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

Jaime Haynes	:	
	:	
v.	:	**A.A. No. 12 - 146**
	:	
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 and the memoranda of counsel, 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 19th day of December, 2012.

By Order:

__/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

____/s/__
Jeanne E. LaFazia
Chief Judge

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

Jaime Haynes	:	
	:	
v.	:	**A.A. No. 2012 – 146**
	:	
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. Ms. Jaime L. Haynes filed the instant complaint for judicial review of a final decision of the Board of Review of the Department of Labor and Training, which held that she was not entitled to receive employment security benefits based upon proved misconduct. This matter has been referred to me for the making for 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 is supported by substantial evidence of record and was not affected by error of law; I therefore recommend that the decision of the Board of

Review be affirmed.

FACTS & TRAVEL OF THE CASE

The facts and travel of the case are these: Ms. Jaime Haynes worked as a phlebotomist/data entry clerk for Independent Research for eighteen months until she was terminated on March 13, 2012. She filed an application for unemployment immediately but on April 2, 2012, the Director determined her to be ineligible to receive benefits pursuant to the provisions of Gen. Laws 1956 § 28-44-18, because she was terminated for proved misconduct.

The Claimant filed an appeal and a hearing was held before Referee William Enos on May 9, 2012. On May 10, 2012, the Referee held that Ms. Haynes was disqualified from receiving benefits because she was terminated for proved misconduct. In his written Decision, the Referee made Findings of Fact, which began by indicating that "… the claimant was terminated for willful disrespect and insubordination when the employer tried to counsel her on taking a day off without the proper notice." Referee's Decision, at 1. The findings pertinent to this conclusion may be quoted as follows:

> The claimant's supervisor testified that the claimant came in the next morning on March 13, 2012 just before her counseling meeting and told her "F… your bosses." The employer testified that at the meeting the claimant came in with a very

> bad attitude, very loud, angry, defensive and inappropriate. The employer testified that it was never our intention to terminate the claimant for calling out of work, but the termination was because of how subordinate she acted towards the President and Vice President of the company at the counseling meeting. The claimant testified that she rarely called out sick and she was honest and told the truth about needing to stay home because of a childcare issue. The claimant testified that she is not a disrespectful person and was never insubordinate toward her employer.

Decision of Referee, May 10, 2012 at 1. Based on these facts, the Referee came to the following conclusion:

> * * *
> I find from the credible evidence and testimony from the employer and the two employer witnesses that the claimant was terminated under disqualifying reasons since the claimant showed willful disrespect and insubordination toward her employer. Based on this conclusion, I find the claimant is not entitled to Employment Security benefits under Section 28-44-18 of the above Act.

Decision of Referee, May 10, 2012 at 2. Claimant appealed and the matter was reviewed by the Board of Review. On June 30, 2012, the Board of Review issued a decision in which the decision of the Referee was found to be a proper adjudication of the facts and the law applicable thereto; further, the Referee's decision was adopted as the decision of the Board. Decision of Board of Review, June 30, 2012, at 1. The Member Representing Labor dissented, asserting that the Claimant's actions were an isolated instance.

Finally, Ms. Haynes filed a complaint for judicial review in the Sixth Division District Court on July 30, 2012.

APPLICABLE LAW

This case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically addresses misconduct as a circumstance which disqualifies a claimant from receiving benefits; Gen. Laws 1956 § 28-44-18, provides:

> **28-44-18. Discharge for misconduct. —** An individual who has been discharged for proved misconduct connected with his or her work shall become ineligible for waiting period credit or benefits for the week in which that discharge occurred and until he or she establishes to the satisfaction of the director that he or she has, subsequent to that discharge, had at least eight (8) weeks of work, and in each of that 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. Any individual who is required to leave his or her work pursuant to a plan, system, or program, public or private, providing for retirement, and who is otherwise eligible, shall under no circumstances be deemed to have been discharged for misconduct. If an individual is discharged and a complaint is issued by the regional office of the National Labor Relations board or the state labor relations board that an unfair labor practice has occurred in relation to the discharge, the individual shall be entitled to benefits if otherwise eligible. For the purposes of this section, "misconduct" is defined as deliberate conduct in willful disregard of the employer's interest, or a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a

> result of the employee's incompetence. Notwithstanding any other provisions of chapters 42 – 44 of this title, this section shall be construed in a manner that is fair and reasonable to both the employer and the employed worker.

In the case of Turner v. Department of Employment and Training, Board of Review, 479 A.2d 740, 741-42 (R.I. 1984), the Rhode Island Supreme Court adopted a definition of the term, "misconduct," in which they quoted from Boynton Cab Co. v. Newbeck, 237 Wis. 249, 259-60, 296 N.W. 636, 640 (1941):

> 'Misconduct' * * * is limited to conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the statute.

The employer bears the burden of proving by a preponderance of evidence that the claimant's actions constitute misconduct as defined by law.

STANDARD OF REVIEW

The standard of review is provided by Gen. Laws 1956 § 42-35-15(g), a section of the state Administrative Procedures Act, which provides:

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]

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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 Dept. of Employment Security, 104 R.I.

In reviewing a decision of the Board of Review the Court confronts a mixed question of law and fact. D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1040 (R.I. 1986). Where the record supports only one conclusion, the case must be decided as a matter of law. D'Ambra, 517 A.2d at 1041. On the other hand, if more than one reasonable conclusion could be reached, the agency decision will be affirmed. D'Ambra, 517 A.2d at 1041.

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 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

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503, 246 A.2d 213, 215 (1968). Also D'Ambra v. Board of Review, Dept. of Employment Security, 517 A.2d 1039, 1041 (R.I.1986).

> 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 (adopting the decision of the Referee) 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.

ANALYSIS

The Board adopted the Referee's factual conclusion that Claimant acted inappropriately when she was being counseled about an attendance issue; the Board then concluded that her behavior constituted proved misconduct. See Gen. Laws 1956 § 28-44-18. Accordingly, our first duty must be to examine the record to determine whether these allegations are supported in the record. We note that the employer, in its effort to meet its burden of proof on this issue, presented several witnesses.

Ms. Pezzullo, President of the employer, testified that when Ms. Haynes was brought into the conference room for her counseling session she stated, in a combative tone — "So what's the issue?" Referee Hearing Transcript, at 24. Ms. Pezzullo responded by explaining the issue was the

manner in which she called in to say she would be absent on the day before. Id. In Ms. Pezzullo's estimation, at this point Claimant was "very defensive, very combative, very disrespectful" and so she asked Ms. Haynes to calm down and change her attitude. Referee Hearing Transcript, at 25. The claimant responded — "What about my attitude?" Id. Then, when Ms. Pezzullo told Claimant she was being disrespectful, Ms. Haynes said — "Too bad, what are you going to do, fire me?" Id. At that point, according to Ms. Pezzullo, she and Ms. Haughey decided Ms. Haynes had to be fired — which they did. Id.[4]

Ms. Haughey also gave testimony. Referee Hearing Transcript, at 8 et seq. She explained that management had not meant to fire Ms. Haynes but only to counsel her. Referee Hearing Transcript, at 10. She stated that Ms. Haynes was "very angry" during the meeting. Referee Hearing Transcript, at 11. She got "very, very, very loud at one point." Referee Hearing Transcript, at 12. She told the employer her attitude was "poor." Id. Ms. Pezzullo indicated that comment was inappropriate and Ms. Haynes responded — "What are you going to do, fire me?" Id. Ms. Pezzullo answered — "As a

[4] Other incidents, immediately thereafter, are excluded, since they occurred after claimant was terminated and cannot, therefore, constitute grounds for termination.

matter of fact, I think it would be best." Id.

Under cross-examination, Ms. Haughey testified that Claimant had received one prior warning. Referee Hearing Transcript, at 14. She further revealed that Claimant, in a decision with her supervisor when she first reported in, said: "F— your bosses, f— them." Referee Hearing Transcript, at 16. But she conceded that this was unknown when Ms. Haynes was fired. Id. She also stated that Claimant had never displayed a bad attitude before. Referee Hearing Transcript, at 17.

The third witness for the employer was Monica Freeman, who testified that when she reproached Ms. Haynes for the manner in which she had called-in [not the fact that she had done so], she responded that she did not care. Referee Hearing Transcript, at 41. She further stated that Claimant stated: "F— your bosses, f— them." Referee Hearing Transcript, at 42. She conceded that she had acted inappropriately to Ms. Haynes last year. Referee Hearing Transcript, at 43.

Finally, Claimant testified. Referee Hearing Transcript, at 44 et seq. She testified that when she entered the meeting she sensed that Ms. Pezzullo and Ms. Haughey were looking at her with disgust. Referee Hearing Transcript, at 45. She said Ms. Pezzullo was "the most negative one here."

Referee Hearing Transcript, at 46. And when she responded — "What does that mean?" — Ms. Pezzullo indicated her response made her "unemployable." Id. She denied she was belligerent or combative during the whole meeting. Referee Hearing Transcript, at 48-49. Finally, she denied she said "F— your bosses or the like." Referee Hearing Transcript, at 50.

Legally, it is well-settled that insubordination is conduct that can be deemed to constitute proved misconduct. Factually, the Board could rely on the testimony of the employer's witnesses — which was, concededly, contradicted by Ms. Haynes — to find that Claimant did indeed demonstrate a lack of respect, but even more so, a lack of cooperation. Employees must be, from time to time, counseled — to correct error, to ameliorate behavior, to teach new procedures. Employees must certainly be open to this process.

In this case, Ms. Haynes' reaction to her employers' inquiry — *What are you going to do, fire me?* — precipitated her termination, not her absence from work on the day before; her statement was received as a refusal to be counseled, a challenge to their authority. Their judgment was accepted by the Board as reasonable. And although it might have also been reasonable for her employers to overlook this transgression in light of her record of service, I cannot find, as a matter of law, that the Board of Review was wrong to find

her behavior to be a breach of the standards of conduct which an employer has the right to expect of its employee; in addition, although the employer's reaction might well be viewed as harsh, it was not unreasonable for the Board to have found her behavior to be discourteous to such a degree that, per se and of a single instance, it constituted a willful disregard of the employer's interests. See quotation from Boynton Cab, supra at 5.

Pursuant to the applicable standard of review described supra at 6, 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. Applying this standard of review and the definition of misconduct enumerated in Turner, supra, I must recommend that this Court hold that the Board's finding that claimant was discharged for proved misconduct in connection with her work is well-supported by the record and should not be overturned by this Court.

CONCLUSION

Upon careful review of the evidence, I find that the decision of the

Board of Review is not affected by error of law. Gen. Laws 1956 § 42-35-15(G)(3),(4). Further, it is also not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; nor is it arbitrary or capricious. GEN. LAWS 1956 § 42-35-15(G)(5),(6).

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

/s/
Joseph P. Ippolito
Magistrate

December 19, 2012