STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**

SIXTH DIVISION

Abe Moore	:	
	:	
v.	:	**A.A. No. 10 - 211**
	:	
Department of Labor and Training,	:	
Board of Review	:	

ORDER

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings & Recommendations of the Magistrate.

After a de novo review of the record, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto. It is, therefore,

ORDERED, ADJUDGED AND DECREED,

that the Findings & Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the decision of the Board of Review is AFFIRMED.

Entered as an Order of this Court at Providence on this 17th day of March, 2011.

By Order:

Melvin Enright
Acting Chief Clerk

Melvin J. Enright
Acting Chief Clerk

Enter:

Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Abe Moore	:	
	:	
v.	:	**A.A. No. 10 - 0211**
	:	
Department of Labor and Training, Board of Review	:	

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Mr. Abe Moore urges that the Board of Review of the Department of Labor & Training erred when it held that he was ineligible to receive temporary disability insurance (TDI) benefits because he was receiving workers' compensation benefits in Massachusetts. Jurisdiction to hear and decide appeals from decisions made by the Board of Review is vested in the District Court by Gen. Laws 1956 § 28-44-52. This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. For the reasons stated below, I conclude that the instant matter should be affirmed.

FACTS & TRAVEL OF THE CASE

Mr. Abe Moore filed a claim for Temporary Disability Insurance (TDI)

benefits. When the Director learned claimant was receiving workers' compensation benefits in Massachusetts he was disqualified. Claimant filed an appeal and a hearing was set for August 16, 2010 before Referee Stanley Tkaczyk. Referee Tkaczyk issued a decision on August 27, 2010 which included the following findings of fact:

> 2. Findings of Fact:
> The claimant had worked in Massachusetts as well as in Rhode Island through April 10, 2010. On that date the claimant became injured at work on his job in Massachusetts. A worker's compensation claim was filed with the State of Massachusetts. At the same time a claim for Rhode Island Temporary Disability Insurance benefits was filed on his Rhode Island employer. The claimant was awarded Workers' Compensation benefits in the amount $435.34 per week based on his Massachusetts employment. The claimant's weekly benefit rate in Rhode Island was a total of $223.00 per week. The claimant's basis of appeal is that Massachusetts did not consider or commute the Rhode Island wages in the award of Workers' Compensation benefits.

Referee's Decision, August 27, 2010, at 1. Then, the referee pronounced the following statements of conclusion:

> The issue in this case is whether or not the claimant is subject to disqualification under the provisions of section 28-41-6 of the Rhode Island Temporary Disability Insurance Act.
>
> There is no dispute that the injury on which the Temporary Disability Insurance claim was filed in a work-related matter or that the claimant is, in fact, receiving Workers' Compensation benefits.
>
> The statute makes no provision or exception to allow eligibility because a Rhode Island employment wages were not considered in the computation of a Massachusetts claim. The evidence is clear

> that the claimant is in fact receiving Workers' Compensation through the State of Massachusetts, therefore he is subject to disqualification under the provisions of Section 28-41-6 of the Rhode Island Temporary Disability Insurance Act.

Referee's Decision, August 27, 2010 at 1- 2. Accordingly, the Decision of the Director finding claimant to be subject to disqualification pursuant to Gen. Laws 1956 § 28-41-6 was sustained.

Claimant appealed and the matter was considered by the Board of Review. On September 22, 2010, the Board of Review issued a unanimous decision which held that the decision of the referee was a proper adjudication of the facts and the law applicable thereto and adopted the decision of the Referee as its own. Thereafter, claimant filed a timely complaint for judicial review in the Sixth Division District Court.

APPLICABLE LAW

This case centers on the application of the following provision of the Rhode Island Employment Security Act, which enumerates one of the several grounds upon which a claimant may be deemed ineligible to receive unemployment benefits. Gen. Laws 1956 § 28-41-6(a), provides:

> (a) No individual shall be entitled to receive waiting period credit benefits or dependents' allowances with respect to which benefits are paid or payable to that individual under any workers' compensation law of this state, any other state, or the federal government, on account of any disability caused by accident or illness. In the event that workers' compensation benefits are subsequently awarded to an individual, whether on a weekly basis

or as a lump sum, for a week or weeks with respect to which that individual has received waiting period credit, benefits, or dependents' allowances, under chapters 39--41 of this title, the director, for the temporary disability insurance fund, shall be subrogated to that individual's rights in that award to the extent of the amount of benefits and/or dependents' allowances paid to him or her under those chapters. (Emphasis added).
(b) * * *

As one may readily observe, subsection (a) provides an absolute and unconditional bar to the receipt of TDI benefits during a week one is receiving workers' compensation benefits.

STANDARD OF REVIEW

The pertinent standard of review is provided by Gen. Laws 1956 § 42-35-15(g), a section of the state Administrative Procedures Act, which provides:

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.' "[1] The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.[2] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[3]

The Supreme Court of Rhode Island recognized in Harraka v. Board of Review of the Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595, 597 (1964) 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

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1 Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing R.I. GEN. LAWS § 42-35-15(g)(5).

2 Cahoone v. Board of Review of the Dept. of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

3 Cahoone v. Bd. of Review of Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

> 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.

ISSUE

The facts of this case are not in dispute. Instead, a legal question is presented for the Court's consideration — Whether Mr. Moore's claim for TDI benefits in Rhode Island was subject to disqualification pursuant to Gen. Laws 1956 § 28-41-6 because he was also receiving workers' compensation benefits under the laws of the Commonwealth of Massachusetts?

ANALYSIS

In this case claimant Moore asserts that he is not subject to the provision in § 28-41-6 that bars — by its terms, unconditionally — the payment of Temporary Disability Insurance (TDI) benefits to those who are collecting workers' compensation benefits. He bases his exemption request on two uncontested facts: (1) he is collecting workers' compensation in Massachusetts and Massachusetts' law does not allow his Rhode Island earnings to be considered in the calculation of his benefits; and (2) his Rhode Island TDI would be based on his Rhode Island earnings only.[4] Accordingly, he urges that collecting TDI in Rhode Island would be neither unwarranted nor unjust.

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4 Claimant does not assert a right to collect based onthe fact that he is receiving Massachusetts workers' compensation per se. This position

Mr. Moore's position is not unreasonable. As he states in his compelling memorandum, the collection of TDI by Mr. Moore would not constitute unfair or avaricious "double-dipping." See Appellant's Memorandum, at 4. His Massachusetts benefits were calculated without regard to his Rhode Island employment, during which he contributed to Rhode Island TDI system. Unfortunately, the plain language of § 28-41-6 requires that his claim be denied.

Admittedly, this Court's strict application of § 28-41-6 has produced some arguably draconian results. For instance, this Court has held that section 28-41-6 requires a recipient of workers' compensation benefits to be totally barred from receiving TDI benefits. See Eaton v. Department of Employment Security Board of Review, A.A. No. 83-189 (Dist.Ct. 7/29/86)(Higgins, J.)(Claimant, collecting worker's compensation for a job-related injury, applied for TDI for unrelated debilitating condition; District Court holds claimant totally ineligible, based on "explicit" language of § 28-41-6).

This Court has also applied this rule to the situation wherein the worker has been deemed less than 100% disabled by the work injury. See Correia v. Department of Labor and Training Board of Review, A.A. No. 01-134 (Dist.Ct. 3/07/02)(DeRobbio, C.J.)(Where 70% of claimant's disability was attributed to a work-related injury and 30% to a pre-existing condition, the District Court

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would be untenable, because by its language, § 28– 41 - 6 creates a bar to

holds § 28-41-6 completely bars receipt of TDI — slip op. at 6-7) and Mitchell v. Department of Labor and Training Board of Review, A.A. No. 01-082 (Dist.Ct. 4/3/02)(DeRobbio, C.J.).

This Court has also applied § 28-41-6's rule of ineligibility where the claimant was receiving benefits (prior to collecting Massachusetts workers' compensation) from an employer-sponsored short-term disability plan. See Cramer v. Department of Labor and Training Board of Review, A.A. No. 95-211 (Dist.Ct. 9/06/96)(DeRobbio, C.J.). The Board, in reasoning adopted by the District Court, found the claimant ineligible because § 28-41-6 speaks to workers' compensation benefits "paid or payable." (Cramer, slip op. at 5-6).

Many of the District Court cases construing § 28-41-6 have considered its application when there was a commutation[5] of the workers' compensation benefits. See e.g. Vergara v. Department of Labor and Training Board of Review, A.A. No. 99-047 (Dist.Ct. 3/20/00)(DeRobbio, C.J.); Whalen v. Department of Labor and Training Board of Review, A.A. No. 98-001 (Dist.Ct. 6/2/98)(DeRobbio, C.J.). Especially noteworthy is Adelita S. Orefice, Director, v. Department of Labor and Training, Board of Review, and Ronald Patenaude,

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TDI based equally on foreign and Rhode Island workers' compensation.

5 A "commutation" is a lump sum payment to the worker which represents his or her probable future weekly payments. Adelita S. Orefice, Director, v. Department of Labor and Training, Board of Review, and Ronald Patenaude, A.A. No. 04-092 (Dist. Ct.4/3/06)(W. Clifton, J.)(Slip op. at 5).

A.A. No. 04-092 (Dist. Ct. 4/3/06)(W. Cilfton, J.), in which this Court ruled that the application of a commutation precluded the receipt of TDI based on a new and distinct injury. Specifically, Judge Clifton noted that: "The statute is clear and unambiguous and is capable of only one interpretation; no one collecting workers compensation may collect TDI." Orefice (Patenaude), slip op. at 5.

On the other hand, a workers' compensation recipient may claim and receive unemployment benefits, although an offset provision found in § 28-44-19 requires the amount of workers' compensation benefits to be offset against the amount of unemployment benefits received. E.g. McGlynn v. Department of Labor & Training Board of Review, A.A. No. 00-053 (Dist.Ct. 5/17/01) (Cenerini, J.). Some of the cases finding § 28-41-6's bar to be absolute have specifically noted that the TDI act does not include an offset provision analogous to § 28-44-19. See Correia, supra, (Slip op. at 6); Mitchell, supra, (Slip op. at 7).

In sum, this Court has — for 25 years — scrupulously and uniformly applied the bar to the receipt of TDI by a workers' compensation recipient. I do not believe any circumstances are present which would justify a deviation from this Court's firmly held precedents.

Pursuant to Gen. Laws 1956 § 42-35-15(g), the decision of the Board must be upheld unless it was, inter alia, contrary to law, clearly erroneous in light of the substantial evidence of record, or arbitrary or capricious. As stated above, the collection of TDI by Mr. Moore would not be outrageous or improper. However, my personal feelings about the outcome in this case cannot override the plain language of the statute. Accordingly, after reviewing the record below, I find that the Board's decision (adopting the finding of the Referee) that claimant was subject to the section 28-41-6's total bar on the receipt of TDI by one receiving worker's compensation benefits to be correct, not clearly erroneous and not affected by error of law.

CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the Board of Review was not affected by error of law. GEN. LAWS 1956 § 42-35-15(G)(3),(4). Further, it was not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record or arbitrary or capricious. GEN. LAWS 1956 § 42-35-15(G)(5),(6). Accordingly, I recommend that the decision of the Board be AFFIRMED.

Joseph P. Ippolito
MAGISTRATE

MARCH 17, 2011