

**STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS  
PROVIDENCE, Sc.**

**DISTRICT COURT  
SIXTH DIVISION**

**Osvaldito Cardona** :  
 :  
v. : **A.A. No. 15 - 012**  
 :  
**Department of Labor and Training,** :  
**Board of Review** :

**ORDER**

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings & Recommendations of the Magistrate.

After a de novo review of the record and the memoranda of counsel, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto.

It is, therefore, ORDERED, ADJUDGED AND DECREED, that the Findings & Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the decision of the Board of Review is hereby AFFIRMED.

Entered as an Order of this Court at Providence on this 29<sup>th</sup> day of May, 2015.

By Order:

\_\_\_\_\_/s/\_\_\_\_\_  
Stephen C. Waluk  
Chief Clerk

Enter:

\_\_\_\_\_/s/\_\_\_\_\_  
Jeanne E. LaFazia  
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS  
PROVIDENCE, Sc. DISTRICT COURT  
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Osvaldito Cardona :  
v. : A.A. No. 15 – 012  
Department of Labor and Training, :  
Board of Review :

**FINDINGS & RECOMMENDATIONS**

**Ippolito, M.** In this case Mr. Osvaldito Cardona urges that the Board of Review of the Department of Labor and Training erred when it held him to be disqualified from receiving unemployment benefits because it found that he had left his position without good cause as defined in Gen. Laws 1956 § 28-44-17. Jurisdiction for appeals from decisions of the Department of Labor and Training Board of Review is vested in the District Court by Gen. Laws 1956 § 28-44-52. This matter has been referred to me for the making of Findings and Recommendations pursuant to Gen. Laws 1956 § 8-8-8.1.

Employing the standard of review applicable to administrative appeals, I find that the decision rendered by the Board of Review on the issue of eligibility was not clearly erroneous; 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. Osvaldito Cardona was employed by Hallman Septic Service for one year and five months. His last day of work was September 24, 2014. He filed a claim for unemployment benefits on October 28, 2014 but on November 24, 2014 a designee of the Director issued a decision finding that Mr. Cardona had left his employment without good cause within the meaning of Gen. Laws 1956 § 28-44-17.

Claimant appealed from this decision and on December 31, 2014 Referee Nancy L. Howarth conducted a hearing on the matter. Claimant appeared without counsel; one representative of the employer was present. Two days later, the Referee issued a decision which affirmed the Director's denial of benefits to Claimant. Referee Howarth made the following findings of fact:

The claimant was employed as a driver by the employer. On September 24, 2014 the claimant advised his supervisor that he

was resigning from his position, effective immediately. Although the claimant states he was experiencing a mental breakdown which caused him to act irrationally, he has failed to provide adequate medical documentation to substantiate his statement.

Decision of Referee, January 2, 2015, at 1. Based on these findings, the

Referee pronounced the following conclusions:

\* \* \*

In order to establish that he had good cause for leaving his job the claimant must show that the work was unsuitable or that he was faced with a situation that left him no reasonable alternative other than to terminate his employment. The burden of proof in establishing good cause rests solely with the claimant. In the instant case the claimant has not sustained this burden. There has been insufficient evidence presented at the hearing to establish that the claimant's leaving was with good cause under the above Section of the Act. Accordingly, benefits must be denied on this issue.

Decision of Referee, January 2, 2015, at 1. Accordingly, Referee Howarth affirmed the Director's decision denying benefits to Mr. Cardona.

Claimant filed a timely appeal and the matter was considered by the Board of Review; the Board did not hold a new hearing but considered Claimant's appeal on the basis of the record certified to it.<sup>1</sup> On January 30, 2015, the Board unanimously affirmed the decision of Referee Howarth,

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<sup>1</sup> This procedure is authorized by Gen. Laws 1956 § 28-44-47.

finding it to be a proper adjudication of the facts and the law applicable thereto; in fact, the Board adopted the Referee's decision as its own. Decision of Board of Review, January 30, 2015, at 1.

Then, on February 26, 2015, Mr. Cardona filed a complaint for judicial review in the Sixth Division District Court.

## II APPLICABLE LAW

The fundamental issue in 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.** – For benefit years beginning on or after July 6, 2014, an individual who leaves work voluntarily without good cause shall be ineligible for waiting period credit or benefits for the week in which the voluntary quit occurred and until he or she establishes to the satisfaction of the director that he or she has, subsequent to that leaving, 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.

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 malingeringer. 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 it added:

\* \* \* 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. And in Powell v. Department of Employment Security, Board of Review, 477 A.2d 93, 96-97 (R.I. 1984), the

Court clarified that "... the key to this analysis is whether petitioner voluntarily terminated his employment because of circumstances that were effectively beyond his control." Also, Rhode Island Temps, Inc. v. Department of Labor and Training, Board of Review, 749 A.2d 1121, 1129 (2000).

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

The Supreme Court of Rhode Island recognized in Harraka, ante at 4, 98 R.I. at 200, 200 A.2d at 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

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<sup>2</sup> 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).

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

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

eligibility under the guise of construing such provisions of the act.

#### IV

#### ANALYSIS

#### A

#### **Evidence of Record**

At the December 31, 2014 hearing conducted by Referee Howarth in this matter the first witness was Claimant Cardona. Referee Hearing Transcript, at 1, 6 et seq.

As Mr. Cardona began his testimony by indicating that he had been employed by Hallman since April of 2013 as a loop driver — one who goes out and cleans toilets in various areas, in-state and out. Referee Hearing Transcript, at 7. And, in response to a specific question from the Referee, he stated that he left Hallman because he had a mental breakdown — specifically, he was cleaning a toilet when he blacked out “... and the next thing you know, I’m at my house, smashing stuff that I owned.” Referee Hearing Transcript, at 8. He clarified that “ ... instead of going from my next stop, to my next stop, I went back to the shop and I quit and I went home.” Referee Hearing Transcript, at 9. Later in his testimony, Mr. Cardona added that when he went home, he smashed half the stuff that he owned; and that

his family was afraid of him, so he “took off.” Referee Hearing Transcript, at 13. He sought medical treatment the next day. Id.

When the Referee asked if he had any medical records, Mr. Cardona responded that he just had his discharge papers. Referee Hearing Transcript, at 10-11. He said “they” gave him prescriptions for moods, for depression, and for insomnia. Referee Hearing Transcript, at 11. He further indicated that he never gave any medical records to his employer. Referee Hearing Transcript, at 12.

Mr. Hallman testified briefly, confirming Claimant’s testimony that the employer was never told why he left. Referee Hearing Transcript, at 14-15.

## **B**

### **Discussion**

It is certainly true that leaving due to illness has been recognized as good cause to quit. But this Court — and the Board of Review — have historically only recognized illness as a good cause to quit when medical opinion has been presented documenting the necessity of that action. Compare Megalli v. Department of Employment and Training Board of Review, A.A. No. 94-92, (Dist.Ct. 7/3/95)(Rahill, J.)(Claimant, who left job

due to stress after three months' employment, was found to be not entitled to receive benefits; affirmed, where medical evidence was equivocal and no causal relationship was established) and Nowell v. Department of Employment and Training Board of Review, A.A. No. 94-87, (Dist.Ct. 12/6/94)(Cenerini, J.)(Board of Review found claimant not entitled to benefits; affirmed, where claimant's stress and epilepsy claims were not supported by medical evidence) with Talbot Treatment Center, Inc. v. Department of Employment and Training Board of Review, A.A. No. 91-190, (Dist.Ct. 6/25/92)(DeRobbio, C.J.)(Board of Review found claimant resident assistant entitled to benefits, and employer appealed; affirmed, where medical testimony supported claim that stress of position, including confrontation with a patient, was negatively affecting claimant's diabetes).

In the instant case Claimant provided no such information to either the employer — or to this Court. Indeed, the Newport Hospital medical records that were presented to the Referee (marked as Claimant's Exhibit No. 1) indicate "No restrictions" in the space labeled "Work Restrictions" and the space labelled "Return to Work/School/Class" is left blank. So, there was nothing here to show that Claimant's ill health required him to quit on or

about September 24, 2014.<sup>5</sup>

## VI CONCLUSION

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

Upon careful review of the evidence, I conclude that the Board's decision disqualifying Mr. Cardona from receiving unemployment because he quit without good cause is not clearly erroneous in view of the reliable,

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<sup>5</sup> It may be noted that the medical records from Newport Hospital indicated that he was admitted on September 26, 2014 and discharged on September 30, 2014. Claimant included other records with his Complaint for Judicial Review but they are all concerned with his care subsequent to his quitting and do not speak to the necessity, vel non, of his quitting.

<sup>6</sup> Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213 (1968).

<sup>7</sup> Cahoone, 104 R.I. at 506, 246 A.2d at 215 (1968). See also D'Ambra v. Board of Review, Dept. of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986) and Gen. Laws 1956 § 42-35-15(g), ante at 6 and Guarino, ante

probative, and substantial evidence of record — and the applicable law. Gen. Laws 1956 § 42-35-15(g)(3),(4).

I therefore recommend that the Decision of the Board of Review rendered in this case be *AFFIRMED*.

\_\_\_\_\_/s/\_\_\_\_\_  
Joseph P. Ippolito  
MAGISTRATE

MAY 29, 2015

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at 7, n. 2.

