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

Jennifer A. Watson	:	
	:	
v.	:	**A.A. No. 12 - 130**
	:	
Department of Labor and 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 REVERSED.

Entered as an Order of this Court at Providence on this 4th day of FEBRUARY, 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. In this administrative appeal Ms. Jennifer A. Watson urges that the Board of Review of the Department of Labor and Training erred when it held that she should be disqualified from receiving further unemployment benefits because she refused a suitable position that had been offered to her. Jurisdiction for appeals from decisions of 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. Employing the standard of review applicable to administrative appeals, I find that the decision of the Board of Review to be clearly erroneous and affected by error of law; I therefore recommend that the Decision of the Board of Review be REVERSED by this Court.

I. FACTS & TRAVEL OF THE CASE

The facts and travel of the case may be briefly stated: Claimant was working as a teacher's assistant for the Northern Rhode Island Collaborative (NRI) until June 17, 2010, when she was laid off for the next academic year. She filed a new claim for benefits on August 2, 2011. Later that month, the school offered her (or merely purported to offer her, in Ms. Watson's view) the opportunity to return to work under what it termed a "special assignment." She never accepted this putative offer. Nevertheless, on October 31, 2011, a designee of the Director of the Department of Labor and Training found her to be eligible to receive further unemployment benefits because she had good cause to refuse NRC's offer of work — i.e., it was unsuitable because the pay and benefits offered were substantially less than the remuneration that she had previously received. See Director's Decision, October 31, 2011 at 1.

The Collaborative appealed from this decision and on December 20,

2011 a hearing was conducted by Referee William Enos. Ms. Watson appeared assisted by counsel and accompanied by a witness on her behalf; NRC was represented by counsel and two representatives. Referee Hearing Transcript, at 1. The hearing was taken up with an explanation of her situation and the details of the offer made to her. Then, on December 28, 2011, Referee Enos issued a decision in which he affirmed the decision of the Director in all particulars.

The Collaborative appealed again and the matter was considered by the Board of Review. Although it did not conduct a new hearing — and it need not do so — the Board made findings of fact based on the official record. It noted that prior to her original lay-off the claimant earned $104.91 per day [$16.14 per hour times 6.5 hours per day]. See Board of Review Decision, at 2. In contrast, the "special assignment" tendered her on August 31, 2011 would have paid her $71.50 per day [although the pay would increase to $99.99 per day after the 90th day of work]. See Board of Review Decision, at 1. The Board found that she never responded to this offer. Id. The Board also noted that she had worked as a teacher's assistant on a part-time basis from January to May, 2011 at a daily rate of $100 per day — without benefits. Id. Apparently she only worked about a dozen days in this period, since her gross pay was

reported to have been $1,238.00. Id.

Based on these facts, the Board made the following conclusions:

> The issue is whether the claimant refused an offer of suitable work under Section 28-44-20 of the Act. The claimant was laid off in June of 2010. By August 31, 2011, when the employer offered the claimant a Special Assignment position, she had not found a teaching assistant position that would pay her the wages and benefits she had received prior to being laid off by this employer. The claimant had been out of full-time work approximately 14 months, when the employer sent its offer of work. After this time, the claimant's prospects of obtaining work as a teacher's assistant at her previous wages and benefits was highly unlikely. The issue is whether the claimant is required to accept the same, or similar, position with less compensation than she was receiving when she was laid off by this employer. Is an offer of such a position an unsuitable offer?
>
> We believe that the August 31, 2011 letter was an offer of suitable work because there was no other employer willing to compensate the claimant at the rate that she last worked. After 14 months of searching unsuccessfully for full-time work, it is reasonable to conclude that the wages offered by the employer were not less favorable than those prevailing for similar work in the locality. The offer presented the claimant with an opportunity to get back into the labor force. See Jarvis v. Dept. of Labor & Training, Board of Review, and Northern R.I. Collaborative AA 12-39.

See Board of Review Decision, at 2. Accordingly, the Board found Ms. Watson refused an offer of suitable work without good cause. Id. It held she was therefore disqualified from the receipt of further benefits by Gen. Laws 1956 § 28-44-20.

From this decision the Member Representing Labor dissented, particularly taking exception to what he perceived to be an essential element of the Board's position — that the passage of time can make an unsuitable job suitable. See Board of Review Decision, at 3.

Thereafter, on June 14, 2012, Ms. Watson filed a complaint for judicial review in the Sixth Division District Court. A conference was held by the undersigned and a briefing schedule was set. Learned and helpful memoranda have been submitted by the Petitioner and the Collaborative.

II. STANDARD OF REVIEW

The standard of review by which this Court considers Board of Review decisions is enumerated in 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.' "[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 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

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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. 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).

> 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.

III. APPLICABLE LAW

The Board of Review found Ms. Watson had refused suitable work and, as a result, would be disqualified from receiving further unemployment benefits under the authority of Gen. Laws 1956 § 28-44-20. But because Ms. Watson was receiving extended benefits when she was disqualified, she argues that the Board of Review should have approached the case — at least initially — under Gen. Laws 1956 § 28-44-62, which governs issues of eligibility regarding those claiming extended benefits. So, we shall now present, for further reference, the particulars of section 62.

A. Section 62 — Extended Benefits.

Section 28-44-62 of the Employment Security Act, entitled "Extended benefits," governs in a comprehensive way the eligibility vel non of claimants for extended benefits. For instance, subsection (c) enumerates the prerequisites

to eligibility, mainly (1) exhaustion of regular benefits, (2) not having being disqualified for regular benefits, and (3) monetary eligibility based upon earnings during the base period. But in my view two parts of section 62 are particularly germane to the issue before the Court.

The first is a definition of suitable work, which is crucial to the question of refusing suitable work.

1. Definition of Suitable Work.

Subsection (a) of section 62 consists of a series of definitions. The eighth is definition of suitable work, which is presented here:

> (8) "Suitable work" means, with respect to any individual, any work that is within that individual's capabilities; provided, however:
> (i) That the gross average weekly remuneration payable for the work must exceed the sum of the individual's weekly benefit amount as determined under subsection (g) of this section plus the amount, if any, of supplemental unemployment benefits 26 U.S.C. § 50(C)(17)(D) payable to that individual for that week, and
> (ii) That wages for such work are not less than the higher of:
> (A) The minimum wage provided by 29 U.S.C. § 206(a)(1) without regard to any exemption, or
> (B) The applicable state or local minimum wage.

Thus, the standard for suitability under section 62 is very low. Work is suitable so long as the wages exceed the weekly unemployment benefits being received or the minimum wage. But, as we shall see, the potential harsh effects of these

provisions are tempered to a great extent by the next provision we shall examine.

2. Further Provisions Defining Suitability Under Section 62.

The second relevant provision is subsection (d) of section 62, entitled "Suitable Work and Work Search Requirements For Extended Benefits," which provides:

> (d)(1) *Suitable work and work search requirements for extended benefits.* Notwithstanding the provisions of subsection (b) of this section, an individual shall be ineligible for payment of extended benefits for any week of unemployment beginning on or after April 1, 1981, if the director finds that during that period:
> (i) He or she failed to accept an offer of suitable work as defined in subsection (a) of this section or failed to apply for any suitable work to which he was referred by the director; or
> (ii) He or she failed to actively engage in seeking work as prescribed under subdivision (3) of this subsection;[4]
> (2) Any individual who has been found ineligible for extended benefits by reason of the provisions in subdivision (1) of this subsection shall also be denied benefits beginning the first day of the week following the week in which that failure occurred and until he or she has been employed, except in self-employment, in each of four (4) subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four (4) times the extended weekly benefit amount. No individual shall be denied extended benefits for failure to accept an offer of or to apply for any job which meets the definition of suitability as described in subsection (a) of this section if:

[4] Thus, we can see that paragraph (d)(1)(i) invokes the commands of section 28-44-20 that a claimant not refuse suitable work and paragraph (d)(1)(ii) invokes the commands of section 28-44-12 the claimants be available and pursue suitable work. These carry forth into (d)(2) and (d)(3), respectively.

(i) The position was not offered to that individual in writing or was not listed with the employment service;

(ii) The failure would not result in a denial of benefits under the definition of suitable work for regular benefit claimants in § 28-44-20 to the extent that the criteria of suitability in that section are not inconsistent with the provisions of subsection (a) of this section; or

(iii) The individual furnishes satisfactory evidence to the director that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If that evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to that individual shall be made in accordance with the definition of suitable work for regular benefit claimants in § 28-44-20 without regard to the definition specified by subsection (a) of this section.

* * *

Gen. Laws 1956 § 28-44-62(d)(Footnote and emphasis added). Thus, this provision gives us two mandates — (1) the offer must be in writing and (2) the position may be refused if it fails to meet the suitability standard of section 20.

B. Section 20 — The Refusal of Suitable Work Statute.

Section 20 is the provision within the Employment Security Act which establishes the principle that an individual collecting unemployment benefits may not refuse work unless the position offered is unsuitable for reasons enumerated in subsection 20(b). See Rhode Island Temps, Inc. v. Department of Labor and Training, Board of Review, 749 A.2d 1121, 1126 (R.I. 2000). Subsection (a) provides the general rule:

> (a) If an otherwise eligible individual fails, without good cause, either to apply for suitable work when notified by the employment office, or to accept suitable work when offered him or her, he or she shall thereby become ineligible for waiting period credit or benefits for the week in which that failure occurred * * *.

Gen. Laws 1956 § 28-44-20(a). Next, in section (b), we find the exceptions to suitability which are critical to the adjudication of this case:

> (b) "Suitable work" means any work for which the individual in question is reasonably fitted, which is located within a reasonable distance of his or her residence or last place of work and which is not detrimental to his or her health, safety, or morals. No work shall be deemed suitable, and benefits shall not be denied under chapters 42 -- 44 of this title to any otherwise eligible individual for refusing to accept new work, under any of the following conditions:
> (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
> (2) If the wages, hours, or other conditions of the work are substantially less favorable to the employee than those prevailing for similar work in the locality;
> (3) If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Gen. Laws 1956 § 28-44-20(b)(Emphasis added). Clearly, none of the elements stated in the first paragraph are material; further, the first and third enumerated exceptions are irrelevant. Only subdivision (2) will be pertinent to our inquiry and we consider it at length below.

III. ISSUE

The issue before the Court is whether the decision of the Board of Review which denied benefits to Claimant and found she should be disqualified pursuant to sections 28-44-62 and 28-44-20 was supported by substantial evidence in the record or whether or not it was clearly erroneous or affected by error of law?

IV. ANALYSIS

Considering Ms. Watson appeal on the basis of the record developed by the Referee,[5] the Board found Ms. Watson failed to accept an offer of suitable work and was therefore ineligible to receive further unemployment benefits pursuant to Gen. Laws 1956 § 28-44-20. For the two reasons that I shall now enumerate, I have concluded the Board's decision in this case is clearly erroneous and made contrary to law; I shall therefore recommend that it be set aside.

A. Preliminary Question — Applicable Law.

As I mentioned above, the Board found Ms. Watson disqualified because — in violation of section 28-44-20 — she had refused suitable work. As we know, section 20 bars, upon penalty of disqualification, those receiving

[5] See Gen. Laws 1956 § 28-44-47.

unemployment benefits from refusing suitable work. But before the Court Ms. Watson argues that her case should have been decided under Gen. Laws 1956 § 28-44-62, because she was collecting extended benefits when the Collaborative tendered her its offer of employment under a "Special Assignment." See Petitioner's Memorandum, at 6-7. Thus, she submits, it is to section 62 that we must turn to obtain the parameters under which a recipient of extended benefits is permitted to decline a job offer without suffering the penalty of disqualification.

1. Applicability of Section 62.

Before this Court the Collaborative concedes that the Board of Review should have applied section 62 in its decision. See Employer's Memorandum of Law, at 5-6. Accordingly, I must find that the Board erred in this regard.

2. Materiality of the Error.

Nevertheless, we must ask — is the Board's error material? In other words, would adjudication under section 62 have required a different result? This would indeed be curious, especially since, as we have seen, section 62 invokes section 20's suitability standard?

Ms. Watson notes that section 62 contains a mandate that a job offer must be made "in writing" — but that section 20 does not. Petitioner's

Memorandum of Law, at 6-7. Factually, she asserts the Collaborative failed to prove an offer was ever made, by e-mail or otherwise.

But I shall recommend that the Court not make its ruling on this issue, since the Board of Review made no finding that an offer was made to Ms. Watson "in writing" and the facts on this point, which are in dispute, are not amenable to more than one interpretation.

The Collaborative argues that Ms. Watson was tendered a job offer by telephone on April 23, 2011. Employer's Memorandum, at 5 citing Referee Hearing Transcript, a 15. Mr. Robert Wall, Director of Education Services, testified that he left a voice-mail and sent a follow-up e-mail. Id. When he received no response, he sent a letter on August 31, 2011. Employer's Memorandum, at 5 citing Referee Hearing Transcript, a 16. The Collaborative argues that this letter, if nothing done previously, satisfies section 62's writing requirement. Employer's Memorandum, at 5.

On the other hand, Ms. Watson urges that the August 31, 2011 letter was not meant to constitute a job offer, or to memorialize an oral offer made previously, but was intended as a confirmation that Ms. Watson had rejected the Collaborative's "special assignment" offer. See Petitioner's Memorandum, at 7. Thus, she argues that she never received a job offer in writing.

In my view, in order for this issue to be resolved the August 31 letter must be construed and findings of fact made. That is the role of the Board of Review, and since the Board did not evaluate whether the Collaborative's job offer was made in writing, the matter would have to be remanded to the Board for findings to be made. But I believe such a remand is unnecessary.

Instead, I believe the Court should rule on other grounds which will allow it to resolve the instant matter with finality without the need for further proceedings.

B. The Suitability Issue — Remuneration.

I believe the case may well be amenable to resolution on the issue of suitability. As stated above, refusing work does not result in disqualification unless the position is "suitable." The general standard for suitability in Rhode Island is that stated in section 20.

> (b) "Suitable work" means any work for which the individual in question is reasonably fitted, which is located within a reasonable distance of his or her residence or last place of work and which is not detrimental to his or her health, safety, or morals. No work shall be deemed suitable, and benefits shall not be denied under chapters 42 -- 44 of this title to any otherwise eligible individual for refusing to accept new work, under any of the following conditions:
> (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
> (2) If the wages, hours, or other conditions of the work are substantially less favorable to the employee than those prevailing

> for similar work in the locality;
> (3) If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Gen. Laws 1956 § 28-44-20(b)(Emphasis added). The statute establishes the standard by which suitability vel non is affected by issues of remuneration. Very simply, a position is not suitable if the pay offered is "substantially less favorable to the employee than those prevailing for similar work in the locality."

In its decision, the Board adopted the position that a job offer that may reasonably have been deemed financially unsuitable when a claimant first becomes unemployed may become — with the passage of time — financially unsuitable. This rule seems to have its germination in a case cited by the Collaborative to Referee Enos — In re Potvin, 132 Vt. 14, 313 A.2d 25 (Vt. 1973). See Reference Hearing Transcript, at 49; see also Claimant's Correspondence, December 20, 2011. In Potvin the Vermont Supreme Court noted that its Employment Security Board must consider the length of the claimant's period of unemployment in determining whether a particular job which has been offered is suitable. Potvin, 132 Vt. at 19, 313 A.2d at 28. However, it is important to remember that this was not a judicially prescribed duty which the Board possessed — but one mandated by statute. See 21

V.S.A. sec. 1344(3)(A) as quoted in Potvin, 132 Vt. at 17, 313 A.2d at 27. But, notwithstanding Vermont's adherence to this principle, the Court reversed the Board's disqualification of Ms. Potvin, who had rejected a position in a lower skill level. Potvin, 132 Vt. at 19-20, 313 A.2d at 28-29.

Before this Court the Collaborative cites additional cases: Ellwood City Hospital v. Unemployment Compensation Board of Review, 73 Pa. Cmwlth 78, 457 A.2d 231, 233 (Pa. Comm. Ct. 1983); Dubkowski v. Administrator, Unemployment Compensation Act, 150 Conn. 278, 188 A.2d 658 (1963); and Pacific Mills v. Director, 322 Mass. 345, 349-50, 77 N.E. 2d 413, 416 (1948). These cases are also immaterial, for the same reasons.

For instance, in Ellwood City Hospital, supra, a panel of the Pennsylvania Commonwealth Court affirmed a finding of continuing eligibility made by its Unemployment Compensation Board of Review regarding an electronic technician, Mr. Robert Verone, who was laid off from a position paying $5.25 per hour and who, a week later, declined to accept a position in the housekeeping position of a local hospital paying $3.35 per hour. Ellwood, supra, 73 Pa. Cmwlth. at 79-80, 457 A.2d at 232-33. Under the circumstances, especially the brief period of unemployment, the Court found Mr. Verone's refusal of the position to be reasonable. Ellwood, supra, 73 Pa. Cmwlth. at 81-

82, 457 A.2d at 233. In so finding, the Court quoted from the applicable statute defining "suitable work" — 43 P.S. § 753(t) — which, as quoted in Ellwood City, supra, 73 Pa. Cmwlth at 80, 457 A.2d at 233, enumerates among the factors to be considered — "the length of time he has been unemployed." Section 20 contains no such provision.

Likewise, in Dubkowski, supra, the Connecticut Supreme Court found that its Superior Court had committed no error in affirming the unemployment administrator's decision to permit benefits to three former skilled workers at the Stanley Works (who had been making $2.35, $2.35, and $2.25 per hour) who had declined positions as sweepers (earning $1.69 per hour). Dubkowski, supra, 150 Conn. at 279-80, 188 A.2d at 659. After rejecting the employer's assertion that the claimants were unavailable for work, the Court addressed the employer's second argument — that they had refused suitable work. Dubkowski, supra, 150 Conn. at 280-81, 188 A.2d at 659-60. The Court began its analysis by quoting from the pertinent statute — Section 31-236 of the General Statutes. Dubkowski, supra, 150 Conn. at 281-82, 188 A.2d at 660. Included in the list of factors to be considered in determining whether a position is suitable is "his length of unemployment." Id. And, relying heavily on the brevity of the claimants' unemployment, the Court

found the offer to be unsuitable. Dubkowski, supra, 150 Conn. at 284-85, 188 A.2d at 661.

Finally, the employer cited Pacific Mills, supra, a 1948 Supreme Judicial Court decision which addressed an employer's appeals from four District Court decisions, each of which affirmed an award of benefits. Pacific Mills, supra, 322 Mass. at 345-46, 77 N.E. 2d at 414. In its decision, the Court described each of the claimants' circumstances. Pacific Mills, supra, 322 Mass. at 347-48, 77 N.E. 2d at 414-15. As to each, the Court noted that the claimants had only been briefly unemployed, were experienced mill workers, and that there was much opportunity in that industry in the community — i.e., Lawrence. Id. The Court analyzed the pertinent statute (G.L. c. 151A, § 25) defining suitable work and, focusing on the phrase "reasonably fitted by training and experience," held that the lower court (and the Board) could consider the claimants' opportunity to find better paying positions within a reasonable time. Pacific Mills, supra, 322 Mass. at 349-50, 77 N.E. 2d at 416. Notably, the Court did so even though the statute did not enumerate length of unemployment as a factor to be considered.

I therefore believe that the Board's reliance on Potvin and these other cases was largely, if not entirely, misplaced. In three out of four cases the

statute was different. Rhode Island's equivalent provision, section 28-44-20, contains no such language. And all involved the extension of time to a newly discharged claimant. These cases involve giving a claimant time to find a new job. None involved a long unemployed claimant. All are inapposite.

Our Supreme Court has emphasized that the "… plain meaning of the language in § 28-44-20 requires that the claimant accept a position unless that position can be shown to fall within the exceptions noted." Rhode Island Temps, supra, 749 A.2d at 1126. Thus, the Board should have simply analyzed the case under subdivision 28-44-20(b)(2). Doing so, it would have confronted the ultimate question — was the remuneration offered substantially less favorable to the claimant than the prevailing wage for similar work in the community? But it strayed from this duty — or was led astray.

At most, the Board merely tipped its cap to section 20, stating — "It is reasonable to conclude …." But this is not a conclusion, it is an assumption, not based on any evidence. I do not believe the Collaborative's unilateral offer is, unto itself, evidence of the going rate for teacher assistant services. Must we, then, remand the case for testimony to be taken on the market rate of pay? In my view, we need not, as there is evidence of the going rate in the record.

The market for goods or services is what a willing buyer and seller will pay. The only evidence in the record of what similarly situated workers in the community were being paid is what the regular teachers' assistants were earning at the Collaborative. This is what Claimant Watson was earning before being laid off.

Because the reduction in remuneration was substantial, involving both a 25% cut in pay and a loss of valuable benefits, I believe the Court must find that the offer tendered to Ms. Watson was not suitable, within the meaning of section 20 — as incorporated in section 62.

Pursuant to the applicable standard of review described supra at 4-5, 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. This Court is not permitted to substitute its judgment for that of the Board as to the weight of the evidence; accordingly, the findings of the agency must be upheld even though a reasonable fact-finder might have reached a contrary result. Under these circumstances — where only the claimant's version of events was submitted to the Referee, there is no basis for this Court to substitute its judgment for that of the Board of Review. See Gen.

Laws 1956 § 42-35-15(g), and Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980).

As a result, applying the applicable standard of review, I must recommend that this Court hold that the Board of Review's finding that Claimant refused suitable work is clearly erroneous and affected by error of law and should be vacated by this Court.

CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the Board of Review was affected by error of law. Gen. Laws 1956 § 42-35-15(g)(3),(4). Further, it is 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 REVERSED.

/s/
Joseph P. Ippolito
MAGISTRATE

FEBRUARY 4, 2013