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

Jessie L. Mathis	:	
	:	
v.	:	**A.A. No. 12 - 019**
	:	
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 1st day of March, 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 this case Mr. Jessie L. Mathis seeks judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor & Training which was adverse to Mr. Mathis'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 General Laws 1956 § 28-44-52. This matter has been referred to me for the making of findings and recommendations pursuant to General 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 Mr. Mathis was supported by the facts of the case and the applicable law and should be affirmed; accordingly, I so

recommend.

I. FACTS & TRAVEL OF THE CASE

Mr. Jessie L. Mathis worked for Blackstone Management LLC as a property manager for twelve years until January 28, 2012. He applied for unemployment benefits and in a decision dated May 12, 2012 the Director deemed him ineligible to receive benefits because he resigned without good cause within the meaning of Gen. Laws 1956 § 28-44-17.

The claimant appealed and Referee Paul Whelan held a hearing on the matter on June 29, 2011. Only Mr. Mathis appeared — no employer's representative was present. Relying on the claimant's uncontradicted testimony, the Referee found that Mr. Mathis did not leave his position voluntarily but was in fact fired. Referee's Decision, at 1-2. The Referee also found that claimant had committed no act of misconduct. Referee's Decision, at 2. Accordingly, Referee Whelan found Mr. Mathis eligible for benefits. Id.

From this decision the employer appealed. The Chairman of the Board of Review, Mr. Thomas J. Daniels, sitting alone, decided the case on the basis of the record before the Referee, as permitted by Gen. Laws 1956 § 28-44-47. In his decision, issued on December 23, 2011, the Chairman made the following Findings of Fact regarding claimant's termination:

2. FINDINGS OF FACT:

The claimant was employed as a property manager. The claimant noticed that the employer had placed an advertisement in a newspaper describing a job offering with many of the same tasks as he was performed. (sic) The claimant made inquiry of the employer, but did not receive a satisfactory explanation. On his last day of work, the claimant met with the employer and was informed that he needed to get on board with the new reorganization or restructuring. He was told to think about it over the weekend. As a result of the meeting with the employer, the claimant assumed he was no longer needed by the employer, and he did not report to work on Monday.

Board of Review Decision, December 23, 2011, at 1-2. Based on these findings the Chairman formed the following Conclusion:

3. CONCLUSION:

The issue is whether the claimant quit or was terminated. My view of the records shows that the claimant quit. After the meeting with the employer, the claimant "assumed" that he was no longer needed (Transcript P 6). In his January 29, 2011 letter the claimant set forth that he was "… accepting a lay off." There is nothing in the record to show that the employer was offering to lay him off. The employer had informed the claimant there would be a new operating plan. The claimant, by his actions, took exception to the new plan. The claimant was not (sic) described the plan or shown how it affected his employment: would he receive a reduction in compensation, work a different shift, less hours, and different tasks? Prior to leaving one's job, a claimant must show that he had no other alternative but to leave. The claimant has not shown how the plan would make the job unsuitable. The claimant must show that he had good cause to leave. The claimant has not established good cause.

Board of Review Decision, December 23, 2011, at 2. Accordingly, Chairman Daniels found claimant Mathis to be disqualified from receiving benefits and

reversed the decision of the Referee. As a result of this decision, Mr. Mathis' benefits ended.

Thereafter, the claimant filed a timely complaint for judicial review in the Sixth Division District Court.

II. 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.

III. 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

[1] Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d

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, supra page 7, 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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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, Department of Employment Security, 517 A.2d 1039 (R.I. 1986).

Finally, it must be remembered that a claimant seeking unemployment benefits who quit bears the burden of proving he did so with good cause.

IV. 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 he left work without good cause pursuant to section 28-44-17?

V. ANALYSIS

Referee Whelan rendered his decision allowing benefits by accepting claimant's overall representation of the events of his separation — i.e., that he was fired. In light of the fact that Mr. Mathis was the only witness at the hearing, this certainly was not an unreasonable outcome. On appeal, Chairman Daniels, who also decided the case solely on the basis of Mr. Mathis' testimony, came to a contrary decision. — i.e., that he quit. He did so by looking beyond Mr. Mathis' conclusion and examining the particulars of his testimony.

Of course, it is not this Court's role to decide whose decision — the Referee's or the Board's — is better-reasoned. As explained above in Section III of this opinion, supra at 6-7, our function is essentially limited to deciding whether the decision of the Board is supported by reliable and substantial evidence of record and whether it is clearly erroneous or otherwise made contrary to law. And, after reviewing the record below, I am of the opinion that the decision issued by Chairman Daniels on behalf of the Board that Mr. Mathis quit is indeed well-supported by the record, which is to say, Mr. Mathis' own testimony.

First, Mr. Mathis never expressly stated that he had been fired. He testified that his employer never said he was being let go. Referee Hearing Transcript, at 12. Secondly, in finding he was not fired the Chairman could well rely on the following excerpt from Mr. Mathis' testimony:

> … on this particular Friday uh — January 28th, she told me about the restructuring – dah – dah – dah – dah – dah. Um – how she gonna restructure the company and that uh – it was gonna start on the following Monday uh – and if I would either get on board with it, or – or not, and she certainly told me that if I was not to get on board with it, to not come in on Monday, but to take the weekend to think about it. And so I assumed that she meant that she didn't need me no longer for the company … .

Referee Hearing Transcript, at 6. The Chairman viewed this testimony as rebutting the inference that Mr. Mathis was being fired and supporting the

inference that he was being offered a chance to stay on — albeit in a new position. In the "Findings of Fact" section of his decision, the Chairman specifically referenced claimant's testimony that he was being given an opportunity to "get on board" in the new reorganization. Board of Review Decision, at 1, quoted supra, at 3. He was offered a chance to meet the new person, which he declined. Id. Rather than accept any revision to his circumstances, Mr. Mathis turned in his keys and other equipment and quit.[4]

Of course, it has long been held that an employee who quits in the face of an involuntary discharge for misconduct is not considered to have voluntarily quit within the meaning of section 17. See Kane v. Women & Infants Hospital of Rhode Island, 592 A.2d 137, 139 (R.I. 1991).[5] But there is nothing in the record to show that he was — in fact — about to be fired. By his own testimony, he "assumed" he had been fired. And assumptions do not supply a factual basis for a Board of Review decision.

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[4] There certainly are cases in which a demotion or a cut in pay has been determined to constitute good cause to quit. These cases are limited, because in most instances the Board (and this Court) has determined that the claimant should stay with the job until a new position can be located. Unfortunately, this doctrine cannot be invoked by claimant Mathis, since he never learned how his position or pay was about to change.

[5] In such cases a referee must undertake a full section 28-44-18 misconduct analysis to determine if the circumstances are disqualifying.

Pursuant to Gen. Laws 1956 § 42-35-15(g), 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. When applying this standard, the Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact, including the question of which witnesses to believe.[6] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[7] Accordingly, the Board's decision (reversing the finding of the Referee) that claimant voluntarily terminated his employment with Blackstone Management without good cause within the meaning of section 17 is supported by the evidence of record and must be affirmed.

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[6] Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213 (1968).

[7] Cahoone, supra n. 6, 104 R.I. at 506, 246 A.2d at 215 (1968). See also D'Ambra v. Board of Review, Dept. of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986). See also Gen. Laws 1956 § 42-35-15(g), supra p. 6 and Guarino, supra p. 6, n.1.

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

MARCH 1, 2012