

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

DISTRICT COURT

Alexander Vasilenko :
v. : A.A. No. 14-05
Department of Labor & Training, :
Board of Review :

JUDGMENT

This cause came on before Jabour 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 Providence, Rhode Island, this 9th day of March, 2016.

Enter:

By Order:

_____/s/_____

_____/s/_____

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DECISION

Jabour, J. The matter before the Court, filed pursuant to Rhode Island General Laws § 42-35-15, seeks judicial review of a final decision rendered by the respondent, Board of Review, Department of Labor and Training, (hereinafter cited as “the Board”) which affirmed Referee William Enos’ decision that the claimant, Alexander Vasilenko (hereinafter cited as “Claimant”) was not entitled to receive employment security benefits.

TRAVEL OF THE CASE

“The claimant’s last day of work was July 31, 2013. He filed a claim for Employment Security benefits on August 22, 2013, effective on August 11, 2013. On September 30, 2013, the Director ruled that the claimant was entitled to benefits under Section 28-44-18 of the Rhode Island Employment Security Act. The employer filed a timely appeal of that decision on October 10, 2013”
Referee Decision pg. 1.

On October 24, 2013, a hearing was conducted by Referee William Enos with testimony from the claimant and employer representatives, Susan Clarke, Human Resource Analyst and Michael Chalek, Lieutenant URI Police Department. In a decision dated October 30, 2013, the Referee made the following findings of fact and conclusions:

“The claimant worked as a Research Scientist for URI Sponsored Contract Research, last on July 31, 2013. The claimant was discharged for violating the Violence in the Workplace Prevention Policy. The claimant had an apartment on the URI campus and had weapons stored in the apartment. The employer presented evidence, a copy of the Lease Agreement, signed by the claimant on January 15, 2013 showing Regulation #10-2.19 Residents will not possess and or store firearms/weapons of any sort or ammunition in the apartment or on campus. The claimant stated that he did have 3 guns stored in a gun safe in his apartment but never took them out into the campus. The claimant stated that he did not read the lease agreement

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 is discharged for reasons of proven misconduct in connection with his work must be held to have been terminated under disqualifying circumstances under the provisions of Section 28-44-18 which provides, in part, as follows.

For the purposes of this section, misconduct shall be defined as deliberate conduct in willful disregard of the employer’s interest, or a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee’s incompetence. Notwithstanding any other provisions of chapters 42 – 44 of this title, this section shall be construed in a manner which is fair and reasonable to both the employer and the employed worker.

In the case of Turner vs. Department of Employment and Training, Board of Review, 479 A 2d 740, 741-42 (R.I. 1984), the Rhode Island Supreme Court adopted a general definition of the term, “misconduct”, as enunciated in Boynton Cap Co. vs. Newbeck, 237 Wis. 249, 296 N.W. 636 (1941):

‘[M]isconduct’ ... is limited to conduct evincing such willful or wanton disregard of an employer’s interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an employer’s interest or of the employee’s duties and intentional and substantial disregard of the obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed ‘misconduct’ within the meaning of the statute.’ *Id.* At 259-60, 296 N.W. at 640.

In cases such as this, the burden of establishing proof of misconduct is on the

employer. That burden has been met.

I find that the credible testimony and evidence submitted at this hearing showed that the claimant was discharged for violating the Violence in the Workplace Prevention Policy as adopted on August 20, 2007. Therefore, I find that sufficient credible testimony has been provided to support the employer's position that the claimant was discharged for proven misconduct." Referee Decision pg. 1-2

The Referee reversed the Director's decision and found that the claimant was discharged under disqualifying circumstances under the provisions of Section 28-44-18 of the Rhode Island Employment Security Act.

A timely appeal was filed before the Board of Review on November 4, 2013. In accordance with Section 28-44-47 of the Rhode Island Employment Security Act, 1956; the Board reviewed the decision of the Appeal Tribunal and considered all of the evidence submitted to the Appeal Tribunal and the decision of the Appeal Tribunal thereon. The Board affirmed and declared to be the decision of the Board of Review and incorporated by reference herein:

1. "That the findings of the Appeal Tribunal on the factual issues which are hereby incorporated by reference constitute a proper adjudication of the facts; the conclusions of the Appeal Tribunal as to the applicable law thereto are correct and proper and such findings and conclusions are hereby Affirmed.
2. For the purposes of judicial review in accordance with Section 28-44-51, the decision of the Appeal Tribunal is Affirmed and shall be deemed to be the decision of the Board of Review."

There was a dissenting opinion from the member representing labor who found that:

"[a]lthough the employer had a reasonable rule relative to firearms, this claimant broke no law and also testified that he was unaware of the employer's rule, even though in his lease. He could have been given a chance but wasn't. He was terminated for an isolated incident of questionable misconduct... I would reverse the Referee and reinstate the Director's decision allowing benefits." Board of Review Decision pg. 1.

Thereafter, a complaint was filed for judicial review; jurisdiction for review of the Board's

decision is vested in the District Court by Rhode Island General Laws § 28-44-52.

STANDARD OF REVIEW

The Administrative procedures Act sets forth the standard of review in Rhode Island General Laws § 42-35-15(g), 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

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

³ Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968). See also D’Ambra v. Board of Review, Department of

The Supreme Court of Rhode Island recognized in Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595, 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 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.

ANALYSIS

The issue before the Court is whether the decision of the Board 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.

The Board determined that claimant was discharged under disqualifying circumstances within the provisions of Section 28-44-18 of the Rhode Island Employment Security Act. This Court “must determine whether the decision is [m]ade upon unlawful procedure” or “affected by other error of law”, Section 35-15(g)(3) and (4).” University of Rhode Island v. Department of Employment and Training, Board of Review, 691 A.2d 552, 554 (1997). Under the provisions of Rhode Island General Laws Section 28-44-18, “misconduct” is defined as “deliberate conduct in willful disregard of the employer’s interest, or a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be a result of the employee’s incompetence.”

Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

At the hearing, it was established through employer testimony that claimant was a resident of the Graduate Village. Under the lease agreement (ER.1) Section 10 entitled “Regulation for all Resident Students” – subsection 19 specifically provides “Residents will not possess and/or store firearms, weapons of any sort or ammunition in the apartment or on campus”. Claimant signed the agreement on January 15, 2013.

On July 16, 2013, several police personnel contacted claimant to question him about possession of weapons. Claimant admitted that he had the weapons (3) including ammunition (Tr. 6 – 9). The employer also testified that the university had a violence in the workplace policy (see ER. 2) . Claimant testified that he didn’t pay attention to the policy; acknowledged that he was a gun owner and that they were locked in a safe (Tr. 11 – 12).

On appeal, both sides agree that the policy is reasonable and for purposes of the appeal, the policy is uniformly enforced on campus. However, Claimant argues that the Employer failed to show a “knowing” violation of the workplace policy. Claimant argues that because he did not sign the Workplace Prevention Policy (ER.2) it was not a “knowing” violation. There was no evidence presented at the hearing that this policy must be signed by the employee.

Further, the claimant admitted that he “didn’t pay much attention to, you know what the policy is”. (Tr. 11) In addition, the knowing argument must fail because the Lease Agreement (ER.1) Section 10 clearly states:

“10) Regulations for all Resident Students:

Please refer to the University of Rhode Island Student Handbook for a complete list of regulations that apply to all University students. Note important campus policies as referenced below:

2.19) Residents will not possess and/or store firearms, weapons of any sort or ammunition in the apartment or on campus.”

This provision indicates that the student “note important campus policies as referenced below” which refers to the prohibition of weapons. The claimant admitted that he signed the Lease Agreement.

On findings of fact, as to the weight of the evidence, this Court shall not substitute its judgment for that of the administrative agency. Two employer representatives as well as the claimant appeared and gave testimony during the evidentiary hearing on this matter. There was ample probative evidence for the Board to consider.

CONCLUSION

This Court finds that the decision of the Board of Review was made upon lawful procedure and was not affected by error of law . Gen. Laws §42-35-15(g)(3),(4). Neither was it clearly erroneous in view of the reliable, probative and substantial evidence on the whole record nor arbitrary or capricious. Gen. Laws § 42-35-15(g)(5),(6).

Accordingly, the decision of the Board is AFFIRMED.