
Civil Rights Division - Bureau of Labor & Industries
Complaint Dismissal Memo

Complainant: [REDACTED]
Respondent: Cmh Manufacturing West, Inc. Dba Clayton Hemston
Case Number: EEEMRC200918-71306
Date: June 1, 2021
Investigator: Brittny Boggs
Reviewed By: s/Leila Wall Date: June 1, 2021

Complainant alleges unlawful employment practices based on race discrimination and retaliation for reporting and opposing unlawful conduct. Complainant identifies as Black. Complainant alleges that throughout Complainant's employment, Complainant reported that someone was intentionally disrupting Complainant's cleaning supplies and that Complainant's mops would have feces on them. Complainant alleges someone wrote a racial epithet on a bathroom stall, targeting Complainant. Complainant alleges that in August 2020, Complainant observed her sister being targeted and yelled at by white members of Respondent's management. Complainant alleges Complainant intervened on behalf of her sister, and her employment was terminated.

Complainant has requested through her attorney to withdraw the complaint. At the time of the request, the Division had received and reviewed a response to the complaint, interviewed Complainant, and requested additional documentation from Respondent. At the time of the request, the Division lacked evidence sufficient upon which to issue a determination.

*s/*Brittny Boggs

Brittny Boggs
Senior Investigator



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January 14, 2021

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VIA EMAIL: brittney.boggs@state.or.us

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800 NE Oregon St., Suite 1045
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Complainant: [REDACTED]
Respondent: **CMH Manufacturing West Inc. DBA
Clayton Hermiston**
BOLI Case No.: **EEEMRC200918-71306**

Dear Ms. Boggs:

This office represents the Respondent, CMH Manufacturing West Inc. DBA Clayton Hermiston in connection with the above-referenced case. We are in receipt of your November 24, 2020 letter. This is respondent's written response to [REDACTED]'s complaint.

Clayton Hermiston emphatically denies all of [REDACTED]'s allegations of illegal conduct by the company and/or its employees. Attached, please find copies of relevant documents related to [REDACTED]'s employment with Clayton Hermiston and the allegations made in her complaint.

Background

Clayton Hermiston is a building facility for Clayton Homes located in Hermiston, Oregon. Clayton Homes is a national company specializing in affordable housing, including modular homes and manufactured homes. Clayton Hermiston has about 190 employees. Clayton Hermiston hired [REDACTED] in June 2018 for a janitorial position.

Specific Responses to Allegations

Allegation No. 1:

On June 11, 2018, Respondent hired me as part of the maintenance staff. I am a Black woman and throughout my employment with Respondent, I have been the only Black person in my department.

Response:

Respondent agrees Clayton Hermiston hired [REDACTED] as a janitor starting on June 11, 2018. On her employment application, [REDACTED] self-identified as Black.

Clayton Hermiston has employed six employees self-identifying as Black/African-American since 2017. This is equivalent to three percent of Clayton Hermiston's work force. The population of the city of Hermiston, where Clayton Hermiston is located, is only 0.8 percent African American, based on 2010 census data. The greater Umatilla County area is also 0.8 percent African American according to the census data.

Allegation No. 2:

I was one of the only two Black employees at Respondent for most of my time working there. The other Black person at Respondent was my twin sister, [REDACTED]

Response:

See response to Allegation No. 1, above.

Allegation No. 3:

As part of my job, I work with many chemicals, and these were stored with mops in a storage closet. I was the only person assigned to work in the storage closet.

Response:

Respondent agrees that [REDACTED]'s job as a janitor involved using cleaning chemicals and mops which were kept in a storage closet. However, other individuals would sometimes use the closet to obtain cleaning supplies.

Allegation No. 4:

Around September 2018 I went into work and found the mop heads I use brown, dirty and smelling like feces, even though I had bleached and cleaned them the night before. This started happening about every other week. Sometimes, it would happen every other day, and other times it would not happen for over a month. It happened throughout my employment with Respondent.

Response:

Respondent agrees that [REDACTED] complained that the mopheads she used looked brown and dirty and smelled like feces. Respondent denies the mopheads were in fact contaminated with feces. The mopheads appeared brown and dirty as a natural result of high-volume use. The mops are used multiple times a day to clean high-traffic areas frequented by over 190 employees in a manufacturing plant. With this level of use, it is normal for new mopheads to appear gray or brown after even a day of use. This deterioration can happen more quickly when bleach or other chemicals are poured directly onto the mopheads to clean them.

Additionally, after [REDACTED] reported her concerns about the mopheads, Respondent took appropriate steps and conducted a thorough investigation to confirm no one had tampered with the mopheads or intentionally contaminated them. See response to Allegation No. 5, below, for a detailed explanation of the investigation conducted by the employer into [REDACTED]'s report.

Allegation No. 5:

Beginning in 2018 I reported to Respondent's General Manager Tom Shimp that I was concerned about someone having access to the storage room where the mops and cleaning chemicals were stored. I explained that after cleaning mop heads every day before leaving, I came in the next morning to find them dirty again. General Manager Shimp said that he would look into it, but I do not believe he did anything about it. I continued to report incidents when they happened throughout my employment

Response:

Respondent agrees [REDACTED] made her concerns known in 2018 to Tom Shimp. At that time, Mr. Shimp was the production manager, not the general manager. Respondent emphatically denies Mr. Shimp ignored [REDACTED]'s concerns. As detailed below, Mr. Shimp took appropriate steps to address [REDACTED] concerns and ensure that the issues with her mops were not the result of tampering.

Mr. Shimp personally inspected the mopheads, and observed they were brown and/or grayish in color, consistent with what is expected given their significant amount of use in a large facility. Mr. Shimp did not find that the mopheads looked or smelled like they were contaminated with feces.

Mr. Shimp furthermore notified the maintenance manager, Darren Broderick, and the EHS manager, David Campana, of ██████████'s concerns. The storage closet was in full view of all three managers' offices. After ██████████ made her complaint, the managers committed to closely monitoring the supply closet. None of the three managers ever observed anyone accessing it without authorization.

However, because ██████████ continued to be concerned that someone was tampering with her mops, Respondent provided a lock for the storage closet in 2019. Only ██████████ and Mr. Broderick, the maintenance manager, had the key to this closet. Despite ██████████'s purported concerns about the security of the closet, she stopped locking it after a few weeks, leaving it unlocked overnight.

Allegation No. 6:

Also, in 2018, I saw the word "nigger" written on the bathroom stall wall, as well as a swastika that was drawn as big as the wall itself. Because I and my sister were the only Black people working at Respondent, this seemed specifically targeted at us. I reported this to Taylor Deyo and General Manager Tom Shimp.

Response:

Respondent agrees ██████████ and others have reported offensive language written on bathroom stalls. Each time this has occurred, respondent has fully investigated the incident and took steps to prevent future occurrences, including by restricting access to Sharpie markers. Additionally, Respondent has made it clear to all employees that this behavior is grounds for immediate termination. Respondent has never been able to identify who wrote the offensive racial slur on the wall or even determine whether it was an employee or a visitor that did so.

Allegation No. 7:

Around May 2020, I took a mop head, bleached and cleaned it, and then hid it so that I could use it the next day. I always also left a mop in the women's bathroom in case any incident happened in the bathrooms. The next day, I went to find my mop head, grabbed it with my hands to pull it out of where I hid it, and found it brown and smelling like feces.

Response:

See response to Allegation No. 8. Based on its thorough investigation into this matter, Respondent denies [REDACTED] was the target of intentional tampering or contamination of her mophead. The mopheads become brown quickly due to their high-volume use.

Allegation No. 8

I went to my coworker, Dave Campana, and said, "Someone here does not like me." I had tears in my eyes. Dave said, "Why do you say that?" I took him to my closet and showed him the mop head. He said, "Oh, I did that." I was shocked and asked him why he would do that when he knew I left a mop with a handle in the ladies' restroom. He said he didn't want to get that one dirty. I said, "You cleaned up a mess with the mophead in hand?" He just repeated himself, saying he didn't want to get the other one dirty.

Response:

Respondent agrees Mr. Campana used a mophead in the storage closet to clean up a spill in the lunchroom that occurred after [REDACTED] left for the day. To clean the mop after he used it, Mr. Campana poured bleach directly on the mop and left it in a bucket in the closet. As noted above, pouring bleach or other chemicals directly onto a mophead tends to cause it to deteriorate more quickly. See Response to Allegation No. 10, below. Respondent emphatically denies Mr. Campana's actions were in any way intended to target [REDACTED] or discriminate against her.

Allegation No. 9

In June 2020, I picked up a bottle of bleach in this storage closet and noticed immediately that it was almost boiling hot to the touch and that the bottle was dangerously expanding as if it was going to explode.

Response:

Respondent agrees [REDACTED] reported some type of chemical reaction occurring with a bottle of bleach in the storage closet. As detailed in response to Allegation No. 10, below, there is absolutely no evidence this occurred as the result of any intentional act targeting [REDACTED].

Allegation No. 10

I went to Dave Campana and told him that it looked like someone had added a chemical to the bottle, creating a dangerous chemical reaction. He said he had not

seen anyone go into the closet. I was worried that the chemicals could have exploded, causing me serious injuries. Because of the experiences with mophead, I thought Dave might have been the one targeting me.

Response:

As noted above, Respondent agrees [REDACTED] reported what she thought was a chemical reaction occurring with a bottle of bleach. There is absolutely no evidence this occurred because of an intentional act targeting [REDACTED].

After [REDACTED] reported this to Mr. Campana, he safely disposed of the bottle. At the time of this incident, [REDACTED] was the only person outside of management with a key to the storage unit and no one else was seen going into the closet.

[REDACTED]'s allegation that she thought Mr. Campana might have been the one targeting her is at odds with overwhelming evidence she had a friendly, good relationship with Mr. Campana during her employment.

During the time they worked together, Mr. Campana provided Christmas and Thanksgiving meals to [REDACTED] and her family, gave her Christmas gifts, and even gave her cash to help her pay bills. Mr. Campana estimates he gave her approximately \$600 during the time they worked together.

For example, in early May 2020, Mr. Campana gave [REDACTED] money to help her turn her utilities back on. [REDACTED] texted Mr. Campana on May 9, 2020 expressing her gratitude and confirming their friendship:

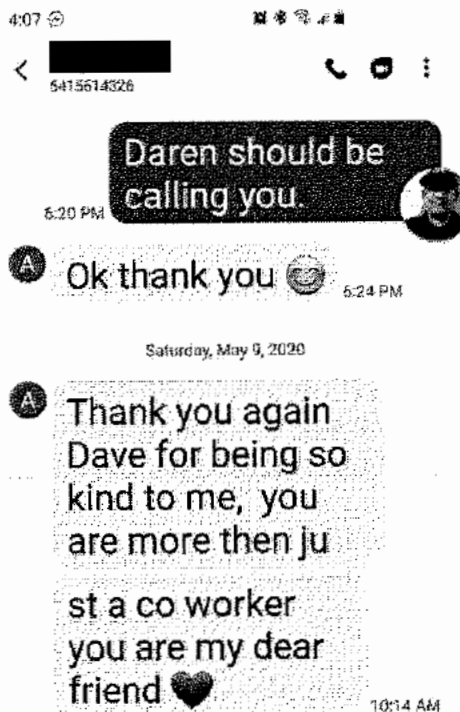
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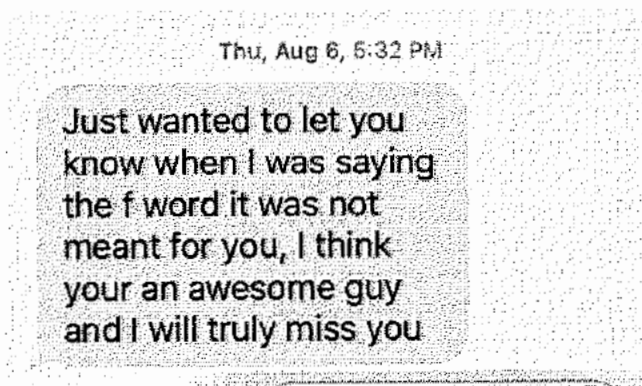
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Following the events of August 6, 2020 leading to her termination, [REDACTED] sent Mr. Campana this text:



These texts from May 2020 and August 2020 do not support [REDACTED]'s allegation that she believed Mr. Campana was targeting her by tampering with her cleaning supplies. (See attached, CMH 001-002)

Allegation No. 11

In 2019, I also reported this incident to Jeff Williams, another General Manager for Respondent and he ordered a lock for the storage closet door. I was given a key for this closet by manager, Darien Broderick.

Response:

It is unclear from this allegation what incident is being referenced. Respondent agrees it provided a lock for the storage closet in 2019 to address [REDACTED]'s concerns about her mopheads, despite having found no evidence of anyone accessing the storage closet without authorization.

Allegation No. 12

The mops in the storage closet continued to be dirty on mornings I knew I had left them clean in the locked storage closet until around summer of 2020. Because I was the only one who was assigned to use the mops, I believe someone was intentionally making the mop heads dirty in order to harass me. In the summer of 2020, I started buying new mop heads and would change them every day to solve the problem.

Response:

See above responses. Respondent appropriately responded to [REDACTED]'s concerns and conducted a thorough investigation. Based on respondent's investigation, there is no evidence that the issue [REDACTED] reported with the mopheads were the result of any tampering or other misconduct targeting [REDACTED]

Respondent has no knowledge of [REDACTED] ever personally purchasing mopheads. She routinely ordered new mopheads which were paid for by the company.

Allegation No. 13

In the summer of 2020, I asked my manager Darren for the key to the toolroom, and he told me it was in his desk drawer. I went to his desk and saw that the storage closet key was there where anyone in the office could have access to it.

Response:

Respondent emphatically denies that Mr. Broderick ever instructed [REDACTED] to go into his desk drawer to get the toolroom key, as he keeps this key on his person. Mr. Broderick keeps the janitorial closet key in his desk drawer as he does not use it often. Employees are not authorized to access Mr. Broderick's desk drawer without permission, and to Mr. Broderick's knowledge, no one was aware he kept the key in his desk drawer.

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Allegation No. 14

██████████, my twin sister, worked in the "final building" department. After work, many days throughout the time we worked there, ██████████ told me about discrimination she was experiencing. She told me that other women in her department called her boss "daddy," but that she would not do that. She told me about reporting sexual harassment from a coworker named Gustavo, and that when she reported it to her bosses, nothing happened. ██████████'s boss was giving her more work than her white coworkers, and it seemed like this was either because she wouldn't call her boss "daddy," or because she is Black, or both.

Response:

Respondent has no ability to comment on what ██████████ may or may not have said to ██████████. Regarding the substance of ██████████ allegations, please see Clayton Hermiston's Response to ██████████ complaint. Respondent emphatically denies all allegations by ██████████ of illegal conduct by Clayton Hermiston and/or its employees.

Allegation No. 15

On August 5, 2020, ██████████ told me she reported to her assistant lead that she was concerned about being assigned an unfair amount of work compared to her white coworkers. Her assistant lead became very angry, cursed at her, and slammed the door.

Response:

Respondent has no ability to comment on what ██████████ may or may not have said to ██████████. Regarding the substance of ██████████ allegations, please see Clayton Hermiston's Response to ██████████ complaint. Respondent emphatically denies all allegations by ██████████ of illegal conduct by Clayton Hermiston and/or its employees.

Allegation No. 16

On August 6, 2020, I was mopping in the main building and saw my sister crying in a conference room with her boss and the HR Coordinator. It looked like her boss was grinning at her and enjoying that she was crying. Even though I knew my sister had reported discrimination, she is the only person I have ever seen from her department being written up. It seemed like she was being targeted again.

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Response:

Respondent agrees [REDACTED] had a meeting with her supervisor, Hilario Avila, and Erinn Gailey-Genack, human resources manager, on August 6, 2020. Regarding the substance of [REDACTED] allegations, please see Clayton Hermiston's Response to [REDACTED] complaint. Respondent emphatically denies all allegations by [REDACTED] of illegal conduct by Clayton Hermiston and/or its employees.

Allegation No. 17

I opened the door to the conference room to try to support my sister, and the HR Coordinator told me to leave. Andrew Timpy, the General Manager, has an office close to the conference room and I went to him and said, "Can I ask you a question?" He replied, "Sure." I asked, "Why is it Lori ([REDACTED]'s white coworker) is never written up when [REDACTED] and Lori work together? Is it because Lori is white, and [REDACTED] is black?" [REDACTED] and Lori work side by side every day. GM Timpy said, "I can't discuss this with you."

Response:

Respondent agrees [REDACTED] had a meeting with Mr. Avila and Ms. Gailey-Genack on August 6, 2020. Regarding the substance of [REDACTED] allegations, please see Clayton Hermiston's Response to [REDACTED] complaint. Respondent emphatically denies all allegations by [REDACTED] of illegal conduct by Clayton Hermiston and/or its employees.

Mr. Timpy is the production manager, not the general manager. Respondent agrees [REDACTED] alleged to Mr. Timpy that [REDACTED] was being targeted because of her race. [REDACTED] became agitated, speaking loudly and swearing. [REDACTED] stated to Mr. Timpy that [REDACTED] supervisor, Hilario Avila "had it out" for [REDACTED]. Mr. Timpy responded that [REDACTED] needed to stop.

Allegation No. 18

I heard my sister going back into the conference room, and she asked the same question to the HR Coordinator and her boss. The door closed so I couldn't hear what they said back to her.

Response:

Respondent agrees [REDACTED] had a meeting with Mr. Avila and Ms. Gailey-Genack on, Human Resources Manager on August 6, 2020. Regarding the substance of [REDACTED] allegations, please see Clayton Hermiston's Response to

██████████' complaint. Respondent emphatically denies all allegations by ██████████ of illegal conduct by Clayton Hermiston and/or its employees.

Allegation No. 19

I heard my sister start uncontrollably crying. Her boss was grinning, and it looked like the HR Coordinator was talking very aggressively to my sister. I was afraid for my sister. I opened the door to protect my sister, and I said, "They don't care: This is some racist shit." I took my sister by the arm to protect her and get her out of that room.

Response:

Respondent agrees ██████████ interrupted a meeting occurring between ██████████ and her supervisor, Mr. Avila, and Ms. Gailey-Genack, human resources manager. Without invitation, ██████████ opened the closed door to the conference room where the meeting was taking place and yelled the situation was unfair and ██████████ should leave.

Ms. Gailey-Genack asked ██████████ to leave as the situation did not involve her. ██████████ left but returned and interrupted the meeting again a few minutes later. At that point, ██████████'s manager, Mr. Broderick intervened. He told ██████████ to stop and to come with him. ██████████ refused to leave.

Allegation No. 20

The HR Coordinator told me to leave, but I was afraid for my sister. ██████████ went to go to the restroom, and when she came out, the HR Formator suspended both of us for the rest of the day. I was shocked, and I said, "what?". The HR Coordinator walked towards me with her finger pointing at me aggressively. I said "Fuck you."

Response:

Respondent agrees ██████████ refused to leave. Respondent disagrees that ██████████ and ██████████ was suspended at this point. Rather, Mr. Timpy and Ms. Gailey-Genack determined that they should go home for the rest of the day to de-escalate the situation and calm down. At no time did Ms. Gailey-Genack point her finger at ██████████ or ██████████ nor did she behave aggressively toward her or ██████████ Respondent agrees ██████████ yelled obscenities at Ms. Gailey-Genack and other managers, including "fuck you."

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Allegation No. 21

GM Timpy told me to wait outside, and I did. He came out soon after, took my keys, and told me not to return to work. I have seen white coworkers use curse words without being disciplined or terminated. I believe I was fired in retaliation for opposing racism.

Response:

Respondent emphatically denies [REDACTED] was fired in retaliation for opposing racism. [REDACTED] was terminated for insubordination, and inappropriate and hostile behavior. [REDACTED] interrupted a private meeting between another employee and management. She then refused to leave after being given an opportunity to go home and de-escalate the situation. Instead, she continued yelling, including shouting "fuck you" at managers."

The reason for her termination was not her use of the curse word but her associated hostility and aggressive, insubordinate behavior. This behavior by any employee would be grounds for immediate termination under Respondent's policies. Respondent's employee handbook specifically notes that insubordination, including but not limited to failing to follow a reasonable instruction from a supervisor, is grounds for immediate dismissal. (See attached, CMH 003-009)

Allegation No. 22

I believe Respondent violated ORS 659A.030 by creating a hostile, intimidating, or offensive work environment because I am Black, forcing me to watch my one Black coworker retaliated against for reporting discrimination, and ultimately firing me for reporting and opposing discrimination.

Response:

Respondent emphatically denies that it created a hostile, intimidating or offensive work environment because of [REDACTED]'s race. Respondent appropriately and thoroughly responded to [REDACTED]'s concerns and found no evidence that she was targeted because of her race.

Respondent also strongly denies that [REDACTED] was fired for reporting and opposing discrimination. The decision to terminate [REDACTED] was made for legitimate, non-discriminatory reasons, consistent with Respondent's usual practices and policies. Respondent terminated [REDACTED] because of her insubordinate, inappropriate and hostile behavior.

Allegation No. 23

I believe Respondent violated ORS 659A.199 by terminating me in retaliation for making a good faith report that I believed it was discriminating against my sister because of her race.

Response:

Respondent emphatically denies that [REDACTED] was terminated in retaliation for making a good faith report of discrimination based on race. The decision to terminate [REDACTED] was made for legitimate, non-discriminatory reasons, consistent with Respondent's usual practices and policies. Respondent terminated [REDACTED] because of her insubordinate, inappropriate and hostile behavior.

Legal Argument

**Respondent Did Not Create a Hostile Work Environment
in Violation of ORS 659A.030**

To establish a hostile work environment claim under ORS 659A.030, there must be evidence of an offensive environment so "severe or pervasive" that it alters the conditions of the conditions of the victim's employment and creates an abusive working environment. The utterance of a discriminatory slur alone does not sufficiently affect conditions of employment to create a hostile work environment. Additionally, whether there is a basis to impose liability on a defendant employer, depends on whether the defendant knew about the alleged conduct and took appropriate corrective action. *See Garcez v. Freightliner Corp.*, 188 Or. App. 397, 408, 72 P3d 78, 85-86 (2003).

There is no evidence in this case that [REDACTED] was subjected to severe and pervasive offenses creating a hostile work environment. The law clearly establishes that a single slur, such as the graffiti alleged in [REDACTED]'s complaint, does not sufficiently affect conditions of employment as to create a hostile work environment. Additionally, Respondent took appropriate corrective action when it received reports of graffiti. Regarding [REDACTED]'s allegations related to her cleaning supplies, there is simply no evidence that anyone ever tampered with [REDACTED]'s mops or other cleaning supplies or targeted her because of her race. Nevertheless, Respondent appropriately responded to [REDACTED]'s concerns and took appropriate steps to investigate her reports.

Based on foregoing, there is no evidence [REDACTED] was subjected to a hostile work environment because of her race. The allegation that Respondent violated ORS 659A.030 is unfounded.

**Respondent Did Not Retaliate Against ██████████
in Violation of ORS 659A.199**

ORS 659A.199 prohibits private employers from retaliating against an employee who “has in good faith reported information that the employee believes is evidence of a violation of a state or federal law, rule or regulation.” To sustain that claim, the employee must show she (1) engaged in “protected activity;” (2) she suffered an adverse employment action and (3) there is a causal link between the protected activity and adverse action. *Neighorn v. Quest Health Care*, 870 F.Supp.2d 1069, 1102 (D. Or. 2012).

Starting in 2018, Respondent promptly and appropriately responded to concerns raised by ██████████ about alleged issues with her cleaning supplies. After thoroughly investigating each complaint, Respondent found no evidence that anyone was targeting ██████████ because of her race or other reason. However, Respondent continued to appropriately address every concern raised by ██████████. Respondent never took any retaliatory action of any kind against ██████████ for any complaint she made.

The only retaliatory action alleged by ██████████ is her termination in August 2020. By ██████████'s own admission, she was terminated after she interrupted a private meeting between another employee and managers, refused to leave when asked, and shouted obscenities including “fuck you” at members of management. This account is supported by statements from individuals who witnessed the incident (See Attached, CMH 012-017).

Respondent continued to employ ██████████ under the same conditions and privileges of employment up until her termination. Her termination occurred as a result of, and immediately following her undisputed insubordinate and inappropriate behavior on August 6, 2020. (See attached, CMH 0018). Respondent’s employee handbook, which ██████████ acknowledged receiving when she was hired, clearly provides that insubordination and disobeying reasonable instructions may be grounds for immediate dismissal. (See Attached, CMH 003-009).

Additionally, it can be inferred that Respondent had no discriminatory motive in terminating ██████████ because the same individuals, including Tom Shimp, were involved in the decision to hire and fire ██████████. (See attached, CMH 010-011). “[W]here the same actor is responsible for both the hiring and firing of a discrimination plaintiff, and both actions occur within a short period of time, a strong inference arises that there was no discriminatory motive.” *Siring v. Oregon State Bd. of Higher Educ. ex rel. E. Oregon Univ.*, 927 F. Supp. 2d 1030, 1058 (D. Or. 2012).

Based on the foregoing, there is no evidence to support a causal link between [REDACTED]'s termination and her engaging in any protecting reporting activity during her employment. The overwhelming evidence shows respondent terminated [REDACTED] for legitimate, non-discriminatory reasons in accordance with its company policy. Further, the same actor defense supports an inference Respondent had no discriminatory motive. [REDACTED]'s allegation that Respondent violated ORS 659A.199 is unfounded.

Conclusion

The allegations in this complaint are unsupported by facts or law. There is no evidence Respondent violated ORS 659A.030 or ORS 659A.199. This complaint should be dismissed in its entirety.

Sincerely,



Krishna Balasubramani

KB: KMC:zb

Enclosures (18 pages)

cc: Shawn Jorgensen, Clayton Homes (via e-mail) w/encls
Erinn Genack, Marlette Homes (via email) w/encls
Tom Shimp, Marlette Homes (via email) – w/encls
Emily Robbins, Clayton Homes (via email) – w/encls
Barbara Kelley, SE Homes (via email) – w/encls