

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0927**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 2, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 130814). Claimant filed a timely request for hearing. On September 11, 2018, ALJ Snyder conducted a hearing, and on September 19, 2018 issued Order No. 18-UI-116845, affirming the Department's decision. On September 25, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Rogue River PMC Rec, cannabis dispensary, employed claimant as a budtender from October 2015 until July 18, 2018.

(2) The employer was a small business that was operated and mostly staffed by three or four closely related people. One person, RR, managed the business, made all decisions and all staff members reported to him. Claimant was not related to RR or other staff. Claimant was of Mexican heritage.

(3) During claimant's employment, RR regularly made comments in the workplace that claimant interpreted as biased and prejudiced. RR often referred to customers who appeared to be of mixed racial descent as "half-breeds" or "mongrels." Audio at ~14:09. Claimant was of mixed racial descent. RR also made other racial slurs about customers. In addition, RR made homophobic comments about certain customers as well as offensive references about overweight customers. RR's comments upset claimant.

(4) Claimant did not complain to RR about the offensive and biased workplace comments he made because RR had authority over the workplace, claimant thought RR was making these comments intentionally and in part to harass claimant and claimant did not think that RR's behavior would change. Because everyone in the workplace reported to RR, claimant did not complain to other staff about the offensive comments RR was making because he thought it would be futile to do so. As a result of RR's comments, claimant experienced stress and had difficulty sleeping. Claimant's physician diagnosed him with high blood pressure which claimant believed was attributable to RR's racist attitudes in the workplace.

(5) On July 18, 2018, claimant worked a shift. During that shift, claimant made a comment to RR. RR responded to claimant's comment by stating, "You know what you said to me? You said what a Mexican would say." Audio at ~ 11:50. At the end of his shift, claimant told RR that he was quitting. Claimant left work because of the cumulative impact on him of RR's biased comments and attitudes in the workplace and claimant's inability to tolerate them any longer.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work with 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 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

In Order No. 18-UI-116845, the ALJ concluded claimant voluntarily left work without good cause. Although the ALJ determined that "[c]laimant may have faced a grave situation when he was continually offended by [racist] comments made by his manager," the ALJ reasoned that claimant was disqualified from benefits because "claimant had the alternative of complaining to the [e]mployer about the manager's comment or telling his manager that he found the comments offensive." Order No. 18-UI-116845 at 2.

We agree with the ALJ that racially offensive comments of the type that RR made in the workplace created a grave situation for claimant, but disagree that there were reasonable alternatives to claimant leaving work when he did. Notably, the employer's witness at hearing, RR's wife and apparently an employee, did not deny that RR could have made racist comments in the workplace and did not agree that other of the employer's staff might have made "strange comments" in the workplace, presumably racially biased ones, that were "joking in manner." Audio at ~20:06, ~21:29. The employer's witness further testified that she was sure there was some workplace behavior that was "inappropriate," was "whatever boys do" and was "sometimes disturbing to most normal people," but she was "quite certain" that claimant "joined in most of that [offensive] stuff." Audio at ~ 21:42. Based on the attitude of minimization underlying the witness's testimony, the very small number of employees other than RR in the workplace, and the fact that all employees in the workplace were subordinate to RR, it does not appear that making a complaint to the "employer," as distinct from RR, was likely to have been a reasonable course for claimant to pursue as an alternative to quitting. As well, since RR's racist and other offensive workplace comments were apparently not infrequent, RR was not subordinate to anyone else in the employer's workplace and other staff apparently tolerated RR's offensive comments as a workplace norm it was not unreasonable for claimant to have concluded that telling RR that he was offended by RR's workplace comments was likely would have been of no effect. Consequently, we disagree with the ALJ and conclude that there were no reasonable alternatives available to claimant in lieu of quitting work when he did.

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

**DECISION:** Order No. 18-UI-116845 is set aside, as outlined above.

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

**DATE of Service: October 30, 2018**

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

**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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