

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0092**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 25, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 151757). On October 3, 2014, the Department served notice of an amended administrative decision cancelling administrative decision #151757 but again concluding claimant voluntarily left work without good cause (decision # 151757). On October 20, 2014, claimant filed a timely request for hearing. On January 9, 2015, ALJ S. Lee conducted a hearing, and on January 16, 2015, issued Hearing Decision 15-UI-31976, affirming the Department's decision. On February 2, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**EVIDENTIARY MATTER:** In Hearing Decision 15-UI-31976, the ALJ wrote that Exhibit 1 had been admitted into evidence. Hearing Decision 15-UI-31976 at 1. However, the record shows that, at hearing, the ALJ excluded Exhibit 1 from evidence and admitted Exhibit 2. Transcript at 4, 33. We considered the content of Exhibit 2 when reaching this decision. Because the ALJ excluded the documents marked as Exhibit 1 from evidence, we did not consider those materials when reaching this decision.

EAB considered claimant's written argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) Multnomah County School District #1 employed claimant as a full-time qualified mental health provider (QMHP) from August 16, 2008 to August 15, 2014.

(2) For the school years beginning 2008 through 2012, claimant worked for the employer as a QMHP in "behavior" classrooms in Portland public schools. Transcript at 6. In that position, claimant provided mental health support to special education students with emotional disorders placed in those classrooms within regular neighborhood schools. At the end of the 2012 school year, the employer cut claimant's position and similar positions for budgetary reasons.

(3) In August 2013, the employer assigned claimant to a new position – half-time in a similar-type of “behavior” classroom at Lincoln High School (Lincoln) and half-time with the “Pioneer Special Classrooms” program (Pioneer) where claimant provided mental health support to elementary, middle school and high school students with “severe” emotional disorders that prevented them from attending regular neighborhood schools. Transcript at 7-8. At Pioneer, claimant provided services at four school sites within two Pioneer campuses. The behavioral characteristics of Pioneer students included “non-compliance”, “excessive fears and phobias” and “physical aggressiveness.” Exhibit 2. The Pioneer sites had “de-escalation rooms” for students whose behavior was out of control and physical aggressiveness by students was not uncommon. Exhibit 2. One teacher had his hand broken by a student when he attempted to intervene during a fight. Claimant was required to be alone with Pioneer students during one-on-one therapy sessions and when she escorted them to her counseling area several hundred yards from a Pioneer school. Claimant considered the Pioneer position extremely unsafe and working there caused her physical and emotional stress.

(4) In October 2013, after only two months in the new position, claimant became so stressed out by her work at Pioneer that it produced physical symptoms that caused her physician to restrict her from working there for the remainder of the school year. Exhibit 2. The employer honored the restriction and allowed claimant to work half-time by working only at Lincoln.

(5) In May 2014, claimant learned that the employer had received increased funding for the next school year and that claimant’s previous position working in a “behavior” classroom in a neighborhood school had been reinstated along with two similar positions. Claimant applied for one of the positions but her application was denied.

(6) For the 2014-2015 school year, the employer again assigned claimant to the split position at Lincoln and Pioneer. Subsequently, claimant requested an unpaid leave of absence for the year but was denied. Claimant also requested that she be allowed to work half-time only at Lincoln. That request also was denied. Although claimant complained to the employer that the Pioneer position was unsafe for her because she was required to be alone with physically aggressive Pioneer students with severe emotional disorders, the employer did not offer to provide her with any safeguards to satisfy her safety concerns. Rather, it advised her that her choice was to accept the offered position or “quit.” Transcript at 6.

(7) On August 15, 2014, claimant resigned from her position rather than continue to work at Pioneer.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ. Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) proves, by a preponderance of the evidence, that she had good cause for leaving work when she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause” is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

In Hearing Decision 15-UI-31976, after finding “claimant sincere in her concerns for her own personal safety” and “credible in her testimony that the students at Pioneer could be both aggressive and violent”, the ALJ concluded claimant left work without good cause, reasoning that claimant’s circumstances were not sufficiently grave because she had not yet been assaulted, had not addressed her safety concerns with the employer and had the additional option to address her concerns through her union and the grievance process . Hearing Decision 15-UI-31976 at 3-4. However, the employer did not dispute claimant’s testimony that she had brought her safety concerns to the employer’s human resources office without any response, and that the grievance process would have taken at least six months during which claimant would have had to expose herself to the same dangerous conditions that detrimentally affected her health the prior year. Transcript at 17. And, viewed objectively, waiting until she was assaulted by an “aggressive and violent” high school student was not a reasonable alternative to quitting work when she did.

On this record, claimant quit work due to legitimate, unaddressed safety concerns she had with regard to her one-on-one contact with demonstrated aggressive and violent students with severe emotional disorders the employer had concluded were not fit to be educated at regular neighborhood schools. She had pursued the available alternatives of transfer, half-time work at Lincoln, unpaid leave and safety modifications all without success. Ultimately, the employer gave her the choice to either accept the combined position as it was or quit. Under the circumstances described, remaining employed indefinitely or for at least six months until a grievance process was completed was not a reasonable alternative available to claimant to quitting work when she did.

Claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

**DECISION:** Hearing Decision 15-UI-31976 is set aside, as outlined above.<sup>1</sup>

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

**DATE of Service:** March 19, 2015

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

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<sup>1</sup> This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.