STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

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

Margaret A. McCormick	:	
	:	
v.	:	**A.A. No. 13 - 159**
	:	
Dept. 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 and the matter remanded to the Board of Review for referral to the Director of the Department of Labor and Training so that he may calculate the amount of benefits to be received after the application of the benefit offset described in Part IV-D of the attached opinion.

Entered as an Order of this Honorable Court on this 12th day of November, 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. In this case Ms. Margaret A. McCormick urges that the Board of Review of the Department of Labor and Training erred when it held that she was not entitled to receive employment security benefits because she quit a part-time position without good cause. Jurisdiction for appeals from decisions of the Department of Employment and Training 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.

Employing the standard of review applicable to administrative appeals, I find that the decision rendered by the Board of Review on the issue of eligibility was supported by substantial evidence of record and was not affected by error of law; I therefore recommend that the Decision of the Board of Review be affirmed on the fundamental issue of disqualification. I shall, however, recommend that the decision be modified due to a subsidiary issue that arises in this case.

I

Facts and Travel of the Case

The facts and travel of the case are these: after being laid-off from a previous full-time position, Ms. Margaret McCormick applied for and received unemployment benefits. Thereafter, hoping it would lead to greater things, she accepted a part-time position as a warehouse worker for Farmaesthetics Inc. But when, five months later, she saw that opportunities for advancement had diminished she resigned, in order to relocate to the State of Florida. Her last day of work was January 23, 2013.

She renewed her claim for benefits and collected further benefits. Then on May 23, 2013, a designee of the Director issued a decision finding her to be disqualified from the receipt of benefits and overpaid during the time-

period of (the weeks ending) January 26, 2013 through May 4, 2013. The Claimant was disqualified by the Director because she had left the employ of Farmaesthetics without good cause, within the meaning of Gen. Laws 1956 § 28-44-17. Claimant appealed from this decision and on June 26, 2013 Referee Carl Capozza conducted a hearing on the matter. Claimant appeared telephonically, as did a company representative, Ms. E. Katarina Quinn.

The Referee issued a decision the next day, on June 27, 2013, in which he made the following findings of fact:

> **2. Findings of Fact:**
>
> The claimant had been employed for approximately five months as a part-time warehouse employee until her last day of work January 23, 2013. Due to her dissatisfaction with the wages and lack of advancement opportunities, the claimant made the decision to quit her job and relocate to the State of Florida to reside with family members while she leased her home in Rhode Island so that her mortgage could be paid.
>
> When filing her claim for benefits the claimant advised the Department through the Internet that she was laid off due to a lack of work and as a result of that representation did receive benefits for the weeks ending January 26, 2013 through May 4, 2013 totaling $6,753.00.

Decision of Referee, June 27, 2013, at 1. Based on these findings, the Referee made the following Conclusions:

> * * *
> An individual who leaves work voluntarily must establish good

> cause for taking that action or else be subject to disqualification under the provisions of Section 28-44-17.
>
> In order to show good cause for leaving her job the claimant must establish and prove that the job was unsuitable or that she had no reasonable alternative. Based on the credible testimony and evidence presented in this case I find that neither of these situations existed when the claimant made the personal decision to leave her job because of dissatisfaction with her wages and relocate to the State of Florida. Prior to her leaving the claimant had not secured employment in that State. Under these circumstances I must find that the claimant had voluntarily quit her job without good cause for personal reasons and, therefore, cannot be allowed benefits.

Referee's Decision, June 27, 2013, at 2. Accordingly, Referee Capozza affirmed the Director's decision denying benefits to Ms. McCormick. Referee's Decision, June 27, 2013, at 2-3.

Claimant filed an appeal on July 12, 2013. Then, on August 7, 2013, the Board of Review issued a unanimous decision finding the decision of the Referee was a proper adjudication of the facts and the law applicable thereto. Decision of Board of Review, August 7, 2013, at 1. Accordingly, the decision rendered by the Referee was affirmed.

Thereafter, on September 19, 2013, the Claimant filed a complaint for judicial review of the Board of Review's decision in the Sixth Division District Court.

II

Applicable Law

The fundamental issue in 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.

And in Powell v. Department of Employment Security, Board of Review, 477 A.2d 93, 96-97 (R.I. 1984), the Court clarified that "… the key to this analysis is whether petitioner voluntarily terminated his employment because of circumstances that were effectively beyond his control." See also Rhode Island Temps, Inc. v. Department of Labor and Training, Board of Review, 749 A.2d 1121, 1129 (2000).

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 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, 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

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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. Board 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).

> 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

In order to determine whether the decision of the Board of Review (i.e., the decision of the Referee as adopted by the Board as its own) was clearly erroneous in light of the reliable, probative, and substantial evidence of record, we must review the facts of record, which emanate primarily from the transcript of the hearing conducted by Referee Capozza.

A

The Questions to Be Answered

As we shall see, the record provides definitive evidence that Ms. McCormick left her part-time position at Farmaesthetics voluntarily and for good cause. She concedes that she quit. The only issue to be considered (and this is rather insubstantial) is whether she did so for good cause. I believe the

Board of Review's decision that Claimant failed to prove she quit for good cause is not clearly erroneous. Accordingly, I shall recommend that the Board's decision finding her disqualified pursuant to Gen. Laws 1956 § 28-44-17 be affirmed.

But the resolution of this question will not end our labors. To the contrary, I believe we must also consider the decision of the Referee was flawed in two subsidiary matters — one which was addressed by the Referee, one which was not — the former is the Referee's order of repayment, the latter is the issue of whether Claimant's disqualification results in a full or partial disqualification from the receipt of benefits. Both issues shall be addressed in this opinion.

B

A Review of the Factual Record

The Claimant, Ms. Margaret McCormick, who had been receiving unemployment benefits because she had been laid off from a job at Science Applications International Corporation (SAIC) that paid $65,000.00 per year, testified that she first took a temporary job at MacMillan Yachts and then accepted a $12.00 per hour part-time position in the warehouse of Farmaesthetics Inc., because she thought it might lead to a professional

position with the firm. Referee Hearing Transcript, at 6-8. When she realized that this was unlikely, she relocated to Florida, to live with "family"[4] members there; at the same time, in an effort to keep up with her mortgage payments, she rented out her Rhode Island home. Referee Hearing Transcript, at 7. In Florida, she obtained work but then lost it. Referee Hearing Transcript, at 7-8. By the time of the Referee hearing she had left Florida and was living with her brother in Colorado. Referee Hearing Transcript, at 9.

She stated that when she refiled her claim for benefits via the internet, she put down the reason for the separation as lack of work, meaning a lack of full-time work. Referee Hearing Transcript, at 10-11. She conceded that she interpreted it incorrectly and that she received benefits as a result. Referee Hearing Transcript, at 11.

The employer representative, Ms. Quinn, also testified, albeit briefly. Referee Hearing Transcript, at 13-17. She indicated that Ms. McCormick told

[4] She later described them as "people I've known my whole life." Referee Hearing Transcript, at 8.

her she was going to rent out her house and move to Florida.[5] Referee Hearing Transcript, at 14.

C

The Section 28-44-17 Disqualification

In my estimation, the Referee's conclusion (adopted by the Board of Review as its own) — i.e., that Claimant quit her position at Farmaesthetics Inc. without good cause within the meaning of section 28-44-17 — is fully supported by the record in this case. She quit her position and moved to Florida before securing a new position there. Both the Board of Review and this Court have held on innumerable occasions held that leaving one's job to pursue a new position but without a firm offer in hand constitutes a leaving without good cause. And relocation is also a circumstance which generally makes one ineligible for unemployment benefits, because it is viewed as a personal reason for quitting.[6] For these reasons, Claimant's § 17 disqualification must be upheld.

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[5] Ms. Quinn also raised an issue — whether Claimant had refused a full-time position in the warehouse. The Referee, apparently satisfied to rule on the section 17 disqualification, did not address this issue. Referee Hearing Transcript, at 15. Accordingly, this issue is not before the Court.

[6] One limited exception to the general rule of disqualification when a claimant quits and relocates for personal reasons may be found in Rocky

We now turn to the subsidiary questions which arise from the resolution of the disqualification issue.

D

Full or Partial Disqualification (The Offset Issue)

1. Overview of the Issue.

The Board of Review's fundamental conclusion — that Claimant quit her position at Farmaesthetics for reasons that did not constitute good cause — gives rise to a further question which the Referee and the Board did not address but which, in the interests of fairness, I shall consider sua sponte: What is the effect of this finding? Does it trigger a full or partial disqualification? Certainly, if Ms. McCormick had quit a full-time position without good cause, she would be fully disqualified from the receipt of benefits. But Claimant only worked part-time hours at Farmaesthetics. Should she also be fully disqualified? In light of both statutory law and certain

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Hill School, Inc. v. Department of Labor and 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. This exception does not apply in Ms. McCormick's case.

longstanding precedents of this Court, I believe the answer to this question must be no. To the contrary, to the extent that Ms. McCormick still had a claim for benefits during the weeks in question based on her separation from SAIC she should be allowed to collect those benefits[7] subject to an offset for wages voluntarily forgone when she left Farmaesthetics.

2. Reasoning.

To begin with, it is clear from the record that the Director held Claimant McCormick was fully disqualified from receiving benefits. In his May 23, 2013 decision, the Director, based on his finding that Ms. McCormick left without good cause, determined Claimant to be disqualified from receiving unemployment benefits; in the ruling she was specifically told that her disqualification would be in effect "until you have (8) weeks of work with an employer who pays unemployment taxes, and in each of those eight weeks, you have earned an amount equal to or in excess of the benefit rate on your 13 Benefit Year claim (BYE)." Decision of Director, May 23, 2013, at 1. Identical language was used in Referee Capozza's decision. Referee's Decision, June 27, 2013, at 3. Based on this phraseology being used, it

[7] It therefore goes without saying that the benefits she will collect, if any, must be attributed to her SAIC claim, not a claim against Farmaesthetics.

appears that these decisions ruled Claimant to be entirely, not partially, disqualified from receiving benefits.

But, should Ms. McCormick be disqualified from the receipt of all benefits? I believe not. Doing so would be contrary to the manner in which quitting a part-time position is treated in analogous circumstances.

First, the Rhode Island Employment Security Act provides that a claimant who is laid-off from a full-time position who is working part-time may collect benefits, subject to an offset based on the worker's part-time earnings. See Gen. Laws 1956 § 28-44-7. Secondly, this Court has long held that a worker who is laid-off from a full-time position who then quits a part-time position (without good cause) may nonetheless collect benefits — subject to an offset for that income voluntarily forgone. See Craine v. Department of Employment and Training, Board of Review, A.A. No. 91-25, (Dist.Ct.6/12/91)(DeRobbio, C.J.)(Claimant lost a full-time job, then took leave from a part-time job; Held, partial benefits would be awarded pursuant to § 28-44-7). The rule of Craine provides that although the claimant has left his part-time position in circumstances which would have, if viewed in isolation, triggered a disqualification under section 28-44-17 [Leaving Without Good Cause], he or she is not fully disqualified, only partially.

After applying the foregoing statutes and precedents, I have concluded Ms. McCormick's situation falls within the ambit of this Court's holding in Craine. I therefore believe fairness requires that the offset-rule should be made fully applicable to her — after all, she should not be penalized for obtaining a replacement part-time position.

And so, Ms. McCormick must be allowed benefits offset by the amount of weekly wages she gave up by leaving Farmaesthetics. These amounts shall be calculated by the Director based on the record of this case and such further investigation as he may deem appropriate.

E

Repayment of Benefits Received Pursuant to § 28-42-68.

Finally, Claimant was ordered to repay $6,753.00 by the Director pursuant to Gen. Laws 1956 § 28-42-68. There is certainly evidence in the record that Claimant misled the Department by indicating she was laid off for lack of work when, to the contrary, part-time work (at least) was available to her. Thus, the order of repayment must be upheld, at least in principle.

But, in light of my recommendation in Subsection D that Claimant should not be fully disqualified from the receipt of unemployment benefits

but only partially so, the amount of the overpayment must be set aside in favor of the offset calculation described above.

V

Conclusion

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.[8] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[9]

Applying this standard, I recommend that this Court find that the decision of the Board of Review regarding the § 17 disqualification 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

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[8] Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213 (1968).

[9] Cahoone, supra n. 8, 104 R.I. at 506, 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 7-8 and Guarino, supra at 8, n. 1.

evidence on the whole record or arbitrary or capricious. Gen. Laws 1956 § 42-35-15(g)(5),(6).

However, I find that — by failing to recognize that Claimant's voluntary departure from Farmaesthetics caused only a partial, not a full disqualification of Ms. McCormick's receipt of benefits on her SAIC claim — the Board committed an error of law. Gen. Laws 1956 § 42-35-15(g)(4).

/s/
Joseph P. Ippolito
MAGISTRATE

November 12, 2013