EO: 200
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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0919

Affirmed
No Disqualification

PROCEDURAL HISTORY: On July 18, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 144906). Claimant filed a timely request for hearing. On September 11, 2018, ALJ Wyatt conducted a hearing at which the employer failed to appear, and on September 19, 2018 issued Order No. 18-UI-116884, concluding the claimant voluntarily left work with good cause. On September 21, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Flipside Hats, LLC employed claimant as a sales representative from May 29, 2018 to June 4, 2018.

(2) On June 1, 2018, claimant worked an 8-hour day with the male co-owner. Claimant's job duties would require her to work closely with that co-owner on a regular basis. Claimant was single, and although she did not discuss her relationship status or dating while at work, the co-owner repeatedly made comments about dating websites and worked comments about claimant's dating life into the conversation. Claimant felt uncomfortable with the co-owner's comments.

(3) The co-owner assigned claimant to work alone conducting a sales demo at a retail store the following day. Claimant did not feel prepared to work alone, but agreed to do so. While discussing his expectations, the co-owner told claimant that she should send him pictures throughout the day, including a picture of her "new black boyfriend." Claimant did not have a new boyfriend, had not been discussing her dating life or dating in the context of doing a demo on June 2nd, and did not know why the co-owner mentioned race when making his comment.

(4) Later on June 1st, the co-owner became upset because of another employee's minor error. He reacted by yelling and being loud, and getting red in the face. The co-owner's wife, who co-owned the business with him, had to intervene and suggest he take a walk around the block to calm down. The co-owner left the business for an hour. Claimant felt frightened at what she perceived as the co-owner's disproportionate reaction, and was concerned how he might react if he became upset with her.

(5) On June 2nd, claimant did the demo and sold five hats. She felt pleased with her performance and sent the co-owner a group text message with pictures of the customers who had bought the hats. The co-owner did not respond. The co-owner had responded to group texts from other sales representatives that day, and claimant felt affected that the co-owner had chosen not to respond to hers.

(6) Claimant had tried to laugh off the co-owner's inappropriate comments. She needed the job and was concerned that if she approached him about it or complained that things might become awkward between herself and some friends she had in common with the co-owner. Claimant did not think it would do any good to complain to the co-owner's wife and was concerned about the co-owner's temper.

(7) Over claimant's days off, she thought about her employment and decided to quit her job. On June 4, 2018, claimant returned her key to the co-owner's wife and said she quit.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she 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) (January 11, 2018). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

As a preliminary matter, claimant testified at the hearing, and the ALJ found as fact, that the employer did not pay claimant for the work she performed for its business. *See e.g.* Order No. 18-UI-116884 at 1, 2. That is immaterial to the work separation. Claimant did not have a reasonable expectation of receiving payment for the services she performed between May 29, 2018 when she began work and June 4, 2018 when she quit work. She did not learn of the employer's failure to pay until after her work separation. Therefore, the employer's failure to pay her for her services was not the reason she quit work, nor, logically, was it a factor she considered when she decided to quit work when she did.

Claimant quit work because of the co-owner's behavior toward her during an approximately one and one-half day period of employment. The co-owner repeatedly brought up claimant's relationship status, referenced dating websites, and made comments about getting a "new black boyfriend" while performing a demo at work. Claimant had not discussed dating or relationships at work, and those topics were not relevant to claimant's job or her discussions with the co-owner about work. The co-owner's comments were therefore inappropriately personal, and inexplicably and inappropriately included gratuitous references to an individual's race. Such comments in the context of an employment relationship constituted a situation of gravity, particularly when made by a co-owner with whom claimant was going to have to work closely in the future.

Claimant did not have reasonable alternatives to quitting work when she did. She reasonably thought it would be futile to complain to the co-owner's wife about the co-owner's behavior. Under certain

circumstances an employee might reasonably have been expected to tell the co-owner that she was uncomfortable with his behavior and give him a chance to self-correct before quitting work. In this case, however, claimant had during her first day working with him experienced his loss of temper over a minor matter that left her frightened of his reaction and how he might react if she caused him to lose his temper. Accordingly, it was not reasonable to expect this claimant to notify the co-owner she felt offended by his conduct and ask him to change his behavior toward her.

For the reasons explained, claimant quit work due to a situation of such gravity that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have continued to work for the employer for an additional period of time. Claimant is therefore not disqualified from receiving unemployment insurance benefits because of her work separation.[1]

DECISION: Order No. 18-UI-116884 is affirmed.

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

DATE of Service: October 24, 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. 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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[1] In reaching this decision, we note that the employer did not appear at the hearing in this case and there is no evidence in the record under review about the employer's perspective on the work separation or employment relationship. Claimant's testimony was uncontroverted, and this decision was based entirely upon the evidence claimant provided during the hearing.