

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

Angel Beltre :
 :
v. : A.A. No. 2014-0154
 :
Department of Labor & Training, :
Board of Review :

JUDGMENT

This cause came before Hastings, J. on Administrative Appeal,
and upon review of the record and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Board is affirmed.

Dated at Newport, Rhode Island, This 2nd day of March, 2016

ENTER:

BY ORDER:

/s/

/s/

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DECISION

Hastings, J. This matter is before the Court pursuant to Rhode Island General Laws 1956 §42-35-15, seeking a judicial review of a final decision rendered by the Board of Review, Department of Labor and Training. Mr. Beltre states that the Board of Review of the Department of Labor and Training erred in denying his claim for unemployment benefits. Jurisdiction for appeals from the Department of Labor and Training Board of Review is vested in the District Court pursuant to Gen. Laws 1956 § 28-44-52. I find that the decision of the Board of Review is not clearly erroneous in light of the reliable,

probative and substantial evidence of record and was not affected by error of law. Therefore, the Decision of the Board of Review is AFFIRMED.

I. FACTS AND TRAVEL OF THE CASE

Mr. Beltre was employed 24 months by the employer. He was an Assistant Manager whose duties included hiring employees. According to Mr. Beltre, he was instructed by the employer to hire good looking people. He left his job on June 13, 2014 because he did not agree with the employer's hiring practices. His last day of work was June 13, 2014. He filed a claim for Employment Security benefits on June 18, 2014. In a Department of Labor and Training Director decision, it was determined that the claimant voluntarily left his job without good cause under the provisions of Section 28-44-17 of the Rhode Island Employment Security Act. The claimant filed a timely appeal of that decision on July 14, 2014. A hearing was held on August 6, 2014 was assigned to Referee Nancy L. Howarth for hearing.

In her decision dated August 13, 2014 the Referee made the following findings of fact:

The claimant was employed as an Assistant Manager by the employer. One of his job duties was hiring employees. He was instructed by the employer to hire good looking people. The claimant voluntarily left his job on June 13, 2014 since he did not agree with the employer's hiring practices. The employer had continuing work available.

Referee's Decision, at 1. Based on these findings, the Referee formed the following conclusions:

CONCLUSION:

* * *

The issue involved is whether or not the claimant was discharged from this job under disqualifying circumstances within the provisions of Section 28-44-18 of the Rhode Island Employment Security Act.

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 he had good cause for leaving his job, the claimant must show that the work had become unsuitable or that he was faced with a situation that left him no reasonable alternative other than to terminate his employment. The burden of proof in establishing good cause rests solely with the claimant. In the instant case, the claimant has not sustained this burden. There has been insufficient evidence of record to indicate that the work was unsuitable. The evidence and testimony presented at the hearing establish that the claimant did have a reasonable alternative, other than to terminate his employment. If he was dissatisfied with his job responsibilities he could have continued working for the employer until he was able to find another position. Since the claimant had a reasonable alternative available to him, which he chose not to pursue, I find that his leaving is without good cause under the above Section of the Act. Accordingly, benefits must be denied on this issue.

Referee's Decision, at 2. Thus, the Referee determined that the Claimant left work voluntarily without good cause. Therefore, he was disqualified under the provisions of Section 28-44-17 of the Rhode Island Employment Security Act.

Referee's Decision, at 2. Accordingly, Referee Howarth affirmed the decision of the Director. Referee's Decision, at 2.

Claimant filed an appeal and on August 25, 2014 the Board of Review affirmed the Referee's decision, finding it to be a proper adjudication of the facts and the law applicable thereto. Board of Review Decision, at 1. Claimant filed a complaint for judicial review in the Sixth Division District Court on January 6, 2015.

II. APPLICABLE LAW

This case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, focusing on voluntary leaving without good cause; Gen.Laws 1956 § 28-44-17. With respect to voluntarily leaving without good cause, § 28-44-1 provides, in pertinent part, as follows:

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 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 Harraka v. Board of Review of Department of Employment Security, (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 this 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.

Subsequently, 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.

An individual who voluntarily leaves work without good cause is disqualified from receiving unemployment security benefits under the provisions of § 28-44-17. See Powell v. Department of Employment Security, 477 A.2d 93, 96 (R.I. 1984) (Citing Harraka v. Board of Review of Department of Employment Security 98 R.I. 197, 201, 200 A.2d 595, 597 (1964)). In order to establish good cause under § 28-44-17, the claimant must show that his or her work had become unsuitable or that the choice to leave work was due to circumstances beyond his or her control Powell, 477 A.2d at 96-97; Kane v. Women and Infants Hospital of Rhode Island, 592 A.2d 137, 139 (R.I. 1991). The question of what circumstances constitute good cause for leaving employment is a mixed question of law and fact, and “when the facts found by the board of review lead only to one reasonable conclusion, the determination of ‘good cause’ will be made as a matter of law.” Rocky Hill School, Inc. v. State of Rhode Island Department of Employment and Training, Board of Review, 669 A.2d 1241, 1243 (R.I. 1995)(citing D’Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1040 (R.I. 1986)).

III. STANDARD OF REVIEW

Judicial review of the Board's decision by the District Court is authorized under § 28-44-52. The standard of review is provided by G.L. 1956 § 42-35-15(g) of the Rhode Island Administrative Procedures Act ("A.P.A."), which provides as follows:

The court shall not substitute its judgment for that of the agency as to 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 constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon lawful 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.

The scope of judicial review by this Court is limited by Gen. Laws 1956 § 28-44-54, which in pertinent part provides:

The jurisdiction of the reviewing court shall be confined to questions of law, and, in the absence of fraud, the findings of fact by the board of review, if supported by substantial evidence regardless of statutory or common law rules shall be conclusive.

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. Guarino v. Department of Social Welfare, 122 R.I. 583, 588, 410 A.2d 425, 428 (1980) (citing § 42-35-15(g)(5)). The Court will not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact. Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968). “Rather, the court must confine itself to review of the record to determine whether ‘legally competent evidence’ exists to support the agency decision.” Baker v. Department of Employment & Training Bd. of Review, 637 A.2d 360, 363 (R.I. 1993) (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). “Thus, the District Court may reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record.” Baker, 637 A.2d at 363.

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 or

made upon unlawful procedure? Did Mr. Beltre leave work voluntarily with good cause within the meaning of section 28-44-17 of the Rhode Island Employment Security Act?

V. ANALYSIS

In order to establish that he had good cause for leaving his job, the claimant must show that the work had become unsuitable or that he was faced with a situation that left him no reasonable alternative other than to terminate his employment. The burden of proof rests with the claimant. In this present case, the claimant has not sustained this burden. The record lacks sufficient evidence to indicate that the work was unsuitable. The employer had continuing work available. There was evidence presented that Mr. Beltre did have a reasonable alternative, other than to terminate his employment. Under Harraka v. Board of Review, Department of Employment Security, 200 A.2d 595 (1964), This Court finds substantial and competent evidence that Claimant left voluntarily without good cause. There was ample probative evidence for the Board to consider. There is a sufficient credible foundation for the Referee's conclusion.

VI. CONCLUSION

After a thorough review of the entire record, this Court finds that the Board's decision to deny claimant, Mr. Beltre, Employment Security benefits under § 28-44-18 of the Rhode Island Employment Security Act was supported by reliable, probative, and substantial evidence of record and was not "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record" 42-35-15(g)(5)(6). Accordingly, this Court holds that the decision of the Board is AFFIRMED.

_____/s/_____
Colleen M. Hastings
Associate Judge

February 25, 2016