STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

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

Alena M. Nash	:	
	:	
v.	:	**A.A. No. 12 - 082**
	:	
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 8th day of June, 2012.

By Order:

__/s/_____
Melvin Enright
Acting Chief Clerk

Enter:

___/s/_____
Jeanne E. LaFazia
Chief Judge

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

Alena M. Nash	:	
	:	
v.	:	**A.A. No. 12 - 082**
	:	
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. Alena M. Nash 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. Nash was not entitled to receive employment security benefits. This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1.

I. FACTS & TRAVEL OF THE CASE

The facts in this case may be stated briefly: in August of 2011 Ms. Nash became separated from her employment at Sandy's Consignment store in Fort Myers, Florida. She relocated to Rhode Island where members of her family reside.

She applied for unemployment benefits on September 29, 2011 but on December 29, 2011, the Director determined that claimant was ineligible for benefits because she had left the job without good cause within the meaning of section 28-44-17 of the General Laws. Claimant appealed and on February 2, 2012 Referee Carol A. Gibson held a hearing on the matter, at which the claimant was present; her former employer participated telephonically. In her February 3, 2012 decision, the Referee found the following facts:

> 2. Findings of Fact:
>
> The claimant had worked for the employer, a consignment shop located in Florida, for two months performing customer service work through August 13, 2011. The claimant averages twenty-five to forty hours of work per week. The claimant states that she left the job as she was experiencing financial difficulties and she wanted to relocate back to Rhode Island for the support of her family. The claimant did not have other employment secured at the time of her leaving. The employer states that claimant initially indicated that she was only driving her boyfriend back to Rhode Island and that the claimant would be returning to work. The claimant denies indicating she would be returning to work with the employer.
> Referee's Decision, February 3, 2012, at 1.

And, after quoting extensively from Gen. Laws 1956 § 28-44-17, enunciated the following conclusions:

> * * *
>
> In order to show good cause for leaving a job the claimant must show that the work had become unsuitable or that she was faced with no reasonable alternative but to resign. The burden of proof rests solely with the claimant.
>
> In this case, the claimant has not sustained this burden. The record

> is void of sufficient evidence to indicate that either of the above situations existed. The testimony has established the claimant left her job to relocate back to Rhode Island as she has experience (sic) financial difficulties. The claimant did not have other employment secured at the time of her leaving. This claimant's leaving is considered to be without good cause under the provisions of Section 28-44-17 and benefits may not be allowed on this issue.
> Referee's Decision, February 3, 2012, at 2.

Accordingly, Referee Gibson issued a decision finding claimant disqualified from receiving benefits.

Claimant filed an appeal and the matter was heard by the Board of Review. On March 15, 2012, the Board of Review issued a unanimous decision which affirmed the decision of the Referee.

Thereafter, on April 13, 2012, 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.

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; 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.

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 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

---

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, 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).

> enlarge the exclusionary effect of expressed restrictions on eligibility under the guise of construing such provisions of the act.

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 she left work without good cause pursuant to section 28-44-17?

V. ANALYSIS

The Board of Review found claimant quit her position without good cause within the meaning of section 28-44-17. For the reasons that follow I believe the decision of the Board of Review denying benefits to Ms. Nash is correct and I recommend that it be affirmed.

The facts elicited at the hearing from the two witnesses diverge to a great extent.

First, Ms. Nash testified that she had gone to Florida to start a new life. Referee Hearing Transcript, at 11, 14. She worked for Sandy's Consignment in Florida as a customer service representative for about two months. Referee Hearing Transcript, at 7-8. She said she left the job because the business was slow and because she had a support system in Rhode Island. Referee Hearing Transcript, at 8-9, 10, 15. She said she told her employer she was leaving. Referee Hearing

Transcript, at 9-10. She explained that she told her employer — Jill Vieira — that she was leaving because her mother was sick and because she was not making enough money. Referee Hearing Transcript, at 11-12. Putting the latter notion into context, she said Jill had warned her she might have to be let go if business did not get busier. Referee Hearing Transcript, at 12. She conceded that when she left Sandy's, she had no job in Rhode Island. Referee Hearing Transcript, at 13.

Replying to Ms. Nash, Ms. Vieira indicated that she did not know Ms. Nash had left her employ. She said Ms. Nash left clothes and personal belongings with her. Referee Hearing Transcript, at 19. She said Ms. Nash told her she was driving to Rhode Island to bring her boyfriend home. Referee Hearing Transcript, at 22. She said she was coming back to Florida thereafter. Referee Hearing Transcript, at 22. According to Ms. Vieira, Ms. Nash never related any concern over her hours. Referee Hearing Transcript, at 23. Ms. Vieira specifically denied she ever told Ms. Nash she was in danger of being laid off. Referee Hearing Transcript, at 27.

Finally, Ms. Vieira testified that Ms. Nash asked her to lie and say she was laid off, so she could collect unemployment. Referee Hearing Transcript, at 27.

Generally, when workers terminate for personal reasons – *i.e.,* reasons not directly related to their positions – they are disqualified from receiving benefits because such reasons are not considered good cause to quit within the meaning of section 17. However, this rule has a few limited exceptions.

One such exception to the general rule of disqualification when a claimant has quit for personal reasons may be found in Rocky Hill School, Inc. v. Department of Labor & Training, Board of Review, 668 A.2d 1241 (R.I. 1995), a case in which benefits were allowed a teacher named Geiersbach who quit his position at the Rocky Hill School in order to accompany his wife — who also had been a Rocky Hill teacher — to Colorado, where she had obtained a new and better position. Rocky Hill, 668 A.2d at 1241. The Supreme Court held "* * * that public policy requires that families not be discouraged from remaining together." Rocky Hill, 668 A.2d at 1244. The Rocky Hill Court distinguished Murphy v. Fascio, 115 R.I. 33, 340 A.2d 137 (1975), an earlier case in which our Supreme Court determined that leaving one's employment in order to marry and relocate to another state was not good cause within the meaning of section 17, on the basis that the Geiersbachs were already married. See Rocky Hill, 668 A.2d at 1243-44, and Murphy, 115 R.I. at 37, 340 A.2d at 139. However, the Rocky Hill case is patently inapposite to the facts of the instant case.

In sum, because the record is clear that Ms. Nash left Florida for reasons that were predominantly personal[4] — particularly in light of the fact that she left

---

[4] I find no need to reprint here the reasons she gave Ms. Vieira why she needed to drive her boyfriend home. Referee Hearing Transcript, at 22.

Florida without a job to return to in Rhode Island — I believe the instant case falls outside the ambit of Rocky Hill.

As stated above in Section III of this opinion (Standard of Review), 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. Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.

Clearly, applying this standard, the Board acted within its sound discretion in assigning credibility to the testimony of Ms. Vieira and denying same to Ms. Nash. Accordingly, I must conclude — in light of the testimony and evidence of record — that the Board's decision (adopting the finding of the Referee) that claimant voluntarily terminated her employment for personal reasons and without good cause within the meaning of section 17 is supported by the evidence of record, is not clearly erroneous, 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

JUNE 8, 2012