

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

Angel D. Pujols :
 :
v. : A.A. No. 2014 – 432
 :
Department of Labor and Training, :
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. Mr. Angel D. Pujols filed the instant complaint for judicial review of a final decision of the Board of Review of the Department of Labor and Training, which held that he was not entitled to receive employment security benefits based upon proved misconduct. This matter has been referred to me for the making of Findings and Recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. After comparing the decision rendered by the Board of Review with the record certified to this Court, I have concluded that the decision disqualifying Mr. Pujols is not clearly erroneous in light of the

probative, reliable, and substantial evidence of record; 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. Angel Pujols worked for Auto Paint RI at its auto repair shop for 3 years as a “body man” until July 17, 2014. He filed a claim for unemployment benefits but on September 4, 2014, a designee of the Director of the Department of Labor and Training determined him to be ineligible to receive benefits pursuant to the provisions of Gen. Laws 1956 § 28-44-18, because he was terminated for proved misconduct.

The Claimant filed an appeal and a hearing was conducted by Referee Carol A. Gibson on October 15, 2014. On this occasion Claimant appeared without counsel; three employer representatives also appeared, with counsel. Two days later, on October 17, 2014, the Referee held that Mr. Pujols should be disqualified from receiving unemployment benefits because he had been fired for misconduct. In her written Decision, the Referee made Findings of Fact on the issue of misconduct, which are quoted here in their entirety —

The claimant had worked for the employer, an auto repair shop, for three years as a body man. The record indicates that on October 7, 2013 the claimant was counseled regarding his behavior in the workplace following a conflict with another employee. The incident which resulted in the claimant's termination occurred on July 17, 2014. On that date, the claimant's manager brought a work quality issue to his attention. The claimant became upset because he believed a co-worker had addressed the work quality to the manager. The claimant made a statement to the manager after meeting with management and the co-worker. The manager testified the claimant stated he wanted to punch someone in the mouth. The claimant disputes this but acknowledges making a general statement to the effect of, "If they butt into my job they are going to have a problem with me." The claimant was discharged on July 18, 2014, due to his conduct in the workplace after being counseled and warned.

Decision of Referee, October 17, 2014 at 1. Based on these facts — and after quoting extensively from Gen. Laws 1956 § 28-44-18 and the leading case in this area, Turner v. Department of Employment and Training Board of Review, 479 A.2d 740 (R.I. 1984) — Referee Gibson pronounced the following conclusions:

...

In cases of termination, the employer bears the burden to prove by a preponderance of credible testimony or evidence that the claimant committed an act or acts of misconduct as defined by the law in connection with her work. It must be found and determined that the employer has met their burden. The credible evidence and testimony presented at the hearing has established that the claimant had been previously warned regarding his conduct in the workplace. In the final incident, the

claimant's actions constitute inappropriate and unprofessional behavior and, therefore, misconduct under the above Section of the Act. Accordingly, benefits must be denied on this issue.

Decision of Referee, October 17, 2014 at 2-3. The Claimant appealed and the Board of Review deliberated on the matter. On November 21, 2014, the Board of Review unanimously affirmed the decision of the Referee — finding it to be a proper adjudication of the facts and the law applicable thereto; the Board adopted the decision of the Referee as its own.

Finally, Mr. Pujols filed a complaint for judicial review in the Sixth Division District Court on December 5, 2014.

II 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 on and after July 1, 2012 and prior to 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 at least

eight (8) weeks of work, and in each of that eight (8) weeks has had earnings greater than, or equal to, 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.

(Emphasis added). 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” previously pronounced in a decision of the Wisconsin Supreme Court — Boynton Cab Co. v. Newbeck, 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.

The employer bears the burden of proving by a preponderance of evidence that the claimant's actions constitute misconduct as defined by law.¹

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;

¹ Foster-Glocester Regional School Committee v. Board of Review, Department of Labor and Training, 854 A.2d 1008, 1018 (R.I. 2004).

- (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

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 the Employment Security Act:

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

⁴ Cahoone v. Board of Review of Department of Employment Security, 104 R.I. 503, 246 A.2d 213, 215 (1968). Also D’Ambra v. Board of Review, Dept. of Employment Security, 517 A.2d 1039, 1041 (R.I.1986).

* * * 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.

IV

ANALYSIS

A

The Facts of Record

It is our customary practice in section 18 (misconduct) cases to begin our analysis of a decision of the Board of Review by recounting the evidence and testimony adduced at the hearing, so that we may determine whether the findings made by the Board are supported by reliable, probative, and substantial evidence. Of course, when we do so, we are implicitly assuming that the Board’s findings regarding the claimant’s behavior are — if supported

by the record — sufficient as a matter of law to constitute misconduct within the meaning of § 18. Most often, this issue is not subject to serious debate.

1

Testimony of David Baglini

The employer’s first witness at the hearing conducted by Referee Gibson was Mr. David Baglini, its Repair Manager.

Mr. Baglini described the last incident with Mr. Pujols, which occurred on July 16, 2014, and which led to his termination.⁵ He said it began when, as was his custom, he inspected a vehicle that had been repaired (and which was allegedly ready to be turned over to its owner); he found that the body work on the vehicle, which had been done by Mr. Pujols, was “not adequate.”⁶ And so he told Mr. Pujols that the work needed to be corrected; Claimant “got upset, slammed the door and told me that it was acceptable and to deliver the car.”⁷ Mr. Pujols then went on his break, with the other workers.⁸

⁵ Referee Hearing Transcript, at 19.

⁶ Referee Hearing Transcript, at 20-21. He said that there were “pin holes” in the quarter-panel. Id.

⁷ Referee Hearing Transcript, at 21.

⁸ Referee Hearing Transcript, at 22.

Mr. Baglini showed the door to the owner, after which Paul Yavavone⁹ and Mr. Baglini went into the break room to talk to Mr. Pujols, who was still upset, and was venting to the other staff about Mr. Yavavone, whom he apparently assumed was the person who had referred his work to Mr. Baglini.¹⁰ He was saying Paul should not be bringing information to management.¹¹

And so, Mr. Baglini went to the owner's office to inform him of the issue.¹² Mr. Pujols came in from the break room and, seeing Mr. Yavavone there, began an argument with the owner, during which Mr. Yavavone interjected that he did not find the problem, David (Mr. Baglini) did.¹³ As he left the office, he said (in English) that he was going to (or wanted to) punch

⁹ Mr. Yavavone works in the "Reconditioning Department" and performs the final preparation on a vehicle before it is released. As a result, he sometimes does alert Mr. Baglini to problems he sees, although — according to his testimony and that of the other witnesses for the employer — he did not do so in the instant case. Referee Hearing Transcript, at 24.

¹⁰ Referee Hearing Transcript, at 22-24.

¹¹ Referee Hearing Transcript, at 24.

¹² Referee Hearing Transcript, at 24.

¹³ Referee Hearing Transcript, at 24-25.

someone in the face.¹⁴ At that point Mr. Pujols went back to his work station and Mr. Baglini told the owner what he had just said.¹⁵

The owner decided to terminate Mr. Pujols that evening, apparently after receiving a text from Mr. Yavavone that he was concerned about the threat.¹⁶ Mr. Baglini, who had only been with the firm since February, knew of no prior statements of a similar nature that Claimant had made.¹⁷ However, he was aware of prior problems regarding the quality of Mr. Pujols' work, which had been discussed with him.¹⁸ Nevertheless, the primary reason that Claimant Pujols was fired was the threat.¹⁹

Under questioning by the employer's attorney, Mr. Baglini testified that Claimant's attitude was that he was a professional, better than the rest, and that the work he did was acceptable and the car should be delivered.²⁰ He had

¹⁴ Referee Hearing Transcript, at 25, 29.

¹⁵ Referee Hearing Transcript, at 26. Perhaps surprising to the uninitiated, Mr. Baglini said the making of the threat was not uncommon in an auto shop, but the shouting was. Id., at 26-27.

¹⁶ Referee Hearing Transcript, at 28.

¹⁷ Referee Hearing Transcript, at 29.

¹⁸ Referee Hearing Transcript, at 30-31, 36.

¹⁹ Referee Hearing Transcript, at 32.

²⁰ Referee Hearing Transcript, at 33.

exhibited this attitude on prior occasions as well.²¹ He took the threat seriously.²²

2

Testimony of Mr. Paul Yavavone

Next, Mr. Yavavone testified.²³ He explained that he worked in the recon (perhaps short for reconditioning) department, where he was responsible for buffing and cleaning the cars prior to the owner taking delivery.²⁴ Regarding the car at the center of this case, he said that he put the car in front of the door, and David (Mr. Baglini) inspected it and found pinholes in the body work, after which he saw David talking to Mr. Pujols.²⁵

During break-time he went into the office, though not to “stir up any heat.”²⁶ Mr. Pujols entered the office, and “comes at” him and Mr. Baglini, telling him that he should not be looking for errors.²⁷ But Mr. Yavavove told

²¹ Referee Hearing Transcript, at 33.

²² Referee Hearing Transcript, at 32, 34.

²³ Referee Hearing Transcript, at 36 et seq.

²⁴ Referee Hearing Transcript, at 36-37.

²⁵ Referee Hearing Transcript, at 37.

²⁶ Referee Hearing Transcript, at 37.

²⁷ Referee Hearing Transcript, at 38.

Claimant that it was part of his job — because he had been instructed to do so.²⁸

Then, after this impromptu meeting was over, Mr. Yavavone was told by Mr. Baglini that Angel said he “wanted to punch someone in the face.”²⁹ The witness said that, although he did not personally feel threatened, and did not want to “make a big deal” about it, he texted the owner, Kenny, who said he would take care of it.³⁰ In the text he implied to the owner that he was “uncomfortable” because he was the one in jeopardy (because Mr. Pujols thought that he was the one that had raised the issue).³¹ He also knew, from prior experience, Mr. Yavavone typically got upset if his work was questioned.³² And when asked by the Referee if this type of talk had occurred before, he said no.³³

²⁸ Referee Hearing Transcript, at 38.

²⁹ Referee Hearing Transcript, at 39.

³⁰ Referee Hearing Transcript, at 40.

³¹ Referee Hearing Transcript, at 41. He thought this because Claimant had said as much in the office. Id. In the text, he told Kenny that he had already told Linda, who works in the office. Referee Hearing Transcript, at 40. He also reminded the owner of an incident Mr. Pujols had had with another worker, Franco, about a year earlier. Id., at 40-41.

³² Referee Hearing Transcript, at 42.

³³ Referee Hearing Transcript, at 42-43.

Testimony of Mr. Mark St. Sauveur

After Mr. Yavavone's testimony concluded, the Referee called upon the final employer's witness, Mr. Mark St. Sauveur, its body shop manager, to give his testimony regarding the incident.³⁴

Mr. St. Sauveur, an eight-year employee of the employer, testified that he was in his office when he heard yelling and screaming, including Mr. Pujols telling David to close the door and deliver the car because it was "okay."³⁵ And when they got into the office Mr. Pujols let it be known that he did not like people checking the quality of his work.³⁶ According to Mr. St. Sauveur, this is consistent with Claimant's behavior during the three years he had been working there.³⁷

Mr. St. Sauveur indicated that — as a result of the previous incident with Franco — Mr. Pujols had promised, in writing, that such an incident would not happen again.³⁸ From what Mr. St. Sauveur could remember, Mr.

³⁴ Referee Hearing Transcript, at 45.

³⁵ Referee Hearing Transcript, at 45.

³⁶ Referee Hearing Transcript, at 46.

³⁷ Referee Hearing Transcript, at 47.

³⁸ Referee Hearing Transcript, at 47-48.

Pujols was suspended for a couple of days (or fired and rehired).³⁹ He volunteered that Claimant is a very hard worker, but this pin-hole issue is a problem that affects the other departments in the shop — accordingly, he’s spoken to Mr. Pujols about the problem “[a]bout a 150 times.”⁴⁰ Speaking generally, he said Claimant sometimes had problems following directions.⁴¹

4

Testimony of Claimant Angel Pujols

Mr. Pujols began his testimony regarding the incident in question by indicating that Kenny (the owner) had already said it was perfect before Mr. Baglini brought up the issue of the pinholes.⁴² As a result, when Mr. Baglini said there was a problem, he said it was an issue of the painter.⁴³

Mr. Pujols denied he was complaining in the break room.⁴⁴ When he went into the office he spoke to Paul (Yavavone) and queried his right to

³⁹ Referee Hearing Transcript, at 48-49.

⁴⁰ Referee Hearing Transcript, at 50-51.

⁴¹ Referee Hearing Transcript, at 52.

⁴² Referee Hearing Transcript, at 53-54.

⁴³ Referee Hearing Transcript, at 54-55, 59.

⁴⁴ Referee Hearing Transcript, at 55.

question the quality of his work.⁴⁵ But, he denied he was yelling in the meeting.⁴⁶ Mr. Pujols also denied he ever threatened to punch anyone.⁴⁷ However, Claimant conceded he had told Mr. Yavavone that he “butted into his job, they are going to have problems with me.”⁴⁸

He indicated that Kenny (the owner) came out and asked him about the problems with the car.⁴⁹ Apparently, he reminded the owner that, earlier, he had said the car was fine.⁵⁰ He felt that only the boss and the manager should inspect his work; but, on this job, everybody did.⁵¹

When he was shown the statement he had executed the previous year, in which he promised to watch his conduct in the future, Mr. Pujols stated that he did know what he was signing, though he acknowledged that the owner told him to do his job and not to argue.⁵²

⁴⁵ Referee Hearing Transcript, at 55.

⁴⁶ Referee Hearing Transcript, at 56.

⁴⁷ Referee Hearing Transcript, at 56.

⁴⁸ Referee Hearing Transcript, at 57.

⁴⁹ Referee Hearing Transcript, at 58-59.

⁵⁰ Referee Hearing Transcript, at 59.

⁵¹ Referee Hearing Transcript, at 60.

⁵² Referee Hearing Transcript, at 61-62. This statement was a product of Claimant’s conflict with Franco; Mr. Pujols agreed he told Franco not to

Mr. Pujols admitted he got upset during the July incident.⁵³ When the owner fired him the next day, he told him he had no “professionalism.”⁵⁴ Claimant also conceded that they had spoken to him about the pinholes many times.⁵⁵ He stated he deserved respect; he agreed that he did tell Paul he had no right to judge his work.⁵⁶

B

Did the Employer Prove Claimant Was Fired for Misconduct?

After reviewing the preceding synopsis of the testimony received at the hearing she conducted, I have concluded that Referee Gibson’s Findings of Fact are fully supported by the evidence of record. I also believe that her conclusion, that Claimant was terminated for inappropriate and unprofessional behavior in the workplace, and that this behavior constituted misconduct within the meaning of § 28-44-18, is fully supported by those findings. For this reason I shall recommend that the Board of Review’s decision be affirmed.

inspect his work; but he denied he yelled. Referee Hearing Transcript, at 60-62.

⁵³ Referee Hearing Transcript, at 63.

⁵⁴ Referee Hearing Transcript, at 63.

⁵⁵ Referee Hearing Transcript, at 64.

In my view, the record is clear (and mainly undisputed) on the following key points: (1) Claimant was employed by Auto Paint as a body man and enjoyed a good reputation for craftsmanship, reliability, and work ethic; (2) if he had one chink in his armor, it was this matter of “pin-holes” — about which he had been spoken to on many occasions; (3) the managers of Auto Paint encouraged all employees to point out any problem they saw with the work, so that it could be addressed before the vehicle left the shop; and (4) Mr. Pujols found the idea of his work being critiqued by non-craftsman injurious to his pride, and refused to accept it.

Now, it is only in the particulars of the manner by which Claimant expressed his displeasure that the testimony of Mr. Pujols and the employer’s witnesses diverge. Mr. Baglini testified that Claimant expressed a desire (or intention) to punch someone in the face, while Mr. Pujols insists that he merely said that if people “budded into” his job, they “were going to have problems” with him. The Board of Review (by adopting the Referee’s decision as its own) was certainly within its discretion when it credited the testimony of the employer’s witnesses over that of Mr. Pujols. And so, a

⁵⁶ Referee Hearing Transcript, at 64-65.

finding that Claimant acted unprofessionally in the workplace was certainly supported by the record.

But, in a broader sense, I believe that both versions of the statement are essentially identical — at least with regard to their impact on the employer. Each statement may be reduced to this — *I, Mr. Angel Pujols, do not want my inferiors commenting on my work, regardless of the employer’s instructions to the contrary; and anyone who does so will suffer my wrath.* And so, I view each statement he made as countermanding the instructions and expectations established by the employer. In my view, Mr. Pujols’ declaration of workplace independence constituted nothing less than insubordination.

Let us examine the meaning of that term. The Ninth Edition of Black’s Law Dictionary defines insubordination as either “a willful disregard of an employer’s instructions” or “an act of disobedience to proper authority.” Black’s Law Dictionary 870 (9th ed. 2009). General dictionaries follow suit: the Webster’s Third defines “insubordinate” as “unwilling to submit to authority.” Webster’s Third New International Dictionary 1172 (3rd ed. 2002); likewise, the American Heritage defines “insubordinate” as “not submissive to authority.” American Heritage Dictionary 910 (5th ed. 2011). Mr. Pujols refusal to submit to the employer’s workplace preeminence was,

under these definitions, insubordinate. And so, under this theory, we must also find Mr. Pujols to be guilty of misconduct.

Pursuant to the applicable standard of review described supra at 6-7, the decision of the Board of Review 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. Applying this standard of review, I must recommend that this Court hold that the Board's decision was not legally or factually flawed. I shall therefore recommend that it be AFFIRMED.

V
CONCLUSION

Upon careful review of the evidence, I find that the decision of the Board of Review is not affected by error of law; nor is it clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Gen. Laws 1956 § 42-35-15(g)(3), (4), and (5). Accordingly, I recommend that the decision rendered by the Board of Review in this case be AFFIRMED.

_____/s/_____
Joseph P. Ippolito
Magistrate
April 10, 2015

