STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Linda Harr and	:	
Patricia Calitri	:	
	:	
v.	:	**A.A. No. 11 - 127**
	:	
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 decisions of the Board of Review are AFFIRMED.

Entered as an Order of this Court at Providence on this _5th__ day of March, 2013.

By Order:

_____/s/_____
Stephen C. Waluk
Chief 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. While the great majority of applicants for unemployment benefits file their claims forthwith after their termination from a position, some do not. For instance, some file for unemployment benefits after collecting worker's compensation benefits based on a work-related injury. In fact, a provision of the Employment Security Act specifically enables such claims by allowing them to be backdated to the date of injury.[1]

[1] Absent the backdating procedure, such claims would be doomed to failure for what is known as monetary ineligibility. See Gen. Laws 1956 § 28-44-11. This is true because all such claimants would be found to have insufficient

But the provisions which, taken together, permit the backdating of claims for those who have collected worker's compensation have restrictions — one of which is that the claimant must be able to return to work while he or she still enjoys the "right to reinstatement" as defined in the Rhode Island Worker's Compensation law. And according to the Board of Review, it was this provision which barred the backdating of the claims of the appellants in the instant case, Ms. Harr and Ms. Calitri. As a result, they come to this Court — not asserting that the Board of Review misapplied the law — but urging the application of the reinstatement rule to them violated their rights to equal protection of law as guaranteed by the fourteenth amendment to the United States Constitution. On this basis, they urge this Court to vacate the Board of Review decisions denying them 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. After a review of the entire record, I find that the provision in question is not unconstitutional as

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(if any) earnings in the period before the claim was filed (known as the "base period") because the claimants were not working but collecting worker's compensation benefits.

applied to appellants; I further find that the pertinent provisions of the Employment Security Act and the Workers' Compensation law were properly applied in each case. I therefore recommend that the decisions of the Board of Review denying benefits to Ms. Harr and Ms. Calitri be affirmed.

I. FACTS & TRAVEL OF THE CASE

As stated above, two separate decisions of the Board of Review have been included in this case. In order to avoid unnecessary confusion, I shall first focus on the factual background pertaining to Ms. Linda Harr and then turn to that regarding Ms. Patricia Calitri.

A. Linda Harr.

Ms. Harr was working as a paralegal until January 30, 2009 when, as a result of a work-related injury she had suffered in 2007, she became incapacitated and began to receive worker's compensation benefits. Although she was medically released to return to work in August of 2010, she continued to collect worker's compensation benefits until her settlement date — January 5, 2011. Referee Hearing Transcript, at 8-9. Because her prior position no longer existed (her employer having retired), she filed a claim for unemployment benefits on January 8, 2011. Id., at 9-22.

In conjunction with the filing of her claim, Ms. Harr requested that the Director "backdate" her base period[2] to the date of her injury, as is permitted in cases where an applicant for unemployment benefits had been receiving workers' compensation. See Gen. Laws 1956 § 28-42-3(3). Such an adjustment was critical to her claim, because if the Director used the normal base period — roughly the twelve-month period prior to the filing of her claim — she could have collected nothing, since she was not working in that period but collecting workers' compensation benefits; her lack of earnings would render her monetarily ineligible and her claim would fail.

But the Department, in a decision rendered by a designee of the Director, declined to grant her request for backdating, relying upon subsection 28-42-3(3) of the Employment Security Act and — a provision of the Worker's Compensation law cross-referenced therein, paragraph 28-33-47(c)(1)(vi). See Director's Decision, February 17, 2011, at 1 and Department's Exhibit No. D2A. The Department ruled that her base period could not be backdated

[2] At this juncture we may pause to note that unemployment benefits are not granted to all those who are out of work. There are prerequisites too numerous to mention here. As mentioned above, one such precondition to receiving benefits is that the claimant had sufficient earnings in what is denominated a "base period." Because contributions to the fund are assessed to employers on the basis of the amount of hours worked by their employees, the liquidity of the unemployment fund is thereby assured.

because her right of reinstatement had lapsed one year from her date of her injury, because she had not achieved maximum medical improvement within that year. Id. Because her base period was not backdated and because she had no income in the base period, she was declared monetarily ineligible. Id. Ms. Harr appealed and a hearing was held before Referee Gunter A. Vukic on June 2, 2011, which was attended by Ms. Harr and a representative of the Department. See Referee Hearing Transcript, at 1.

In his decision, issued on June 20, 2011, the Referee held that the right to have one's claim for unemployment benefits backdated to the date of injury is dependent on the claimant showing that — at the time she filed for unemployment benefits — she still enjoyed "the right to reinstatement" to her prior position as that term is defined under subsection 28-33-47[3] of the Worker's Compensation law. Like the Director, Referee Vukic declared that the right of reinstatement expires in one year unless the claimant reaches her maximum level of medical improvement within that same year. He then found that Ms. Harr had not reached a maximum level of improvement within one year of the date injury. See Referee's Decision, June 20, 2012, at 2. Accordingly,

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[3] Subdivision 28-33-47(c)(1) enumerates the parameters of the right to reinstatement.

Referee Vukic affirmed the Director's decision finding that she was not entitled to have her base year backdated. Referee's Decision, at 2.

An appeal was taken and the Board of Review affirmed the Referee's ruling in a decision dated August 24, 2011. Ms. Harr filed a Petition within the Sixth Division District Court on September 23, 2011.

On January 17, 2012, the Court entered an order remanding Ms. Harr's matter to the Board of Review.[4] On May 24, 2012, the Board issued a second decision confirming its judgment that Ms. Harr was ineligible for benefits. On July 31, 2012 Ms. Harr filed an Amended Complaint with this Court.

B. Patricia Calitri.

Ms. Patricia Calitri was employed for five years as a store manager for Chico's fashions until October 21, 2009, when she suffered a job-related injury. Referee's Decision, at 1. She received workers' compensation benefits. Id. Ms. Calitri filed a claim for unemployment benefits on September 11, 2011. Id.

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[4] The Court's chief purpose in remanding the case was for the Board to determine if any of the other preconditions to the right of reinstatement applied to Ms. Harr. See Gen. Laws 1956 § 38-33-47(c)(1). Unfortunately, this intention was not reflected in the order of remand entered by the Court. In any event neither Ms. Harr nor Ms. Calitri have asserted that any provisions which might extend the right to reinstatement apply in their cases.

In conjunction with the filing of her claim, Ms. Calitri requested that her claim be backdated. Consistent with the approach it had taken months earlier in Ms. Harr's case, the Department denied this request, finding that Ms. Calitri did not reach her maximum level of medical improvement within one year, as is required by Gen. Laws 1956 § 28-33-47(c)(1)(vi). See Director's Decision, November 4, 2011, at 1, contained in record as Exhibit Director's D2.

Ms. Catiltri appealed and a hearing was held before Referee John R. Palangio on December 14, 2011. In his decision, issued that same day, Referee Palangio, after citing section 28-42-3(3), announced the following conclusion:

> In this case, the claimant failed to meet a maximum evel of improvement within one year of the date of injury.
> Therefore, the claimant is not eligible to have her base period backdated to the date of injury.

Referee's Decision, December 14, 2011, at 1. Ms. Calitri filed a further appeal and the Board of Review affirmed the Referee's ruling in a decision dated January 25, 2012. Thereafter, a further hearing involving argument was held before the Board of Review. On this occasion, the Board made the following comments regarding claimant's argument in favor of backdating her claim:

> The Employment Security benefits, which the claimant is seeking, are funded by employers from a tax paid by the employers through an Employment Security insurance program. It is within the purview of the Legislature to establish, through the Director,

> the eligibility for the benefits paid for by a tax levied on employers.

Board of Review Decision, May 24, 2012, at 1. On July 31, 2012, Ms. Calitri filed her Complaint for judicial review in the District Court.

II. STANDARD OF REVIEW

The standard of review which this Court must employ 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.' "[5] The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.[6] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[7]

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, 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

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[5] 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).

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

[7] 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).

it permit this court to enlarge the exclusionary effect of expressed restrictions on eligibility under the guise of construing such provisions of the act.

III. APPLICABLE LAW

Three provisions of the Rhode Island General Laws are especially pertinent to the proper resolution of this case. The first two are found in the Employment Security Act; the third is a component of the Rhode Island's Worker's Compensation law.

1. The Earnings Requirement.

The first provision of the Employment Security Act that is pertinent to our inquiry is section 28-44-11. Although not cited in the Referee's Decision, it is crucial to the outcome of this case. Section 11 provides that applicants for employment security benefits must satisfy an earnings requirement.

> **28-44-11. Earnings requirement for benefits. —** (a)(rule for pre-1989 claims omitted) * * *
> (b)(1) In order to be deemed eligible for benefits an individual whose benefit year begins on or after October 1, 1989:
> (i) Must have been paid wages in any one calendar quarter of the base period which are at least two hundred (200) times the minimum hourly wage as defined in chapter 12 of this title, and must have been paid wages in the base period amounting to at least one and one-half (1½) times the wages paid to the individual in that calendar quarter of the base period in which the individual's wages were highest; provided, that the minimum amount of total base period wages paid to the individual must be at least four hundred (400) times the minimum hourly wage as defined in chapter 12 of this title. The base period wages must have been paid to the individual for performing services in

> employment for one or more employers subject to chapters 42 -- 44 of this title; or
>
> (ii) Must have been paid wages in the base period for performing services in employment for one or more employers subject to chapters 42 -- 44 of this title amounting to at least three (3) times the total minimum amount required in paragraph (i) of this subdivision.
>
> * * *

It must be remembered that the employment security system is regarded as an insurance program, not a welfare program. By including an earnings requirement, the legislature has ensured that a recipient of unemployment benefits has had a recent employment history of such strength that it was worth insuring and that, since the contributions are paid on the basis of a weekly payroll, that a certain amount of premiums have been paid on behalf of the claimant. The earnings are measured in a time frame known as the "base period" — which is itself defined in a separate statutory provision.

2. Definition of "Base Period."

The second statute we must consider is subsection 28-42-3(3), which is cross-referenced in section 11 and which defines the term "base period:"

> **28-42-3. Definitions. —** The following words and phrases, as used in chapters 42 -- 44 of this title, have the following meanings unless the context clearly requires otherwise:
>
> * * *
>
> (3) "Base period", with respect to an individual's benefit year means the first four (4) of the most recently completed five (5) calendar quarters immediately preceding the first day of an

> individual's benefit year. For any individual's benefit year and for any individual deemed monetarily ineligible for benefits for the "base period" as defined in this subdivision, the department shall make a re-determination of entitlement based upon the alternate base period which consists of the last four (4) completed calendar quarters immediately preceding the first day of the claimant's benefit year. Notwithstanding anything contained to the contrary in this subdivision, the base period shall not include any calendar quarter previously used to establish a valid claim for benefits; provided, that notwithstanding any provision of chapters 42 -- 44 of this title to the contrary, for the benefit years beginning on or after October 4, 1992, whenever an individual who has received workers' compensation benefits is entitled to reinstatement under § 28-33-47, but the position to which reinstatement is sought does not exist or is not available, the individual's base period shall be determined as if the individual filed for benefits on the date of the injury; * * *. (Emphasis added)

Thus, the basic definition of base period furnished in subsection 28-42-3(3) is — the first four of the five most recent calendar quarters preceding the start of receiving benefits; alternatively, it may be the most recent four calendar quarters prior to the receipt of benefits. But, a specific provision encompasses the scenario in which a worker files a claim for unemployment benefits after having previously collected workers' compensation; it provides that when a person who has been receiving worker's compensation benefits attempts to return to work — but his or her position is unavailable — the base period may be set back to the date of the injury. However, such backdating is dependent on the

claimant's being "entitled to reinstatement" under section 28-33-39. We shall now examine this latter provision in greater detail.

3. Limitations on the Right to Reinstatement.

The final provision of the General Laws which is critical to an understanding of this controversy is section 28-33-47, which provides, in pertinent part:

> **28-33-47. Reinstatement of injured worker. —** (a) A worker who has sustained a compensable injury shall be reinstated by the worker's employer to the worker's former position of employment upon written demand for reinstatement, if the position exists and is available and the worker is not disabled from performing the duties of the position with reasonable accommodation made by the employer in the manner in which the work is to be performed. A workers' former position is "available" even if that position has been filled by a replacement while the injured worker was absent as a result of the worker's compensable injury. If the former position is not available, the worker shall be reinstated in any other existing position that is vacant and suitable. A certificate by a treating physician that the physician approved the worker's return to the worker's regular employment or other suitable employment shall be prima facie evidence that the worker is able to perform the duties.
>
> (b) * * *.
>
> (c) Notwithstanding subsection (a) of this section:
>
> (1) The right to reinstatement to the worker's former position under this section terminates upon any of the following:
>
> (i) * * *;
> (ii) * * *;
> (iii) * * *;
> (iv) * * *;
> (v) * * *;

> (vi) The expiration of thirty (30) days after the employee reaches maximum medical improvement or concludes or ceases to participate in an approved program of rehabilitation, or one year from the date of injury, whichever is sooner, provided, in the event a petition to establish liability for an injury is filed, but not decided within one year of the date of the injury, within twenty-one (21) days from the first finding of liability. Notwithstanding the foregoing, where the employee is participating in an approved program of rehabilitation specifically designed to provide the employee with the ability to perform a job for which he or she would be eligible under subsection (a) of this section, the right of reinstatement shall terminate when the employee concludes or ceases to participate in the program or eighteen (18) months from the date of injury, whichever is sooner. (Emphasis added).

Thus, under subdivision (c)(1), the right of reinstatement terminates at various times based on various eventualities — most of which are not quoted above since they are immaterial to the case at bar. Even under the single paragraph quoted above — paragraph (c)(1)(vi) — the right of reinstatement may be determined to cease in five different ways.

IV. ISSUE

The issue before the Court is whether the decisions of the Board of Review were supported by reliable, probative, and substantial evidence in the record or whether or not it was clearly erroneous or affected by error of law. More precisely, were Claimants Harr and Calitri properly ruled monetarily

ineligible to receive unemployment benefits based on a determination that their base periods should not be backdated?

V. ANALYSIS

Our analysis starts with a fundamental principle — that appellants must show that they had sufficient earnings to satisfy the section 11 earnings requirement during their base periods. As a base period is customarily defined, this would be impossible for appellants Harr and Calitri because, prior to filing for unemployment, they had been out of work, collecting worker's compensation. However, as we have seen, subsection 28-42-3(3) provides that an applicant for employment security benefits who had previously collected worker's compensation benefits may have her base period backdated to the date of injury if the applicant's prior position is unavailable when she is ready to resume work. It is undisputed that Ms. Harr and Ms. Calitri met all the foregoing conditions.

However, there is one additional prerequisite to backdating (and eligibility). Pursuant to the cross-reference contained in subsection 28-42-3(3), they must show that when they sought to return to work they were still cloaked with the right to reinstatement established in section 28-33-47.

In both cases before the Court the Referees found that the Claimants did not satisfy this element. For instance, Referee Vukic found the following facts in Ms. Harr's case:

> Section 28-42-3(3) of the Rhode Island Employment Security Act states, in part, that whenever an individual who has received workers' compensation benefits is entitled to reinstatement under 28-33-47, but the position to which reinstatement is sought does not exist or is longer available, shall have the base period of his her claim be determined as if the individual filed for benefits on the date of injury. The based (sic) period of a claim shall not include any calendar quarter previously used to establish a valid claim for benefits.
>
> The above section of the act is contingent on the Rhode Island Workers Compensation law, which states, in part, that the right to reinstatement terminates one year from the date of injury according to Section 28-33-47(3)(1)(vi).
>
> In the instant case, the claimant failed to meet a maximum level of improvement within one year of the date of injury.
>
> Therefore, the claimant is not eligible to have her base period back dated to the date of injury.

Decision of Referee, June 20, 2011, at 1-2. Thus, we see that, without expressly quoting the text, the Referee held that an injured worker must reach maximum medical improvement within one year in order to fall under the protective salutary ambit of paragraph (c)(1)(vi). He therefore found that paragraph

(c)(1)(vi) provided Ms. Harr — who was injured in January of 2009 but did not reach maximum medical improvement until August of 2010 — no relief.[8]

But, Ms. Harr questions section 28-33-47's applicability to her; indeed, she asserts that applying the "right to reinstatement" rule violated her right to equal protection under the fourteenth amendment of the United States Constitution. See Plaintiff's Memorandum of Law, at 5 et seq. The same argument is made by Ms. Calitri. Id.

Citing Rojas v. Fitch, 928 F. Supp. 155 (D.R.I. 1996) aff'd 127 F.3d 184 (1st Cir. 1997) cert den. 524 U.S. 937 (1998), appellants argue that denying backdating to those who are not able to resume work within one year does not meet even the most lenient of the equal protection tests — i.e., that the action

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[8] The Referee's understanding of the law may be accurate — insofar as it describes the first sentence of paragraph (c)(1)(vi) — but it entirely ignores and overlooks the second sentence. See supra at 13-14. For instance, under the second sentence of paragraph (c)(1)(vi), a claimant who is participating in a rehabilitation program enjoys the right of reinstatement for eighteen months, not a year. On this basis, this Court recently reversed a ruling of the Board of Review because it failed to recognize that subdivision 28-33-47(3)(1)(vi) is not a flat one-year rule but is subject to adjustments. See Robert A. Martin v. Department of Labor and Training Board of Review, A.A. No. 12-132, (Dist.Ct. 8/12/12). However, Claimant Harr does not challenge the Board of Review's reading of 28-33-47(3)(1)(vi) as being overly simplistic: unlike Mr. Martin, she does not claim she falls within any exception to the one-year rule. Neither does Claimant Calitri.

must be rationally related to a legitimate governmental interest. See Plaintiff's Memorandum of Law, at 5-6.

But the Rojas case is very much distinguishable. There, the primary issue was an establishment clause (i.e., first amendment) challenge to the Employment Security Act's exemption of religious employers from its provisions. The equal protection argument was a secondary argument and was handled summarily by the United States District Court and the First Circuit. Rojas, supra, 928 F. Supp. at 166-67 and 127 F.3d at 189. And so, we must turn to a more pertinent case for guidance.

Such a case is Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471 (1977), in which the Supreme Court considered whether Ohio's rule of ineligibility for those unemployed due to a labor dispute other than a lockout was unconstitutional because it violated equal protection. Hodory, supra, 431 U.S. at 489 et seq. The Court first noted that since the case did not involve a fundamental interest or affect a protected class, the test would be "whether the statute had a rational relation to a legitimate state interest." Id., at 489. Next, the Court indicated that it applies this test using "a relatively relaxed standard reflecting the Court's awareness that the drawing of lines that create distinctions is particularly a legislative task and an unavoidable one." Id. In its final

prefatory comment the Court stated — "Perfection in making the necessary classifications is neither possible nor necessary. (Citation omitted) Such action by a legislature is presumed to be valid." (Citation omitted). Id.

The Court then applied these principles and found that charging employers who lock out their employees but not those whose employees strike constituted "rough justice" sufficient to constitute a reasonable basis. Hodory, supra, at 491. The Court found that the distinction was supported by three separate rationales; it rejected the first but found the second and third legitimate. First, it rejected the notion that the payment of benefits would constitute subsidizing the union members. Second, the Court held that the legislature could properly consider that payment of benefits to strikers could disadvantage the employer in its settlement negotiations. Third, the Court recognized that, unless the means chosen were irrational, protecting the fiscal integrity of the compensation fund constituted a legitimate state interest. Id., at 491-92.

Armed with this guidance from the highest judicial authority, we may now turn to our analysis of the instant cases. At the outset, we must acknowledge the Board of Review handled this constitutional question summarily —

> The Employment Security benefits, which the claimant is seeking, are funded by employers from a tax paid by the employers through an Employment Security insurance program. It is within the purview of the Legislature to establish, through the Director, the eligibility for the benefits paid for by a tax levied on the employer.

Decision of Board of Review (Harr), May 24, 2012, at 1. I take this as a refutation of appellants' constitutional claim,[9] although it is not labeled as such. Nevertheless, I find it reflects much practical wisdom. Accordingly, I have concluded that the statutory requirement that the claimant be ready to return to work within one year is rational and sufficient to satisfy equal protection considerations.

First, let us recall that the one-year limitation on reinstatement is not a fundamental parameter of eligibility. By permitting the Department to backdate a claimant's base period, it allows persons who would otherwise be ineligible to collect benefits. As a result, each instance of backdating permits an award from the fund that the basic eligibility rules would not have allowed. Certainly, the legislature is entitled to greater deference in the formulation of what must ultimately be considered an act of grace, than in the fundamental determination

[9] The Board of Review used identical language in denying Ms. Calitri's equal protection claim. Decision of Board of Review (Calitri), May 24, 2012, at 1.

of eligibility vel non. And so, it certainly had a right to limit the application of the rule.

Second, the language of section 28-33-47 shows its many intricacies — subdivision by subdivision. In seeking to define a limitation on the right to backdate the legislature was certainly within its authority to cross-reference such a finely drawn statute, rather than drafting a new section ab initio. Clearly, in addressing this matter, the legislature used a scalpel not a cleaver. The legislature certainly had a right to invoke its provisions and avoid having to reinvent the wheel.

Third, the General Assembly work-product in this area is, in my view, entitled to great deference because this question involves the harmonization of (or interplay between) two components of the social safety net for workers — the unemployment system and the worker's compensation system — each of which the legislature created.

Finally, it is beyond doubt that the legislature may consider the financial solvency or long-term integrity of the employment security fund as a legitimate governmental interest. The Supreme Court of Rhode Island has held that asset preservation is a legitimate state concern sufficient to satisfy equal protection concerns. See D. Corso Excavating Inc. v. Poulin, 747 A.2d 994, 1002 (R.I.

2000). Accordingly, I must conclude that appellant have not overcome the presumption of validity that attaches to all statutes enacted by the General Assembly.

CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decisions of the Board of Review were not affected by error of law and were not clearly erroneous in light of the reliable, probative and substantial evidence of record. See Gen. Laws 1956 § 42-35-15(g)(4),(5).

Accordingly, I recommend that the decisions of the Board of Review rendered in the cases of Ms. Harr and Ms. Calitri be AFFIRMED.

/s/
Joseph P. Ippolito
MAGISTRATE

MARCH 5TH, 2013