothing else was discussed. Mr. Jeter “was very upset, getting loud. At that point I transferred him to Heath.” (Tr. 198.)

I had previously worked as a dispatcher out of locations that Mr. Jeter drove his truck out of, since March 2014. (Tr. 198.) I saw Mr. Jeter in person two or three times a month prior to January 12, 2015. (Tr. 212.) I had discussions with Mr. Jeter about caretaking for his mother. I did not make records of these conversations. (Tr. 207.) I first learned of Mr. Jeter’s mother in June 2014. (Tr. 199.) We spoke on the phone about his mother. “[W]e would talk about . . . how hard it is to see them failing and getting good caregivers and things like” that. He referred to the mother as “Mom” when we talked. (Tr. 200.) Mr. Jeter also “told me that they had contacted some Christian organization, I’m not sure what one, and that they were threatening if he was not there to relieve the caregiver to put his mother in a home, and that I should be

¹⁴ Bourbonnais, Illinois is between Kankakee and Manteno.

thankful that we never called them in for my mother because they call themselves Christian, but they're not Christian." (Tr. 201.) Mr. Jeter told me that "[h]e had to get home to relieve the caregiver because they were threatening to put the mom in the home if there was not a caregiver with her when their caregiver left." Mr. Jeter "never really said who . . . the other caregiver was that he was relieving." (Tr. 202.)

In September 2014, Mr. Jeter "came to the Kankakee office and said that we weren't getting him home in time to relieve the caregiver regularly enough and that he was giving us two weeks' notice." Our response was to try to work with him, "so we decided to put him on the K-1 route." (Tr. 203.)

I prepared CX-5. It is a driver termination form used by Premier to terminate a driver's employment. (Tr. 204, 205.) I marked "Quit under dispatch" on the form "[b]ecause any time a driver just dumps the trailer back at the yard and doesn't finish his route, that's considered quitting under dispatch." (Tr. 205.) I filled in "Yes" in the column that asks "Was an exit interview performed" because Mr. Jeter "spoke with Heath and Bill Laing on the phone prior to ending his employment with Premier." (Tr. 205.) I do not know if Premier's policy manual says that a driver will be terminated if he doesn't proceed to every destination on his bill of lading. I did not speak with Mr. Jeter again after the initial conversation I had with him on January 12, 2015; I was not on the phone when he spoke with Mr. Laing, (Tr. 208), and I wasn't aware that he talked to Mr. Haney, (Tr. 209). I do not have an understanding of what an exit interview is supposed to consist of; "if the driver talks to someone in charge as to why they're leaving or why the employment is ending, then they consider that an exit interview." (Tr. 209.) "[W]hen he was on the phone with the vice president of the company and the operations manager for quite a period of time, I considered that being an exit interview." Nobody told me to write down that there had been an exit interview. (Tr. 210.)

Heath Brower (Tr. 212-56)

I entered the trucking industry in December 2005 as a dispatcher at Swift Transportation. I held that job for six and a half years. I started working for Premier in May 2013 as Terminal Manager. (Tr. 213.) My duties included overseeing safety and upkeep on the trucks and managing dispatchers. I was in charge of the Kankakee and University Park locations. I held the position of Terminal Manager in January 2015. (Tr. 214.) I was involved in weather issues, employee discipline, and termination meetings. (Tr. 214-15.) "[I]f a driver calls in and says they're unsafe to drive, then it's my responsibility to go do research and figure out" if this is an unsafe condition for the driver or the general public. "[W]e do an investigation and come up with a determination on what we do next." Premier internally investigates the weather situation if a driver called in reporting the weather. (Tr. 215.)

Premier has had routes in Chicagoland at least since I started with Premier. Drivers receive their routes from a dispatcher on an onboard computer. Drivers are also orally told their routes; Premier communicates via text message; and the drivers get bills of lading with their route. Drivers receive their bill of lading the morning of their assignment. However, we confirm with them the night before. (Tr. 216.) Driving routes are designated with letters and numbers, such as K-1 or T-1, and the details of the stops are included in schedules put in drivers'

mailboxes every three or six months when Premier's schedule routes change. (Tr. 249-52.) On the morning of his run, a driver picks up the bill of lading from the security guard and has to sign for it in a couple of spots. They also have to verify the seal number. (Tr. 217.)

Don Haney was the Safety Director in January 2015. His job was "DOT compliance with drivers, with trucks, trailers." (Tr. 217.) He did not deal with weather situations. That is left to the local terminal managers. (Tr. 218.)

RX-1 contains certified weather reports from January 12, 2015 for Gary/Chicago Airport in Gary Indiana and Lansing Municipal Airport in Chicago, Illinois. (Tr. 218-19.) Those areas are within the general area of Interstate 80/94. I performed an investigation into the weather on January 12, 2015. (Tr. 219.)

Mr. Jeter was hired by Premier in March 2014. During the first five months of his employment, Mr. Jeter's route varied day to day. (Tr. 220.) Ms. Lengel informed me that Mr. Jeter had given his two weeks' notice because he needed "to be home by early afternoon to relieve the . . . caretaker at his house." In response, "we came up with this idea to put him on Route K" in order to be compassionate with Mr. Jeter and "see if we can help him out." (Tr. 221.) That route change was not guaranteed. Mr. Jeter told me during that time in September 2014 that he was a caretaker for his mother. The two of us "had a discussion outside the yard by ourselves, and . . . he told me that situation . . . he needed to be home to relieve the caregiver. And I got a little teared up and said, hey, I understand, you know, I went through the same situation." (Tr. 222.)

There are different routes to Valparaiso: 80/94; Route 30; Route 2; Route 10. Premier does not recommend or prefer certain routes. (Tr. 222-23.)

I did not receive reports of weather issues other than Mr. Jeter's on January 12, 2015. On that day, "Tori came into my office and said that Mr. Jeter is refusing to do his route due to hours." She did not mention any other issues Mr. Jeter was having. (Tr. 223.)

I watch the weather daily as Terminal Manager. I check weather reports ahead of time to see if "we're going to have issues." On January 12, 2015, I was not aware of any weather issues based on my review. After speaking with Complainant, I did not learn of any weather issues based on my own investigation. (Tr. 225.)

On January 12, I was in Kankakee, Illinois, about 30 miles from University Park, which is where Mr. Jeter was supposed to return the load. (Tr. 253.) Bourbonnais is 26 or 27 miles from University Park; University Park to Valparaiso is 13 miles; Bourbonnais to Valparaiso, the total trip, would be 50 or 55 miles. (Tr. 253-54.) I first spoke with Complainant around 10:30 or 11:00 in the morning. I found out "that Mr. Jeter had gone to the wrong location and . . . that he didn't have the hours to complete the load due to the weather." (Tr. 225.)

Mr. Jeter told me that he was not completing the load. He absolutely refused to do it. I told him that I'm looking at radar online right now. There is no snow whatsoever. Looked at the cameras on 80/94. . . . [T]raffic was moving, there

was nothing flying, there was nothing on the ground. I had one of our other dispatchers that lived in Valparaiso . . . call[] his wife . . . and nothing was going on. So I'm like, Keith, you're okay. You know, you're going to be fine. You know, I looked at your hours. Your hours are good. I see no weather patterns whatsoever. And at this time that's when Mr. Jeter get[s] really irate and, you know, was basically screaming at me on the phone, and the phone call was disconnected.

(Tr. 225-26.)

After that, I called my immediate boss, Bill Laing. He has to be notified right away if there is a situation where we are not going to deliver a load. I discussed the situation with him. I told Mr. Laing that "Mr. Jeter is claiming that he did not have the hours of service to complete the load due to weather and that he was not bringing the load to Valparaiso, he was bringing it back to University Park and he was done." (Tr. 226.) Mr. Laing asked what I had done to assess the weather and I told him that I checked Doppler radar and the traffic cameras on 80/94, and "[m]y old employee called his wife. And we even got ahold of another driver that was like 10 miles north of that location in Valparaiso and . . . it was perfectly fine." (Tr. 226-27.) There were 20 to 24 different cameras at different locations on 80/94 starting from the oasis and eastbound all the way through the Illinois/Indiana border. I did not see any precipitation falling or in the air or any accumulation on the roadways. (Tr. 227.)

I viewed Doppler radar on the WGN website. (Tr. 237.) I do not know how old the display is when I view it. "[I]t gives you . . . a 20-minute sweep-type situation" with starting and ending times. (Tr. 238.) I do not recall the time on the display when Mr. Jeter called. At that time, I made the area shown "[a]bout a 120-mile radius . . . from the lake" centered "[r]ight at the end of Lake Michigan," near Gary. (Tr. 238-39.) I do not know what the source of the Doppler is. It could be multiple sources. (Tr. 239.) I did not have any training in reading radar; "it's pretty self-explanatory." (Tr. 239.) I do not have a record of the name of the truck driver that I called who was 10 miles north of Valparaiso. I also have no record of the information he gave me. (Tr. 240.) I don't know if the interstate cameras showed current footage and I did not make a record of the pictures. (Tr. 245.)

At that point, Mr. Laing got ahold of Mr. Jeter and the three of us spoke on the phone. Not much was discussed during that conversation, "just basically Mr. Jeter pretty irate, screaming at Bill Laing." (Tr. 228.) Mr. Laing told Mr. Jeter that we had looked at cameras and radar and spoken with other drivers, and that there was no reason, given his hours of service, that Mr. Jeter couldn't take the load. (Tr. 229.) Mr. Laing also told Mr. Jeter that he had "called our terminal manager in Pendleton, Indiana and our terminal manager in Monroe, Michigan" and that "he also looked at radar" via the internet. (Tr. 234.) Mr. Laing and I both informed Mr. Jeter that radar cameras, another driver, and another person in the Valparaiso area all indicated that there was no snow at all. Mr. Jeter responded by saying that "he had a buddy that drives for UPS that just came off Route 80 and told him do not get on there." (Tr. 254-55.) Route 80 would be the quickest route from University Park to Valparaiso, but "[w]e don't make our drivers take a certain route." (Tr. 255.) "We have a few routes that go" from University Park east towards the Valparaiso area, so there were other drivers for Premier that traveled in that

direction. One driver, L.C. Whitaker, took the route that Mr. Jeter would have taken in the afternoon. There were no reports of snow. (Tr. 256.) Mr. Jeter did not begin the conversation yelling; he stated in a normal voice what his position was on the weather. Mr. Jeter got upset in the middle of the conversation when “I interrupted and said this is [what] my perception of this is why Mr. Jeter cannot deliver the load. And Mr. Laing agreed with me, and that’s when Mr. Jeter got really irate and started screaming and yelling and swearing.” I said that “the reason he cannot deliver the load is because he had to get home to relieve the caregiver.” Mr. Jeter had not mentioned having to relieve the caregiver during that conversation. (Tr. 247.) Mr. Jeter said, “I am not doing this load. I am bringing the load back to University Park and I’m done.” (Tr. 229.) As soon as Mr. Jeter said that, Mr. Laing said he was accepting Mr. Jeter’s resignation as of that moment and the phone call was over. (Tr. 230.)

Mr. Jeter did not personally tell me that day that he had to be off work because of his mother; Tori had relayed that to me. (Tr. 229.) When I spoke with him that day, he did not bring up his mother, only weather and hours of service. Specifically, Mr. Jeter said that he was not driving in the snow, that it was unsafe conditions. (Tr. 241.)

Another driver took the load from University Park to Valparaiso around noon or 1:00. (Tr. 254.) Mr. Jeter would have returned to University Park before noon. (Tr. 254.)

Mr. Jeter repeatedly turned down taking additional routes when he was given Route K so that he could relieve the caregiver. (Tr. 236.) Those were not instances of quitting under dispatch because those loads were not on his bills of lading in the morning; they came up in the middle of the same business day and Mr. Jeter was not given advance notice. (Tr. 248-49.) He told me that personally. (Tr. 236.) I do not have records of phone calls with Mr. Jeter or any records of loads that he turned down. (Tr. 237.)

The Premier policy manual does not specifically say anything about terminating an employee for making a mistake in where they attempt to deliver a load. The manual also does not specifically define what it means to “quit under dispatch.” (Tr. 245.) Nothing in the manual says a driver will be disciplined for making a decision concerning whether not to deliver a load. Mr. Jeter was not disciplined for anything until he was terminated. “To a certain degree,” he did his routes and didn’t complain. He did not make any mistakes prior to January 12. (Tr. 246.)

Complainant’s Exhibits

CX-1

CX-1 is a printout from an article in the Chicago Tribune, dated January 12, 2015, 8:03 a.m., with the headline “Snow, ice make travel hazardous south, east of Chicago.” The article states that “[t]he Chicago area got 1 to 3 inches of snow overnight, but the areas to the south and east got pelted with freezing rain and sleet that was making travel dangerous.” The article quotes an advisory put out at 6:30 a.m. by the state police warning that “[f]reezing rain and snow have caused interstates, U.S. routes and state highways to be covered with snow, ice and slush, making driving conditions difficult,” and advising motorists to “[s]low down.” The article states that “[w]inter weather advisories were in effect Monday morning along Interstate 70 from

Missouri east through a good portion of Illinois and Indiana. Slick patches were also reported [on] Interstate 80. In the Chicago area, expressways were generally clear, but rush-hour traffic was slow on most roads. A string of accidents were reported on eastbound Interstate 80-94.” The following forecast was given for Monday, January 12:

Remnant clouds and a little light snow possible early as snow and clouds pull away to the east. Becoming partly sunny and colder. Winds pick up out of the north to northeast, gusting at times to 25 mph. Temps fall during the day from near 20 early morning to the lower teens by evening. Chance of light lake-effect snow showers along the south end of Lake Michigan. Clearing and cold Monday night with single-digit low temperatures.

CX-2 and RX-3

CX-2 is a handwritten log with entries from Mr. Jeter. It contains the following entries:

Friday, September 26, 2014:

“I gave Heath (Dispatcher) @ Premier my 2 weeks notice. I was asked to stay if they could get me home in time to relieve my neighbor so that could she could go to her other job.”

Monday, September 29:

“I started new route which was 5 stops in Chicago 1 ending in Bourbonnais, IL.”

Monday, January 12, 2015¹⁵:

Did my 5 stops in Chicago then went to Bourbonnais, IL. only to find out my route had changed. I should have been in Valparaiso, IN.

Called Dispatch and made them aware of my mistake and to make them aware of the road conditions, which were under a winter road advisory whiteout conditions. And that I did not feel safe driving under these conditions. At which time Heath told me that I had to deliver the load or he would put things on my DAC Report that would keep me from gaining employment with other trucking companies. He even asked me “if I knew what that was.” I hung up the phone and called his supervisor Don Haney in the Safety Dept. Michell in Safety answered the phone I asked for Mr. Haney but he was busy. Michell took my information who then put me on hold only to return to have me repeat what I told her on a speaker phone with Mr. Haney present. Mr. Haney said that he was calling Heath and I continued to talk with Michell, stating that I would drop trailer at University Park and report to work tomorrow 1/13/15 Tues. She said that I better because I was a great employee. I stopped at the Pilot to fuel up for the next day where after several attempts to get fuel for the next day I found out that Heath had disabled my fuel card.

¹⁵ A typewritten version of this entry is also included in the exhibit.

I called Mr. Haney in Safety and he said that he could not talk to me because Heath told him that I quit. I asked him to speak with Michell and I asked him "If I quit why am I putting fuel in the truck for tomorrow." I was transferred to the President Bill Laing V.P. Operations where I was placed on a 3 way call with Bill Laing & Heath where Mr. Laing asked Heath what did he want to do with me Heath hung up. Bill said he did NOT like my attitude and said I was dismissed.

CX-3 and RX-2

Complainant testified that CX-3 is his K-1 driver route report, or bill of lading, for January 12, 2015. (Tr. 76.) It contains five addresses: four in Chicago and the final address in Valparaiso. It is signed by Mr. Jeter.

CX-4 and RX-6

CX-4 is Mr. Jeter's driving log. It reflects that Mr. Jeter reached Bourbonnais, Illinois at 11:00 a.m. on January 12 before returning to Premier Transportation at 11:30 a.m. and going off duty at noon. A handwritten note on the bottom of the driving log states "Keith Jeter did not go to the correct store on his last drop. He noted this himself on the log."

CX-5

CX-5 is a Driver Termination Form from Premier Transportation. Under reason for termination it states "Quit under dispatch."

CX-7 and RX-12

CX-7 contains records of the routes driven by Complainant and payroll records.

Respondent's Exhibits

RX-1

RX-1 is climatological data from the U.S. Department of Commerce National Oceanic & Atmospheric Administration. It contains a table of hourly observations from the Gary/Chicago Airport in Gary, Indiana on January 12, 2015. It contains a column for weather type and notes the following: "-SN" for LST Times 0015, 0035, 0055, 0115, 0135, 0155, 0215, 0235, 0255; "HZ" for 0315; nothing is noted for 0445, 0545, 0745, 0845, 0945, 1045, 1145, 1245, 1345, 1445, and 1545. Entries of total precipitation of 0.01 inches were given for times 0015, 0035, and 0055. No other times recorded an entry for amount of precipitation. Winds were recorded ranging from 0 to 28 miles per hour, with gusts up to 39 miles per hour.

RX-4

RX-4 contains employment records for Complainant.

RX-5

RX-5 is entitled *Premier Transportation Driver Disqualification Guidelines* (“Guidelines”) and appears to be signed by Mr. Jeter on March 11, 2014. It defines a number of infractions, such as preventable accidents, moving violations, and hours of service violations. Each type of infraction is assigned a number of points. The Guidelines state “I understand that if I reach 10 (ten) points in a 24-month period, I will be subject to disciplinary actions up to and including disqualification.”

RX-7

RX-7 is a copy of Complainant’s OSHA complaint, dated March 3, 2015.

RX-8

RX-8 is GPS data from Tractor J29625. The data reflect that the vehicle was “2.1 W of University Park, IL” at 12:28:00 on January 12, 2015.¹⁶

RX-13

RX-13 is a 2015 Form 1099 for Complainant. It reflects \$33,624.00 in non-employee compensation from Echo Limousine, Inc. in Chicago.

RX-14

RX-14 is cell phone records from January 12, 2015 for the phone number 708-710-7642.

RX-16

RX-16 is the deposition of L.C. Whitaker, taken on March 17, 2017.

Deposition Testimony of L.C. Whitaker

I obtained my CDL license in 2005 and began working at Premier Transportation in 2007. I currently drive semis for Premier Transportation. “[W]hen you’re first hired, you get your handbook stating all the rules and regulations they want you to go by. I was told in bad weather anything that’s unsafe, make sure you call them . . . to let them know.” (RX-16 at 2, 3.) I was never forced to drive in dangerous weather. (RX-16 at 3.) While at Premier Transportation, I have refused to drive. Premier did not fire me for refusing to drive in dangerous weather. (RX-16 at 4.)

On January 12, 2015, I was making deliveries along my regular route, Evanston and three locations in Skokie, Illinois. The weather was clear during those morning deliveries. There was

¹⁶ The parties agree on Complainant’s general location and the corresponding times. Additionally, Complainant does not dispute that the data in RX-8 pertains to the tractor that he was driving on January 12, 2015. Therefore, it is unnecessary to reproduce additional data contained in this exhibit.

no dangerous weather. I was contacted by the dispatcher, Tori, to take a load to Valparaiso. I agreed and drove from Skokie to University Park. I did not observe any dangerous weather during that trip; it was “clear and sunny.” At University Park, I hooked up the trailer, did my pre-trip, and headed out to Valparaiso. I took 57 to 80, then 80/90, followed by 49 South. I took the same route in reverse on the way back. I did not observe any dangerous weather conditions during the time that I was driving. There was no snowfall, sleet, rain, or drifting of snow onto the roadways. (RX-16 at 5.) The roadways were clear during the drive to and from Valparaiso. It took me an hour and fifteen minutes to get to Valparaiso, 30 minutes to unload, and an hour and fifteen minutes to return to University Park. I did not observe any dangerous weather the entire day of January 12, 2015 while I was driving the semi-truck. (RX-16 at 6.) If I had encountered weather on January 12, 2015 even if I didn’t feel that it was going to prevent me from carrying the load, I would have reported it; “[i]f it’s bad weather and it’s unsafe, you’re supposed to call.” You’re supposed to call your dispatcher to update them in that situation. It’s the driver’s decision whether or not to continue to drive in inclement weather. (RX-16 at 7.)

I do not recall it snowing on either January 11 or 12, 2015. There was not an ice storm anywhere in the vicinity of my route on January 11 or 12, 2015. I also didn’t experience wind on either of those days. (RX-16 at 8.)

RX-17

RX-17 is the deposition of William J. Laing, taken March 17, 2017.

Deposition Testimony of William J. Laing

I started working for a trucking company in 1987 as a dock worker. I eventually became terminal manager and then regional manager. (RX-17 at 4-5.) In 2003 I began working for Premier Transportation as a general manager in charge of trucking operations. I was in charge of all trucking operations. “We have operations all over the country, line-haul, dedicated, store deliveries, and I was responsible for all of it.” I was promoted in 2010 to Executive Vice President and “put in charge of all operations which includes warehousing, logistics, buildings, brokerage, and still over the trucking.” (RX-17 at 5.) I also oversee all operations every day. I am involved in the day-to-day operations, including weather issues, employee discipline, and termination meetings. (RX-17 at 6.)

“[W]e have a safety program that directly educates on driving in hazardous weather conditions. The general description or the general education to the driver is to operate slower, give yourself more space between you and the other vehicles around you so you’re able to stop. If you get to a point where the roads are just too difficult or hazardous to continue forward, you’re to get off the road and wait out the storm.” That type of discussion “starts at orientation and then it continues throughout time.” (RX-17 at 8.) When “we’re coming into any kind of season with bad weather, the reminders are going out, communication from their dispatchers should be going out, and just general knowledge about to be safe during bad weather.” Premier’s policy on dangerous weather is that “if you get to a point that the roads are too dangerous to proceed, you shouldn’t be driving, you should get off the road and notify your dispatcher that you can’t go any further.” (RX-17 at 9.) The drivers “inform us when they’re coming across

bad road conditions and those sort of things. And that's normally our first piece of information comes from our drivers down on the ground." (RX-17 at 9-10.) "When there is a big storm coming and the roads are bad, we'll have multiple calls from drivers. At that point we're trusting what we're hearing because the majority of the fleet in the area are reporting issues. We'll contact the other drivers in the area and make sure they're safe and they're off the road if it is that bad. If it is just a few reports or a single report, we'll investigate ourselves by checking with other trucks that are in the area and using online sources, those kind of things." (RX-17 at 10.)

Premier Transportation takes weather conditions and safety issues "very seriously"; "our number one goal is the safety of our drivers, of the public, and of our equipment." (RX-17 at 11.) I deal with weather issues once a month on average. Generally, we see weather reports in advance. (RX-17 at 12.) Our drivers also "call immediately if it becomes too rough." We verify driver reports of bad weather through internal investigation. "Unfortunately, not every driver is going to give us the facts and the truth. We're trying to run a business, and that includes our customers and all of our employees. So I think we'd be fools just to believe everything we heard." (RX-17 at 13.)

Each driver has a dispatcher who assigns them runs. At University Park, the drivers "receive their loads at least a day in advance. The dispatcher will either verbal or . . . text the information to the driver depending on how they set it up. The dispatcher then assigns the load in our system which transmits the load to the driver's satellite in his truck which gives him all the stop information, the time it is ready, the time of deliveries." (RX-17 at 16.) The driver receives the bill of lading with the load order when he picks up the load. "[W]hen the driver arrives at the distribution center or University Park, the shipping center, the bill of ladings will be there on site, the driver will ask for his load, whatever release number or trailer number or stops, whatever identifier they use for those loads in a particular place. The driver will be handed the bill of lading. He's to sign his bill of lading. He would read it to identify that's the load that him and his dispatcher spoke of. He would sign it. He would go hook to his trailer. He would confirm his trailer number and his sale number matched the bill of lading. And then he would go on his way to deliver the load." (RX-17 at 17.) "[T]he driver should be reading their bill of lading." (RX-17 at 18.)

I have worked with Heath Brower for four years. Heath is a trucking manager overseeing University Park trucks and regional trucks from Kankakee, Illinois. I communicate with Heath at work through "a hotline set up on our phone system where we just dial an extension, we send emails back and forth, we have talked on our cell phones, we have sent texts back and forth. I communicate with all my trucking managers throughout the country every day." (RX-17 at 19.) Heath is in charge of the Chicagoland area trucking and he "does a very good job for us." (RX-17 at 20.)

On January 12, 2015,

Heath called me, told me that the complainant was refusing to go to his final stop in Valparaiso. He told me that the driver had delivered his first four stops in Chicago and then he drove down to Bourbonnais. I still don't know the reason why. And at that point in time Heath also told me that he had heard from the

driver's dispatcher Tori that the driver needed to get home early for personal reasons to take care of his mother or something of that effect.

(RX-17 at 21.)

I watch the weather every day. "I have the Weather Channel on my television in my office. It is on all the time. When I see any report of any kind of bad weather, I reach out to my people in the area." On January 12, 2015,

I knew there was cold weather and some snow the night before. But through my investigation after Heath called me, everything was clear and travel was fine at that point. I . . . checked with my other trucks in the area through their managers . . . My location in Michigan and my location in Indiana had trucks in the area, and none of them had any trucks having any issues driving that day.

(RX-17 at 22-23.) I did not receive any other weather reports on January 12, 2015 from any driver other than Complainant. (RX-17 at 23.)

I became involved in the situation involving Complainant when Heath Brower called to inform me of the issue.

I instructed Heath to get with the rest of his drivers or any other one he knew in the area and check what the weather was like in that area heading to Valparaiso. I contacted my guy in Michigan, Harry Owsley, who had trucks running in the area. I contacted Doug Carmen in Pendleton, Indiana who had trucks in the area. And then I checked online, the Weather Channel, put in that area, and I could find nothing from anyone that said the roads were hazardous at that time.

(RX-17 at 24.) Heath Brower and I called Mr. Jeter together. I tried "to inform him of our findings that the roads were safe and that he should continue on to his delivery up until a point that he felt that it was unsafe. But he got angry. I just remember him getting really, really angry, yelling at me. And at that point I told him just to take the truck and load back to my location at University Park and I accepted his resignation." (RX-17 at 24-25.) I don't recall if Mr. Jeter told me that he would not proceed to Valparaiso. "I remember me telling him to go and that the roads were clear. And he became very, very angry, yelling at me to a point that I just said you know what, I'm done. Bring the truck over to UP." (RX-17 at 26.) "[M]y belief was I was putting him at ease that the roads were clear to Valparaiso and that I expected him to say all right . . . I'll drive to Valparaiso. But he didn't." When Mr. Jeter began yelling at me, "I figured it was a lost cause and that I would have him bring the truck to my office and [he would] be done working at Premier." (RX-17 at 43.) Mr. Jeter did not say "I quit"; I said "I accept your resignation. Bring the truck to my place." (RX-17 at 44.)

After we hung up with Mr. Jeter, I told Heath to find another driver to deliver the load to Valparaiso. L.C. Whitaker took the load. I did not receive information from Mr. Whitaker or anyone else that there were dangerous weather conditions on the route to Valparaiso that day. (RX-17 at 28.)

A driver is deemed to have quit under dispatch if he refused to deliver his load “with no good reason.” (RX-17 at 38-39.)

Mr. Haney was the Safety Director on January 12, 2015. (RX-17 at 45.) He was based out of the Forest Park location in Georgia. (RX-17 at 47.) He was “in charge of education, compliance, . . . drivers’ logs, their physicals, . . . any kind of accident reporting.” (RX-17 at 45.) Weather issues were not part of Mr. Haney’s work; he would only be involved if there was an accident. “I did not talk to Mr. Haney about Mr. Jeter” on January 12, 2015. I am not aware of anybody else talking to Mr. Haney about Mr. Jeter either. I am not aware of whether Mr. Jeter spoke with Mr. Haney on January 12, 2015. (RX-17 at 46.)

Administrative Law Judge’s Exhibits

ALJX-9

ALJX-9 is stipulations of the parties.

Stipulations¹⁷

- Complainant drove semi-trucks in the winter in the Midwest from December 2005 up to and including January 12, 2015.
- Based on Complainant’s past experiences, he is familiar with driving a semi-truck in winter weather conditions.
- Complainant’s mother-in-law is Lulu B. McKeever.
- Lulu B. McKeever moved in with complainant and his wife in 2013, after McKeever’s husband passed away. She has lived with them up to and including the date of January 12, 2015.
- Complainant was employed with Premier Transportation from March 2014 through and including January 12, 2015.
- Premier Transportation is an interstate motor carrier of household and other goods serving the United States.
- Premier Transportation is a motor carrier engaged in commercial vehicle operations, which maintains its principal place of business in Atlanta, Georgia.
- Premier Transportation has employees who operate commercial motor vehicles, in the regular course of business, over interstate highways and connecting routes, transporting household and other goods.

¹⁷ These stipulations are contained in Respondent’s prehearing submission, marked ALJX-9, as prehearing submission facts 1-3, 5-10, 17-20, 22-23, 27-29, and were mutually agreed to during the hearing. See Tr. 5.

- Premier Transportation is and was a “person,” as defined in the STAA, 49 U.S.C.A. § 31101(3).
- Complainant performed a pre-trip inspection on his semi-truck prior to beginning his route on January 12, 2015. During that inspection he found his truck to be operational with no issues regarding the tires or brakes. The tires and brakes on his truck were always in good condition prior to the date of January 12, 2015, and on that date too.
- Complainant wrongly traveled to Bourbonnais, Illinois, instead of traveling to Valparaiso, Indiana, for his final delivery per his bill of lading and delivery instruction on January 12, 2015.
- Complainant’s travel from Lake Point Plaza, 3562 E. 118th St./Ave., Chicago, Illinois to Bourbonnais, Illinois intersected with I-80 12 miles west of the Indiana border.
- Complainant learned of his mistake in traveling to Bourbonnais from an individual named Michelle at the Bourbonnais Marshall’s store.
- Complainant began his job at Echo Limousine on June 5, 2017.
- Complainant earned reported 1099 income during his employment at Echo Limousine consisting of \$33,624.00.
- Complainant filed his complaint on March 3, 2015 under the Surface Transportation Assistance Act. That complaint was filed with the Occupational Safety and Health Administration.
- On February 22, 2016, OSHA dismissed complainant’s complaint.
- On March 10, 2016, complainant appealed the decision dismissing his complaint to the ALJ for a factual hearing and determination regarding his claims.

Issues to be Decided

1. Did the Complainant engage in protected activity on January 12, 2015 by refusing to deliver a load to Valparaiso, Indiana?
2. If so, was Complainant’s protected activity a contributing factor in Respondent’s decision to take adverse action against Complainant?
3. If so, can Respondent show by clear and convincing evidence that it would have taken adverse action against Complainant in the absence of protected activities?
4. What relief, if any, is Complainant entitled to under the STAA?

Discussion

Under the STAA, an employee engages in protected activity when he refuses to operate a vehicle because he has a reasonable apprehension of serious injury to himself or the public due to an unsafe condition. 49 U.S.C. § 31105(a)(1)(B)(ii).

An apprehension of serious injury is reasonable only if a reasonable individual in the circumstances then confronting the driver would conclude that the unsafe condition establishes a real danger of accident, injury, or serious impairment to health. § 31105(a)(2). The ARB has emphasized that all circumstances must be taken into account.

All the circumstances surrounding a refusal to drive --including but not limited to existing conditions, weather forecasts, timing, the condition and nature of the vehicle, and the driver's experience--must be considered in determining the reasonableness of the driver's refusal and whether the refusal constitutes protected activity.

Treur v. Magnum Express, ARB No. 15-001, ALJ No. 2014-STA-002, pdf at 8-9 (ARB July 28, 2016). The ARB has stated that “[w]hether a refusal to drive qualifies for STAA protection requires evaluation of the circumstances surrounding the refusal under the particular requirements of each of the provisions.” *Melton v. Yellow Transp., Inc.*, ARB No. 06-052, ALJ No. 2005-STA-002, slip op. at 5 (ARB Sept. 30, 2008).¹⁸

Additionally, to qualify for protection, the employee must have sought from the employer, and been unable to obtain, correction of the hazardous safety or security condition. 49 U.S.C. § 31105(a)(2). As the statute indicates, an employee is only protected for refusing to drive a vehicle if he first asked his employer to correct the hazardous safety condition, but the safety hazard remained uncured. *Id.*

The issue here is whether Mr. Jeter actually feared injury to himself or the public if he drove from Bourbonnais, Illinois to Valparaiso, Indiana on January 12, 2015 because of hazardous weather conditions and, assuming he did have such a fear, whether that fear was objectively reasonable after Premier Transportation informed him of the weather conditions. I conclude he did not and was not.

¹⁸ Additionally, the refusal-to-operate provision covers those situations in which an employee refuses to use his vehicle in the manner directed by his employer even if that refusal results in the employee driving the vehicle, as here where Complainant actually drove the vehicle from Bourbonnais to University Park. In other words, the term “operate” is not coextensive with the word “drive.” See *TransAm Trucking v. Dep’t of Labor Admin. Review Bd.*, 833 F.3d 1206 (10th Cir. 2016).

Applicable Standard

The current version of the STAA provides that whistleblower complaints shall be governed by the legal burdens of proof set forth in the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), 49 U.S.C. § 42121(b)(2)(B)(i). 49 U.S.C. § 31105(b)(1). Under the AIR 21 standard, complainants must initially prove by a preponderance of the evidence that a protected activity was a contributing factor in the unfavorable personnel action alleged in the complaint. A “contributing factor” is “any factor, which alone or in combination with other factors, tends to affect in any way the outcome of the decision.”¹⁹ If a complainant makes this showing, an employer can avoid liability by demonstrating with clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the protected behavior. 49 U.S.C. § 42121(b)(2)(B)(ii).

Thus, in order to prevail in this case, Mr. Jeter must prove: (i) that he engaged in protected activity; (ii) that his employer, Premier, took an adverse employment action against him; and (iii) that the protected activity was a contributing factor in Premier’s decision to take the adverse employment action. As I find that Mr. Jeter has not proven he engaged in protected activity on January 12, 2015, his complaint is dismissed on that basis.

Essential Findings of Fact

1. Complainant is an experienced truck driver with training in driving in cold weather and snow.
2. Complainant had previously given Premier two weeks’ notice on or around September 2014 because his assigned route did not allow him to be home with his mother-in-law. Premier accommodated Complainant’s schedule by giving him a different route. Complainant told Premier that he would not take routes that interfered with his ability to get home to care for his mother-in-law.
3. On the morning of January 12, 2015, Complainant drove without weather incident from his home in Calumet City, Illinois approximately 20 miles southwest to the Premier Transportation terminal in University Park, Illinois. Complainant picked up his assigned truck and then made at least three scheduled stops before arriving at his next to last stop at Avenue O, East Chicago, Illinois. Complainant then drove about 30 miles south to Bourbonnais, Illinois arriving at about 10:30 a.m. on January 12, 2015; he believed this was his last stop of the day. Instead, Complainant’s last stop that day was supposed to be Valparaiso, Indiana, about 35 miles east of Avenue O. Complainant did not realize his mistake until he arrived at Bourbonnais and looked at the bill of lading. Complainant called Premier and told dispatcher Tori Lengel he did not have enough time to drive to Valparaiso and get back to University Park. Complainant told Ms. Lengel that he had to get home to take care of his mother-in-law. Complainant did not mention anything about

¹⁹ *Powers v. Union Pac. R.R. Co.*, ARB No. 13-034, ALJ No. 2010-FRS-030, slip op. at 11 (ARB Jan. 6, 2017) (internal citations omitted).

bad weather conditions in his conversation with Ms. Lengel. Ms. Lengel then called Complainant's supervisor, Heath Brower, and informed him that Complainant drove to the wrong stop in Bourbonnais and was refusing to drive to the correct stop in Valparaiso.

4. Heath Brower spoke to Complainant by telephone a little after 10:30 a.m. on January 12, 2015. Complainant informed Brower that he was not driving the truck to Valparaiso because of the bad weather conditions. After reviewing current radar, live traffic cameras along the route from Bourbonnais to Valparaiso, talking to an individual in Valparaiso, and two terminal managers with drivers in the area, Brower concluded there were no actual or anticipated weather conditions that would prevent Complainant from driving from Bourbonnais to Valparaiso and back to University Park. Brower informed Complainant he was looking at the radar online right now and told him there was no snow, there was no bad weather along the travel route from Bourbonnais to Valparaiso; that traffic was moving on the interstates; that no other driver reported bad weather between Bourbonnais and Valparaiso; that there was no current or forecasted weather problems in Valparaiso; that Complainant had sufficient time to complete the route; and he was not under any hours of service limitations. Complainant got mad, screamed at Brower, said he was not driving to Valparaiso, and hung up.
5. Brower then immediately called his boss, Bill Laing, and told him Complainant was claiming he did not have the necessary hours of service to deliver the load from Bourbonnais to Valparaiso due to weather and he was bringing the truck back to University Park. Brower told Laing he had checked radar and the traffic cameras along the route, called a former employee in Valparaiso and another driver that was 10 miles north of Valparaiso, who said the weather was perfectly fine. No precipitation was falling and there was no accumulation on the roadways.
6. Brower and Laing then spoke on the phone with Complainant. Laing told Complainant that they had looked at the cameras and radar and spoke with other drivers, and there was no weather reason, given his hours of service, that he couldn't take the load. Laing told Complainant the roads were safe and he should continue on his delivery until he felt it was unsafe. Complainant again informed Brower and Laing that he was not driving the truck to Valparaiso because of the bad weather conditions. Complainant got angry, and yelled at Brower and Laing. At that point Laing told Complainant he accepted his resignation and told him to take the truck and load back to University Park.
7. Complainant drove the truck back to the University Park. Complainant did not report any hazardous driving conditions from Bourbonnais to University Park upon his arrival in University Park.
8. Premier had other drivers on the road in the same area as Complainant on January 12, 2015. Complainant was the only one who reported bad weather conditions.
9. It is about 60 miles from Bourbonnais, Illinois to Valparaiso, Indiana, and would normally take between 60 and 90 minutes to drive.

10. L.C. Whitaker, another Premier driver, eventually took Complainant's route. Whitaker drove to University Park and picked up the trailer, then drove to Valparaiso, completing the route between noon and 1 p.m. on January 12, 2015. Whitaker did not encounter any snow, sleet or rain along the route. He did not see any snow drifts and reported a roadway with no hazardous weather conditions preventing the drive. Prior to January 12, 2015, Whitaker had refused to drive a route for respondent due to bad weather conditions; he was not terminated or otherwise disciplined for refusing to drive.
11. Certified weather reports for the Gary, Indiana airport (about 26 miles north west of Valparaiso) and Lansing airport in Chicago (about 28 miles west of Valparaiso) show a snow accumulation of 0.01 inches from midnight to 1 am on January 12, 2015; no other precipitation through 3:45 p.m.; and winds 0-28 mph with gusts up to 39 mph.
12. Certified weather reports for January 12, 2015 show no actual bad weather or dangerous weather events over the routes from Bourbonnais, Illinois to Valparaiso, Indiana to University Park, Illinois.
13. When Complainant realized he had driven to the wrong stop on January 12, 2015, he did not want to drive to Valparaiso and instead made up an excuse of bad weather to avoid the trip. Whether the reason for refusing to drive was a desire to get home to take care of his mother-in-law or just that he did not want to do the extra miles, the reason he did give to Premier Trucking, bad weather, was not true as the actual and forecasted weather conditions at 10:30 a.m. on January 12, 2015 between Bourbonnais, Illinois and Valparaiso, Indiana were not unsafe or hazardous, and Complainant was informed of this and the reasons why by Heath Brower and William Laing on the morning of January 12, 2015.

Conclusions of Law

Where a complainant claims that the protected activity is a refusal to drive because of a reasonable apprehension of serious injury, the complainant is required to establish both a subjective belief and that his belief was reasonable according to the standard set forth in § 31105(a)(1)(B)(ii). An apprehension of serious injury is reasonable only if a reasonable individual in the circumstances then confronting the driver would conclude that the unsafe condition establishes a real danger of accident, injury, or serious impairment to health. In addition, as noted above, the employee must have sought from the employer, but did not obtain, a correction of the unsafe condition. § 31105(a).

Complainant Did Not Engage in Protected Activity on January 12, 2015

I find that Complainant did not engage in protected activity on January 12, 2015. Based on the evidence, including Complainant's testimony, Complainant has not shown either a subjective belief that the weather conditions posed a risk in driving from Bourbonnais to Valparaiso at 10:30 a.m. or that a reasonable person in Complainant's position would have believed that the conditions posed such a risk.

Complainant Did Not Believe, in Good Faith, That Weather Conditions Were Hazardous

I find that Complainant did not believe that the weather conditions on January 12, 2015, were so hazardous as to prevent him from safely driving his tractor-trailer from Bourbonnais to Valparaiso.

Complainant was not a credible witness. He contradicted himself a number of times during the hearing²⁰ and acknowledged being unable to remember details about January 12, 2015.²¹ For example, Complainant stated during cross-examination that he had listened to weather reports on the radio on the morning of January 12, 2015, but that he had forgotten to include that information in his interrogatory answers.²²

Complainant testified in detail about delivering a load on January 12, 2015 that he later acknowledged he had not delivered that day. Complainant testified that he delivered a load at 95th and Stony Island, offering details regarding the route, the traffic on those roads, and the weather during the drive.²³ However, after being confronted with his log sheet, which did not contain an entry for that stop, Complainant conceded that he had not made a delivery there on January 12, 2015, and that he had not shown up at that location. He explained that the stop was on his usual route prior to January 12, 2015.²⁴ Complainant also testified that he went to Bourbonnais instead of Valparaiso because he did not realize that his delivery route had changed; he stated that he had not checked the bill of lading and instead assumed that his route was the same as had been assigned for the previous five months.²⁵ If Complainant was unaware that his route changed, it is unclear how he knew not to make a delivery at 95th and Stony Island. Complainant was unable to offer an adequate explanation.²⁶

²⁰ For example, Complainant stated on cross-examination that he wanted to get home earlier for himself and that “[i]t had nothing to do with” his mother-in-law. (Tr. 95.) However, after reviewing his deposition, Complainant stated that being able to relieve the neighbor early was “part of the reason” he put in his two weeks’ notice. (Tr. 99-102.)

²¹ See Tr. 120 (Complainant states: “I don’t know what the visibility was that day [in Valparaiso]. I can’t remember.”)

²² See Tr. 111-17.

²³ Complainant stated: “The roads [were] starting to get a lot worse . . . [with] more accumulation of snow.” (Tr. 50.)

²⁴ See Tr. 158, 159.

²⁵ See Tr. 51.

²⁶ See Tr. 159 (Complainant stated: “I just went right over to the next stop which was – normally would have been Avenue O, and I didn’t go past that, yeah. So it would have been still Avenue O, and I just took for granted that Bourbonnais was after that. I didn’t go much – you know, much further, yeah. That’s a real easy mistake.”). Complainant testified the road conditions were bad and he intended to park the trailer at Bourbonnais and drive it the next day, January 13, 2015 and that he did not feel safe driving an empty trailer to Valparaiso. (Tr. 54-55). Yet, Complainant did not park the empty trailer at Bourbonnais, instead driving it back to University Park that day. If the weather conditions were so poor that Complainant believed driving to Valparaiso would result in a real danger of accident or injury to himself or others, he should have remained in Bourbonnais and waited until the weather

Complainant appears to have exaggerated the traffic conditions that form much of the basis for his contention that the weather on the drive to Valparaiso presented a hazard. Complainant stated that vehicles in Lansing, Illinois were “coming through the snow heading westbound on 80, and they were just covered. The trucks that were headed eastbound are hardly anything on them, but they were headed into . . . a wall of snow. And they were backed up for at least 10 miles from the state line all the way back past Halsted.” Upon further questioning, Complainant clarified that he visually observed only a five-mile backup.²⁷

Tori Lengel’s account of the events of January 12, 2015 provides further evidence that Complainant did not believe that the weather posed a hazard. Tori Lengel presented as a credible witness and I find her testimony to be reliable. Ms. Lengel’s memory of January 12, 2015 appeared to be intact and her testimony was both internally consistent and consistent with the testimony of Heath Brower and William Laing. Accordingly, I credit Ms. Lengel’s account of the conversation she had with Complainant around 10:30 a.m. Ms. Lengel described Complainant as “very flustered and upset that he had gone to the wrong store” and stated that Complainant explained to her that “he now did not have time to drive all the way to Valparaiso, Indiana because he had to get home to take care of his mother.”²⁸ Ms. Lengel also testified that Complainant did not mention anything about the weather, ice, or snow during that conversation, or anything about weather on Interstate 80 or 94 on the route to Valparaiso.²⁹ Ms. Lengel stated that she told Complainant she “would talk to Heath, because we had made the agreement . . . that we would try to get him home with Route K-1.” Ms. Lengel then stated that she talked to Heath “and he said that [Keith] needed to take [the load] to Valparaiso” – and that is what Ms. Lengel instructed Complainant to do after speaking with Heath Brower.³⁰ Finally, Ms. Lengel stated that Mr. Jeter “got very upset and said that he did not have time, he was worried about his mother being put in a nursing home and that he had to get home to relieve the caregiver.”³¹ Ms. Lengel was confident in her testimony that Complainant did not discuss any concerns regarding the weather or safety during either of the above exchanges.³²

Although Complainant eventually raised the issue of weather conditions to Mr. Brower,³³ I find that those issues were raised in an attempt to excuse Complainant’s ongoing refusal to

improved the next day, notwithstanding Laing’s directive to return the truck to University Park after accepting his resignation.

²⁷ See Tr. 52, 53.

²⁸ Tr. 197, 198, 211.

²⁹ See Tr. 197.

³⁰ Tr. 197-98.

³¹ Tr. 198.

³² See Tr. 198.

³³ Mr. Brower testified that Complainant did not mention his mother-in-law during that conversation, and that he only raised the issues of weather and hours of service. Mr. Brower testified that Mr. Jeter told him that he was not driving in the snow, that it was unsafe conditions. Tr. 241.

drive. Notwithstanding Complainant's contention to the contrary, I credit Ms. Lengel's testimony and find that Complainant did not mention the weather conditions until he spoke with Heath Brower, after Ms. Lengel informed him that he would need to drive to Valparaiso regardless of the earlier route accommodations that Respondent had given him.

Complainant provides shifting explanations of why the weather conditions were hazardous. Complainant's account of his initial conversation with Mr. Brower suggests that Complainant only raised the issue of falling precipitation – and that Complainant did not raise the issue of the effects of wind gusts on an empty trailer. Complainant states: "I told him that I thought it would be better to drive the next day because watching the weather report that morning, the snow actually tapered off, I believe, for – it wasn't snowing as bad the next day."³⁴ Additionally, Complainant did not adequately communicate to Respondent an assertion that the combination of wind gusts and a "basically empty" trailer posed a hazard. Complainant concedes that he did not inform Mr. Brower that his trailer was almost empty, instead arguing that Mr. Brower would have known that the trailer was "basically empty"³⁵ because Complainant was on his last delivery.³⁶ Complainant contends that, in his conversation with William Laing, he cited windy conditions as the basis for his refusal to drive.³⁷ However, Complainant's later testimony suggests *only* a concern regarding visibility:

I had no problem driving in inclement weather in the first five stops because I felt comfortable doing it. It wasn't – I could still see in front of me. My visibility was clear. The roads were maybe a little hazardous, but I took my time. When you're on Interstate 80, I don't have the option. You've got more traffic, more conditions. A lot of other elements come into play when you're on Interstate 80.

(Tr. 140.) Although inclement weather may represent multiple hazards, Complainant's testimony suggests that the concerns raised were pretextual and not genuine.

³⁴ Tr. 55.

³⁵ See Tr. 56.

³⁶ Additionally, I find that Complainant not only failed to mention his empty trailer, but also failed to mention wind in general. I credit Heath Brower's testimony, which indicates that Complainant raised only general concerns about driving in the snow. See Tr. 241. Complainant's failure to communicate this concern illustrates the shifting explanations given by Complainant for his refusal to drive. Complainant's failure to communicate those concerns to Respondent regarding what he avers was a hazardous combination of wind gusts and an empty trailer also exclude the refusal to drive, premised on an apprehension of wind gusts, from qualifying as protected activity. See § 31105(a)(2) (providing that "to qualify for protection, the employee must have sought from the employer, and been unable to obtain, correction of the hazardous safety or security condition."). However, in the alternative, I will also evaluate Complainant's refusal based on apprehension of wind gusts under the reasonable belief standard of § 31105(a)(1)(B)(ii), along with the general concern of precipitation communicated by Complainant.

³⁷ Complainant states that he told Mr. Laing "what the weather conditions were and [he] did not feel safe carrying the empty trailer to Valparaiso, Indiana under windy conditions."

Given the credibility concerns enumerated above, I accord little weight to Complainant's testimony regarding his interaction with another truck driver and his wife, who Complainant contends spoke to him about weather conditions in the direction of Gary, Indiana.³⁸

In conclusion, I find that Complainant's refusal to deliver the load to Valparaiso was not prompted in any way by a good faith apprehension of unsafe weather. Instead, I find Complainant's refusal was motivated by a desire to return home.³⁹ Complainant's motivation for refusing to drive is relevant only to the extent that it in any way involved an apprehension of hazardous conditions. Here, Complainant has not established, by a preponderance of the evidence, that his refusal was motivated in any way by a good faith apprehension of a hazardous condition.

A Reasonable Person in Complainant's Situation
Would Not Have Found the Weather Conditions Hazardous

After reviewing all of the circumstances surrounding Complainant's refusal to drive, even if Complainant himself believed the weather conditions posed a danger, I find that Complainant has not shown that a reasonable person in his situation would have concluded that the conditions on January 12, 2015 posed "a real danger of accident, injury, or serious impairment to health."⁴⁰

Complainant relies mainly on his own testimony to establish hazardous weather conditions. As discussed above, I afford little weight to Complainant's testimony regarding his interaction with another truck driver and his wife, who Complainant contends spoke to him about their experience driving from the direction of Gary, Indiana.⁴¹

Complainant's submission of CX-1, an article in the Chicago Tribune dated January 12, 2015, does little to help Complainant meet his burden. The article reports that the "Chicago area" got one to three inches of snow overnight, and that an advisory was in place at 6:30 a.m. warning that "[f]reezing rain and snow have caused interstates, U.S. routes and state highways to be covered with snow, ice and slush, making driving conditions difficult." The article further reported that "expressways were generally clear, but rush-hour traffic was slow on most roads." The article's forecast for January 12 is not dire:

a little light snow possible early as snow and clouds pull away to the east.
Becoming partly sunny and colder. Winds pick up out of the north to northeast,

³⁸ See Tr. 120.

³⁹ The parties disagreed about whether Complainant was *required* to return home by a certain time in order to care for his mother-in-law, or whether he merely had a *preference* to return home early in the day. See Compl. Brief at 8-11; Resp. Brief at 4-4-7; Compl. Reply at 3-4. Regardless of whether Complainant's presence at his home was required, the evidence, including Complainant's own testimony, overwhelmingly suggests that Complainant had a preference for returning home earlier in the day out of concern for his mother-in-law and driving to Valparaiso would have delayed that arrival time.

⁴⁰ See § 31105(a)(2).

⁴¹ See Tr. 120.

gusting at times to 25 mph. Temps fall during the day from near 20 early morning to the lower teens by evening. Chance of light lake-effect snow showers along the south end of Lake Michigan. Clearing and cold Monday night with single-digit low temperatures.

(CX-1.) Rather, it generally suggests that road conditions may improve as the day goes on. In any event, a reasonable person in Complainant's situation would have been in a position to evaluate the driving conditions based upon current conditions and updated future forecasts. However, Complainant does not submit updated forecasts or aver that he relied on current forecasts. Additionally, I afford little weight to Complainant's testimony regarding his firsthand knowledge of the weather conditions because his testimony was not sufficiently credible for the reasons stated above. Finally, I find that a reasonable person in Complainant's situation would not have found the weather to be hazardous after receiving the current and forecasted weather conditions over the route from Heath Brower and Bill Laing and reassurances from drivers and people on the ground that the weather conditions were not hazardous.

Although RX-1 suggests that it snowed overnight, it also suggests that there was no precipitation during all relevant times on January 12, 2015. Only 0.01 inches of precipitation were noted at 12:15 a.m., 12:35 a.m., and 12:55 a.m., and by 4:45 a.m. no weather conditions were noted. From 4:45 a.m. through all relevant times on January 12, 2015, no weather conditions were noted. RX-1 reflects that winds peaked at 28 miles per hour with gusts up to 39 miles per hour. However, I afford greater weight to the testimony of L.C. Whitaker and Heath Brower than to that of Complainant. L.C. Whitaker testified that he had not observed any dangerous weather conditions the entire day of January 12, 2015 while he was driving; that he had not experienced snowfall, sleet, rain, or drifting snow on the roadways headed to Valparaiso or back; and that it took him an hour and fifteen minutes to drive each way for the Valparaiso load.⁴² I also credit Heath Brower's testimony that he viewed Doppler radar and weather reports, spoke with other drivers in the vicinity of Valparaiso, and viewed the relevant traffic cameras – none of which revealed hazardous conditions.⁴³

In conclusion, a reasonable person with Complainant's experience and in the same position would not have found the weather conditions on or about 10:30 a.m. on January 12, 2015 so hazardous or unsafe as to preclude driving a tracker trailer from Bourbonnais to Valparaiso.

⁴² See RX-16 at 5-6. Mr. Whitaker's testimony is relevant to the issue of whether a reasonable person would have found the conditions on January 12, 2015 to pose a risk. Although Mr. Whitaker transported the load slightly later in the day than Complainant would have, his testimony remains probative.

⁴³ See Tr. 223-27; 237-45.

CONCLUSION AND ORDER

Complainant has not met his burden to establish by a preponderance of the evidence that he engaged in protected activity on January 12, 2015.⁴⁴ Complainant was unable to establish a subjectively or objectively reasonable apprehension of serious injury to himself or the public in accordance with 49 U.S.C. § 31105(a)(1)(B)(ii). Accordingly, IT IS ORDERED that the complaint filed by Keith Jeter on March 3, 2015 is hereby DISMISSED with prejudice.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it.

⁴⁴ As Complainant failed to establish that he engaged in protected activity, it is unnecessary to analyze whether Complainant met his burden on the remaining elements of an STAA retaliation claim.

See 29 C.F.R. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1978.109(e) and 1978.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1978.110(b).