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

Sophia Banto	:	
	:	
v.	:	**A.A. No. 12 - 002**
	:	
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 28th day of June, 2012.

By Order:

/s/
Melvin Enright
Acting 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. In the instant complaint Ms. Sophia Banto urges that the Board of Review of the Department of Labor and Training erred when it held that he was not entitled to receive unemployment 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 of the Board in this matter should be affirmed; I so recommend.

FACTS & TRAVEL OF THE CASE

Ms. Sophia Banto worked as an assembly line worker for Falvey Linen Supply for two-and-one-half months until November 4, 2010. She filed a claim for benefits and on December 7, 2010 the Director determined that the claimant left her position voluntarily without good cause and therefore was disqualified pursuant to section 28-44-17 of the General Laws.

Claimant appealed from this decision and Nancy L. Howarth held a hearing on the matter on August 5, 2011. [Note — the hearing was delayed by requested continuances]. The employer did not appear on this date. In her decision, issued on August 26, 2011, the Referee found that that claimant did not quit, but was fired. See Decision of Referee, at 1. However, the Referee found she had not been fired for proved misconduct within the meaning of section 28-44-18 of the General Laws. See Decision of Referee, at 2. As a result, she was deemed eligible for benefits. Id.

The employer appealed and a new hearing was held before the Board Chairman, Mr. Thomas J. Daniels, on December 8, 2011. On this occasion the employer's representatives did appear and testify. In his December 15, 2011 decision, Mr. Daniels announced the following facts and conclusions:

> The employer supervisor testified that he attempted to correct the employer (sic) as to the proper procedures in using the employer's ironing machine. When linens continued to come through the machine in an unacceptable manner, the employer supervisor again attempted to correct the claimant who threw up her arms, punched

> out and left the employer's premises.
>
> The claimant's testimony was that she was told to go home for the day by the supervisor. However, she did not return to her scheduled shift the next day.
>
> The Board finds that the claimant voluntarily left her job without good cause and the decision of the Director in this matter is reinstated.

Board of Review Decision, December 15, 2011, at 1-2. Accordingly, Ms. Banto's receipt of benefits was ended.

Thereafter, on January 3, 2012, 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. A conference was held by the undersigned on March 28, 2012 and a briefing schedule set. Briefs have been received from counsel for Ms. Banto and Falvey Linen.

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.

The court, as stated above, rejected the notion that the termination must be "under compulsion" or that the reason therefore must be of a "compelling nature."

Finally, it is well-settled that a worker who leaves his position voluntarily, in order to be eligible for unemployment benefits, bears the burden of proving that he did so for good cause within the meaning of section 28-44-17.

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, Dept of Emp. Security, 517 A.2d 1039 (R.I. 1986).

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 disqualified from receiving unemployment benefits because she left work without good cause pursuant to section 28-44-17?

ANALYSIS

Our analysis of the instant case must begin with an obvious point: the testimony of the two sides diverged radically. All parties agree that the supervisor approached her because linens were coming out of her machine that appeared stained. They disagree on what happened next.

In her testimony before the Referee, Ms. Banto testified she was told to go home by her supervisor. Referee Hearing Transcript, at 4 et seq. In her memorandum, Ms. Banto marshaled concisely the testimony of record that supported her version of the events of November 4, 2010. See Appellant's Memorandum of Law, at 5-7. If this testimony was believed, Ms. Banto was entitled to a judgment that she was fired in the absence of proved misconduct and was eligible for benefits.

On the other hand, the employer's representative testified Ms. Banto walked away without explanation. If this version of events is credited, she should properly have been deemed disqualified — either under a theory of a constructive

or de facto quit or under an alternate theory that she committed misconduct by walking off the job before the end of her shift.

The Board, after a de novo hearing, chose to believe the employer's version of events and found Claimant had quit her position at Falvey Linen by walking off the job and failing to return the next day. There was substantial evidence in the record to support this theory of events as well.

Mr. Anton Pavo, an Assistant Line Manager for Falvey Linen, identified Ms. Banto, who had been operating an ironer machine for two years, as one of the approximately 100 workers he supervised. (Board of Review Hearing Transcript, at 5, 11). He testified that on November 4, 2010, between 7 and 8 in the morning, he noticed that the linens coming out of Claimant's machine were badly stained. (Board of Review Hearing Transcript, at 6). Mr. Pavo asked Ms. Banto to go the cafeteria with another employee while the matter was addressed. Id. Then, at about 9:20 A.M., he noticed the work issuing from her machine was again stained. (Board of Review Hearing Transcript, at 7-8). He asked Ms. Banto to come to the front of the machine, but she did not; instead, she waved her hands and proceeded to punch out and leave the premises. (Board of Review Hearing Transcript, at 8, 14-15, 18). Mr. Pavo flatly contradicted the testimony Ms. Banto gave before the Referee and denied sending her home. (Board of Review Hearing Transcript, at 16). He also denied he had argued with Ms. Banto regarding whose fault it was that the machine was emitting stained linen. (Board

of Review Hearing Transcript, at 17). Mr. Pavo reported the incident to human resources. (Board of Review Hearing Transcript, at 9). He testified that the Employer's Manual indicates that walking off the job was a "serious offense" subjecting an employee to dismissal. (Board of Review Hearing Transcript, at 13-14).[4]

Legally, leaving the workplace before the end of one's shift without permission (*i.e.*, going "AWOL") has long been recognized a form of quitting. This court has on many occasions indicated that — in order to avoid a section 17 disqualification — an employee asserting workplace problems must bring these issues to the attention of a superior in the firm who has the power to remedy them before quitting. See e.g. Jean Boisvert v. Department of Employment Security, A.A. No. 77-271 (Dist.Ct. 2/12/1982) (Beretta, J.) and Mark Barbera v. Department of Employment & Training Board of Review, A.A. 96-38 (Dist.Ct. 5/6/96)(DeRobbio, C.J.). This principle applies in the instant case because Ms. Banto left the premises without bringing the nature of her frustration to her

[4] Of course, this testimony is technically immaterial because — according to Falvey Linen — Ms. Banto was not fired. The designation of walking off the job as a "serious offense" would imply it would be treated as misconduct. To the contrary, Falvey Linen treated her actions as a quitting. See Board of Review Hearing Transcript, at 20-21 (Testimony of Mollie Givens, Human Resources, Falvey Linen).

superiors, Ms. Givens of Human Resources for one. Therefore, Ms. Banto's departure cannot be said to be with good cause within the meaning of section 17.[5]

As stated above, pursuant to the applicable standard of review, this Court is not authorized to substitute its judgment for that of the Board of Review. See Gen. Laws § 42-35-15(g), supra at 5 and Guarino, supra at 6, fn.1. The scope of judicial review by the District Court is also limited by General Laws section 28-44-54 which, in pertinent part, provides:

> **28-44-54. Scope of judicial review – Additional Evidence – Precedence of proceedings. –** The jurisdiction of the reviewing court shall be confined to questions of law, and in the absence of fraud, the findings of fact by the board of review, if supported by substantial evidence regardless of statutory or common law rules, shall be conclusive.

Accordingly, the Board's decision (adopting the finding of the Referee) that claimant voluntarily terminated her employment by walking off the job is well-

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[5] In closing, I believe I should indicate my view that Ms. Banto could have also been disqualified from receiving unemployment benefits pursuant to Gen. Laws 1956 § 18-44-18 (Misconduct). Leaving before the end of one's shift without permission has also been deemed to be misconduct within the meaning of section 18. See Robert Martin v. Henry Murray, Director of the Department of Employment Security, Board of Review, A.A. No. 85-48 (Dist.Ct.9/26/86)(DelNero, J.) and Pedro Carpio v. Department of Employment and Training Board of Review, A.A. No. 92-86 (Dist.Ct. 3/23/93)(E. Clifton, J.). Indeed, disqualification for misconduct might have been the better fit of the facts to the law in this case, where the claimant was terminated promptly because of her early departure while the operation was being held up by problems with the ironing machine. However, as stated above, I also believe claimant's conduct also falls within the ambit of a section 17 disqualification.

supported by the reliable, probative and substantial 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

JUNE 28, 2012