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

CHARLES J. FOGARTY, in his capacity as	**:**	
Director of the RHODE ISLAND	**:**	
DEPARTMENT OF LABOR AND TRAINING,	**:**	
Plaintiff	**:**	
	:	
v	**:**	**A.A. No 11-62**
	:	
DEPARTMENT OF LABOR AND TRAINING,	**:**	
BOARD OF REVIEW and	**:**	
STEVEN J. STANDRING	**:**	
Defendants	**:**	

JUDGMENT

This cause came on before Gorman J. on Administrative Appeal, and upon review of the record and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Board is affirmed.

Dated at Providence, Rhode Island, this 26th day of March, 2012.

Enter: **By Order:**

/s/ **/s/**

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

CHARLES J. FOGARTY, in his capacity as Director of the RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING, Plaintiff	:	
v	:	**A.A. No 11-62**
DEPARTMENT OF LABOR AND TRAINING, BOARD OF REVIEW and STEVEN J. STANDRING Defendants	:	

DECISION

In this suit, plaintiff seeks to overturn a ruling by the Rhode Island Department of Labor and Training, Board of Review which found Steven Standring eligible to receive unemployment benefits because his voluntary separation from his job was for good cause. This court has jurisdiction pursuant to Rhode Island General Laws 1956 § 42-35-15.

I. PROCEDURAL HISTORY AND FACTS

The claimant in this case was a long-term employee of Verizon, a telecommunication company, as a "service splice technician," Referee's Hearing Tr., p. 4, and paid at an hourly rate. He understood that the employer was "downsizing." Id. at 6. At the time Mr. Standring accepted a severance package

and voluntarily left the company, he was doing a "files job" and was told that he would not be allowed to return to what he considered his normal duties. Id. at 8-9.

Following his termination from the employer, the claimant filed for unemployment benefits. This request was denied by the Director of the Rhode Island Department of Labor and Training based on a determination that Mr. Standring left his job voluntarily and without good cause. Based on this finding, he was disqualified for benefits under § 28-44-17 of the Rhode Island Employment Security Act. This decision was appealed and after an evidentiary hearing, was affirmed by a referee. Another appeal followed, and the referee's decision was reversed by the board of review. In its ruling, the board relied on the record before the referee and made the specific findings of fact set forth below:

> The claimant was employed as a splice-service technician. The employer's work load of splice-service technicians (non-copper) had decreased. The claimant was notified of an employer reduction in force (RIF) program for employees determined to be surplus employees. The employer offered the claimant a one-time enhanced incentive offer/enhanced income protection plan (EIIP) whereby the employer, in exchange for certain monetary benefits made to the claimant, would assign the claimant a termination date. The claimant accepted the offer and the employer assigned the claimant a termination date of June 19, 2010. The claimant's separation from employment occurred on this latter date.

In its decision reversing the referee's ruling, the board included the following conclusions:

> The claimant worked as a splice-service technician. He had worked on the "copper side" of the splicing service, but at the time of the EIPP he was not performing copper splicing. His testimony showed that his work load was getting low. The claimant was near or at the top of the payroll scale; having been employed since he was eighteen years of age; a period of almost 30 years. All of the aforementioned factors create a presumption that the claimant had a reasonable belief that he would be laid off in the near future.

The board member representing industry filed a dissenting opinion based on the claimant's failure to show that he sought other positions within the company before deciding to accept the termination plan offered by the employer.

II. DISCUSSION

This is one of a series of cases involving the same employer which has been in the process of reducing its work force, and has offered financial incentives to individuals who terminate their employment voluntarily. This state has enacted legislation, the Rhode Island employment Security Act (Title 28, Chapter 42-44 of the General Laws of Rhode Island 1956) which establishes a comprehensive program to address problems relating to unemployment. Chapter 44 describes benefits available to workers, and § 28-44-17 provides in relevant part, that "[a]n individual who leaves work voluntarily without good cause shall be ineligible" for benefits.

On several occasions, the Rhode Island Supreme Court has considered the question of "good cause" as used in this statute. In one opinion, Powell v Department of Employment Security, Board of Review, 477 A.2d 93, 96 (R.I. 1984), the court noted that in earlier decisions the court had "given apparently conflicting definitions to the phrase 'good cause.'"[1] However the Powell decision harmonized the various treatments of this issue saying that "the key to this analysis is whether petitioner voluntarily terminated his employment because of circumstances that were effectively beyond his control." 477 A.2d at 96-97.

Ordinarily, in evaluating specific circumstances which might constitute "good cause," the court must deal with a mixed question of law and fact. D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d

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[1] In an early case, Harraka v. Board of Review of Department of Employment Security, 200 A.2d 595, 597 (R.I. 1964), the court said:

> 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.

Then, in Murphy v. Fascio, 340 A.2d 137, 139 (R.I. 1975) a claimant was found ineligible after the court explained that the law "was intended to protect individuals from the hardships of unemployment the advent of which involves a substantial degree of compulsion." But in a 1995 case, the court noted that "[o]nce again, we reject an interpretation of good cause that would require an element of compulsion." Rocky Hill School, Inc. v. State of Rhode Island Department of Employment and Training, Board of Review, 668 A. 2d 1241, 1244 (R.I. 1995).

1039, 1040 (R.I. 1986). Where the record supports only one conclusion, the case must be decided as matter of law. Id. at 1041. On the other hand, if the agency's decision is reasonable but not the only choice, and is supported by the evidence, the agency decision will be affirmed. Ibid.

In this instance, the referee asked a series of leading questions[2] which resulted in a determination that Mr. Standring failed to show that his

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[2] The transcript reflects the following colloquy (pp. 6-8):

> Ref: Okay and that [the termination bonus] was, uh, accepted freely and voluntarily by you?
> CLT: Yes.
> Ref: Is that correct?
> CLT: Yes.
> Ref: You were not in any immediate danger or immediate jeopardy of being terminated at the time you accepted the offer?
> CLT: No they were downsizing sir and, um, they offered this package to a lot of different people –
> Ref: Yeah –
> CLT: And, um –
> Ref: With an attempted downsize –
> CLT: Yeah because the workload was getting low and stuff like that, um –
> Ref: But you were not singled out that if you did not accept it you would be laid off in the immediate future or terminated –
> CLT: No, no they, they needed so many people and –
> Ref: Okay.
> CLT: Yeah.
> Ref: So you had the opportunity to reject the offer and, uh, continue with you employment, uh, and accept whatever determination was made down the road so –
> CLT: Right, right.
>
> * * *

employment was sufficiently jeopardized to satisfy the "good cause" requirement of § 28-44-17. The board of review exercised its authority under § 28-44-47[3] and disagreed with the referee's conclusion.

Although the court cannot substitute its judgment for that of the administrative agency as it relates to questions of fact, § 42-35-15(g), the board is not similarly constrained when reviewing a referee's decision. This appeal necessarily focuses on the validity of the board's decision, and its propriety. With that focus in mind, the court examined the transcript of the hearing – at which Mr. Standring was the only witness. A full reading of this proceeding leaves the clear impression that the claimant was a voluntary but reluctant

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> CLT: They, could just, uh, say one thing. They in my statement it says that I quit. I, I told them that I didn't quit that it was –
> Ref; Well you did quit technically because you accepted the package, so you quit.
> CLT: Really?
> Ref: Nobody forced you to quit.
> CLT: Um, the way that the job was, they had me doing a, a job that, um, it, what's kind of weird is that you said it in, that I was a service splice technician –
> Ref: Well that's yeah that's –
> CLT: That's the title by they weren't doing that, I was doing a files job which is service splicer technician which they put me in, um, and they wouldn't allow me to go back to like the copper side of the --

[3] This section provides:
> [t]he board of review may affirm, modify, or reverse the findings or conclusions of the appeal tribunal solely on the basis of the evidence previously submitted . . . .

participant in the termination program. At the end of his testimony he says: "I'm 49 years old. I cannot retire but so that's the reason why I did what I did."

III. CONCLUSION

After a careful review of the record in this case, the court is persuaded that the decision made by the board of review is reasonable and are supported by substantive and probative evidence. The board's decision is, therefore, affirmed.