STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Falvey Linen Supply Co.	:	
	:	
v.	:	**A.A. No. 15 - 002**
	:	
Department of Labor and Training,	:	
Board of Review	:	
(Frances Sandy)	:	

O R D E R

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, 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 AFFIRMED.

Entered as an Order of this Honorable Court on this 16th day of October, 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**
SIXTH DIVISION

Falvey Linen Supply Co.	:	
	:	
v.	:	**A.A. No. 15 – 002**
	:	
Department of Labor and Training,	:	
Board of Review	:	
(Frances Sandy)	:	

F I N D I N G S & R E C O M M E N D A T I O N S

Ippolito, M. In this case Falvey Linen Supply Inc. urges that the Department of Labor and Training Board of Review erred when it found its former employee, Ms. Frances Sandy, eligible to receive unemployment benefits — despite the objection it lodged that she had been terminated for misconduct.[1] Jurisdiction to hear and decide appeals from decisions made by the Board of Review is vested in the District Court by a provision of the Employment Security Act[2] and the procedure that we follow in adjudicating these appeals is that prescribed in the Rhode Island Administrative Procedures Act.[3] Finally, I note that this matter has

---

1 See Gen. Laws 1956 § 28-44-18.

2 See Gen. Laws 1956 § 28-44-52.

3 See Chapter 35 of Title 42, generally, and Gen. Laws 1956 § 42-35-15(g), in

been referred to me as District Court magistrate for the making of findings and recommendations.[4]

For the reasons stated below, I conclude that the decision issued by the Board of Review granting benefits to Ms. Frances Sandy is not clearly erroneous in light of the evidence of record and the applicable law; I therefore recommend that it be AFFIRMED.

I
FACTS AND TRAVEL OF THE CASE

Ms. Frances Sandy was employed by Falvey Linen Supply Inc. as a maintenance worker for seven years until August 12, 2014, when she was discharged for violating a work-rule barring food from workstations. Claimant filed for unemployment benefits and on September 8, 2014, a designee of the Director of the Department of Labor and Training ruled that she was discharged for unwillingness to comply with her supervisor's instructions.[5] From this decision the Claimant appealed. As a result, a hearing was scheduled before a referee employed by the Board of Review on October 29, 2014. Claimant Sandy appeared, with counsel — as did five employer representatives, who were also accompanied by counsel.

---

particular.

4 See Gen. Laws 1956 § 8-8-8.1.

5 See Director's Decision, September 8, 2014 — Director's Exhibit No. 2.

In his written Decision, the Referee, Mr. Gunter Vukic, found that Ms. Sandy, on her last day of work, was exiting the cafeteria area at the conclusion of the morning break carrying food; this conduct, which is prohibited by the employer's rules, was observed by a manager. Decision of Referee, October 30, 2014 at 1. Furthermore, the Referee found Ms. Sandy had received prior warnings for the same conduct. Id. Based on these findings — 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) — the Referee concluded that during her employment Claimant displayed a disregard for employer policies and a disrespect for management, particularly with regard to the ban on food at her workstation. Decision of Referee, October 30, 2014 at 2. Referee Vukic therefore affirmed the Director's disqualification of Ms. Sandy based on proved misconduct. Id.

Claimant filed a timely appeal and the matter was considered by the Board of Review on the basis of the record forwarded to it.[6] The Board, through its majority,[7] made Findings of Fact, which are quoted here in their entirety:

> * * * the claimant was employed for approximately seven years; during her employment the claimant had received several warnings; on or about July 14, 2014 the claimant was warned about eating food

[6] The Board cited Gen. Laws 1956 § 28-44-47 as the authority for the procedure it followed.

[7] The Member of the Board Representing Industry dissented, finding that Ms. Sandy's version of events was not credible. Decision of Board of Review, December 29, 2014 at 2.

> at her workstation and suspended for one day; on August 11, 2014, the claimant's supervisor saw her leave the cafeteria with food, the claimant was asked to discard the food; the claimant did not acknowledge the supervisor's instructions; the claimant threw the food (a half a cob of corn) in the trash; the supervisor did not see the claimant throw the food in the trash receptacle; the supervisor followed the claimant to her work station; the supervisor did not notice any food at the work station, the supervisor questioned the claimant; the claimant responded; another supervisor sent the claimant home because of the discussion between the claimant and her supervisor; and, the claimant was terminated for bringing food to her workstation and for being insubordinate to her supervisor.

Decision of Board of Review, December 29, 2014 at 1. Based on these facts —the Board pronounced the following conclusions:

> * * *
> The Board concludes that: the claimant did not bring food to her work station; on August 11, 2014 the claimant was not in violation of the employer's policy of prohibiting food at the work station, and there is insufficient evidence that claimant was willfully insubordinate towards her supervisor. The employer has not proved misconduct.

Decision of Board of Review, December 29, 2014 at 2. As a result, the Board reversed the decision of the Referee and found Claimant Sandy to be eligible for benefits. Id.

Finally, Falvey Linen filed a complaint for judicial review in the Sixth Division District Court on January 8, 2015.

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 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.

The employer bears the burden of proving by a preponderance of evidence that the claimant's actions constitute misconduct as defined by law.[8]

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

---

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

its findings are 'clearly erroneous.' "[9] The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.[10] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[11]

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:

> * * * 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.

---

[9] 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).

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

[11] 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, Department of Employment Security, 517 A.2d 1039, 1041 (R.I.1986).

IV
ANALYSIS

In this case Falvey Linen opposes Ms. Sandy's claim for unemployment benefits by accusing her of violating its rule[12] banning food from the work stations and insubordination arising from that breach. Before resolving this issue, we shall set out the facts of record and the positions of the parties.

A
Factual Review — The Referee Hearing
1
Testimony of the Employer's Witnesses

Since it carried the burden of proof on the issue of misconduct, the employer proceeded first.

a. Mr. Edward Tobin

Mr. Edward Tobin, the Falvey Linen's Plant Manager, testified first. Referee Hearing Transcript, at 10 et seq. He stated that he had worked for the employer in that capacity for seventeen years. Referee Hearing Transcript, at 12. Mr. Tobin then said that the incident which led to Ms. Frances' termination was reported to him by the floor supervisor, who said that Ms. Sandy carried food throughout the plant to her workstation after he had asked her to bring it back to the cafeteria.

---

[12] During his testimony, which shall be summarized in this part of this opinion, Mr. Edward Tobin, Falvey Linen's Plant Manager explained that the main reason for the rule is that the employer wants to avoid having to wash linens more than once. Referee Hearing Transcript, at 13.

Referee Hearing Transcript, at 12-13. The floor supervisor also told Mr. Tobin that Claimant had completely ignored him. Referee Hearing Transcript, at 13. Reading from his synopsis of the event, Mr. Tobin said Claimant left the cafeteria with food and ignored her supervisor when she was called back. Referee Hearing Transcript, at 16.

Mr. Tobin noted that he had access to her personnel file, and the decision to fire Ms. Sandy was made because of her prior violations in this area. Referee Hearing Transcript, at 16, 23. He further stated that Ms. Sandy had been previously warned about the rule and had suffered a previous suspension (one day in August of 2011). Referee Hearing Transcript, at 13-14, 17-18, 20. In his estimation, she had shown that the rules meant nothing to her. Referee Hearing Transcript, at 24.

On cross-examination, Mr. Tobin testified that he spoke to Ms. Sandy right after the incident. Referee Hearing Transcript, at 26. Claimant said that she did not hear her supervisor and did not have any food. Id.

b. Mr. Wilkin Zapata

Mr. Wilkin Zapata, the Falvey Linen's Production Manager, testified next. Referee Hearing Transcript, at 31 et seq. He explained that the employees take a break from 9:00 to 9:10, and it's his job to ensure that no one takes food back to their workstation. Referee Hearing Transcript, at 32.

On the day in question, Mr. Zapata saw Ms. Sandy leaving the cafeteria carrying food — something "like corn." Referee Hearing Transcript, at 32-33. He was about 12 feet away from him. Referee Hearing Transcript, at 34. He testified he then said — "Excuse me, Frances, please don't take that to work station." Referee Hearing Transcript, at 34. He said she ignored him and kept walking. Referee Hearing Transcript, at 33, 35. He followed her and said — "Please don't take that to work station." Referee Hearing Transcript, at 32, 34. At this point he was about 15 feet away from him, with nobody in-between. Referee Hearing Transcript, at 35-36.

Mr. Zapata then followed Ms. Sandy to her work station. Referee Hearing Transcript, at 33. He then said to her — "You know you're not supposed to eat that at your work station." Id. To which she responded — "What do you want me to do?" He said — "Come with me please." Id. They went to the cafeteria and the issue was turned over to "Pavo" and Mr. Tobin. Referee Hearing Transcript, at 37. Later, he wrote a report on the incident. Referee Hearing Transcript, at 39. When asked what happened to the piece of corn, he responded he did not see it at the workstation; as far as he could determine, she did not have it there. Referee Hearing Transcript, at 42, 45.[13]

---

[13] After the next witness, Ms. O'Hara, testified, Mr. Zapata was briefly recalled by the employer. Referee Hearing Transcript, at 57 et seq. He stated that, as she left the cafeteria, Ms. Sandy did not go to the refrigerator or any one of the lockers. Referee Hearing Transcript, at 57-58. On re-cross, he also stated she did not approach the two trash barrels that were outside the cafeteria. Referee

c. Ms. Kaitlyn O'Hara

Ms. O'Hara, a Falvey Linen manager, indicated that that, at first, Claimant was suspended for the rest of the day. Referee Hearing Transcript, at 47. And the next morning, when Ms. Sandy arrived for work, she was terminated, for the incident the day before, and prior incidents of a similar nature. Referee Hearing Transcript, at 47-48. She explained that the rule barring food from the workstations was important to the company because violations (of the rule) can necessitate re-washings, which can cause the items to be delayed from their promised schedules, which, in-turn, can require costly special deliveries. Referee Hearing Transcript, at 48. It also generates pest-control issues. Id.

The witness also pointed out that the, when the incident occurred, Ms. Sandy was on a paid break. Referee Hearing Transcript, at 49.

Ms. O'Hara explained that Ms. Sandy worked in the "garment-hanging" area, which is adjacent to the "pack-out" area. Referee Hearing Transcript, at 49. And, her route from the cafeteria to her workstation would take her through other work areas. Id.

She also testified that Claimant was terminated for bringing food to her workstation and being insubordinate. Referee Hearing Transcript, at 51. Ms. O'Hara explained that Ms. Sandy was insubordinate when she ignored her

---

Hearing Transcript, at 58. And so, he could not explain what happened to the food item he saw Claimant carrying. Referee Hearing Transcript, at 59. He said she had a piece of corn. Referee Hearing Transcript, at 60.

supervisor and yelled at him at her workstation, in front of co-workers. Referee Hearing Transcript, at 51.

On cross-examination, Ms. O'Hara conceded that Ms. Sandy's earlier suspension did not involve insubordination. Referee Hearing Transcript, at 52. And she stated that, as far as she knew, no one from management met with Ms. Sandy on the day of the incident. Referee Hearing Transcript, at 54. Ms. O'Hara explained that employees could store food in their lockers, which were lockers outside the cafeteria, and in the refrigerators in the room, where an employee could store uneaten food. Referee Hearing Transcript, at 54-55. Finally, she conceded that the no-food at the workstations policy was not included in the employee manual. Referee Hearing Transcript, at 56.

d. Ms. Millie Givens

The next witness was Falvey Linen's Human Resource Director, Ms. Millie Givens, an 11-year employee. Referee Hearing Transcript, at 61. She stated that the company has a policy against bringing food to the workstations. Id. She said it has been communicated to the employees on many occasions. Referee Hearing Transcript, at 62. It applies to everyone, including supervisors. Id.

Ms. Givens indicated that she did not learn of the final incident with Ms. Sandy until after it was decided the company had to take action. Id. She took no part in the decision to terminate Ms. Sandy. Referee Hearing Transcript, at 63.

She too could not locate a prohibition against bringing food to the workstation in the employee handbook. Referee Hearing Transcript, at 63.

e. Mr. Michael McLaughlin

The next and final witness for the employer was Mr. Michael McLaughlin, its Director of Operations. Referee Hearing Transcript, at 66. He said that he was present when Ms. Sandy was given a warning and suspended for an incident on July 1. Referee Hearing Transcript, at 68. And he revealed that he was told Ms. Sandy was suspended "and effectively terminated" by Ms. Givens and Ms. O'Hara. Referee Hearing Transcript, at 69-70.

In Mr. McLaughlin's opinion, Ms. Sandy's behavior constituted insubordination. Referee Hearing Transcript, at 70. He stated she had received warnings for having food at her workstation in 2007 and 2014. Referee Hearing Transcript, at 72-73.

2

Testimony of the Claimant

Claimant Sandy presented only one witness at the hearing — herself. Referee Hearing Transcript, at 75 et seq.

At the outset of her testimony, her attention was drawn to the final incident on August 12. Referee Hearing Transcript, at 76. She said that she was given a short piece of corn on the cob as a "thank you" by a co-worker. Id. She was eating

it when the bell rang. Id. She decided to put it in her locker. Id. She then described the confrontation with Mr. Zapata —

> So I was getting out. Then Wilkin said Frances don't take that food to your working station. I said Wilkin I'm not taking it there. I am keeping it in the locker. (Inaudible) he said no. He first said trash it. So I went and put it in the trash.

Referee Hearing Transcript, at 77. She then clarified that she meant the trash barrel just outside the cafeteria. Id.

Then, as she was walking away, Mr. Zapata said — "I'm talking to you." Referee Hearing Transcript, at 78. So she said — "Wilkin. I trashed the corn. I don't have nothing with me right now." Id. And she thought he saw her trash it. Referee Hearing Transcript, at 78.

After that, he followed Ms. Sandy to her workstation. Referee Hearing Transcript, at 79. And according to Ms. Sandy, Mr. Zapata then called another supervisor, Tony Pavo, and told him Frances has food in her hand and was yelling at him. Referee Hearing Transcript, at 79-80. Tony came over (near her workstation) and sent her home for the day, for disrespecting her supervisor. Referee Hearing Transcript, at 80-81.

She returned to work the next day but was unable to punch-in — since she could not find her timecard. Referee Hearing Transcript, at 81. She went into the office and was told to go into the cafeteria and wait for a meeting. Id. When she was called into the meeting, she was told by Ms. O'Hara that she was not working there anymore. Referee Hearing Transcript, at 82. Mr. Tobin was also there. Id.

Ms. Sandy denied she was insubordinate to Mr. Zapata. Referee Hearing Transcript, at 83. And she denied she brought food back to her workstation. Id.

On cross-examination Ms. Sandy conceded that Falvey Linen has a rule against bringing food to the workstations. Referee Hearing Transcript, at 84.

She then was asked about her final workday at Falvey Linen. She agreed that Mr. Zapata was holding the door as she exited the cafeteria. Referee Hearing Transcript, at 85. And she conceded that, at that moment, she was holding food. Referee Hearing Transcript, at 86. She said she wanted to put the food in her locker, but Mr. Zapata told her not to; so she put it in the trash. Referee Hearing Transcript, at 87. She then went toward her workstation. Referee Hearing Transcript, at 88.

Ms. Sandy repeated that, when reminded by Mr. Zapata that she could not bring food to her workstation, she told him she did not have any. Referee Hearing Transcript, at 89. And, according to Ms. Sandy, she did this again when, for the second time, he told her she could not bring food to her workstation. Referee Hearing Transcript, at 90. Mr. Zapata then called Tony, who then accused her of said she disrespecting her supervisor. Referee Hearing Transcript, at 90-91.

Ms. Sandy testified that, when she returned the next day, she told Ms. O'Hara what had happened. Referee Hearing Transcript, at 92. Claimant denied having been disciplined for insubordination previously. Referee Hearing Transcript, at 93.

B

POSITION OF THE PARTIES

1

Appellant's Position

In its Memorandum of Law, Falvey Linen Supply asserts, based on the prior and final incidents, that Ms. Sandy displayed a constant disregard for her employers "policies, practices, and procedures." Appellant's Memorandum of Law, at 9. In particular, it stresses the importance of its rule against food being brought to workstations. Appellant's Memorandum of Law, at 10-11. Falvey Linen further asserts that, in addition to violating the food rule, Ms. Sandy also violated rules against insubordination and a failure to follow instructions. Appellant's Memorandum of Law, at 11.

But the core of the employer's argument is that the Board erred in finding Claimant's version of events credible. Appellant's Memorandum of Law, at 11-12. In addition, the employer argues that the Board exceeded its authority when it reversed the decision of the Referee without holding a hearing, in violation of Gen. Laws 1956 § 28-44-47. Appellant's Memorandum of Law, at 12-13.

2

Claimant's Position

In her Memorandum of Law, Ms. Sandy argues that Falvey Linen failed to prove that she violated its rule barring food from workstations. Appellee's Memorandum of Law, at 7-10. She argues that her testimony was credible and

consistent with what she told management. Appellee's Memorandum of Law, at 9. And Ms. Sandy responds to Falvey Linen's argument that the Board was unable to assess credibility by arguing that the Board did not have to assess credibility, since the employer's witness never testified that he saw any food at her workstation. Id. As a result, misconduct was not proven.

C
DISCUSSION

As one may discern from the extended summary of the testimony in this matter presented ante in Part IV-A of this opinion, the dispute in this case is essentially factual.[14] And so, the Board of Review was required to choose between the version of events presented by the Claimant and the version of events presented by Falvey Linen. It chose, contrary to the decision of the Referee, to give greater weight to the former — a determination entirely within its statutory mandate. Our task is much simpler; it is merely to determine whether the Board's decision was clearly erroneous in light of the reliable, probative, and substantial evidence of record. Or, to phrase it even more concisely — was the Board's decision supported by competent evidence of record? I think it was.

---

[14] There is one legal issue presented in this case which I shall dispatch here and briefly. It is my long-held view that Gen. Laws 1956 § 28-44-47 does indeed authorize the Board to reverse a referee based on a contrary view of the credibility of a witness or witnesses (or, for that matter, any other factual determination). Appellant argues to the contrary. Whether the members of the Board of Review should do so is a question that must be left to their sound discretion. But in my view they clearly are authorized to do so.

First, the Board's decision was supported by the Claimant's testimony, which, if determined credible, is sufficient to constitute competent evidence in her favor. Ms. Sandy testified that, while she did leave the cafeteria with a (partial) ear of corn, she threw it away when directed to do so by Mr. Zapata. If true, this fact would vitiate any consequential allegations of insubordination.

Second, even if we were to disregard the Claimant's testimony, the Board could still find the employer's proof of misconduct lacking. Quite simply, the rule promulgated by Falvey Linen, unwritten as it may have been, barred food from being taken to workstations. The rule, at least as it was explained at the hearing, did not bar employees from exiting the cafeteria with food — which she admittedly did. There was no testimony alleging that the corn got to her workstation.

C
RESOLUTION

Pursuant to § 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, including the question of which witnesses to believe.[15] Stated differently, the findings of the agency will be upheld even though

[15] Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

a reasonable mind might have reached a contrary result.[16] Accordingly, I must conclude that the Board of Review's finding — that disqualifying misconduct on Claimant's part had not been proven — is not clearly erroneous in light of the reliable, probative, and substantial evidence of record. As a result, I must recommend that the decision of the Board be affirmed.

V
CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the Board of Review was not affected by error of law. Gen. Laws 1956 § 42-35-15(g)(3), (4). Further, the instant decision was not 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, I recommend that the decision of the Board of Review be AFFIRMED.

/s/
Joseph P. Ippolito
Magistrate

October 16, 2015

[16] Cahoone, ante n. 15, 104 R.I. at 506, 246 A.2d at 215 (1968). See also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986). See also Gen. Laws § 42-35-15(g), ante at 7 and Guarino, ante at 7, n. 9.