

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0617**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 25, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 101705). Claimant filed a timely request for hearing. On May 29, 2018, ALJ S. Lee conducted a hearing, and on June 1, 2018 issued Order No. 18-UI-110538, affirming the Department's decision. On June 18, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Portland Village School employed claimant, a white male, from August 2012 until April 19, 2018. At the time his employment ended, claimant was a classroom teacher for a fifth grade classroom.

(2) In 2013, claimant received training regarding nonviolent crisis intervention, which included restraint training.

(3) On March 22, 2018, claimant was walking his 5<sup>th</sup> grade class to another room where a play was taking place. While with his class, claimant saw four unsupervised 7<sup>th</sup> graders "rummaging through" some toys used for a school aftercare program. Transcript at 6. Claimant told the four students to put the toys away and go into the play. Three of the students complied. One student did not comply and said he would not put it away. That student was a student of color. Claimant told him to put the toy down again, and the student started to walk out of the room with the toy. Claimant blocked the doorway and asked the student to return the toy. The student refused and turned around. Claimant told the student to give him the toy and reached toward the student to take the toy. The student "flailed" and his elbow hit claimant in the chest. Transcript at 7. Claimant put his hand on the student's bicep and "then there was subsequent just kind of flailing to get away," and claimant grabbed the student's arms and held him in a restraint. Transcript at 7-8.

(4) On March 23, 2018, claimant met with the student's parents to discuss what occurred during the March 22 incident. Claimant told the parents he was sorry about what occurred on March 22, but did not specifically apologize for his actions. The parents were upset that claimant did not apologize for his

actions. The school put claimant on administrative leave with pay while it investigated the matter. The school was on spring break from March 24 through April 1, 2018.

(5) On March 24, 2018, claimant received a telephone call from law enforcement because the parents of the child wanted claimant to be charged with a crime for his March 22 conduct. The police investigated the matter and claimant was not charged with a crime.

(6) On March 29, 2018, the employer's principal gave claimant a letter of direction (LOD) stating that claimant "physically restrained a student when circumstances did not call for such action, and [was] not certified to do so." Exhibit 1 at 2. Claimant's certification to use physical restraint had allegedly expired. The LOD stated that claimant would be suspended from work from April 2 through April 9, 2018 without pay and was not permitted to engage in school business in any form during that time. It also stated that claimant was required to attend a nonviolent intervention training, refrain from having contact with the student from the March 22 incident, apologize to the student's parents, and write a letter of assurance that he would follow best practices going forward to the fifth grade class families. Exhibit 1 at 2. The LOD also stated that the principal had submitted a report of the March 22 incident to the Oregon Teacher Standards and Practices Commission (TSPC), and that claimant had to respond that he planned to follow the direction explained in the LOD by March 30, 2018, or the principal would consider his failure to do so as a resignation. Exhibit 1 at 2.

(7) On March 30, 2018, claimant responded by email to the principal that he felt he was "being inappropriately disciplined for upholding order, discipline and safety" at the school, did not agree to the terms in the LOD, and did not choose to resign. Exhibit 1 at 3. Claimant sent the members of the employer's board of directors (school board) a copy of his email as well.

(8) On April 5, 2018, claimant sent a written appeal of the March 29 LOD to the school board of directors. In his appeal, claimant objected to having no contact with the student from the March 22 incident and writing a letter to the parents of his classroom. Exhibit 1 at 8-10. Claimant also objected to apologizing to the parents of the student from the March 22 incident, stating that he already apologized when he met with the student's parents on March 23. Exhibit 1 at 8-10.

(9) On April 9, 2018, the school principal sent claimant a letter informing him of a training the employer expected claimant to attend on April 13, 2018. The principal stated that claimant could return to work on April 16, 2018 if he completed the April 13 training and the other steps listed in the March 29 LOD. Exhibit 1 at 11.

(10) On April 12, 2018, claimant sent the principal an email stating that he would attend the April 13 training, but "still [did] not agree with the other requirements in order for me to return to the classroom, like being docked 6 days of pay." Claimant also stated that he already apologized to the student's parents and did not agree to write the letter to his classroom. Exhibit 1 at 12.

(11) On April 13, 2018, the principal responded to claimant's April 12 email, alleging that the student's parents had told him that claimant had not apologized and that the letter to his classroom was necessary because some of the students in his classroom were "seriously frightened" by the March 22 incident. Exhibit 1 at 12-13. On April 15, 2018, claimant agreed to apologize to the student's parents and write a

letter to the parents of his class. Claimant stated he intended to complete those requirements by April 17, 2018 and return to work on April 18, 2018. Exhibit 1 at 12.

(12) On April 16, 2018, the school board notified claimant that it would consider his April 5 appeal of the March 29 LOD at a school board meeting on April 19, 2018. Exhibit 1 at 17. Claimant requested that the school board consider his appeal in an open session before the public.

(13) On April 17, 2018, claimant sent the principal an email stating that he would not be ready to return to work on April 18, 2018, and would contact the principal when he had completed the principal's requirements from the LOD. Exhibit 1 at 18.

(14) On April 18, 2018, claimant sent the school board additional information regarding his appeal, including a clarification that he was no longer contesting the requirements that he apologize to the student's parents and write a letter to the parents of his class. Claimant did not give the parents of the 7<sup>th</sup> grade student or the fifth grade classroom the letters required in the LOD before the April 19, 2018 school board meeting.

(15) On April 19, 2018, the school board held an open session. There were multiple emotionally charged public comments. The majority of the public comments expressed dissatisfaction with the disciplinary consequences given to claimant and a desire that claimant be discharged for his conduct on March 22. Allegations were made at the meeting that claimant left "marks" on the child and that claimant treated the child differently than the other three 7<sup>th</sup> graders because the child was a child of color. Exhibit 1, Video of Portland Village School April 19, 2018 Board Meeting, 00:03:48 to 1:08:07.

(16) The school board denied claimant's appeal regarding the unpaid suspension. Near the end of the school board meeting, claimant apologized for his behavior on March 22 and resigned because he felt "unsupported" by the school board, the administration, and the parents, and did not believe he could return to his classroom. Transcript at 22.

**CONCLUSIONS AND REASONS:** We agree with the ALJ and conclude claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause" is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (January 11, 2018). 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. Where the gravity of the situation experienced by a claimant results from his own deliberate actions, to determine whether good cause exists, the actions of the claimant in creating the grave situation must be examined in accordance with the good cause standards of OAR 471-030-0038(4). OAR 471-030-0038(5)(f).

Claimant quit work because of the animosity he saw directed at him during the school board meeting and because he felt he could not return to the classroom without the school board's support. The school community's dissatisfaction with claimant's conduct on March 22 created a grave situation for claimant. However, the community's dissatisfaction with claimant's continued employment resulted from claimant's conduct of physically restraining a student on March 22 where the record shows less restrictive, nonviolent interventions were, more likely than not, available. Claimant alleged that the employer did not have a physical restraint policy. However, as an educator since at least 2012, claimant knew or should have known the Oregon statute regarding physical restraint in schools. ORS 339.291(1)(a) provides that physical restraint may be used only if the student's behavior "imposes a reasonable threat of imminent, serious bodily injury to the student or others, and less restrictive interventions would not be effective." According to claimant's account of what occurred on March 22, the student struggled when claimant put his hand on the student's bicep and claimant either restricted or continued to restrict the student's movement by holding him. The record does not show that the student's behavior posed a reasonable threat of imminent, serious bodily injury to himself or others. Moreover, the record does not show that less restrictive, common sense interventions such as reducing his demands of the student or simply removing the fifth grade classroom from the area were unavailable or ineffective interventions to ensure safety.

Although claimant asserted that restraining the student was warranted to ensure safety (Transcript at 8), the evidence in the record as to whether the gravity of the situation by claimant resulted from his own deliberate actions is, at best, equally balanced. Nor did claimant show that he had no reasonable alternative but to act as he did on March 22. Claimant therefore failed to meet his burden to establish by a preponderance of evidence that he is not disqualified from receiving benefits under OAR 471-030-0038(5)(f).

Claimant failed to establish that he quit work without good cause under OAR 471-030-0038(4) and OAR 471-030-0038(5)(f). He therefore is disqualified from receiving benefits based on his work separation from the employer.

**DECISION:** Order No. 18-UI-110538 is affirmed.

J. S. Cromwell and D. P. Hettle;  
S. Alba, not participating.

**DATE of Service:** July 19, 2018

**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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