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

James D. Pichette	:	
	:	
v.	:	**A.A. No. 13 - 050**
	:	
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 decision of the Board of Review is AFFIRMED.

Entered as an Order of this Court at Providence on this 25th 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 Mr. James D. Pichette urges that the Board of Review of the Department of Labor and Training erred when it held that he was not entitled to receive employment security benefits because he quit his prior position without good cause. Jurisdiction for appeals from the 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 is supported by the reliable, probative, and 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 AND TRAVEL OF THE CASE

The facts and travel of the case are these: Mr. James D. Pichette worked for the United Parcel Service (UPS) for eleven years — until he quit on September 17, 2012. He filed a claim for unemployment benefits but on November 14, 2012 the Director issued a decision finding that he had left UPS's employ without good cause, within the meaning of Gen. Laws 1956 § 28-44-17.

Claimant appealed from this decision and on December 17, 2012 Referee John Costigan conducted a hearing on the matter. Mr. Pichette attended, with counsel, as did two representatives of the employer. In his December 20, 2013 decision, Referee Costigan made the following findings of fact:

> The claimant had worked as a mechanic for the employer for eleven and one half years. His last day of employment was September 17, 2012. The claimant informed the employer that he was leaving the job. He said he had experienced a lot of stress and felt his work was not meeting the employer

> expectations. He also stated he felt he could not do the job any longer. The employer said that the claimant had recently received a verbal warning about his work but he was not in jeopardy of losing his job. When the claimant informed his supervisor he was resigning, the supervisor asked if he really wanted to leave and explained that his job was not in jeopardy and proceeded to bring in the union steward as part of the discussion with the claimant. The claimant did not change his mind and, as a result, he left the job.

Referee's Decision, December 20, 2013, at 1. Based on these findings, Referee Costigan made the following conclusions:

> * * *
>
> In order to establish that he left the job with good cause, there must be evidence presented that the work was not suitable or that he was faced with a situation that left him no reasonable alternative but to terminate his employment. While the claimant said he felt stressed, which made the work difficult, no medical evidence was offered in support of this. He had not contacted his doctor for advice and direction in dealing with his stress situation. He also had not asked the employer for any assistance in that regard. He had been given a verbal warning about his performance but it was clearly stated by the employer that his job was not in jeopardy and that claimant confirmed that was the case. As no evidence was presented to establish that the claimant was faced with a situation that left him no reasonable alternative but to terminate his employment, I find his leaving the job is without good cause and benefits must be denied on this issue.

Referee's Decision, December 20, 2012, at 2. Accordingly, Referee Costigan 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 March 8, 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 18, 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

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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, 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).

> 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

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 his prior employment without good cause pursuant to section 28-44-17?

V

ANALYSIS

The Board of Review, relying on the Referee's decision, found Claimant quit his position at UPS 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. We shall begin with a review of the facts of record.

A

The Facts of Record

To put the case in a nutshell, Mr. Pichette testified that he left the employ of UPS, where he had been employed as an automotive mechanic for over eleven years, because he was working under stressful conditions and did not feel that he could continue any longer. Referee Hearing Transcript, at 9-10, 19. He maintained this position even though he had not sought medical treatment or diagnosis. Referee Hearing Transcript, at 10.

Mr. Pichette identified his supervisor, named John, as the principal source of the hostility he endured; he could not seem to satisfy him. Referee Hearing Transcript, at 10-11. For instance, he asserted he was berated for working too slow and was told to "pick up the pace," to "carry [his] own weight." Referee Hearing Transcript, at 10-11. He said he a verbal[4] warning about the quality of his work. Referee Hearing Transcript, at 12. He was concerned that this would lead to a written warning, but he never received one. Referee Hearing Transcript, at 13-14. Claimant tried to do better, but did

[4] In context, I take this to mean an oral warning. Referee Hearing Transcript, at 12.

not get any positive feedback, only negative. Referee Hearing Transcript, at 14. And so, because he felt "the pressure was just too much," he resigned. Referee Hearing Transcript, at 15. As Claimant explained, he felt stressed because he was routinely exceeding the amount of time that was expected for each job in the UPS maintenance shop. Referee Hearing Transcript, at 17-19.

Mr. Pichette also related that he had filed for bankruptcy in April of 2012 and that he subsequently began treatment for anxiety and depression, all of which he related to his employers. Referee Hearing Transcript, at 20. Later, he went out on TDI, returning in July of 2012. Referee Hearing Transcript, at 21. The Claimant stated that, after he informed management that he was suffering from anxiety and depression, his supervisor, John Ferreira, "was on [his] back all the time," watching him constantly. Referee Hearing Transcript, at 22. But he "guessed" that he must have been doing the same thing to the other mechanics. Id. And a couple of times Mr. Ferreira asked if he was still taking his medications and how he was feeling. Referee Hearing Transcript, at 23, 29. In sum, he felt he was being unfairly singled out because of his health problems. Referee Hearing Transcript, at 27, 29.

On cross-examination, Claimant acknowledged that he knew that progressive discipline for mechanics went from oral warnings which may or may not be documented, to written warnings, then suspensions, and

ultimately termination. Referee Hearing Transcript, at 30-31. And he conceded that he was only on the first step of that ladder and that, as far as he knew, he was not in danger of termination. Referee Hearing Transcript, at 32-35. Nevertheless, he told John Ferreira he was quitting — without asking for job accommodations and doing nothing to preserve his employment. Referee Hearing Transcript, at 32, 35, 37.

Mr. John Ferreira, who had been Mr. Pichette's supervisor for six years, also testified, telling Referee Costigan that Claimant said that going to work on a daily basis was making him sick and he couldn't do it anymore. Referee Hearing Transcript, at 39, 51. He stated he gave Mr. Pichette the opportunity to rescind his resignation. Referee Hearing Transcript, at 40.

Mr. Ferreira explained that Mr. Pichette got yearly warnings because his "skill level isn't up to par where it should be for the job." Referee Hearing Transcript, at 41, 51. In this regard he related an incident where Claimant left a drain plug loose, which could have led to the loss of an engine. Referee Hearing Transcript, at 42-43. And he said that he does do spot checks on the work of all his mechanics. Referee Hearing Transcript, at 45. Mr. Ferreira stated that he suggested Mr. Pichette take courses at a technical school to brush up his skills but Claimant showed no interest in doing so. Referee Hearing Transcript, at 42, 49. On the other hand, he did take some computer-

based training which UPS paid for. Referee Hearing Transcript, at 50. In any event, Mr. Ferreira testified that when he returned from his leave in July (having been on TDI) his level of interest was not the same. Referee Hearing Transcript, at 54.

B

Rationale

It is the burden of a claimant to show that a voluntary resignation was made for good cause. As stated above, the claimant must show that he or she became unemployed due to circumstances beyond his or her control. As I stated above, I believe that the Board of Review's finding — that Mr. Pichette did not satisfy this burden — is not clearly erroneous in light of the evidence of record.

This case also triggers the application of two lines of well-established section 17 jurisprudence —

Firstly, in cases where a claimant is urging that a supervisor was hostile to him or her, it is a precondition to an unemployment claim based on stress that the claimant show that the inappropriate behavior was brought to the attention of the supervisor's superiors, giving them a chance to remedy the situation. E.g. Barbera v. Department of Employment and Training Board of Review, A.A. No. 96-38 (Dist.Ct. 05/06/96)(DeRobbio, C.J.)(Court affirmed

Board's denial of benefits despite Claimant's allegation of harassment by female supervisor where Claimant did not report incidents to higher management); Boisvert v. Department of Employment and Training Board of Review, A.A. No. 77-271 (Dist.Ct. 02/12/82)(Beretta, J.)(Board's denial of benefits affirmed despite Claimant's assertions of conflict with supervisor where Claimant declined offered transfer and did not bring the issue to the attention of higher management or personnel staff).

Secondly, in cases where a claimant asserts that his or her medical condition requires them to resign, the Board of Review and this Court have generally required medical evidence to be submitted to justify the claim — particularly in stress claims. See Nowell v. Department of Employment and Training Board of Review, A.A. No. 94-87 (Dist.Ct. 12/06/94)(Cenerini, J.) (Board's denial of benefits affirmed where claimant's assertions of epilepsy and stress were unsupported by medical evidence); Megalli v. Department of Employment and Training Board of Review, A.A. No. 94-92, (Dist.Ct. 07/03/95)(Rahill, J.)(Denial of benefits affirmed where claim of stress proffered because medical evidence was equivocal and did not establish causal link to employment). In this case, Mr. Pichette presented neither type of evidence. On these bases alone, his claim was subject to rejection.

In addition, the Board of Review had every right to rely on the testimony of Mr. Ferreira that, far from being hostile to Mr. Pichette, he was very much interested in his well-being. Referee Hearing Transcript, at 51-52. And, Mr. Ferreira testified that Mr. Pichette's position with UPS was not in imminent danger — rather, he was "several steps away from actual termination." Referee Hearing Transcript, at 48. While management at UPS certainly had doubts about his ongoing ability to keep abreast of the newer automotive technology, his resignation appears to have been precipitous and unnecessary. If he was truly concerned about his long-term future with the company, it seems clear that he could have searched for a new position before quitting the position he held. For these reasons as well, his resignation does not appear to have been compulsion.

In light of the foregoing, I find that the Board of Review was well-justified in denying Mr. Pichette's claim for unemployment benefits.

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.[5] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[6]

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).

I therefore recommend that the decision of the Board of Review be AFFIRMED.

/s/
Joseph P. Ippolito
MAGISTRATE

NOVEMBER 25, 2013

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

6 Cahoone, supra, n. 5, 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 6-7 and Guarino, supra at 7, fn. 1.