STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**

SIXTH DIVISION

Thomas Dooley	:	
	:	
v.	:	**A.A. No. 12 - 027**
	:	
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 19th day of June, 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. Thomas Dooley urges that the Board of Review of the Department of Labor & Training erred when it held that he was ineligible to receive temporary disability insurance (TDI) benefits because he was receiving partial workers' compensation 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 instant matter should be affirmed.

I. FACTS & TRAVEL OF THE CASE

Mr. Thomas Dooley filed a claim for Temporary Disability Insurance (TDI) benefits. When the Director learned claimant was receiving partial workers'

compensation benefits he was disqualified. Claimant filed an appeal and a hearing was held on September 29, 2011 before Referee Stanley Tkaczyk. Referee Tkaczyk issued a decision on October 7, 2011 which included the following findings of fact:

> 2. Findings of Fact:
> The claimant last worked on June 26, 2011. At that time, he filed a claim for Worker's Compensation benefits and was awarded partial Worker's Compensation benefits. The claimant subsequently filed his claim for Temporary Disability benefits claiming the amount not satisfied by the Worker's Compensation payments. ***

Referee's Decision, October 7, 2011, at 1. Then, the referee pronounced the following statements of conclusion:

> The issue in this case is whether or not the claimant is subject to disqualification under the provisions of section 28-41-6 of the Rhode Island Temporary Disability Act. The evidence presented establishes that the claimant received Worker's Compensation benefits as a direct result of the illness on which he also filed a claim for Temporary Disability benefits. The statute makes no provision for recognizing a partial disability when that condition is directly related to his Worker's Compensation payments. As such, I find the claimant is subject to disqualification under the provisions of Section 28-41-6 as he received Workers' Compensation benefits for the condition at issue.

Referee's Decision, October 7, 2011 at 1. Accordingly, the Decision of the Director finding claimant to be subject to disqualification pursuant to Gen. Laws 1956 § 28-41-6 was sustained.

Claimant appealed and the matter was considered by the Board of Review. On December 7, 2011, the Board of Review, through its Chairman, sitting alone, issued a decision which held that the decision of the Referee was a proper adjudication of the facts and the law applicable thereto and adopted the decision of the Referee as its own. Thereafter, claimant filed a timely complaint for judicial review in the Sixth Division District Court.

II. APPLICABLE LAW

This case centers on the application of the following provision of the Rhode Island Employment Security Act, which enumerates one of the several grounds upon which a claimant may be deemed ineligible to receive unemployment benefits. Gen. Laws 1956 § 28-41-6(a), provides:

> (a) No individual shall be entitled to receive waiting period credit benefits or dependents' allowances with respect to which benefits are paid or payable to that individual under any workers' compensation law of this state, any other state, or the federal government, on account of any disability caused by accident or illness. In the event that workers' compensation benefits are subsequently awarded to an individual, whether on a weekly basis or as a lump sum, for a week or weeks with respect to which that individual has received waiting period credit, benefits, or dependents' allowances, under chapters 39--41 of this title, the director, for the temporary disability insurance fund, shall be subrogated to that individual's rights in that award to the extent of the amount of benefits and/or dependents' allowances paid to him or her under those chapters. (Emphasis added).
> (b) * * *

As one may readily observe, subsection (a) establishes a complete bar to the receipt of TDI benefits during a week one is receiving workers' compensation benefits. See Duffy v. Powell, 18 A.3d 487, 490 (R.I. 2011).

III. STANDARD OF REVIEW

The pertinent 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 even though a reasonable mind might have reached a contrary result.[3]

The Supreme Court of Rhode Island recognized in Harraka v. Board of Review of the Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595, 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

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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).

2 Cahoone v. Board of Review of the Dept.of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

3 Cahoone v. Bd. of Review of Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

> 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. ISSUE

The facts of this case are not in dispute. Instead, a legal question is presented for the Court's consideration — Whether Mr. Dooley's claim for TDI benefits in Rhode Island was subject to disqualification pursuant to Gen. Laws 1956 § 28-41-6 because he was also receiving partial workers' compensation benefits?

V. ANALYSIS

In this case claimant Dooley asserts that he is not subject to the provision in § 28-41-6 that bars — by its terms, unconditionally — the payment of Temporary Disability Insurance (TDI) benefits to those who are collecting workers' compensation benefits. He grounds his request to be deemed without the parameters of § 28-41-6 on the uncontested fact that he is collecting only partial (60%) workers' compensation benefits — (40%) of his disability having been attributed to non-work-related causes; accordingly, he is seeking to collect TDI only to the extent he has been denied workers' compensation. He urges that collecting TDI to this limited extent would be neither unwarranted nor unjust. To the contrary, he argues that denying him partial TDI benefits would necessitate an absurd application of section 28-41-6 and that such a denial would constitute an unconstitutional "taking." In this opinion, I shall address his statutory arguments first and his constitutional arguments second, reversing the order in which they were presented.

A. Statutory Interpretation Argument.

Mr. Dooley's position — that he should be able to collect "apportioned" TDI benefits — is not unreasonable. See Appellant's Memorandum, at 6-8. The collection of TDI by Mr. Dooley would not constitute unfair or avaricious "double-dipping." His TDI benefits — for which he personally contributed — would be limited by the extent he is collecting workers' compensation. Unfortunately, the plain language of § 28-41-6 requires that his claim be denied.

In Duffy v. Powell, 18 A.3d 487 (R.I. 2011), our Supreme Court reviewed § 28-41-6 and declared that "* * * it is abundantly clear that the General Assembly intended receipt of workers' compensation benefits to be a complete bar to receipt of TDI benefits." Duffy, 18 A.3d at 490. Accordingly, the Court set aside an order of the District Court allowing benefits to the recipient of a Workers' Compensation lump sum settlement. Id.

Before Duffy, this Court had repeatedly applied § 28-41-6 strictly — arguably producing some draconian results. For instance, this Court has held that section 28-41-6 requires a recipient of workers' compensation benefits to be totally barred from receiving TDI benefits even when the claimant suffered more than one injury. See Eaton v. Department of Employment Security Board of Review, A.A. No. 83-189 (Dist.Ct. 7/29/86)(Higgins, J.)(Claimant, collecting worker's compensation for a job-related injury, applied for TDI for unrelated debilitating condition; District Court holds claimant totally ineligible, based on "explicit" language of § 28-41-6).

This Court has also applied this rule to the instant situation — wherein the worker has been deemed less than 100% disabled by the work injury. See Correia v.

Department of Labor and Training Board of Review, A.A. No. 01-134 (Dist.Ct. 3/07/02)(DeRobbio, C.J.)(Where 70% of claimant's disability was attributed to a work-related injury and 30% to a pre-existing condition, the District Court holds § 28-41-6 completely bars receipt of TDI — slip op. at 6-7) and Mitchell v. Department of Labor and Training Board of Review, A.A. No. 01-082 (Dist.Ct. 4/3/02)(DeRobbio, C.J.). Thus, § 28-41-6 has been applied in cases on all fours with Mr. Dooley's case.

A number of the District Court cases construing § 28-41-6 have considered its application when there was a commutation[4] of the workers' compensation benefits. See e.g. Vergara v. Department of Labor and Training Board of Review, A.A. No. 99-047 (Dist.Ct. 3/20/00)(DeRobbio, C.J.); Whalen v. Department of Labor and Training Board of Review, A.A. No. 98-001 (Dist.Ct. 6/2/98)(DeRobbio, C.J.). Especially noteworthy is Adelita S. Orefice, Director, v. Department of Labor and Training, Board of Review, and Ronald Patenaude, A.A. No. 04-092 (Dist. Ct. 4/3/06)(W. Cilfton, J.), in which this Court ruled that the application of a commutation precluded the receipt of TDI based on a new and distinct injury. Specifically, Judge Clifton noted that: "The statute is clear and unambiguous and is capable of only one interpretation; no one collecting workers compensation may collect TDI." Orefice (Patenaude), slip op. at 5.

[4] A "commutation" is a lump sum payment to the worker which represents his or her probable future weekly payments. Adelita S. Orefice, Director, v. Department of Labor and Training, Board of Review, and Ronald Patenaude, A.A. No. 04-092 (Dist. Ct.4/3/06)(W. Clifton, J.)(Slip op. at 5).

In distinction to the rule for TDI, a workers' compensation recipient may claim and receive unemployment benefits.[5] See Gen. Laws 1956 § 28-44-19. E.g. McGlynn v. Department of Labor and Training Board of Review, A.A. No. 00-053 (Dist.Ct. 5/17/01) (Cenerini, J.). Some of the cases finding § 28-41-6's bar to be absolute have specifically noted that the TDI act does not include an offset provision analogous to § 28-44-19. See Correia, supra, (Slip op. at 6); Mitchell, supra, (Slip op. at 7).

In sum, this Court has — for 25 years — assiduously applied the rule barring the receipt of TDI by a workers' compensation recipient. To this array of precedents we must now add the controlling guidance of the Supreme Court in Duffy. I do not believe any circumstances are present which would permit a deviation from Duffy or this Court's firmly held precedents.[6]

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[5] The offset provision found in § 28-44-19 requires the amount of workers' compensation benefits to be offset against the amount of unemployment benefits received.

[6] The likelihood that the Supreme Court would give sanction to efforts to create judicial exceptions to § 28-41-6's bright-line rule would seem remote, if a 1984 case is to provide any guidance. In Almstead v. Department of Employment Security, Board of Review, 478 A.2d 980 (R.I. 1984) the question before the Court was this — Was Ms. Ethel Almstead, whose workers' compensation judgment had been reduced into a commutation agreement, barred from receiving unemployment benefits during the twenty-five week period specified in the award? The Court answered the question in the affirmative.
And, significantly for our purposes, the Court commented further, precluding further cases in which litigants would seek exceptions to this rule:

> * * * We are of the opinion that if the circumstances which have arisen in the present case call for an exception to the plain meaning of the language of § 29-33-25 and § 28-44-19, "there is no lawful power in this court to provide it, and therefore the appeal for a remedy should be addressed elsewhere, namely, to the general assembly, the creator of the statute[s]." See Sarrasin v. Crescent Co., 104 R.I. [69] at 73, 241 A.2d

B. Constitutional Arguments.

Mr. Dooley argues in his Memorandum of Law that denying him TDI benefits — at least to the extent of his non-work-related disability — constitutes a "taking" in violation of the fifth and fourteenth amendments to the United State Constitution and Article 1, § 16 of the Rhode Island Constitution. See Appellant's Memorandum of Law, at 3-5. Appellant cites a series of cases but none involve issues regarding the benefit structure of our TDI statute, our unemployment statute or those of any of our sister states — indeed, most involve issues arising from takings by eminent domain. I therefore find these precedents to be inapposite.[7]

> [818] at 820 (quoting Dupere v. Brassard, 87 R.I. 205, 210, 139 A.2d 879, 882 (1958)).

Almstead, 478 A.2d at 980. Accordingly, I believe it unlikely that our Supreme Court would sanction judicial emendations to § 28-41-6's bright-line rule barring the receipt of TDI by those receiving workers' compensation payments.

[7] My own search for due process analyses in TDI cases revealed none. On the other hand, one is able to locate cases that consider equal protection challenges to the administration of these programs. One which is of parochial interest is Rojas v. Fitch, 928 F.Supp. 155, 166 (D.R.I. 1996) aff'd 127 F.3d 184 (1st Cir. 1997) cert. den. 524 U.S. 937 (1998). In considering whether Rhode Island's exemption of religious institutions from the unemployment system constituted a violation of the equal protection clause, the District Judge Boyle wrote:

> There is no fundamental right to the payment of unemployment benefits, and there is no suspect or quasi-suspect classification involved. Accordingly, in order to withstand an equal protection challenge, the statutory exemptions in question here need only be rationally related to a legitimate governmental interest. Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471, 489, 97 S.Ct. 1898, 1908-09, 52 L.Ed. 2d 513 (1977).

Rojas, 928 F.Supp. at 166. Accordingly, based on a number of factors, including the efficient administration of Rhode Island's unemployment system and avoiding entanglements in religious employment issues, the

C. Summary of Findings.

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. As stated above, the collection of TDI by Mr. Dooley would not be outrageous or improper. However, my sentiments to the contrary, I find, after reviewing the record below, that the Board's decision (adopting the finding of the Referee) that claimant was subject to the section 28-41-6's total bar on the receipt of TDI by one receiving worker's compensation benefits to be correct, not clearly erroneous and not affected by error of law. I further find that its application to Mr. Dooley would not be unconstitutional.

Court found the rational basis test had been met. Id.

See also Edwards v. Valdez, 789 F.2d 1477, 1483 (10th Cir. 1986)(Acknowledging cases which hold fiscal integrity of the program to be the fiscal integrity of the program).

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

JUNE 19, 2012