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

Deborah J. Jemo	:	
	:	
v.	:	**A.A. No. 11 - 0152**
	:	
Dept. 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, 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 9th day of April, 2012.

By Order:

/s/
Melvin Enright
Acting Chief Clerk

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

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

Deborah J. Jemo	:	
	:	
v.	:	**A.A. No. 11 – 152**
	:	
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, M. In this case Ms. Deborah J. Jemo seeks judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor and Training which was adverse to Ms. Jemo's efforts to receive employment security benefits. 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 decision issued by the Board of Review denying benefits to Ms. Jemo was supported by the facts of the case

and the applicable law and should be affirmed; accordingly, I so recommend.

FACTS & TRAVEL OF THE CASE

Ms. Jemo worked for Dr. Sunjay Patil as a dental assistant for almost three years until March 10, 2011. She applied for unemployment benefits but in a decision dated April 21, 2011 the Director deemed her ineligible to receive benefits because she resigned without good cause within the meaning of Gen. Laws 1956 § 28-44-17. Ms. Jemo appealed from this decision and Referee John Palangio held a hearing on the matter on July 11, 2011. In his decision, issued on August 22, 2011, the Referee made the following brief Findings of Fact regarding claimant's termination:

> **2. FINDINGS OF FACT:**
> The claimant was a receptionist dental assistant for a local Dentist for two years and ten months last on March 10, 2011. The claimant quit for alleged stress on the job.

Referee's Decision, August 22, 2011, at 1. Based on these findings the Referee formed a more expansive set of Conclusions on the stress issue:

> **3. CONCLUSION:**
> * * *
> Finally, the issue of stress as it related to the claimant and the co-workers, was because of the misusage of hours. The claimant did identify and admit that there were excessive absences. In addition, the day of separation the claimant had been called to a meeting. Under questioning, the employer stated that the meeting was because co-workers were unhappy that they had to cover the claimant's shift. The claimant did not perform her due diligence in identifying alternatives or solutions to the problems that faced

> her in the work place. Therefore, due to the fact that the claimant did have options available to her and did not take them, Unemployment benefits are denied under Section 28-44-17 of the Rhode Island Employment Security Act in this case.

Referee's Decision, August 22, 2011, at 2. Accordingly, Referee Palangio found claimant to be disqualified from receiving benefits. He therefore affirmed the decision of the Director denying benefits.

Claimant filed an appeal and the matter was reviewed by the Board of Review. On September 26, 2011, the members of the Board of Review issued a unanimous decision which found that the decision of the Referee was a proper adjudication of the facts and the law applicable thereto. Accordingly, the decision of the Referee was affirmed. Thereafter, Ms. Jemo filed a complaint for judicial review in the Sixth Division District Court. Memoranda have been received from Claimant and her former employer.

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; Gen. Laws 1956 § 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.

STANDARD OF REVIEW

The standard of review is provided by R.I. Gen. Laws § 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, supra page 4, 98 R.I. at 200, 200 A.2d at 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

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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. Bd. of Review of Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968). Also D'Ambra v. Bd. of Review, Department of Employment Security, 517 A.2d 1039 (R.I. 1986).

> 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 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. More precisely, was Claimant properly disqualified from receiving unemployment benefits because she left work without good cause pursuant to section 28-44-17?

ANALYSIS

Ms. Jemo urges that she should be declared eligible for benefits because she quit for good cause — stress.[4] It is certainly true that medical necessity has long been deemed good cause to quit. But, since Ms. Jemo's claim sounds

[4] Referee Palangio also considered whether (1) Ms. Jemo was in fact terminated or (2) whether she had good cause because she had been directed to falsify insurance documents. Referee's Decision, at 2. These arguments were not renewed in Claimant's Memorandum. Claimant's Memorandum, *passim*. They are thus deemed abandoned.

under section 17, she bore the burden of proving she was required to leave her position at the dental office. The Referee found that Ms. Jemo did not satisfy this burden — that she did not have to leave her position when she did. Because I believe this finding is supported by the evidence of record, I must recommend the decisions of the Referee and the Board of Review denying her benefits be affirmed.

Specifically, Referee Palangio grounded his decision denying benefits to Ms. Jemo on the fact that she had an alternative to immediately quitting. In doing so he could well rely on the testimony of Dr. Patil. Dr. Patil testified that Ms. Jemo was a "good employee" whom he very much respected. Referee Hearing Transcript, at 65. However, he commented that after her wedding she displayed a "slight reduction in her focus" at work. Referee Hearing Transcript, at 66. As a result, frustration increased among the staff, as they were required to cover her duties when she was out.[5] Referee Hearing Transcript, at 69-70.

Ms. Barbara Carpenter, Dr. Patil's officer manager, testified that on Thursday, March 10, 2011 Ms. Jemo came into her office and said she was resigning immediately. Referee Hearing Transcript, at 75. Ms. Jemo expressed

[5] From the time she returned from her honeymoon in August of 2010 until March of 2011 she was absent on eleven full days and six half-days. Referee Hearing Transcript, at 47, 66.

dissatisfaction with a co-worker. Referee Hearing Transcript, at 76. When Ms. Carpenter spoke to the co-worker, she indicated she was not going to do her work any longer. Id. Ms. Carpenter confirmed that there was tension in the office caused by Ms. Jemo's absenteeism and the extra work it caused for the remainder of the staff. Referee Hearing Transcript, at 77.

But, notwithstanding this friction, it appears that management was not poised to take any imminent action against Ms. Jemo. Ms. Carpenter specifically indicated that she thought the staff would be able to work these issues out. Referee Hearing Transcript, at 78. This attitude was reflected in her response to Ms. Jemo's resignation. Rather than accepting her resignation immediately and unequivocally, Ms. Carpenter suggested that she not act hastily — to think about it over the weekend. Referee Hearing Transcript, at 55, 75. On Monday claimant called her to say she had a job interview. Id. Although she said she would call the next day, she did not; in fact, Ms. Carpenter never heard from Ms. Jemo again. Id. Thus, there was substantial evidence in the record to demonstrate that Ms. Jemo was not under pressure from her employer to resign forthwith.[6]

[6] In her testimony Claimant conceded that Barbara did speak to her about the need to reduce her absences, but Dr. Patil never did. Referee Hearing Transcript, at 51-52.

Ms. Jemo described the employment atmosphere in Dr. Patil's office as a "really bad toxic environment." Referee Hearing Transcript, at 13. She stated that her psychiatrist[7] — Ms. Claire P. Cayer — advised her to look for another position and leave that job. Referee Hearing Transcript, at 30-31. In her Memorandum, Ms. Jemo urges that Referee Palangio failed to consider a letter from Ms. Cayer that claimant submitted at the hearing. Appellant's Memorandum, at 3-4. Although Claimant concedes that Ms. Cayer's letter fails to state that she recommended her patient leave Dr. Patil's employ,[8] Ms. Jemo nonetheless urges that the Referee should have fully credited Ms. Jemo's testimony that the doctor had in fact recommended termination. Appellant's Memorandum, at 4 n. 2. Thus, when the record is fully analyzed, the only evidence in support of her claim of medical necessity was her own self-serving testimony. No corroborating expert opinion had been properly presented for the Referee's consideration.

[7] The health-care professional to which Ms. Jemo refers, Ms. Claire P. Cayer, uses the acronym ACNS-BC in her signature line. She does not use the initials M.D. or Ph.D. Accordingly, her professional status or affiliation is not readily apparent to the Court. In any event, her status was not questioned at the hearing and I shall accord her opinion expert status.

[8] However, in a letter she prepared for submission by Ms. Jemo, Ms. Cayer did not confirm that she advised Ms. Jemo to leave her position. Instead, she indicated that Ms. Jemo felt strongly that her only option was to leave the dental practice. Employer's Exhibit No. 1, at 1.

When asked what precipitated her March 10, 2011 departure, Ms. Jemo testified that something had happened, a conflict with a co-worker, but she could not remember exactly what. Referee Hearing Transcript, at 56. She remembered that the co-worker left the meeting angry and yelling. Referee Hearing Transcript, at 57. She began crying and then quit. Referee Hearing Transcript, at 59. Claimant did find another job, effective June 1, 2011. Referee Hearing Transcript, at 57. Her testimony was vague, at best.

In my estimation, the evidence of record fully supports the Referee's finding that Ms. Jemo's resignation was precipitous and not objectively required by her medical condition. It is clear from the exhibits and testimony that Dr. Patil was ready and willing to work with Ms. Jemo to preserve her employment.

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. When applying this standard, the Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact, including the question of which witnesses to believe.[9] Stated differently, the findings of the

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[9] Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213 (1968).

agency will be upheld even though a reasonable mind might have reached a contrary result.[10] Accordingly, the Board's decision (adopting the finding of the Referee) that claimant voluntarily terminated her employment with Dr. Patil's dental practice without good cause within the meaning of section 17 is supported by the evidence of record and must be affirmed.

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.

/s/
Joseph P. Ippolito
MAGISTRATE

APRIL 9, 2012

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[10] Cahoone, supra n. 9, 104 R.I. at 506, 246 A.2d at 215 (1968). See also D'Ambra v. Board of Review, Dept. of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986). See also Gen. Laws 1956 § 42-35-15(g), supra at 5-6 and Guarino, supra at 6, fn.1.