

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

Heather Webster :
v. : A.A. No. 14-126
Department of Labor & Training, :
Board of Review :

JUDGMENT

This cause came on before Houlihan 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 5th day of April, 2016.

Enter:

By Order:

_____/s/_____

_____/s/_____

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DECISION

Houlihan, J. This matter is before the Court on the complaint of Heather Webster seeking judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor & Training which held that Ms. Webster was disqualified from receiving employment security benefits.

FACTS & TRAVEL OF THE CASE

Ms. Heather Webster was employed by Frank Dequattro DMD PC as an administrative assistant for a period of one year until she was dismissed from her position on April 4, 2014. She subsequently applied for unemployment benefits and the Director of the Department of Labor & Training issued a decision finding her disqualified from receiving unemployment benefits pursuant to the provisions of Gen. Laws 1956 § 28-44-18. Section 18 generally bars individuals terminated from a job for misconduct from receiving employment security benefits. Claimant appealed from this decision. Her appeal was heard by Referee William Enos in a Decision dated June 27, 2014. In this decision, the Referee concluded that claimant was disqualified from receiving benefits because she was terminated

for misconduct, as defined by section 28-44-18. Specifically, the Referee found that:

...The employer terminated the claimant for violating the company policy concerning *stealing* time and personal use of company computer and violating the cell phone policy. The employer submitted evidence that showed that the claimant had prior warnings. The employer introduced evidence that showed that the claimant had signed for the company policies. The claimant stated that she denied all allegations and then later testified that she admitted to doing those things. *Referee's Decision, June 27, 2014, at page 1.*

Based on these findings the Referee came to the following conclusion:

* * *

An individual who is discharged for reasons of proven misconduct in connection with his work must be held to have been terminated under disqualifying provisions of Section 28-44-18...

Although I heard conflicting testimony, I find from the credible testimony and evidence presented from the employer that the claimant was terminated under disqualifying reasons since the claimant's actions were not in the best interest of the employer... *Referee's Decision, June 27, 2014, at page 2.*

Accordingly, claimant was deemed ineligible for benefits.

Claimant filed a timely appeal and her eligibility was considered by the Board of Review. On August 22, 2014 the Board of Review issued a unanimous decision affirming the Referee's decision, finding it to be a proper adjudication of the facts and the law applicable thereto.

Thereafter, on September 18, 2014, claimant Webster filed the instant complaint for judicial review in the Sixth Division District Court.

APPLICABLE LAW

This case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically addresses misconduct as a

circumstance which disqualifies a claimant from receiving benefits; Gen. Laws 1956 §28-44-18, provides:

28-44-18. Discharge for misconduct. — ... For benefit years beginning on or after July 6, 2014, an individual who has been discharged for proved misconduct connected with his or her work shall become ineligible for waiting-period credit or benefits for the week in which that discharge occurred and until he or she establishes to the satisfaction of the director that he or she has, subsequent to that discharge, had earnings greater than or equal to eight (8) times his or her weekly benefit rate for performing services in employment for one or more employers subject to chapters 42 – 44 of this title. Any individual who is required to leave his or her work pursuant to a plan, system, or program, public or private, providing for retirement, and who is otherwise eligible, shall under no circumstances be deemed to have been discharged for misconduct. If an individual is discharged and a complaint is issued by the regional office of the National Labor Relations board or the state labor relations board that an unfair labor practice has occurred in relation to the discharge, the individual shall be entitled to benefits if otherwise eligible. For the purposes of this section, “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 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 that is fair and reasonable to both the employer and the employed worker.

In the case of Turner v. Department of Employment and Training, Board of Review, 479 A.2d 740, 741-42 (R.I. 1984), the Rhode Island Supreme Court adopted a definition of the term, “misconduct,” in which they quoted from Boynton Cab Co. v. Neubeck, 237 Wis. 249, 259-60, 296 N.W. 636, 640 (1941):

Misconduct * * * 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 intentional and substantial disregard of the employee’s duties and 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.

Historically, for a claimant's behavior to be defined as misconduct under section 18, it had to be inherently evil or wrong — “deliberate conduct in willful disregard of the employer's interest.” Gen. Laws 1956 § 28-44-18, quoted ante at 5. Under this provision, all types of bad behavior in the workplace have been found to constitute disqualifying misconduct — conduct that would also be criminal, such as theft and assaults, and other patently offensive behavior, such as insubordination.

However, in 1998 the legislature broadened the definition of misconduct to include the violation of a uniformly enforced work rule.¹ Now, misconduct may be alternatively defined as “... a knowing violation of a reasonable and uniformly enforced rule or policy of the employer.” Thus, proved misconduct may now consist of — (1) traditional misconduct, as defined in Turner, and (2) the intentional violation of a work rule. Proceeding under either theory, the employer bears the burden of proving by a preponderance of evidence that the claimant's actions constitute misconduct as defined by law. Foster-Glocester Regional School Committee v. Department of Labor and Training Board of Review, 854 A.2d 1008, 1018 (R.I. 2004).

STANDARD OF REVIEW

The standard of review to be applied in appeals from decisions of the Board of Review is provided by R.I. 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 See P.L. 1998, ch. 369, § 3 and P.L. 1998, ch. 401, § 3.

- (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.’ ”² The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.³ Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.⁴

In Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595, 597 (1964), the Supreme Court of Rhode Island recognized that a liberal interpretation should be utilized in 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

² 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).

³ Cahoone v. Board of Review of Dept. of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

⁴ Cahoone, supra, fn. 3, 246 A.2d at 215. See also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

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 of Review in which Ms. Webster was found ineligible to receive benefits because she was terminated for misconduct is supported by reliable, probative, and substantial evidence in the record and whether it was clearly erroneous or affected by error of law.

The Claimant and Employer disputed the terms upon which the Employer terminated Claimant's employment. Referee Enos found the credible evidence established the Claimant was terminated for disqualifying reasons on April 4, 2014. Namely, Referee Enos found the record established Claimant violated company policy for cell phone use, personal use of the computer and "stealing" time.⁵ See Referee's Decision, p. 1. Further, Referee Enos found evidence had been submitted demonstrating Claimant had prior verbal warnings. Id. Claimant acknowledged these. Tr. at 41.

While the use of a cell phone and personal use of the computer may not in and of themselves constitute disqualifying conduct, stealing company time does. When coupled with stealing company time the personal use of a cell phone and a computer serve to heighten Claimant's disregard for the Employer's policy and best interests.

Evidence was submitted that Claimant was observed editing her time sheet. Tr. at 7, 17. Also, that Claimant continually used company computers for personal use during her scheduled work hours. Tr. at 16.

⁵ The Court takes "stealing" to mean stealing.

The Employer has a right to expect its employee will be at work when scheduled to work and will be functioning at the assigned task while he or she is “on the clock.” Lexing v. Francis, 572 So.2d 295, 299(La.1991). The evidence submitted at the hearing and the findings of the Referee demonstrate Claimant failed to live up to this expectation. Further, falsification of time records in any instance constitutes misconduct. Phillips v. Administrator, Unemployment Compensation Act et al., 157 Conn.App. 342, 115 A2d 1162(2015). This determination of misconduct is amply supported by evidence in the record and wholly within the statutory authority of the agency. Further, there is no indication that the decision is based upon unlawful procedure, in violation of statutory or constitutional provisions or affected by any other error of law.

The Board of Review’s decision incorporated the factual issues as presented to the Appeal Tribunal and found the decision to be a proper adjudication of the facts and the conclusions to the applicable law to be correct and proper.

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.⁶ Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.⁷

⁶ Cahoone v. Bd. of Review of the Dept. of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

⁷ Cahoone, *supra* n. 5, 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),

The scope of judicial review by the District Court is also limited by General Laws section 28-44-54 which, in pertinent part, provides:

28-44-54. Scope of judicial review – Additional Evidence – Precedence of proceedings. – 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.

Accordingly, this Court finds that the Referee's decision (accepted by the Board) that Claimant was disqualified for misconduct within the meaning of section 28-44-18 is fully supported by the record and cannot be set aside by this Court.

CONCLUSION

Upon careful review of the evidence, this Court finds that the decision of the Board of Review was not affected by error of law. Gen. Laws 1956 § 42-35-15(g)(3),(4). Neither was it 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).

Accordingly, the decision of the Board is hereby AFFIRMED.