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

Ronald Tippe	:	
	:	
v.	:	**A.A. No. 11 - 157**
	:	
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 4th day of January, 2012.

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. This matter is before the Court on the complaint of Mr. Ronald Tippe seeking judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor & Training, which held that Mr. Tippe was not entitled to receive employment security benefits. 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 must recommend that the decision of the Board of Review denying benefits to Mr. Tippe be affirmed.

I. FACTS & TRAVEL OF THE CASE

The facts in this case may be stated briefly: At the end of the Spring, 2011 term Mr. Tippe quit the position he held as an adjunct professor at Rhode Island College and moved

to Los Angeles to be with his wife, who had accepted a short-term position as a costume designer on a film. He applied for and — on June 3, 2011 — was granted between-term benefits pursuant to Gen. Laws 1956 § 28-44-68. However, on August 5, 2011, the Director reconsidered his decision and determined claimant was ineligible for benefits because he had left the job without good cause within the meaning of section 28-44-17 of the General Laws. Claimant appealed from this decision. Accordingly, on September 7, 2011, Referee Nancy L. Howarth held a hearing on the matter, in which the claimant participated telephonically. In her October 4, 2011 decision, the referee found the following facts:

> 2. Findings of Fact:
>
> The claimant was employed as an adjunct professor by the employer. On February 18, 2011 the employer provided written notice to the claimant that he would return to the same position in the fall 2011 semester as he had held in the spring, 2011 semester. On April 27, 2011 the claimant informed the employer that he was resigning his job, since he and his wife were moving to Los Angeles. The claimant's wife had received a contract to work for one month and one day as a costume designer on a film. The claimant had no job to go to, nor the promise of one.
> Referee's Decision, October 4, 2011, at 1.

and enunciated the following conclusions:

> * * *
> An individual who leaves work voluntarily must establish good cause for taking that action or else be subject to disqualification under the provisions of Section 28-44-17.
>
> In order to establish that he had good cause for leaving his job, the claimant must show that the work had become unsuitable or that he was faced with a situation which left him no reasonable alternative other than to terminate his employment. The burden of proof in establishing good cause rests solely with the claimant. In the instant case, the claimant has not sustained this burden. The evidence and testimony presented at the hearing established that the

> claimant left his job for neither of these reasons. At the time he left his position and made a decision to move out of state, the claimant's wife had been offered only short term, temporary employment. The evidence and testimony of record fails to establish either that the work itself was unsuitable or that the claimant had no reasonable alternative other than to terminate his employment. Since the claimant's wife had been offered employment for approximately five weeks, the claimant could have continued to work in his position in the subsequent semester. Therefore, I must find that the claimant's leaving was for strictly personal reasons. This is not considered good cause for leaving one's job under the above Section of the Act. Accordingly, benefits must be denied on this issue.
> Referee's Decision, October 4, 2011, at 1-2.

Accordingly, Referee Howarth issued a decision finding claimant disqualified from receiving benefits. She also ruled that claimant was subject to the repayment provisions of Gen. Laws 1956 § 28-42-68.

Claimant filed an appeal and the matter was heard by the Board of Review. On October 26, 2011, the Board of Review issued a unanimous decision which affirmed the decision of the referee on the issue of eligibility. However, the Board set aside the Referee's order of repayment. Accordingly, the decision of the Referee was affirmed in part and modified in part.

Thereafter, on November 4, 2011, the claimant filed a complaint for judicial review in the Sixth Division District Court. This matter has been referred to me for the making of Findings and Recommendations pursuant to section 8-8-8.1 of the General Laws.

II. 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.

III. 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, 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 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.

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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 Employ- ment Security, 517 A.2d 1039 (R.I. 1986).

IV. 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 he left work without good cause pursuant to section 28-44-17?

V. ANALYSIS

The Board of Review found claimant quit his position without good cause within the meaning of section 28-44-17. For the reasons that follow I believe the decision of the Board of Review denying benefits to Mr. Trippe is correct and I recommend that it be affirmed. I so recommend since I believe his case is distinguishable from previous cases in which quitting to relocate with a spouse has been recognized as good cause to quit.

The facts are uncontested: Mr. Tippe was an adjunct professor at Rhode Island College during the Spring-2011 academic term, teaching one course. Referee Hearing Transcript, at 7. He was offered no teaching work during the Summer-2011 term but was offered one course for the Fall-2011 academic term. Referee Hearing Transcript, at 8-9. However, he eschewed this modest opportunity in order to relocate to Los Angeles, where his wife, Ms. Molly Maginnis, had obtained a full-time, limited-period position as a costume designer in the film industry. Referee Hearing Transcript, at 11. He explained that he did so in the interests of preserving his marriage. Referee Hearing Transcript, at 13. To reiterate, the foregoing facts are not in dispute.

Generally, when workers terminate for personal reasons – i.e., reasons not directly related to their positions – they are disqualified from receiving benefits because such reasons are not considered good cause to quit within the meaning of section 17. However, this rule has a few limited exceptions.

One exception to the general rule of disqualification may be found in Rocky Hill School, Inc. v. Department of Labor & Training, Board of Review, 668 A.2d 1241 (R.I. 1995), a case in which benefits were granted to a teacher named Geiersbach who quit his position at the Rocky Hill School in order to accompany his wife — who also had been a Rocky Hill teacher — to Colorado, where she had obtained a new position as a school principal. Rocky Hill, 668 A.2d at 1241. The Supreme Court held "* * * that public policy requires that families not be discouraged from remaining together." Rocky Hill, 668 A.2d at 1244. The Rocky Hill Court distinguished Murphy v. Fascio, 115 R.I. 33, 340 A.2d 137 (1975), an earlier case in which our Supreme Court determined that leaving one's employment in order to marry and relocate to another state was not good cause within the meaning of section 17, on the basis that the Geiersbachs were already married. See Rocky Hill, 668 A.2d at 1243-44, and Murphy, 115 R.I. at 37, 340 A.2d at 139. While Mr. Trippe is married, I have concluded that the instant case is distinguish-able from Rocky Hill for two reasons involving the element of good cause.

Firstly, while the Court in Rocky Hill undoubtedly concluded that Mr. Geiersbach had no alternative to relocating if his family was to remain intact, no such degree of compulsion was present in the instant case. To reiterate, Ms. Maginnis had obtained only

thirty days' work when Mr. Tippe severed his relationship with Rhode Island College. In light of the fact that he was not even teaching during the summer term, this action seems precipitous. Certainly, many marriages have endured separations of thirty days without ill effects. Accordingly, we must conclude that Mr. Tippe — unlike Mr. Geiersbach — did not relocate because his wife had obtained a particular position, but because she had embarked on a new career which involved freelancing and adopting of a mobile lifestyle.[4] And so, I find the element of compulsion for the move in Mr. Tippe's circumstances to be different in kind and lesser in degree than that present in Rocky Hill.

The second reason I believe Rocky Hill is inapposite concerns the financial aspect of good cause. While the Court in Rocky Hill focused on the fact that the Geiersbachs were married and needed to stay together, I also believe the Court's decision was also founded — albeit implicitly — on a second element: which is that the Geiersbach family relocated because Mrs. Geiersbach had obtained a position that constituted a clear upgrade to her status within her profession — she was becoming a school principal. By way of comparison, Ms. Maginnis had lined-up only thirty days' work in Los Angeles. Referee Hearing Transcript, at 9, 11. Mr. Trippe was frank with the Referee, his wife was *freelancing*. Assuming Ms. Maginnis had been employed in Rhode Island, she quit and relocated for reasons which

[4] Indeed, Mr. Tippe stated in his October 3, 2011, appeal notice that after his wife's Los Angeles position ended she then relocated to New York where she began a job in September that was expected to last until March of 2012.

may well not have been accepted as "good cause" to quit under section 17.[5] Thus, the Trippe relocation rests upon an entirely different economic foundation from that undertaken by the Geierbach family.

In sum, because the record is clear that the Trippe/Maginnis family left Rhode Island for reasons that were not related to the acquisition of a particular position but involved broader personal (and financial) issues, I believe the instant case falls outside the ambit of Rocky Hill and Mr. Tippe was properly disqualified from receiving unemployment benefits.[6]

As stated above in Section III of this opinion (Standard of Review), 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. Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.

Accordingly, the Board's decision (adopting the finding of the Referee) that claimant voluntarily terminated his employment without good cause within the meaning of section 17 is supported by the evidence of record and must be affirmed.

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[5] Of course, workers who quit in order to accept a better position usually cannot collect unemployment because they're employed in the new position; however, further issues of eligibility can arise when the new position falls through for unexpected reasons.

[6] From nothing I have written should a criticism of Mr. Tippe's decision to relocate be inferred. I do not presume to know what is best for him, personally or professionally. It has been my duty to recommend a resolution of this case based on the application of statutory law and case precedents. I certainly intend nothing more.

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. R.I. General Laws § 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. R.I. General Laws § 42-35-15(g)(5),(6).

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

/s/
Joseph P. Ippolito
MAGISTRATE

JANUARY 4, 2012