

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

TIMOTHY HAY

v.

DEPARTMENT OF LABOR AND TRAINING,
BOARD OF REVIEW

:
:
:
:
:
:

A.A. No. 14-32

JUDGMENT

This cause came before Capraro 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 2nd day of February, 2016.

Enter:

By Order:

/s/

/s/

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PROVIDENCE, SC.

DISTRICT COURT
SIXTH DIVISION

TIMOTHY HAY

v.

DEPARTMENT OF LABOR AND TRAINING,
BOARD OF REVIEW

:
:
:
:
:
:

A.A. No.: 14-32

DECISION

CAPRARO, J. This matter is before the Court for judicial review of a final decision of the Board of Review of the Department of Labor and Training, which upheld a Referee’s decision that Mr. Hay (hereinafter “Claimant”) Left work voluntarily without good cause. District Court jurisdiction is pursuant to Gen. Laws 1956 §28-44-52.

FACTS AND PROCEDURAL HISTORY

The claimant was hired as a pipe fitter at Senesco Marine roughly around January 10, 2012. After some time on the job, Claimant discovered he had some throat issues which he attributed to work. He claimed poor ventilation left him exposed to dust and smoke. This directly led to a chronic cough and hoarseness Claimant 1 – doctor’s note dated 12-19-12. After seeing this doctor, Claimant received temporary disability from May 18, 2013 until July 13, 2013. The doctor had found that the exposure to dust and

smoke in performance of Claimant's job exacerbates the symptoms Claimant 2 – doctors note dated 5/15/13. The doctor concluded that the only medical therapy to improve Claimant's symptoms was avoidance.

It was also during this time that Claimant admitted that he would often remove the respirator mask he was supposed to wear. Transcript p.19 He stated that this was so he could hear his partner better. Claimant also complained that he was given the incorrect respirator. Transcript p. 20

Claimant recovered and received a return to work note. The doctor's note indicated that there were no restrictions. Decision of Referee, Findings of Fact

After returning to work, he started to suffer the same medical issues again. Transcript p. 11 It was around that time that Claimant voluntarily quit. As Claimant put it "I couldn't take it no more, I couldn't do it no more." Transcript p. 11 In his resignation letter, Claimant never claimed he was resigning for medical reasons, nor did he seek a doctor's opinion on this illness. In fact, Claimant admits that he did not seek out any medical opinion after he returned to work in July. Transcript p. 15 Within three to four days after he voluntarily quit Senesco Marine, Claimant was hired at a new job.

On September 28, 2013, Claimant filed for employment security benefits. The Director denied that claim on November 29, 2013, ruling that Claimant left work voluntarily without good cause. A timely appeal was filed and after a hearing with witnesses and documentation, a referee specifically found:

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.

I find that the claimant voluntarily quit his position for medical reasons, but has failed to show any evidence that he was medically advised to leave his job. Therefore, I find in this case the claimant voluntarily quit his job without good cause. As such, the claimant is subject to the disqualification provisions of Section 28-44-17.

He therefore ruled that:

The decision of the Director is affirmed. The claimant left work voluntarily without good cause. He is, therefore, subject to disqualification under the provisions of Section 28-44-17 of the Rhode Island Employment Security Act.

After another timely appeal the Board of Review affirmed the Referee by concluding that:

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**.

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.

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.

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, 668 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)).

STANDARD OF REVIEW

The standard of review by which this court must consider appeals from the Board 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.

The scope of judicial review by this Court is limited by § 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))

Stated differently, this Court will not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact. Cahoon 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 and Training Board 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 of the record.” Baker, 637 A.2d at 363.

ANALYSIS

This Court has had the benefit of two excellent briefs written by both sides. These briefs greatly aided the Court in narrowing the issue at hand. Both sides agree that this case hinges on Harraka v. Board of Review, Department of Employment Security, 200 A.2d 595 (1964).

Claimant Hay points to the fact that when he applies the sufficient “liberal application” that allows a person to collect benefits if they act in good faith to leave because continued exposure to conditions at work would cause problems, he did nothing wrong by leaving. Claimant says he is not a shirker . He does admit he often took off his mask, but claimed it was because he would choke. To show that the job was making him sick, he went to a doctor. The doctor’s note proved

that Claimant got sick at the job. He also tried to return to work, got sick again and had to leave. Since he was able to immediately get a job with another employer after he left a second time, Claimant claims it shows his good faith and that the job made him sick.

While relying on the same language in Harraka, Senesco Marine states that Claimant took his respirator off when he should not have done so. Senesco Marine states when he returned to work, Claimant never got sick again or sought another doctor's opinion or note. The last straw for the company was when Claimant asked his employer to let him go so he could collect. All of this does not show good faith.

In order to find if the Board acted "clearly erroneous", all this Court has to do is connect the dots. Claimant would take his respirator off, he got sick. He left work and got better. He then had to return to work. He wanted to be let go so he could collect. When the company would not allow it, Claimant just left saying he as sick without the benefit of a medical opinion. This is competent evidence that Claimant left voluntarily without good cause.

Conclusion

This Court finds that the decision of the Board was not “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record”, and that the decision of the Board was not “arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” R.I.G.L § 42-35-15(g)(5)(6).

Accordingly, the decision of the Board is hereby affirmed.