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

Debra A. Colicci	:	
	:	
v.	:	**A.A. No. 12 - 191**
	:	
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 Honorable 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 the instant complaint Ms. Debra A. Colicci urges that the Board of Review of the Department of Labor and Training erred when it held that she 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. Debra A. Colicci worked as the Kitchen and Coffee Shop Manager for the City of Warwick for nine years. Her last day of work was March 19, 2012. She filed a claim for employment security benefits but on June 1, 2012 the Director determined that she was ineligible for benefits. She appealed from this decision and Referee Williams Enos held a hearing on the matter on July 3, 2012. The claimant and two employer representatives appeared and testified. In his decision, the Referee made the following Findings of Fact:

> Claimant worked as a Kitchen & Coffee Manager for the City of Warwick for nine years. Claimant testified that she came in early on March 19, 2012 because she had a party to get ready for and was asked by her supervisor to make coffee for an outside agency, the West Bay Community Center, who was running a party at their facility. The claimant testified that she told her supervisor "no" because she already had a lot of work to do but said she would be glad to show someone else how to do it. The claimant testified that about an hour later she was called into the office and questioned by her supervisor and a co-worker about her not making the coffee and her scheduled hours. The claimant testified that she felt trapped and was upset because her supervisor did not stick up for her and walked off the job. The employer testified that a few days

> later they met with the claimant and asked if she wanted her position back and was told that she did not want to work for someone who would not stick up for her. The employer testified and produced evidence that showed that the claimant signed a resignation letter backdated March 19, 2012.

Referee's Decision, July 5, 2012, at 1. Based on these findings, the Referee concluded that her failure to communicate constituted a leaving without good cause within the meaning of Gen. Laws 1956 § 28-44-17:

> * * *
> I find that the claimant voluntarily left work without good cause when she abandoned her shift. Therefore, I find that the claimant left work voluntarily without good cause.

Referee's Decision, July 5, 2012, at 2. Accordingly, Referee Enos's decision denied benefits to Ms. Colicci.

Claimant filed an appeal and the matter was considered by the Board of Review. In a written opinion issued on August 16, 2012, the members of the Board of Review unanimously held 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. Thereafter, 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.

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

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[1] Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425

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

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(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 Employment Security, 517 A.2d 1039 (R.I. 1986).

> 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 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

The Board of Review found Ms. Colicci quit her position because she walked off the job before the end of her shift. In doing so the Referee could rely on the testimony presented to him at the hearing he held.

1. Review of the Factual Record.

Ms. Colicci testified that at 9:00 a.m. on March 19, 2012 she was asked —by Meg Underwood — to make coffee for "West Bay." Referee Hearing Transcript, at 6. She elaborated:

> And I said no. I said I have things to do. I said but I'll be more than happy to show the girl from the sur (phonetic) program how to push the button on the coffee machine. She

> can come in here and make it. She looked at me and she went okay, Deb an she stomped and went to the nine o'clock staff meeting … .

Id. Later she was called into a meeting with Ms. Underwood and Holly Webber. Id. Ms. Underwood began the meeting:

> … Meg said to me you said you'd make the coffee until the coffee machine was up. I said no, Meg, I said that I would show the sur program how to do the coffee. I have more than enough to do, I do extra things. I needed time to do it. That's why I was there early. She said, let me get this straight now, she said to me but you said you would do it. And I said, well I changed my mind. I said I have other things to do. …

Referee Hearing Transcript, at 6-7. At this juncture, Ms. Webber raised the issue of Claimant's hours. Referee Hearing Transcript, at 7. Ms. Colicci testified that she felt that Ms. Underwood was not defending her. Id. She explained:

> I had no one in there to stick up for me. No one to help me. So I didn't like the way I was being treated by Holly. Meg didn't stick up for me so I said to them I'm getting up now and I'm leaving because I'm going to say something I'm going to regret. I said this is not fair. And I got up and left.

Referee Hearing Transcript, at 8. And she went to the coffee shop, retrieved her pocketbook and left the building. Id.

Mr. Oscar Shelton, Personnel Director for the City of Warwick,

testified for the employer. In large part, testimony consisted of reading Ms. Underwood's March 19, 2012 written report of the incident, which was sent to him by e-mail the same day. See Referee Hearing Transcript, at 10-13 and Employer's Exhibit No. 1.

Ms. Colicci responded by once again indicating her disappointment that Ms. Underwood did not help her. Referee Hearing Transcript, at 14. She explained how dedicated she had been to her part-time position with the City. Id. Nevertheless, she confirmed that — after being asked if she wanted her job back — she resigned because she "couldn't work for someone who wouldn't stick up for me … ." Referee Hearing Transcript, at 16.

2. Resolution of the Question.

There is no doubt Claimant quit. She did so constructively (when she walked off the job before the end of her shift) and expressly (when she submitted her formal resignation). The only question is whether she did so with good cause.

It is uncontested that Claimant quit because — in her view — she was treated unkindly at the meeting. She did not know she was suspended.

In essence, she quit because she lost faith in her supervisor.

As a matter 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). See also Ward v. Department of Employment and Training, Board of Review, A.A. No. 96-51, (Dist.Ct.9/4/1996)(Denial of benefits affirmed where claimant walked off the job when work-product was criticized). 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 (adopting the finding of the Referee) that claimant voluntarily terminated her employment by failing to contact her employer to resume her employment is supported by the 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