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

Catherine E. Conaty	:	
	:	
v.	:	A.A. No. 11-0150
	:	
Department of Labor & Training,	:	
Board of Review	:	

O R D E R

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 appellate panel of the Traffic Tribunal is AFFIRMED.

Entered as an Order of this Court at Providence on this 16th day of December, 2011.

By Order:

____/s/_____
Clerk

Enter:

__/s/_____
Jeanne E. LaFazia
Chief Judge

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F I N D I N G S & R E C O M M E N D A T I O N S

Ippolito, M. In this administrative appeal Catherine E. Conaty 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 Conaty was employed as a charge nurse for three and one-half years at the Rhode Island Veterans' Home. Her last day of work was February 15, 2011. In May she filed for Employment Security benefits but on June 16, 2011, 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 August 2, 2011 a hearing was held before Referee Carol Gibson. At the hearing the claimant was the sole witness. Referee Hearing Transcript dated August 2, 2011 at 1.

In her August 25, 2011 decision the referee made the following findings of fact:

> The claimant had worked for the employer, the Rhode Island Veteran's Home, for approximately three and a half years as a charge nurse. The claimant states that she may have last worked on February 8, 2011 but the record indicates her last day of work was February 15, 2011. On her last day of employment the claimant was called into a meeting with the Director of Nursing and her manager. The claimant states that she was not treated appropriately in this meeting and that the employer was addressing issues they had with her. The claimant was not counseled or warned during this meeting. The claimant states that she left the meeting upset over how she had been treated. The claimant did not return to work after that date. The claimant called out of work sick until she could see her doctor who was away. The claimant's doctor excused her from work from February 24, 2011 until March 17, 2011. On March 17, 2011, the claimant submitted written notice that she was leaving her job. The claimant was concerned over how she had been treated by the employer and she believed if she returned to work there would be further issues in the workplace. The claimant did not address these issues with the employer or her union before making the decision to leave her job.

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

conclusions:

> In order to show good cause for leaving a job, the claimant must show that the work had become unsuitable or that she was faced with no reasonable alternative but to resign. The burden of proof rests solely with the claimant. In this case, the claimant has not sustained this burden. The record is void of any evidence to indicate that either of the above situations existed in this case, the claimant left her job due to issues in the workplace that were not addressed with the employer. This circumstance does not constitute good cause within the meaning of Section 28-44-17 of the Act and benefits may not be allowed on this issue.

Referee's Decision, at 2. Thus, the Referee determined that Ms. Conaty 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, she affirmed the decision of Director. Id., at 3.

The claimant filed a timely appeal on September 8, 2011 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 September 26, 2011, 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, September 26, 2011, at 1. Claimant then filed an appeal to this court for judicial review.

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.
>
> 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. I conclude she did not.

At the hearing before the Referee claimant explained, mostly in narrative form, why she left her position at the Veterans Home. She described being called into a meeting on February 8, 2011 with her supervisor and the Director of Nursing. Referee Hearing Transcript, at 8 et seq. The Director of Nursing was concerned that claimant had consulted with a payroll person, instead of with him, as to why she had not received "charge pay." Referee Hearing Transcript, at 9.

During the same meeting claimant questioned why she had not been invited to a meeting with "the Alliance" regarding a new patient. Referee Hearing Transcript, at 10.

Claimant asserted that at this point in the conversation her supervisor said she should have "shut her mouth." Referee Hearing Transcript, at 11. She termed this abusive and harassment. Id. Claimant conceded she did not complain about this treatment but also noted the Director of Nursing just sat there and said nothing. Referee Hearing Transcript, at 11-12. Finally, the Director of Nursing inquired of claimant why she was working overtime and she responded. Referee Hearing Transcript, at 13 et seq. After the meeting she returned to work and, at the end of her shift, went home. Referee Hearing Transcript, at 17.

Claimant testified that she was upset about the meeting. Referee Hearing Transcript, at 17. However, she did not contact the union. Referee Hearing Transcript, at 23. She called in sick for a number of days and then obtained an excuse from her doctor covering the period from February 24, 2011 through March 17, 2011. Referee Hearing Transcript, at 18. However, her doctor did not recommend that she terminate her employment. Referee Hearing Transcript, at 24. Claimant conceded she was not disciplined or warned of possible discipline during the meeting. Referee Hearing Transcript, at 15, 24. In fact, claimant closed her testimony by stating — "I enjoyed working at the Veterans Home. And the care there is very good. But they do have problems in communication." Referee Hearing Transcript, at 27.

Based on the foregoing review of the transcript, I am satisfied that the Referee's Findings of Fact are fully supported by the record in this case. See Referee's Findings of Fact, supra at 2. I must also find that the Referee's Conclusions are also supported by the record.

After examining her testimony, it appears Ms. Conaty quit because of issues regarding the manner in which she was addressed. Although she testified the Director of Nursing observed one offensive incident, it is not clear claimant communicated the extent of her distress. Similarly, she failed to seek redress through the union — going over the head of her representative, whom she alleged offended her. Quite simply, it appears she had alternatives to becoming unemployed.

In light of these factors, I find that the Referee's finding that claimant lacked good reason to quit within the meaning of section 17 is not clearly erroneous. While claimant's testimony, if credited and believed, included instances of rude behavior, nothing described rose to the standard of unsuitability cited in the Powell decision, supra at 5. Because the Referee's conclusions are supported by substantial evidence, I must recommend that her decision (which was adopted as the decision of the Board of Review) be affirmed by this Court.

CONCLUSION

After a thorough 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." Gen. Laws 1956 § 42-35-15(g)(3)(4). Neither was said decision "arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion." Gen. Laws 1956 § 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.

_____/s/_____
Joseph P. Ippolito
Magistrate

December 16, 2011