STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

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

Melissa A. Goncalves	:	
	:	
v.	:	**A.A. No. 13 - 043**
	:	
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 deci sion of the Board of Review is AFFIRMED.

Entered as an Order of this Court at Providence on this 22nd 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 matter Ms. Melissa Goncalves 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 her prior position without good cause. Jurisdiction for appeals from the decision 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 is 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.

I. FACTS & TRAVEL OF THE CASE

The facts and travel of the case are these: Ms. Melissa Goncalves worked for the Janco company for five months at one of its many Burger King stores — until September 20, 2012. She filed a claim for unemployment benefits but on November 30, 2012 the Director issued a decision finding that she had left the Janco's employ without good cause, within the meaning of Gen. Laws 1956 § 28-44-17.

Claimant appealed from this decision and on January 8, 2013 Referee Stanley Tkaczyk conducted a hearing on the matter. Ms. Goncalves and a representative of Janco appeared and testified AT the hearing. In his January 9, 2013 decision, Referee Tkaczyk made the following findings of fact:

> The claimant had worked for this employer a period of five months through September 30, 2012. She left the job because of the commuting distance. The claimant did not request a transfer with the employer, nor did she inform the employer of her reason for leaving or seek any accommodations.

Referee's Decision, January 9, 2013, at 1. Based on these findings, Referee Tkaczyk 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 establish that she left the job with good cause, there must be evidence presented that the work was not suitable or that she was faced with a situation that left her no reasonable alternative but to terminate her employment. The burden of proof in establishing good cause for leaving rests solely upon the claimant. There is no evidence presented to indicate that the work itself was not suitable. In addition, there has been insufficient evidence presented to establish that the claimant was faced with a situation that left her no reasonable alternative but to terminate her employment. To the contrary, the evidence establishes that the claimant did not seek out any alternatives prior to separation.
>
> In the absence of evidence to establish good cause, I must find that the claimant's leaving is not with good cause and benefits must be denied on this issue.

Referee's Decision, January 9, 2013, at 1-2. Accordingly, Referee Tkaczyk found Claimant to be disqualified from receiving benefits pursuant to section 28-44-17. Claimant filed an appeal and the matter was reviewed by the Board of Review. On February 12, 2013, the members of the Board of Review unanimously held that the decision of the Referee was a proper adjudication of the facts and the law applicable thereto. Accordingly, the decision rendered

by the Referee was affirmed. Thereafter, on March 12, 2013, the Claimant 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.

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 burden which now falls upon the unemployed worker and his

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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, 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).

> 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. 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, relying on the Referee's decision, found Claimant quit her position at Janco without good cause within the meaning of section 28-44-17. For the reasons I shall now state, I believe its determination that Claimant was subject to a section 17 disqualification is not clearly erroneous in light of the reliable, probative, and substantial evidence of record.

A. The Disqualification Issue.

Ms. Goncalves' disqualification is well-grounded in fact and law. She stated she left the employ of Janco because the commute was too onerous. Referee Hearing Transcript, at 5-6. However, Janco has many locations and she could have sought a transfer to a closer store. Referee Hearing Transcript, at 8-9. Accordingly, she did not properly exhaust all the alternatives that were available to her before quitting; as a result, her termination from Janco cannot be considered for good cause.

And Ms. Goncalves never really objected to such a finding. Throughout the hearing, she insisted that she had filed a claim against her other employer — Mental Health and Consumer Advocates — by whom she was laid off on August 30, 2012, not Janco. And it is this last circumstance — i.e., that Ms. Goncalves was working for two employers — which requires me, in the interest of justice, to offer a few comments sua sponte which may inure to Ms. Goncalves' benefit.

B. The Offset Issue.

We must remember that this Court has repeatedly ruled 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 foregone. 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 a Claimant has left her 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 is not fully disqualified.

Of course, I am not able to direct that this rule be applied to Ms. Goncalves in the instant case. The record does not reveal whether she was working for Janco on a full-time or part-time basis. Nevertheless, assuming (1) that she was working for Janco on a part-time basis and (2) her termination from Mental Health and Consumer Advocates was, as she states, strictly involuntary and not caused by misconduct, she should be deemed within the ambit of this Court's holding in Craine and allowed benefits — offset by that income voluntarily foregone. This determination should be made by the Director based on the record of this case and such further investigation as he may deem appropriate.

VI. 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.[4] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[5]

Applying this standard, I recommend that this Court find that the decisions of the Board of Review were 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).

Specifically, the Board of Review's decision (adopting the findings and conclusions of the Referee) that claimant voluntarily terminated her

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

[5] Cahoone, supra, n. 4, 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

employment at Janco without good cause within the meaning of section 17 is well-supported by the evidence of record.

I therefore recommend that this Court find that the decision of the Board of Review on the issue of Claimant's eligibility 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).

/s/
Joseph P. Ippolito
MAGISTRATE

APRIL 22, 2013

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at 6-7 and Guarino, supra at 7, fn. 1.