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

Keith Recabo	:	
	:	
v.	:	**A.A. No. 13 - 022**
	:	
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 instant matter 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. In this case Mr. Keith Recabo urges that the Board of Review of the Department of Labor & Training erred when it found that he left his employment at Lifespan — Newport Hospital without good cause and was therefore barred from receiving unemployment benefits pursuant to Gen. Laws 1956 § 28-44-17. 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. These matters have been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. For the reasons that follow I conclude that the Board of Review's decision is supported by substantial evidence of record and should be affirmed; I so recommend.

FACTS AND TRAVEL OF THE CASE

An outline of the facts and travel of this case may be stated briefly: Claimant worked for Lifespan–Newport Hospital for fourteen and one-half weeks as a sterile supply processing technician until August 13, 2012. He filed for unemployment benefits on August 21, 2012 but in a decision dated October 19, 2012 a designee of the Director determined the claimant was disqualified from receiving benefits pursuant to Gen. Laws 1956 § 28-44-17 because he voluntarily quit without good cause.

Claimant filed a timely appeal and a hearing was held by Referee Nancy L. Howarth on November 28, 2012. At the hearing, Claimant was present and testified; two representatives of the employer testified telephonically. In her December 5, 2012 decision, Referee Howarth made the following findings of fact:

> The claimant was employed as a sterile supply processing technician by the employer. He voluntarily resigned his job as of August 13, 2012 to relocate to New York to be with his family. He had no job to go to, nor the promise of one.

Referee's Decision, December 5, 2012, at 1. Based on these findings, Referee Howarth 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.

> The burden of proof in establishing good cause for leaving rests solely with the claimant. In the instant case the claimant has not sustained his burden. The record is void of any evidence to indicate that the work itself was unsuitable. The evidence and testimony presented at the hearing establish that the claimant left his job for neither of the above reasons. The claimant's reason for leaving was strictly personal. This is not considered good cause for leaving one's job under the above Section of the Act. Accordingly, benefits must be denied on this issue.

Referee's Decision, December 5, 2012, at 2. Accordingly, the Referee affirmed the decision of the Director and found that claimant was disqualified from receiving benefits because he had quit his position without good cause. It should be noted that — as of the date of the hearing, November 28, 2012 — Mr. Recabo had returned to Rhode Island.

Claimant filed a timely appeal and on January 31, 2013 a majority of the members of the Board of Review issued a Decision affirming the Referee's decision — finding it to be a proper adjudication of the facts and the law applicable thereto; moreover, the Referee's decision was adopted as the Decision of the Board. On February 5, 2013, Mr. Recabo filed a complaint for judicial review in the Sixth Division District Court.

APPLICABLE LAW

Our review of 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.

STANDARD OF REVIEW

The standard of review by which the court must proceed is established in 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]

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

[3] Cahoone v. Board of Review of Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213 (1968). Also D'Ambra v. Board of Review,

The Supreme Court of Rhode Island recognized in Harraka, supra, 98 R.I. at 200, 200 A.2d at 597, 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 construing such provisions of the act.

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

Department of Employment Security, 517 A.2d 1039 (R.I. 1986).

ANALYSIS

Based on the testimony received at the hearing she held and the documents contained in the administrative record, Referee Howarth found that Claimant quit his position without good cause; on appeal, the Board of Review affirmed her decision and adopted it as its own. Because I believe this finding to be well-supported by the record, I must recommend that this Court affirm the Board's decision.

A.

Claimant indicated he left his position at Newport Hospital in order to relocate to New York to live with his family (i.e., his birth family). Referee Hearing Transcript, at 14. His parents were getting a divorce and he wanted to help the situation. Id. Also, his son lived there, although his daughter lived here. Referee Hearing Transcript, at 15. The representatives of the hospital had no questions for Mr. Recabo. Referee Hearing Transcript, at 14.

Ms. Maureen Sherman, claimant's supervisor, indicated that Mr. Recabo worked on a per-diem basis — as-needed, one or two shifts per week. Referee Hearing Transcript, at 17-18.

B.

Mr. Recabo's decision to leave Rhode Island was not only an employment decision but also a life decision, one this Claimant was certainly free to make.

But relocation is a circumstance which generally makes one ineligible for unemployment benefits, because it is viewed as a personal reason for quitting.[4] Claimant did not allege that his position with this employer had become unsuitable. Referee Hearing Transcript, passim. He was apparently well-regarded by Lifespan; indeed, at the conclusion of the hearing, one of the employer's representatives invited him to reapply. Referee Hearing Transcript, at 21.

Accordingly, I must conclude that the referee — based on the record before her, which in large part consisted of claimant's testimony — was fully justified in finding that claimant quit for personal reasons and not for grounds that would constitute "good cause" within the meaning of section 28-44-17.

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

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[4] One limited exception to the general rule of disqualification when a claimant quits and relocates 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. This exception does not apply in Mr. Recabo's case.

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, including the question of which witnesses to believe. Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[5] Accordingly, the Board's decision (adopting the finding of the Referee) that claimant voluntarily terminated his employment without good cause within the meaning of section 17 is supported by substantial evidence of record 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 regarding claimant's eligibility to receive unemployment benefits was supported by substantial evidence of record and was not clearly erroneous. GEN. LAWS 1956 § 42-35-15(g)(3).

Accordingly, I recommend that the decision of the Board of Review in the instant matter be AFFIRMED.

/s/
Joseph P. Ippolito
MAGISTRATE

APRIL 12, 2013

[5] Cahoone, supra at 7, n. 2, 104 R.I. at 506, 246 A.2d at 215 (1968). See also D'Ambra v. Bd. 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.