STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Taneisha Scott	:	
	:	
v.	:	**A.A. No. 12 - 233**
	:	
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 19th day of April, 2013.

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. This matter is before the Court on the complaint of Teneisha S. Scott seeking judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor and Training, which held that Ms. Scott 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. Scott is 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

The facts in this case are not in dispute. Ms. Taneisha Scott worked for Re Focus Inc. as a direct support worker for two years until July 5, 2012. Shortly thereafter, she relocated to North Carolina with her fiancé, who had found work there.

Claimant filed for unemployment benefits but on August 6, 2012 the Director of the Department of Labor and Training issued a decision which found her to be disqualified from receiving benefits because she left her job without good cause within the meaning of § 28-44-17 of the General Laws.

Claimant appealed from this decision. Accordingly, Referee Carl Capozza held a hearing on the matter on September 5, 2012. In his September 12, 2012 decision, the Referee made the following findings of fact:

> The claimant had been employed for 2 years as a direct support worker until her last day of work, July 5, 2012 at which time she voluntarily quit her job for purposes of relocating to the State of North Carolina. The claimant's significant other/fiance had obtained employment in that state and, as a result, made the decision to relocate with him.

Decision of Referee, September 12, 2012, at 1. Based on these findings, the Referee declared the following conclusions:

> The issue in this case is whether the claimant left work voluntarily with good cause within the meaning of Section 28-44-17 of the Rhode Island Employment Security Act.
>
> Leaving one's job for the purpose of relocating to another state for one's fiancé has been determined not good cause under the Statute. The claimant's decision to relocate, under the circumstances, was for personal reasons. I find under the circumstances that the claimant, therefore, voluntarily left her job without good cause as previously determined by the Director and not entitled to benefits.

Decision of Referee, September 12, 2012, at 2. Accordingly, Referee Capozza found Ms. Scott to be disqualified from the receipt of benefits.

Claimant filed an appeal and the matter was considered by the Board of Review. On November 7, 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 November 19, 2012, the claimant filed a 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 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 although a reasonable mind might have reached a contrary result.[3]

The Supreme Court of Rhode Island recognized in Harraka, supra, 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

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1 Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5).

2 Cahoone v. Board of Review of the Department 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. Board of Review, Department of Employment Security, 517 A.2d 1039 (R.I. 1986).

> 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.

IV. ANALYSIS

A.

At the hearing before the Referee, Ms. Scott testified that she loved her job at Re Focus but left because her fiancé, Mr. Alfonso Curry, got a job in North Carolina and they had no place to stay in Rhode Island. Referee Hearing Transcript, at 5. Although she was working full-time, she could not support a family of three (she, her fiancé and their child) by herself. Referee Hearing Transcript, at 6. Mr. Curry was not working when he was living in Rhode Island. Id., at 5-6. Accordingly, they relocated to Charlotte, North Carolina. Id., at 8.

The employer did not contest Claimant's testimony regarding the circumstances of her departure or the reasons therefore. Referee Hearing

Transcript, at 9. As a result, there is no issue of fact to be determined, only the following issue of law —

> **Does a worker who resigns to accompany her fiancé to another state where he has acquired work leave for good cause within the meaning of section 28-44-17?**

In answering this question we start from the following fundamental premise of the Employment Security Act — that workers who leave their employment for personal reasons do so without good cause within the meaning of section 28-44-17. However, there are a few, limited, exceptions to this rule.

However, when it adopted the decision of the Referee as its own, the Board embraced the Referee's declaration that — "Leaving one's job for the purpose of relocating to another state for one's fiancé has been determined not good cause under the Statute." See Decision of Referee, at 1 and Board of Review Decision, at 1. Although Referee Capozza did not name the case, it is clear to me that the precedent to which he referred was the Rhode Island Supreme Court's decision in Murphy v. Fascio, 115 R.I. 33, 340 A.2d 137 (1975). In Murphy 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. However, Ms. Scott urges this Court to apply a subsequent case — Rocky Hill School, Inc. v. Department of Labor and Training, Board of Review, 668 A.2d 1241 (R.I. 1995). See Appellant's Memorandum, at 5-7.

In Rocky Hill, a teacher named Kenneth N. Geiersbach quit his position at the Rocky Hill School in order to follow his wife to a new position in Colorado was allowed benefits. Rocky Hill, 668 A.2d at 1241. The Supreme Court distinguished Murphy on the ground the claimant in Rocky Hill was already 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.

Ms. Scott urges that she and Mr. Curry, together with their child, do in fact constitute a family. See Appellant's Memorandum, at 5-7. Moreover, she asserts that the presence of the child provided her with more impetus to remain together. Accordingly, she urges that

notwithstanding the fact that she and Mr. Curry were not married,[4] her situation falls within the ambit of the Rocky Hill decision.

B.

Without question, Ms. Scott's decision to relocate — from a personal point of view — was completely understandable. But our task herein is not to evaluate the logic of her decision, but to determine whether, under the circumstances, she must be declared eligible for unemployment benefits. Clearly, the presence (and existence) of the child in the instant case is a compelling factor for unity that was not present in Ms. Murphy's case.

And it is beyond question that, since 1975, when Murphy was decided, the popular conception of what makes a family have been reconceived in the eyes of many. Nevertheless, the Court in Rocky Hill distinguished Murphy on the ground that the Geiersbachs were already married while Ms. Murphy was merely engaged when she quit to marry

[4] Claimant did not assert before the Referee, and has not asserted in her memorandum, that her relationship with Mr. Curry met the criteria of a common-law marriage under Rhode Island law. See Holdgate v. United Electric Rys. Co., 47 R.I. 337, 133 A. 243, 244 (1926) and Odd Fellows Benevolent Assn. of Rhode Island v. Carpenter, 17 R.I. 720 (1892).

and relocate. 668 A.2d at 1233-34. This Court is, of course, bound by the directives of the Rhode Island until such time as they may be reconsidered. See University of Rhode Island v. Department of Employment and Training, Board of Review, 691 A.2d 552, 555 (R.I. 1997).

C.

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.[5] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[6] Accordingly, the Board's decision (adopting the finding of the

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

[6] Cahoone, supra n. 5, 246 A.2d at 215 (1968). See also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986). See also Gen. Laws 1956 § 42-35-15(g), supra at

Referee) that Claimant voluntarily terminated her employment without good cause within the meaning of section 17 is supported by the reliable, probative and substantial evidence of record and ought to be affirmed.

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6 and Guarino, supra at 7, fn.1.

V. 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

APRIL 19, 2013