STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**

SIXTH DIVISION

Lynne Pryor	:	
	:	
v.	:	**A.A. No. 12 - 023**
	:	
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 28th day of February, 2012.

By Order:

/s/
Chief Clerk

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

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

Lynne M. Pryor	:	
	:	
v.	:	**A.A. No. 12 - 023**
	:	
Dept. of Labor & 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. This matter is before the Court on the complaint of Ms. Lynne M. Pryor seeking judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor & Training, which held that Ms. Pryor was not entitled 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. Pryor is supported by the facts of the case and the applicable law and should be affirmed; accordingly, I so recommend.

FACTS & TRAVEL OF THE CASE

The facts in this case are not in dispute. Ms. Lynne Pryor worked as a legal assistant for the employer's law firm for over six years. In August of 2011 she relocated to Colchester, Connecticut with her fiancé. She quit her position because commuting to Providence would have been impractical.

Claimant filed for unemployment benefits on August 16, 2011 but the Director of the Department of Labor andTraining issued a decision finding her disqualified from receiving benefits because she left her job without good cause within the meaning of section 28-44-17 of the General Laws.

Claimant appealed from this decision. Accordingly, Referee William Enos held a hearing in her matter on October 21, 2011. In his October 24, 2011 decision, the Referee made the following findings of fact:

> Claimant worked as a legal assistant for this employer for six and a half years last on August 12, 2011. Claimant testified that she left this employer to relocate to follow her fiancé to Connecticut for his employment. The employer testified that it is true the claimant left because her fiancé and the claimant consolidated homes and bought a home together in Colchester, CT., closer to his employer. The cost of the commute was prohibitive for the claimant. The claimant testified that Section 28-44-17 allows relocating to follow a spouse and they have known each other for six and a half years, bought a house and live together, they should be considered common-law spouses.

Decision of Referee, October 24, 2011, at 1. Based on these findings, the Referee — after quoting section 28-44-17 — made the following conclusions:

> * * * I find that the claimant in this case has not established proof

> that she meets the standards of a common-law marriage. I find that the claimant in this case voluntarily left work without good cause when she left her job to relocate to another State to follow her fiancé.

Decision of Referee, October 24, 2011, at 2. Accordingly, Referee Enos found Ms. Pryor to be disqualified from the receipt of benefits.

Claimant filed an appeal[1] and the matter was considered by the Board of Review. On January 5, 2012, the Board of Review unanimously issued a 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.

Thereafter, on January 19, 2012, the claimant filed a 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

[1] Claimant's appeal was filed late. The Board asked for the reasons for her lateness and was apparently satisfied by claimant's response, since it considered her appeal on the merits.

> 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.' "[2] The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.[3] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[4]

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

---

2 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).

3 Cahoone v. Board of Review of the Dept.of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

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

> 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.

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

At the hearing before the Referee, Ms. Pryor testified that she left her position because her fiancé got a job in Colchester, Connecticut and they decided to make a home together and share expenses. (Referee Hearing Transcript, at 4). They had not done so previously. (Id.). But, since her new home is 81 miles from Providence commuting was not feasible. (Referee Hearing Transcript, at 5). Accordingly, she quit. (Id.).

The employer did not contest claimant's testimony regarding the circumstances of her departure or the reasons therefore. (Referee Hearing Transcript, at 6).

The Board of Review (relying on the findings and conclusions of Referee Enos) found claimant quit her position without good cause within the meaning of

section 17. The Referee's decision is supported by Rhode Island precedent. In Murphy v. Fascio, 115 R.I. 33, 340 A.2d 137 (1975), our Supreme Court decided that leaving one's employment in order to marry and relocate to another state was not good cause within the meaning of section 17. Murphy, 115 R.I. at 37, 340 A.2d at 139. A case to the contrary (*i.e.,* where benefits were allowed), Rocky Hill School, Inc. v. Department of Labor & Training, Board of Review, 668 A.2d 1241 (R.I. 1995), is inapposite. In Rocky Hill a teacher quit his position to follow his wife to a new position in Colorado. Rocky Hill, 668 A.2d at 1241. However, the distinguishing element in Rocky Hill is that the parties were married. Rocky Hill, 668 A.2d at 1243-44. The Supreme Court held " * * * that public policy requires that families not be discouraged from remaining together." Rocky Hill, 668 A.2d at 1244. Since Ms. Pryor and her fiancé were not married, her case does not fall within the ambit of the Rocky Hill decision.

Finally, there was some discussion at the hearing, among the claimant, the employer, and the Referee that Ms. Pryor might be deemed qualified for benefits on the theory that she had become her fiancé's common-law wife.[5] But while common-law marriage is still recognized in Rhode Island, I believe the Referee's decision declining to find a common-law marriage had been proven is well-supported by the record and not clearly erroneous.

---

[5] I have failed to mention the gentleman's name not from discourtesy but because it is not given in the transcript or elsewhere in the record.

In Holdgate v. United Electric Rys. Co., 47 R.I. 337, 133 A. 243 (1926), the Rhode Island Supreme Court held that — "A common-law marriage may be shown as an inference of fact from cohabitation, declarations, and reputations among friends and kindred." Holdgate, 133 A.2d at 244. In the instant case the evidence shows that while claimant and her fiancé had been in a long-term relationship, they had only recently begun cohabitation and there was no evidence that they had held each other out as husband and wife or that they were known in the community as such.[6] I therefore believe the Referee's decision on this question to be sound.

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.[7] Stated differently, the findings of the

---

6 In Odd Fellows Benevolent Assn. of Rhode Island v. Carpenter, 17 R.I. 720, 24 A.2d 578 (1892), the Supreme Court indicated that — "Proof of reputation and continuous cohabitation for a long period of time has been held sufficient to establish a marriage for civil purposes, while proof of cohabitation alone has generally been held to be insufficient. Com. v. Stump, 53 Pa. 132, 135." Odd Fellows, 24 A. at 579.

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

agency will be upheld even though a reasonable mind might have reached a contrary result.[8]

Accordingly, the Board's decision (adopting the finding of the Referee) that claimant voluntarily terminated her employment without good cause within the meaning of section 17 is supported by the 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

FEBRUARY 28, 2012

[8] Cahoone, supra n. 6, 246 A.2d at 215 (1968). See also D'Ambra v. Bd. of Review, Dept. of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986). See also Gen. Laws § 42-35-15(g), supra at 5 and Guarino, supra at 6, fn.1.