

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

DISTRICT COURT

SIXTH DIVISION

DAVID RICCI

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V.

A.A. 08-28

DEPARTMENT OF LABOR AND
TRAINING, BOARD OF REVIEW

DECISION

QUIRK, J. This matter is before the Court on the complaint of David Ricci, filed pursuant to Rhode Island General Laws § 42-35-15, seeking judicial review of a final decision rendered by the respondent, Board of Review, Department of Labor and Training, which upheld the finding of the Referee that the claimant, David Ricci was not entitled to receive employment security benefits.

The travel of the case is as follows:

The claimant's last day of work was June 13, 2007. He filed a claim for Employment Security benefits on June 18, 2007.

On August 3, 2007 the Director issued a decision denying benefits under the provisions of Section 28-44-17 of the

Rhode Island Employment Security Act. The claimant appealed.

A hearing was held before a Referee on September 4, 2007 at which the claimant and two employer representatives appeared and testified.

The Referee held the claimant was not entitled to receive unemployment security benefits, based on the determination that claimant left work voluntarily without good cause and was thus disqualified pursuant to Rhode Island General Laws § 28-44-17.

Thereafter, a timely appeal was filed and the matter was heard by the Board of Review, at which time claimant, his two attorneys, the employer's president and foreman were present. Additional testimony and legal argument were presented to the Board. The Board determined that there was substantial evidence in the record of the proceedings, as enlarged by the testimony before the Board, to support the Referee's findings and conclusions. The Board, having so found, upheld the Referee's decision. Thereafter, Mr. Ricci filed a complaint for judicial review; jurisdiction for review of the decisions of the Board is vested in the District Court by Rhode Island General Laws § 28-44-52.

The standard of review is provided by Rhode Island General Laws § 42-35-15(g), a section of the state Administrative Procedures Act, which provides as follows:

42-35-15. Judicial review of contested cases.

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or

modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Thus, on questions of fact, the District Court ". . . may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are clearly erroneous." Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Rhode Island General Laws § 42-35-15(g)(5). The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact. Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968). Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result. Cahoone v. Board of Review of Department of Employment Security, 104 R.I. 503, 246 A.2d 213, 215 (1968). See also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

The Court has recognized that a liberal interpretation shall be utilized in construing and applying the Employment Security Act:

. . . eligibility for benefits is to be determined in the light of the expressed legislative policy that "Chapters 42 to 44, inclusive, of this title shall be construed liberally in aid of their declared purpose which declared purpose is to lighten the burden which now falls upon the unemployed worker and his family." G.L.1956, § 28-42-73. The legislature having thus declared a policy of liberal construction, this court, in construing the act, must seek to give as broad an effect to its humanitarian purpose as it reasonably may in the circumstances. Of course, compliance with the legislative policy does not warrant an extension of eligibility by this court to any person or class of persons not intended by the legislature to share in the benefits of the act; but neither does it permit this court to enlarge the exclusionary effect of expressed restrictions on eligibility under the guise of construing such provisions of the act. Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 201, 200 A.2d 595, 597 (1964).

The issue before the Court is whether the Board's determination that the Referee's decision was a proper adjudication of the facts and that the claimant left his job without good cause was supported by reliable, probative, and substantial evidence in the record as enlarged, and whether or not it was clearly erroneous.

The Board of Review affirmed the findings and conclusions of the Referee:

The claimant had worked for this employer for approximately four and one-half years. The claimant was serving in a position as a welder for the employer. On Saturday, June 9, 2007 the claimant apparently suffered an injury while working in the rain. He did not realize that there had been an incident until the following day. On Monday the claimant returned to work. During the next day or two the claimant had a meeting with his superior about matters other than the injury. During the course of that meeting the claimant became angry and engaged in an argument with his supervisor concerning working conditions. The claimant left his job and, subsequently, on June 13, 2007, the claimant saw a physician who directed that the claimant stay away from work for three or four days. When the claimant presented this doctor's note to his employer, another argument ensued and the claimant walked out.

. . .

The issue in this case is whether or not the claimant left work voluntarily with good cause within the meaning of Section 28-44-17 of the Rhode Island Employment Security Act.

. . .

The evidence available in this case does not establish that the claimant had good cause to leave his job under these circumstances. Had the claimant returned to work after the end of his medical leave, he might have been at a better position to address the other issues that he had with respect to working conditions.

Additionally, the Board of Review made additional finding and conclusions:

After review of the official record, the transcript from the Referee's hearing and the testimony before the Board, it is determined that there is substantial credible evidence before the Board to conclude that the claimant has failed to establish good cause to leave his job under Section 28-44-17 of the Act. The claimant asserted that he left because of safety reasons or issues. The credible evidence established that he left over dissatisfaction with his compensation. We conclude that the claimant's concerns over safety would be resolved to his favor, if the employer raised his compensation \$3.00 an hour. There is substantial evidence for the Referee, and the Board, to conclude that the claimant left his job without good cause.

The Referee's decision is based on substantial credible evidence. Therefore, the Board will not substitute its judgment for the referee's determination. We affirm the Referee's findings and conclusions and incorporate said findings and conclusions into this decision, as if fully set forth herein; provided, however, the Board makes the following additional findings. When the claimant presented his doctor's note to the employer, another argument ensued. During the argument the claimant demanded a raise of \$3.00 an hour. When the employer refused, the claimant left his job. The claimant is not eligible for benefits under Section 28-44-17 of the Act.

An individual who leaves work voluntarily must establish good cause for taking that action or else be subject to disqualification under the provisions of Section 28-44-17, which provides:

“28-44-17 - Voluntary leaving without good cause. - An individual who leaves work voluntarily without good cause shall be ineligible for waiting period credit or benefits until he or she establishes to the satisfaction of the director that he or she has subsequent to that leaving had at least eight (8) weeks of work, and in each of those eight (8) weeks has had earnings of at least twenty (20) times the minimum hourly wage as defined in chapter 12 of this title for performing services in employment for one or more employers subject to chapters 42 -- 44, of this title. For the purposes of this section, voluntary leaving work with good cause shall include sexual harassment against members of either sex. For the purposes of this section, voluntarily leaving work without good cause shall include voluntarily leaving work with an employer to accompany, join or follow his or her spouse in a new locality in connection with the retirement of his or her spouse, or failure by a temporary employee to contact the temporary help agency upon completion of the most recent work assignment to seek additional work unless good cause is shown for said failure; provided, however, that the temporary help agency gave written notice to the individual that the individual is required to contact the temporary help agency at the completion of the most recent work assignment to seek additional work.”

The approach to be taken in defining “good cause” was stated in 1964 in Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 201, 200 A.2d 595, 597-98 (1964). The court noted that a liberal reading of good cause would be adopted:

To view the statutory language as requiring an employee to establish that he terminated his employment under compulsion is to make any voluntary termination thereof work a forfeiture of his eligibility under the act. This, in our opinion, amounts to reading into the statute a provision that the legislature did not contemplate at the time of its enactment.

In excluding from eligibility for benefit payments those who voluntarily terminate their employment without good cause, the legislature intended in the public interest to secure the fund from which the payments are made against depletion by payment of benefits to the shirker, the indolent, or the malingerer. However, the same public interest demands of this court an interpretation sufficiently liberal to permit the benefits of the act to be made available to employees who in good faith voluntarily leave their

employment because the conditions thereof are such that continued exposure thereto would cause or aggravate nervous reactions or otherwise produce psychological trauma.

The court, as stated above, rejected the notion that the termination must be “under compulsion” or that the reason therefore must be of a “compelling nature.”

The focus of the additional testimony and legal argument presented to the Board of Review was in support of “safety issues” which claimant offered, with a claim of sexual abuse, as his motivation for quitting on June 13, 2007. (The record from the proceedings before the Board of Review lacked clarity as to the date of separation which is resolved by the doctor’s note. Said lack of clarity was not an issue during the hearing before the Referee several months earlier.) The incidents which were listed were sporadic and spanned 4 – 5 years of claimant’s employment. Workplace safety should always be of paramount importance. A review, however, of the totality of the circumstances under which Mr. Ricci made this claim reveals the Board of Review was not clearly wrong when it rejected as not credible the claim that lack of workplace safety was claimant’s motivation to quit his job.

Working as a welder in the rain the Saturday before an unrelated employee meeting took place was clearly on Mr. Ricci’s mind as events unfolded at that meeting. However the record reveals that was not all that was on his mind and which eventually lead him to quit. Mr. Ricci specifically stated:

“Me and Billy (owner William), uh, talked after I got back from the doctor’s in his office (June 13 per doctor’s note), uh, and just talking about how he wanted me to come back, and *I told him this is what it would take for me to come back cuz I wasn’t happy with the things that were going on in the shop. Uh, we were – I was dealing with*

three new people. Uh, two of the people I couldn't associate with because they were out of control." Referee transcript pg.6

The Board of Review learned at the subsequent hearing from Billy (owner William Newman) that what it would take, according to Mr. Ricci, was a three dollar raise. Board of Review transcript pg. 53.

Whether the reference to the three dollar raise was made before or after the moment of separation is of no consequence. The Board of Review clearly found it probative of the role compensation played as a motive for claimant to quit his job. Such a finding cannot be said to be clearly wrong.

A review of the entire record demonstrates that there is substantial, probative and reliable evidence to support the findings of fact, conclusions and decision of the Board of Review.

On findings of fact, as to the weight of the evidence, this Court shall not substitute its judgment for that of the administrative agency.

The scope of judicial review by the Court is also limited by General Laws section 28-44-54 which, in pertinent part, provides:

28-44-54. Scope of judicial review – Additional Evidence – Precedence of proceedings. – The jurisdiction of the reviewing court shall be confined to questions of law, and in the absence of fraud, the findings of fact by the board of review, if supported by substantial evidence regardless of statutory or common law rules, shall be conclusive.

Upon careful review of the evidence, this Court finds that the decision of the Board was not "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record," and that said decision was not "arbitrary or capricious or characterized by abuse of discretion or clearly

unwarranted exercise of discretion.” Rhode Island General Laws § 42-35-15(g)(5)(6).

Accordingly, the decision of the Board is hereby affirmed.