

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

DISTRICT COURT

Jonathan Goss

:
:
:
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:
:

v.

A.A. No. 14-75

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 11th day of February, 2016.

Enter:

By Order:

_____/s/_____

_____/s/_____

**STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
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Jonathan Goss :
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Department of Labor and Training, :
Board of Review :

DECISION

Jabour, J. This matter is before the Court filed pursuant to Rhode Island General Laws § 42-35-15, seeking 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 a Referee’s decision that the claimant, Jonathan Goss (hereinafter cited as “Claimant”) was not entitled to receive employment security benefits.

FACTS & TRAVEL OF THE CASE

Claimant was employed at Umicore Thin Film Products (“Employer”) from April 18, 2011 until January 6, 2014 when he was terminated. On January 13, 2014, claimant filed for Employment Security benefits. The Director determined that the claimant was discharged under disqualifying circumstances within the provisions of Section 28-44-18 of the Rhode Island Employment Security Act. A timely appeal was filed; a hearing before the Referee was conducted on March 13, 2014. The Claimant and an employer representative appeared and testified.

The Referee engaged in fact finding to determine whether or not the claimant was

discharged from the job under disqualifying circumstances within the provisions of Section 28-44-18 of the Rhode Island Employment Security Act. In reaching a conclusion, the Referee relied on the Rhode Island Supreme Court's ruling in Turner vs. Department of Employment and Training, Board of Review, 479 A.2d 740, 741-42 (R.I. 1984). The Court adopted a general definition of the term, "misconduct" as enunciated in Boynton Cab Co. v. 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 interest 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 employer’s interest or 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. *Id.* At 259-60, 296 N.W. at 640.”

The Referee concluded that the burden of proof in establishing misconduct rested solely with the Employer. In reaching a decision, the Referee concluded that there was sufficient evidence and testimony presented at the hearing to establish that Claimant’s actions constituted misconduct. The Referee affirmed the Director’s decision and denied payment of benefits.

An appeal before the Board of Review was held on March 20, 2014. Pursuant to Rhode Island General Laws § 28-44-47, the Board reviewed the Referee’s decision and declared the decision to be the Board’s decision. The Board determined that the Referee’s findings and conclusions of law were a proper adjudication of the facts and applicable law. The Board affirmed the Referee’s decision.

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

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 and whether or not it was clearly erroneous or affected by error of law. This Court “must determine whether the decision is [m]ade upon unlawful procedure” or “affected by other error of law”, Rhode Island General Laws § 42-35-15(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 § 28-44-18, entitled “Discharge for Misconduct,” the definition of “misconduct” is “deliberate conduct in willful disregard of the employer’s interest, or 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.”

On appeal, Claimant argues that the record does not support a misconduct finding. Claimant states that the Employer’s reason for termination was excessive absenteeism

(Claimant's Memorandum p.7). More specifically Claimant states that he was terminated for absences from December 27, 2013 to January 5, 2014. Claimant focuses on the fact that he was ill during this time period and that he notified his supervisor that he was ill. He alleges that he was told by the supervisor to bring a doctor's note when he was able enough to return to work (TR 9 – 10). Claimant argues that the burden was on the Employer to provide legally competent evidence that Claimant's conduct was not only deliberate but also a willful disregard of the Employer's interest.

The Referee heard extensive testimony from both the Employer and the Claimant. The Employer testified and provided supporting documentation regarding the Claimant's excessive lateness and excessive use of sick time. The Employer gave both verbal and written warnings to the Claimant. (See ER 1 Exhibit)

The Employer testified specifically that in 2011 that Claimant had been on time for work only seven times in weeks to which he received verbal and written warnings (TR at1) (See ER 1 Exhibit Jonathan Goss Termination Summary). In 2012, Claimant also received verbal warnings on excessive tardiness and excessive call outs. In 2013, Claimant was warned for over use of sick time (no sick time available) and excessive tardiness (TR at 11).

Claimant testified that he was sick and had doctor's notes (TR at 12). Claimant submitted the various doctor's notes dated December 27, 2013, December 30, 2013 and January 9, 2014 (See Claimant 1).

The Employer responded that while the Claimant may have had the doctor's notes in his possession, he did not provide them to the Employer (TR 12–13). The Employer further testified that Claimant had received excessive warnings regarding absenteeism and tardiness and that the responsibility was on Claimant to provide the notes (TR 18-19).

The Referee had ample, probative and reliable evidence to support the decision that the claimant was discharged for misconduct. Claimant's arguments fail that the record does not support a misconduct finding

The Board affirmed the Referee's decision. The Board's decision must be upheld unless it was, inter alia, contrary to law, clearly erroneous in light of the evidence of record or arbitrary or capricious. This Court cannot substitute its judgment for that of the Board as to the weight of the evidence. Accordingly, the findings of the agency must be upheld even though a reasonable fact-finder might have reached a contrary result.

CONCLUSION

The decision of the Board of Review was not made upon unlawful procedure, affected by other error of law or clearly erroneous in view of the reliable, probative and substantial evidence of the entire record. Rhode Island General Laws § 42-35-15(g)(3),(4),(5).

Accordingly, the decision of the Board is AFFIRMED.