STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**

SIXTH DIVISION

Natalie C. Cesar	:	
	:	
v.	:	**A.A. No. 12 - 0184**
	:	
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 AFFIRMED.

Entered as an Order of this Court at Providence on this 25th day of October, 2012.

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 case Ms. Natalie C. Cesar seeks judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor and Training which was adverse to Ms. Cesar's efforts to receive employment security 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 issued by the Board of Review denying benefits to Ms. Cesar was supported by the facts of the case and

the applicable law and should be affirmed; accordingly, I so recommend.

FACTS & TRAVEL OF THE CASE

Ms. Cesar worked for the Jan Company as a cook at its East Providence Burger King restaurant for approximately five years until March 4, 2012. She applied for unemployment benefits and in a decision dated May 14, 2012 the Director deemed her eligible to receive benefits because misconduct had not been shown within the meaning of Gen. Laws 1956 § 28-44-18. The employer appealed from this decision and Referee John Palangio held a hearing on the matter on June 25, 2012. In his decision issued the same day Referee Palangio made the following brief Findings of Fact regarding claimant's termination:

> **2. FINDINGS OF FACT:**
> The claimant was a cook for five years last on March 5, 2012. The store manager disciplined the claimant by sending her home for the remainder of her shift. The claimant did not return to work after that day.

Referee's Decision, June 25, 2012, at 1. Based on these findings the Referee formed a more expansive set of Conclusions. He began by finding that Ms. Cesar was not fired, but terminated voluntarily. Then, analyzing the case under Gen. Laws 1956 § 28-44-17, which requires those who quit a job to show they did so for good cause, if they wish to collect unemployment benefits, the Referee concluded:

> **3. CONCLUSION:**
> * * *
> The credible testimony of the employer was that the claimant had on ongoing issue with her temper at work. The employer further testified that on several occasions she was sent home during her shift by a supervisor for an inappropriate display of anger. Finally, on the last day of her employment, the employer testified that he told the claimant to "go home and come back when you feel better."
>
> The testimony of the claimant was not credible. Her answers conflicted as to whether or not she was told in the past to leave before the end of her shift. The claimant did acknowledge that she had been told by the manager in the past to leave, and in all of those cases the claimant returned to work without incident. Further, the claimant acknowledged that she could have returned to work in this case, but did not because she felt humiliated. However, the claimant acknowledged that the manager did not raise his voice in disciplining her.
>
> The claimant could have returned to work. She did not perform due diligence in keeping her job at the restaurant. Therefore, unemployment benefits are denied under Section 28-44-17 of the Rhode Island Employment Security Act.

Referee's Decision, June 25, 2012, at 1-2. Accordingly, Referee Palangio found Claimant to be disqualified from receiving benefits. He therefore reversed the decision of the Director granting benefits.

Claimant filed an appeal and the matter was reviewed by the Board of Review. On August 23, 2012, the members of the Board of Review issued a unanimous decision which found that the decision of the Referee was a proper adjudication of the facts and the law applicable thereto. Accordingly, the

decision of the Referee was affirmed. Then, on September 20, 2012, Ms. Cesar filed a pro-se complaint for judicial review in the Sixth Division District Court.

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; Gen. Laws 1956 § 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.

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

[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).

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, supra page 4, 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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[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 Employment 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 properly 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 substantially. All parties agree that the manager sent her home before the end of her shift. They disagree solely on what he said when he did so.

In her testimony before the Referee, Ms. Cesar testified that when she was sent home her manager said — "Clock out and don't come back." Referee Hearing Transcript, at 15. She concluded he was serious, even though she had been told this before — but then allowed to come back to work. Referee Hearing Transcript, at 20, 24. After some vacillation, she conceded that she had been sent home before the end of her shift on previous occasions. Referee Hearing Transcript, at 16, 18, 21-24. She testified that she thought she could have gone back to work but did not because she felt "humiliated." Referee

Hearing Transcript, at 26.

The manager, Mr. Helio Melo, also testified. Referee Hearing Transcript, at 7 et seq. He indicated that Ms. Cesar was a "wonderful person" who has a "temper" and a "behavioral issue." Referee Hearing Transcript, at 9. He testified that on her last day Ms. Cesar was involved in a dispute over procedures. Referee Hearing Transcript, at 11. He told her to — "Go home and call me when she's feeling better." Id. He denied saying anything that could have been misinterpreted as a firing. Referee Hearing Transcript, at 10, 12. Mr. Melo testified that — when she did not return to work and he did not hear from her — he told other employees who might be in contact with Claimant that she was welcome to come back. Referee Hearing Transcript, at 10. He surmised that she quit when she turned in her uniform about a week after the incident. Referee Hearing Transcript, at 10.

After weighing the two versions of the events leading to Ms. Cesar's termination, Referee Palangio believed the employer's. He concluded that Mr. Melo did not fire Ms. Cesar, when he sent her home he was merely disciplining her — and I would add, maintaining workplace decorum. The Referee also concluded Claimant's refusal to return to work was unjustified.

In my view, Referee Palangio had at least two valid grounds for accepting the employer's version of Ms. Cesar's separation. Based on a review of the

transcript of the hearing, I believe the Referee certainly had a substantial basis to conclude that Ms. Cesar's testimony was self-contradictory and that, as a result, she did not satisfy her burden of proving that she quit for good cause. Secondly, he believed Mr. Melo's testimony. And, having credited Mr. Melo's testimony, Referee Palangio was well-justified in finding that Ms. Cesar constructively quit — by failing to return to work after being disciplined.

And, as a question of law, this Court has long held that discipline, even if imposed unfairly, does not constitute good cause to quit. See Medeiros v. Department of Employment and Training, Board of Review, A.A. No. 94-221 (Dist.Ct. 6/19/1995). The Court has rationalized that the Claimant should have obtained a new position before quitting. Capraro v. Department of Employment and Training, Board of Review, A.A. No. 95-151 (Dist.Ct. 9/27/1995).

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 6 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 (affirming the finding of the Referee) that claimant voluntarily terminated her employment by failing to return to work after being disciplined is well-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

OCTOBER 25, 2012