STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**

SIXTH DIVISION

Yanina T. Walker	:	
	:	
v.	:	**A.A. No. 13 - 014**
	:	
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 12th 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. Before the Court is the complaint of Ms. Yanina T. Walker 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. Walker 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. Walker 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 of the case are these: Ms. Yanina T. Walker worked for RBS Citizens Bank as a Senior Bank Teller for five years. She worked about twenty hours per week — a part-time shift she described as "mother's hours" (i.e., between 9:00 a.m. and 2:30 p.m.).

Claimant's last day of work was August 21, 2012, when she quit because her hours were changed and increased. Claimant filed for unemployment benefits but on September 20, 2012 the Director of the Department of Labor and Training found her to be 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 26, 2012. In his November 2, 2012 decision, the Referee made the following findings of fact:

> * * * The claimant testified that her hours were increased and changed by her manager without any input from her. The claimant testified that her son is on SSI and cannot work over a certain number of hours or she would lose her son's SSI.

> The employer testified that he gave the claimant and others the revised schedule and asked them all to look at it and give input so he could work together with them to make it work. The employer testified that that the claimant first indicated to him that it would work out but soon after changed her story and quit. The employer testified that the claimant had worked for him for five years and was shocked that the claimant did not try and work it out with him but instead just quit.

Decision of Referee, November 2, 2012, at 1. Based on these findings, the Referee — after quoting from section 28-44-17 — declared the following conclusions:

> I find that the claimant, in this case, voluntarily left work without good cause when she quit her job without trying to work out suitable hours with her employer. Therefore, I find that the claimant left work without good cause.

Decision of Referee, November 2, 2012, at 2. Thus, Referee Enos — while assuming that a change to her hours would have, in theory, constituted good cause to quit — found she did so precipitously, without exploring alternatives. Accordingly, Referee Enos found Ms. Walker to be disqualified from the receipt of benefits.

Claimant filed an appeal and the matter was considered by the Board of Review. On December 26, 2012, a majority of the members of the Board of Review issued a decision in which they 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 24, 2013, Ms. Walker 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

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

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, 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 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

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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. Board 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).

construing such provisions of the act.

IV. ANALYSIS

As stated above in section II of this opinion, one who quits a position may receive unemployment benefits only if he or she quit for good cause. See Gen. Laws 1956 § 28-44-17. In prior cases too numerous for citation, this Court has held that a quitting in order to care for a child (or children) does indeed constitute good cause within the meaning of section 17.[4] E.g. Flowers v. Department of Employment Security, Board of Review, A.A. No. 83-292, (Dist.Ct. 4/29/88)(Wiley, J.)(Board found claimant cashier not entitled to benefits; Reversed, where the Board's determination that claimant had not shown good cause to terminate was clearly erroneous — where she could not return to work because her hours were changed so as to interfere with her care for hearing-impaired child). But, as a prerequisite to eligibility, the Court has required the employee to fully explore alternatives to quitting, such as requesting an accommodation — either a change to his or her schedule, or, where necessary, a leave of absence, Estrella v. Department of Employment and Training, Board of

[4] Of course, in many of these cases, the Claimant will be disqualified under Gen. Laws 1956 § 28-44-12 — because he or she is not fully available for work.

Review, A.A. No. 94-111, slip op. at 6-7, (Dist.Ct. 11/22/94)(Cenerini, J.)(Board found claimant not entitled to benefits; affirmed, where claimant quit in order to care for child in Florida and where claimant declined an offered leave of absence) or a change to his or her personal schedule, Croteau v. Department of Employment Security Board of Review, A.A. No. 94-229, slip op. at 7, (Dist.Ct. 2/1/95) (DeRobbio, C.J.)(Claimant found not entitled to benefits; affirmed, claimant was moved to 3rd shift causing child care problems but where claimant did not explore alternatives). Such a requirement prevents those who have unnecessarily quit from receiving benefits. In this case the testimony of Ms. Walker and her manager diverged on this critical question — Did she really have to quit? With this question in mind, we will now review the testimony of record.

At the hearing before the Referee, Ms. Walker testified that for five years she worked for Citizens Bank, putting in 20 hours per week (between 9:00 and 2:30). Referee Hearing Transcript, at 6. Then, she received a phone call at home that her hours would be increased. Id. She confirmed this the next day. Id. She explained that she limited her hours because she had maternal duties with her small children — such as dropping them off in the

morning at the school bus and picking them in the afternoon. Referee Hearing Transcript, at 6-7.

Ms. Walker informed the Referee that when she heard about these changes she spoke to her manager, who told her to take the schedule and determine what needed to be changed — and then he would see if it was possible. Referee Hearing Transcript, at 8. This caused her to be stressed and she went out on a couple of days' stress leave. Id. When she came back she told her manager she could not work more hours because her son gets Social Security and she only can work a certain number of hours. Referee Hearing Transcript, at 8-9.

On cross-examination she admitted that she knew that the changes were only going to be for three weeks. Referee Hearing Transcript, at 10. She also conceded that all the tellers had their hours changed, not just her. Referee Hearing Transcript, at 11.

Claimant's Branch Manager, Mr. Saleh Yassine testified for the employer. Referee Hearing Transcript, at 11 et seq. He professed that the schedule change was necessitated by circumstances, and was not meant to "mess up" people's personal lives. Referee Hearing Transcript, at 11-12. Mr. Yassine testified that he told Ms. Walker that if she wanted to modify the

schedule she should come back to him and they would discuss it. Referee Hearing Transcript, at 12-13. But according to Mr. Yassine, she never came back to him. Referee Hearing Transcript, at 13. The next thing he knew, Ms. Walker presented a doctor's note. Referee Hearing Transcript, at 14. Then she quit. Referee Hearing Transcript, at 15.

Ms. Walker then testified in rebuttal. She said that when she told Mr. Yassine she could not work more than twenty hours, he said he would drop her to ten. Referee Hearing Transcript, at 16. And when she told him that he could not do that he said he would make her work afternoons. Id. She felt he was being spiteful. Id.

Mr. Yassine responded that the changes were more on the basis of business necessity. Referee Hearing Transcript, at 19. He swore before the Referee that he would have changed the schedule to accommodate Ms. Walker. Referee Hearing Transcript, at 29.

This is a case where two different versions of events were presented. If one believes Ms. Walker's version of events, she had no alternative to quitting; if one credits Mr. Yassine's testimony, her resignation was completely unnecessary. The Referee (and the Board) believed Mr. Yassine.

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]

In this case the Referee (and the majority of the Board of Review) credited the employer's testimony. There is simply no question that Mr. Yassine's sworn testimony — that he would have accommodated Ms. Walker — is, if believed, sufficient to support the finding that her termination was precipitous and unnecessary and that she voluntarily terminated her employment without good cause within the meaning of section 17.

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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, Dept. of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986). See also Gen. Laws § 42-35-15(g), supra at 6 and Guarino, supra at 6, fn.1.

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 12, 2013