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

Lisa M. Paradis	:	
	:	
v.	:	**A.A. No. 10-0235**
	:	
Department of Labor & Training,	:	
Board of Review	:	

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this administrative appeal Lisa Paradis urges that the Department of Labor and Training Board of Review erred when it denied her request to receive Employment Security Benefits. Jurisdiction for appeals from the Department of Labor and Training Board of Review is vested in the District Court pursuant to 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. Employing the standard of review applicable to administrative appeals, I find that the decision of the Board of Review finding that the claimant voluntarily left her employment without good cause within the meaning of Gen. Laws 1956 § 28-44-17 is supported by substantial evidence of record and was not affected by error of law; I therefore recommend that the decision of the Board of Review be affirmed.

FACTS & TRAVEL OF THE CASE

Claimant Paradis was employed for eleven years by Avatar, Inc. Her last day of work was June 2, 2010. She filed for Employment Security benefits but on June 17, 2010, the

Director of the Department of Labor and Training found that the claimant had voluntarily left her employment without good cause within the meaning of Gen. Laws 1956 § 28-44-17 and denied the claim. The claimant filed a timely appeal and on September 23, 2010 a hearing was held before Referee Gunter A. Vukic. At the hearing the claimant and two employer representatives appeared and testified. Referee Hearing Transcript dated September 23, 2010 at 1.

In his September 29, 2010 decision the referee made the following findings of fact:

> * * * The claimant worked as an assistant management member in a residential group home servicing male adults with developmental and behavioral conditions. The employer provides twenty-four hour, seven day service. The day shifts are primarily limited based on employment/recreational activities attended off site by the clients. Daytime shifts by management include some direct service activities and largely the bureaucratic support needed.
>
> The claimant was involved in establishing the work schedule at the residential home. The claimant was attempting to have the employer accommodate her with full-time day hours in order to allow her to secure secondary evening employment at a veterinary facility. Options and potential transfers were available to the claimant but did not meet her expectations. May 10, 2010, the claimant gave the employer a written notice that May 22, 2010 would be her last day of work.

Referee's Decision, at 1. Based on these findings, the Referee made the following conclusions:

> In order to show good cause for leaving her job, the claimant must show that the work had become unsuitable or that she was faced with such a situation that left her no reasonable alternative but to resign. The burden of proof rests solely on the claimant. Insufficient testimony and no evidence has been provided to support either of the above conditions.
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> In the instant case, the claimant was largely dissatisfied with the scheduling requirements that interfered with her ability to secure part-time employment at a veterinary facility. It was the subjective opinion by the claimant that the staffing did not meet needs and is without support. The claimant did have the reasonable alternative of continuing her full-time employment or taking such

> reassignment that may or may not have required a demotion and would allow for full-time day hours.
>
> Therefore, I find and determine that the claimant left her job for personal reasons and benefits are denied.

Referee's Decision, at 2. Thus, the referee determined that the Claimant voluntarily left her employment without good cause within the meaning of Section 28-44-17 of the Rhode Island Employment Security Act. Referee's Decision at 2. Accordingly, he affirmed the decision of Director. Id.

The claimant filed a timely appeal on October 12, 2010 and the matter was reviewed by the Board of Review. The Board did not conduct an additional hearing, but instead chose to consider the evidence submitted to the Referee pursuant to General Laws 1956 § 28-44-47. In its decision, dated November 12, 2010, the Board of Review affirmed the decision of the referee, finding it to be an appropriate adjudication of the facts and law applicable thereto and adopted the referee's decision as their own. See Decision Board of Review, November 12, 2010, at 1. Claimant then filed a timely appeal to this court for judicial review on December 10, 2010.

APPLICABLE LAW

This case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically touches on voluntary leaving without good cause; R.I. Gen. Laws § 28-44-17, 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 for the week 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, '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 that failure; 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.

In the case of Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 201, 200 A.2d 595, 597-98 (1964), the Rhode Island Supreme 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.
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> 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.

Later, in Murphy v. Fascio, 115 R.I. 33, 340 A.2d 137 (1975), the Supreme Court elaborated that:

> The Employment Security Act was intended to protect individuals from the hardships of unemployment the advent of which involves a substantial degree of compulsion.
> Murphy, 115 R.I. at 37, 340 A.2d at 139.

and

> * * * unemployment benefits were intended to alleviate the economic insecurity arising from termination of employment the prevention of which was effectively beyond the employee's control."
> Murphy, 115 R.I. at 35, 340 A.2d at 139.

An individual who voluntarily leaves work without good cause is disqualified from receiving unemployment security benefits under the provisions of § 28-44-17. See Powell v. Department of Employment Security, 477 A.2d 93, 96 (R.I. 1984)(citing Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 201, 200 A.2d 595, 597 (1964)). In order to establish good cause under § 28-44-17, the claimant must show that his or her work had become unsuitable or that the choice to leave work was due to circumstances beyond his or her control. Powell, 477 A.2d at 96-97; Kane v. Women and Infants Hospital of Rhode Island, 592 A.2d 137, 139 (R.I. 1991). The question of what circumstances constitute good cause for leaving employment is a mixed question of law and fact, and "when the facts found by the board of review lead only to one reasonable conclusion, the determination of 'good cause' will be made as a matter of law." Rocky Hill School, Inc. v. State of Rhode Island Department of Employment and Training, Board of Review, 668 A.2d 1241, 1243 (R.I. 1995) (citing D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1040 (R.I. 1986)).

STANDARD OF REVIEW

Judicial review of the Board's decision by the District Court is authorized under § 28-44-52. The standard of review which the District Court must apply is set forth under G.L. 1956 § 42-35-15(g) of the Rhode Island Administrative Procedures Act ("A.P.A."), which provides as follows:

> The court shall not substitute its judgment for that of the agency as to 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.

The scope of judicial review by this Court is limited by § 28-44-54, which, in pertinent part, provides:

> 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. 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, 588, 410 A.2d 425, 428 (1980) (citing § 42-35-15(g)(5)).

Stated differently, this Court will not substitute its judgment for that of an agency 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, 506, 246 A.2d 213, 215 (1968). "Rather, the court must confine itself to review of the record to determine whether "legally competent evidence" exists to support the agency decision." Baker v. Department of Employment & Training Bd. of Review, 637 A.2d 360, 363 (R.I. 1993) (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). "Thus, the District Court may reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record." Baker, 637 A.2d at 363.

ANALYSIS

In this case, the Board determined that claimant left her job without good cause within the meaning of § 28-44-17 of the Rhode Island Employment Security Act. I believe this finding is supported by substantial evidence. It is uncontested that claimant quit her job. The only question is whether she did so with good cause.

According to claimant, she quit because she was working too many hours. She told the Department's interviewer that she quit because "[w]e were very short staffed and I was working six days a week. I was being compensated for my times (sic), but I felt it was too much work for me. I did not want to work that much any longer." Exhibit Department's 1, at 1. At the hearing before the Referee, she testified at length, and when her testimony was over, the record was a something of a jumble. Eventually, Referee Vukic put the question directly:

> Ref: * * * What caused you to resign, ma'am?
>
> * * *
>
> CLT: Because hours – have to do with my own hours as well as being short staffed. So those are all hours-related. Some have to do with me. Because I had to fill those hours. I did ask, Can I just keep these shifts? Because I had been filling them in?

Referee Hearing Transcript, at 22. She explained further that she preferred to keep Tuesday through Saturday. Id.

In her long testimony, Ms. Paradis testified that she was working 43-46 hours per week. Referee Hearing Transcript, at 12. As a result, she attempted to speak to her supervisors regarding supervisors about staff ratio. Referee Hearing Transcript, at 23. She

was spending money on gas and tires, going from one installation to another. Referee Hearing Transcript, at 17.

In my view, scheduling difficulties would not be sufficient to provide a factual basis for a finding that Ms. Paradis was required to quit " * * * because of circumstances that were effectively beyond [her] control[,]" , which is a necessary predicate to a finding of good cause under section 17. See Powell v. Department of Employment Security, 477 A.2d 93, 97 (R.I. 1984).

Scheduling issues are not generally regarded as a good reason to immediately quit under section 17. If she quit because she was working too many hours, this would not constitute good cause because she would have the alternative to quitting: which would be to maintain the job at Avatar while looking for more suitable work. Moreover, she discussed her issues with her supervisor, Mr. Kevin McKenna, on April 28, 2010, and she conceded things got "somewhat" better thereafter. Referee Hearing Transcript, at 24, 28. In spite of this, she submitted her resignation on May 10, 2010.

In light of these factors, I find that the Referee's finding that claimant lacked a good reason to quit within the meaning of section 17 is not clearly erroneous. Because the referee's conclusions are supported by substantial evidence, I must recommend that the referee's decision (which was adopted as the decision of the Board of Review) be affirmed.[1]

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[1] Nothing in my analysis, in whole or in part, should be taken as an implied criticism of Ms. Paradis decision to quit her position. Leaving a job is a life decision as well as an economic one. Neither I nor the referee is in a position to judge the wisdom of the undoubtedly difficult decision Ms. Paradis made to leave Avatar. My focus here is solely on the standard for quitting established in section 28-44-17 and the cases that have construed that statute.

CONCLUSION

After a through review of the entire record, this Court finds that the Board's decision to deny claimant Employment Security benefits under § 28-44-17 of the Rhode Island Employment Security Act was not "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record" 42-35-15(g)(3)(4). Neither was said decision "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Section 42-35-15(g)(5)(6). On findings of fact and as to the weight of the evidence, this Court shall not substitute its judgment for that of the administrative agency. Substantial rights of the claimant have not been prejudiced. Accordingly, I recommend that the decision of the Board be affirmed.

Joseph P. Ippolito
Magistrate

January 11, 2011

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. DISTRICT COURT
SIXTH DIVISION

Lisa M. Paradis	:	
	:	
v.	:	**A.A. No. 10 – 0235**
	:	
Department of Labor & 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 and the memoranda of counsel, 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 11 day of January, 2011.

By Order:

Melvin J. Enright
Acting Chief Clerk

Melvin Enright
Acting Chief Clerk

Enter:

Jeanne E. LaFazia
Chief Judge