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

Sabrina Ramos	:	
	:	
v.	:	**A.A. No. 2011 – 0032**
	:	
Department of Labor and Training,	:	
Board of Review	:	

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

Ippolito, Magistrate. Ms. Sabrina Ramos filed the instant complaint for judicial review of a final decision of the Board of Review of the Department of Labor & Training, which held that she was not entitled to receive employment security benefits because it had been proven that she was terminated for misconduct. Jurisdiction for appeals from the decision of the Department of Employment and Training Board of Review is vested in the District Court by General 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 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

The facts and travel of the case are these: Ms. Sabrina Ramos was employed by PRI XVIII d/b/a Westin Hotel for three years until she was discharged on August 9, 2010. She applied for unemployment benefits but on September 13, 2010 the Director of the Department of Labor & Training determined her to be disqualified from receiving benefits pursuant to General Laws 1956 § 28-44-18 because she was terminated for misconduct — specifically, insubordination.

Ms. Ramos filed an appeal and a hearing was held before Referee Stanley Tkaczyk on January 19, 2011. On January 21, 2010, the Referee held that Ms. Ramos was disqualified from receiving benefits because her actions constituted proved misconduct. In his written Decision, the referee found the following facts:

> The claimant had worked for this employer a period of three years in the housekeeping department. The incident resulting in the claimant's termination occurred on July 31, 2010. On that date, the claimant did have a confrontation with the director of housekeeping. During the course of that confrontation, it became heated and the claimant did refuse to follow directives of that individual as well as refusal to accept the authority of that individual. As a result, she was initially suspended and subsequently terminated.

Decision of Referee, January 21, 2011 at 1. Based on these facts, the referee came to the following conclusion:

> * * *
> The weight of the evidence presented establishes the claimant was discharged for insubordination when she refused to follow the directives or to accept the authority of the individual giving those directives. The termination resulting is under disqualifying conditions and benefits must be denied on this issue.

Decision of Referee, January 21, 2011 at 2. The claimant appealed and the matter was reviewed by the Board of Review. On March 24, 2011, a majority of the members of the Board of Review issued a decision in which the decision of the referee was found to be a proper adjudication of the facts and the law applicable thereto; accordingly, the referee's decision was adopted as the decision of the Board. Decision of Board of Review, March 24, 2011, at 1. The Member Representing Labor dissented.

Finally, Ms. Ramos filed a complaint for judicial review in the Sixth Division District Court on March 30, 2011.

APPLICABLE LAW

This case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically addresses misconduct as a circumstance which disqualifies a claimant from receiving benefits; Gen. Laws 1956 § 28-44-18, provides:

> **28-44-18. Discharge for misconduct. ---** An individual who has been discharged for proved misconduct connected with his or her work shall become ineligible for waiting period credit or benefits for the week in which that discharge occurred and until he or she establishes to the satisfaction of the director that he or she has, subsequent to that discharge, had at least eight (8) weeks of work, and in each of that 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. Any individual who is required to leave his or her work pursuant to a plan, system, or program, public or private, providing for retirement, and who is otherwise eligible, shall under no circumstances be deemed to have been discharged for misconduct. If an individual is discharged and a

> complaint is issued by the regional office of the National Labor Relations board or the state labor relations board that an unfair labor practice has occurred in relation to the discharge, the individual shall be entitled to benefits if otherwise eligible. For the purposes of this section, "misconduct" is defined as deliberate conduct in willful disregard of the employer's interest, or a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence. Notwithstanding any other provisions of chapters 42 – 44 of this title, this section shall be construed in a manner that is fair and reasonable to both the employer and the employed worker.

In the case of Turner v. Department of Employment and Training, Board of Review, 479 A.2d 740, 741-42 (R.I. 1984), the Rhode Island Supreme Court adopted a definition of the term, "misconduct," in which they quoted from Boynton Cab Co. v. Newbeck, 237 Wis. 249, 259-60, 296 N.W. 636, 640 (1941):

> 'Misconduct' * * * is limited to conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the statute.

The employer bears the burden of proving by a preponderance of evidence that the claimant's actions constitute misconduct as defined by law.

STANDARD OF REVIEW

The standard of review is provided by Gen. Laws 1956 § 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.' "[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 Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595,

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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, 246 A.2d 213 (1968).

[3] 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).

597 (1964) that a liberal interpretation shall be utilized in construing 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.

ISSUE

The issue before the Court is whether the decision of the Board of Review denying benefits to Ms. Ramos was supported by reliable, probative, and substantial evidence in the record or whether or not it was clearly erroneous or affected by error of law.

ANALYSIS

At the outset of my analysis, I must note that the District Court has repeatedly held that acts contemptuous of employer authority — whether labeled insubordination or not — can be deemed to constitute misconduct. See Karen Cute v. Department of Employment Security Board of Review, A.A. No. 85-399 (Dist.Ct. 8/18/86)(Beretta, J.)(Slip op. at 3)(Board found claimant motel desk clerk not entitled to benefits; Affirmed, where claimant was ordered to leave supervisor's

office during discussion of vacation schedule and did not). More recently, see e.g. Elma Valderama v. Department of Employment and Training Board of Review, A.A. No. 10-217 (Dist.Ct. 3/8/11)(Slip opinion at 6-8). Certainly, insubordinate acts are destructive of the particular supervisor-worker relationship and corrosive to workplace harmony generally.

By adopting the decision of the Referee as its own, the Board embraced the referee's conclusion that claimant was terminated[4] because "* * * refused to follow the directives or to accept the authority of the individual giving those directives." See Referee's Decision at 2, quoted supra page 2. The question of law and fact before the District Court is whether the record contains reliable, probative and substantial evidence supporting this finding or whether it is clearly erroneous. Based on the evidence in the record I shall recount, I believe Referee Tkaczyk's finding is very much supported in this record.

The employer presented three witnesses in an effort to meet its burden of proving misconduct.

The first was Ms. Lauren Minutoli, the Director of Human Resources. Referee Hearing Transcript, at 5 et seq. She explained that on July 31, 2010, Ms. Ramos asked the Director of Housekeeping if she could leave for the day. Referee

[4] Claimant has presented documents to show that she was subsequently reinstated. This does not change our analysis because this Court has held that — for purposes of section 18 — a suspension is the same as a termination. See Rhode Island Board of Governors for Higher Education v. Department of Employment and Training Board of Review, A.A. No. 95-23 (Dist.Ct. 2/9/1996)(DeRobbio, C.J.)(Slip op. at 2, 5-6).

Hearing Transcript, at 8. When he said no, she got upset and the matter escalated into a confrontation in front of other employees, resulting in security being summoned, and claimant was escorted off the property. Referee Hearing Transcript, at 8-10. On August 3, 2010, Ms. Minutoli began to investigate the matter. Referee Hearing Transcript, at 10. Ms. Minutoli met with claimant, who apologized for raising her voice. Referee Hearing Transcript, at 11. She also gave a written statement. Id. She continued claimant's suspension. Referee Hearing Transcript, at 12. Ms. Minutoli indicated that her investigation revealed that the managers maintained decorum while Ms. Ramos was being loud. Referee Hearing Transcript, at 12-13. As a result of the investigation, claimant was terminated. Referee Hearing Transcript, at 19. See also Employer's Exhibit 2.

Next, Mr. Chris Buonocore — the Director of Housekeeping — testified. Referee Hearing Transcript, at 20 et seq. He indicated that at about 9:15 or so in the morning of July 31, 2011, he was handing out assignments and room keys when Ms. Ramos approached him asking to go home. Referee Hearing Transcript, at 21. He told her he would deal with her afterwards. Id. She accused him of treating her like a child. Referee Hearing Transcript, at 22. After some urgings from her co-workers, she eventually went to the back of the line, got her beeper and assignments, and made no further request to go home. Id. She then returned, complaining about the assignments being given out. Id. She got louder and louder, despite being asked to refrain. Referee Hearing Transcript, at 23. She responded by saying she can say — "what she wants, when she wants, and where she wants." Id.

She refused to go upstairs and accused Mr. Buonocore of being "like a little bird chirping in her ear." Id. She did not calm down even though several of her co-workers asked her to calm down and go upstairs. Referee Hearing Transcript, at 23-24, 27. When Mr. Buonocore warned her that she would be sent home if she did not calm down and go upstairs, she continued yelling and screaming. Referee Hearing Transcript, at 24. Mr. Buonocore described this incident as lasting ten to fifteen minutes. Referee Hearing Transcript, at 27. Finally, he called security because he was sending her home for the day for insubordination. Id.

Finally, Donna Goldberg, Housekeeping Supervisor, briefly testified and corroborated Mr. Buonocore's testimony. Referee Hearing Transcript, at 30. She added that she tried to calm Ms. Ramos down and claimant told her to mind her own business. Referee Hearing Transcript, at 30-31.

In response, claimant testified. See Referee Hearing Transcript, at 31 et seq.. She indicated that she came in on Saturday the 31st and waited to speak to Mr. Buonocore and he refused to let her go home. Referee Hearing Transcript, at 31. She got her key and — because she had been assigned an "extra" cart — she had to add certain supplies. Referee Hearing Transcript, at 32. Although she admitted questioning the assignment of another employee to project duty, she denied being disrespectful. Referee Hearing Transcript, at 33. She indicated she was concerned Mr. Buonocore would touch her. Referee Hearing Transcript, at 34. She implicitly admitted to telling Ms. Goldberg to mind her business. Id. She then narrated what she discerned to be confusion about whether she was being suspended or not.

Referee Hearing Transcript, at 35-37. At the conclusion of her direct examination, she stated she felt she was being pushed and harassed by Mr. Buonocore; she denied being insubordinate. Referee Hearing Transcript, at 38.

On cross-examination, claimant denied she was insubordinate, indicating that she apologized to avoid "hard feelings." Referee Hearing Transcript, at 41. She felt there was "favoritism in handing out the assignments. Referee Hearing Transcript, at 43.

Clearly, the referee accepted the employer's version of the events which led to Ms. Ramos's termination: that Mr. Buonocore's efforts to distribute assignments had been disrupted by claimant's conduct. Without specifically stating, he also seems to have accepted Ms. Goldberg's testimony that claimant was also disrespectful toward her. Accordingly, the Referee found that claimant's actions — i.e., being disrespectful to two supervisors and disrupting its operation — were undertaken in willful disregard for her employer's best interests and that the employer met its burden of proving misconduct as defined in the Act. See section 28-44-18, quoted supra at 3-4.

Pursuant to the applicable standard of review described supra at 4-5, 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. This Court is not permitted to substitute its judgment for that of the Board as to the weight of the evidence; accordingly, the findings of the agency must be upheld even though a reasonable fact-finder might have reached a contrary result. Indeed, I

find that the employer testimony presented in this case provided an ample basis for the Referee's finding of misconduct, which was clearly supported by reliable, probative and substantial evidence of record and was not clearly erroneous.

Therefore, applying the applicable standard of review and the definition of misconduct enumerated in Turner, supra, I must recommend that this Court hold that the Board's finding that claimant's discharge (which was ultimately reduced to a suspension) was based on proved misconduct in connection with her work is well-supported by the testimony and evidence of record and should not be overturned by this Court.

CONCLUSION

Upon careful review of the evidence, I find that the decision of the Board of Review is not affected by error of law. GEN. LAWS 1956 § 42-35-15(G)(3),(4). Further, it is also not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; nor is it arbitrary or capricious. GEN. LAWS 1956 § 42-35-15(G)(5),(6).

Accordingly, I recommend that the decision of the Board of Review be AFFIRMED.

/s/
Joseph P. Ippolito
Magistrate

May 24, 2011

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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 Board of Review is AFFIRMED.

Entered as an Order of this Court at Providence on this 24th day of May, 2011.

By Order:

___/s/_____
Melvin Enright
Acting Chief Clerk

Enter:

__/s/_____
Jeanne E LaFazia
Chief Judge