

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS  
PROVIDENCE, Sc.

DISTRICT COURT  
SIXTH DIVISION

Catherine T. Rodrigues :  
v. : A.A. No. 15 – 045  
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, 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 Court at Providence on this 21<sup>st</sup> day of January, 2016.

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

Catherine T. Rodrigues :  
v. : A.A. No. 15 – 045  
Department of Labor and Training, :  
Board of Review :

**FINDINGS & RECOMMENDATIONS**

**Ippolito, M.** In this case, Ms. Catherine T. Rodrigues urges that the Board of Review of the Department of Labor and Training erred when it held that she was not entitled to receive employment security benefits because she left her prior employment without good cause. Jurisdiction to hear and decide appeals from decisions made by the 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. For the reasons stated below, I conclude that the decision issued by the Board of

Review in this matter is supported by the facts of record and the applicable law.

I shall therefore recommend that it be AFFIRMED.

## I

### FACTS & TRAVEL OF THE CASE

Ms. Christine Rodrigues was employed by the Talaria Company LLC<sup>1</sup> for more than two years as a senior systems administrator until September 2, 2014, when she submitted a written resignation. She filed for unemployment benefits and, on November 12, 2014, a designee of the Director deemed her eligible to receive benefits because she resigned for good cause within the meaning of Gen. Laws 1956 § 28-44-17. The employer appealed from this decision and, as a result, Referee William Enos conducted a hearing on December 11, 2014, at which Ms. Rodrigues appeared pro-se; a representative of the employer, Mr. Peter Bratsos, also appeared, as did counsel for the firm.

In his decision, issued on December 12, 2014, Referee Enos found that Ms. Rodrigues “felt her supervisor was asking her to violate the HIPAA<sup>2</sup> laws when questioning her about taking excessive time off.” Referee’s Decision,

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<sup>1</sup> In the record the employer is also referred to as “The Hinckley Company.” For purposes of clarity, I shall refer to the employer as “Talaria” throughout.

<sup>2</sup> HIPAA is an acronym for “The Health Insurance Portability and Accountability Act of 1996,” Pub. L. 104-191, 110 Stat. 1936. Although the provisions of the act are scattered throughout the United States code, the confidentiality provisions may largely be found at 42 U.S.C. § 1320d.

December 12, 2014, at 1. He noted that she also alleged that “her supervisor was super rude and would yell at her in front of co-workers about her excessive absences.” Id. The Referee then found that Ms. Rodrigues quit because “she felt that the employer was pressuring her to inform them about her reasons for taking an excessive amount of time off.” Referee’s Decision, December 12, 2014, at 2. He found this reason not to constitute good cause within the meaning of § 28-44-17. Id. Accordingly, he found Ms. Rodrigues to be disqualified from receiving further unemployment benefits. Id.

Feeling aggrieved by this decision, Ms. Rodrigues filed an appeal to the Board of Review, which conducted a further hearing into the matter on February 10, 2015, at which Ms. Rodrigues, Ms. Altman, and Mr. Bratsos again appeared. In its March 27, 2015 decision, the Board of Review made the following factual findings:

The **findings of fact** contained in the Referee’s decision of December 12, 2014 are affirmed and incorporated as if fully set forth herein; provided that, with respect to any factual conflict, this decision shall be controlling. The Referee’s findings notwithstanding, the Board makes the following additional findings of fact: the claimant chose to quit her position of employment due to an ongoing sense of dissatisfaction, which resulted from poor relationships with her co-workers and stress which resulted from her awareness that, as some undetermined future date, her position would probably be eliminated.

Decision of Board of Review, March 27, 2015, at 1. Based on these findings,

the Board formed the following conclusions regarding Ms. Rodrigues' separation from Talaria:

Regarding the claimant's personal medical information, the Board concludes that the employer did not make any impermissible inquiry. The Claimant did not demonstrate that the Employer requested information of a nature other than what is permissible, necessary, and reasonably expected for the purpose of addressing issues of scheduling and attendance. Similarly, the Board did not find the Claimant's testimony regarding allegedly poor management practices to be credible.

The Board concludes that, within the meaning of Section 28-44-17, "good cause" did not result from the Claimant's correct assertion that there was a substantial likelihood of her position eventually being eliminated. Where a claimant voluntarily quits in the face of an imminent termination, such leaving generally supports a finding of good cause. However, based upon the record evidence, including the Claimant's own testimony, the possibility of her being laid off was not "imminent." Rather, the potential lay-off is more appropriately characterized as having been the subject of long-term business planning. The date, conditions of, and rationale for any such lay-off had never been determined by the Employer or communicated to the Claimant. Accordingly, the ongoing specter of job insecurity, although unpleasant, was too indefinite to be characterized as imminent.

Referee's Decision, March 27, 2015, at 2. Thus, the Board found Ms. Rodrigues to be disqualified from receiving benefits because she left work without good cause. Id. Accordingly, the decision of the Referee was affirmed. Finally, on April 24, 2015, Ms. Rodrigues filed a complaint for judicial review in the Sixth Division District Court.

**II**  
**APPLICABLE LAW**  
**A**  
**LEAVING FOR GOOD CAUSE — THE STATUTE**

The resolution of this case involves the application of § 28-44-17, the provision of the Rhode Island Employment Security Act which delineates the circumstances in which those who quit their prior employment may nonetheless be deemed eligible to receive unemployment benefits; it provides:

**28-44-17. Voluntary leaving without good cause.** – (a) 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. \* \*  
\* For the purposes of this section, ‘voluntarily leaving work with good cause’ shall include:

- (1) Sexual harassment against members of either sex;
- (2) Voluntarily leaving work with an employer to accompany, join, or follow his or her spouse to a place, due to a change in location of the spouse’s employment, from which it is impractical for such individual to commute; and
- (3) The need to take care for a member of the individual’s immediate family due to illness or disability . . . .

(b) 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; provided, 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.

Based on our reading of § 17, we may discern that it enumerates three preconditions to eligibility — first, that the claimant left his or her prior employment; second, that the resignation was voluntary; and third, that the claimant left the position for good cause (this last is the most frequently litigated element of § 17).

## **B**

### **LEAVING VOLUNTARILY FOR GOOD CAUSE — THE ELEMENT OF “GOOD CAUSE”**

In the case of Harraka v. Board of Review of Department of Employment Security,<sup>3</sup> the Rhode Island Supreme Court declared 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

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<sup>3</sup> 98 R.I. 197, 201, 200 A.2d 595, 597-98 (1964).

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 (1975),<sup>4</sup> our Supreme Court stated 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.<sup>5</sup>

Additionally, the Murphy Court declared:

\* \* \* 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.”<sup>6</sup>

Finally, in Powell v. Department of Employment Security, Board of Review (R.I. 1984),<sup>7</sup> 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.”<sup>8</sup>

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<sup>4</sup> 115 R.I. 33, 340 A.2d 137 (1975).

<sup>5</sup> Murphy, 115 R.I. at 37, 340 A.2d at 139.

<sup>6</sup> Murphy, 115 R.I. at 35, 340 A.2d at 139.

<sup>7</sup> 477 A.2d 93 (R.I. 1984).

<sup>8</sup> 477 A.2d at 96-97. Also, Rhode Island Temps, Inc. v. Department of Labor and Training, Board of Review, 749 A.2d 1121, 1129 (R.I. 2000).

## C

### LEAVING VOLUNTARILY FOR GOOD CAUSE — “VOLUNTARINESS”

In Kane v. Women and Infants Hospital of Rhode Island,<sup>9</sup> our Supreme Court interpreted § 17 in a manner that gives effect<sup>10</sup> to the term “voluntarily,” declaring that —

To recover under § 28-44-17, an employee must leave for both good cause and voluntarily.”<sup>11</sup>

Therefore, a finding that a worker resigned from a position does not preclude a finding that the worker did so involuntarily.<sup>12</sup> To understand this apparent paradox, we will now review the Kane case in a bit more depth.

The Kane decision is a cornerstone of our understanding of “voluntariness” as that term is used in § 17. In Kane, the Court considered the unemployment-benefit claim of a hospital employee who — when facing

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<sup>9</sup> Kane v. Women and Infants Hospital of Rhode Island, 592 A.2d 137, 139 (R.I. 1991).

<sup>10</sup> This result was consistent with the precept of statutory interpretation that “the court will give effect to every word, clause, or sentence, whenever possible.” State v. Bryant, 670 A.2d 776, 779 (R.I. 1996).

<sup>11</sup> Kane v. Women and Infants Hospital of Rhode Island, 592 A.2d 137, 139 (R.I. 1991)(Emphasis in original).

<sup>12</sup> Kane, 592 A.2d at 139-40.

discharge for misconduct — took an early retirement.<sup>13</sup> The Court did not have to decide whether Ms. Kane quit for reasons constituting good cause under § 17, because the statute (then in effect) dictated such a finding — by declaring quitting pursuant to a retirement plan to be good cause per se.<sup>14</sup> And so, with the good-cause issue resolved, the Court was free to focus its attention on the element of voluntariness — an issue of first impression.<sup>15</sup>

The Court began by stating the majority rule as follows —

... Most jurisdictions hold that if an employee resigns because of a reasonable belief that he or she is about to be discharged for job performance, then the resignation is not voluntary. See Matter of Werner, 44 N.C. App. 723, 725-29, 263 S.E.2d 4, 6-7 (1980)(an employee who resigns at his employer’s request because the employer is no longer “pleased” with his job performance did not resign voluntarily); Norman Ashton Klinger Associates v. Unemployment Compensation Board of Review, 127 Pa. Commw. 293, 295-98, 561 A.2d 841, 842-43 (1989)(an employee who resigns upon being told he would be discharged, not for willful misconduct, did not resign voluntarily). These cases examine the voluntariness of the resignation according to whether the employee acted of his or her own free volition. Green v. Board of Review of Industrial Commission, 728 P.2d 996, 998 (Utah 1986). Even though an employee may be given a choice to resign or be fired, “if that choice is not freely made, but is compelled by the employer, that is not an exercise of volition.” Id. An employee who wishes to continue employment, but nonetheless resigns

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<sup>13</sup> Kane, 592 A.2d at 138.

<sup>14</sup> For the language of this provision as it then existed, see Kane, 592 A.2d at 138. Section 17 no longer contains this provision.

<sup>15</sup> See Kane, 592 A.2d at 139.

because the employer has clearly indicated that the employment will be terminated, does not leave voluntarily. Perkins v. Equal Opportunity Commission, 234 Neb. 359, 362, 451 N.W.2d 91, 93 (1990).<sup>16</sup>

Thus, the majority rule is that claimants who quit in the face of a discharge for poor performance are regarded as having quit involuntarily; the Kane Court embraced and extended this rule, bringing within its ambit those who resign while facing discharge for misconduct.<sup>17</sup> Having decided that Ms. Kane did not quit voluntarily, the Court then reviewed the record to determine whether she should be disqualified for proved misconduct under § 28-44-18; doing so, it found she would be.<sup>18</sup>

### 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

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<sup>16</sup> See Kane, *id.*

<sup>17</sup> See Kane, *id.*

<sup>18</sup> See Kane, 592 A.2d at 140.

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>19</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>20</sup> Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.<sup>21</sup>

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<sup>19</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>20</sup> Cahoone v. Board of Review of the Dept.of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

<sup>21</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).

The Supreme Court of Rhode Island stated in Harraka,<sup>22</sup> 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.

#### IV ANALYSIS

When an appeal from a Board of Review decision denying unemployment benefits under § 28-44-17 comes to us, we must decide whether it is clearly erroneous in light of the reliable, probative, and substantial evidence of record. For the reasons I shall explain (after a brief review of the testimony and evidence taken at the hearings conducted by the Referee and the Board of Review), I have concluded that the Board’s decision in the instant case (finding

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<sup>22</sup> Harraka, 98 R.I. at 200, 200 A.2d at 597, cited ante at 6-7.

Ms. Rodrigues quit voluntarily and without good cause) is not clearly erroneous. I must, therefore, recommend that the decision rendered by the Board of Review in this case be affirmed.

**A**  
**THE EVIDENCE OF RECORD**

**1**  
**The Referee Hearing**  
**a**  
**Ms. Rodrigues' Testimony**

At the hearing conducted by the Referee, Ms. Rodrigues testified that she had a lot of medical appointments, and had a lot of tests; she tried to schedule these matters at the end of the day. Referee Hearing Transcript, at 6. She said she did not want to tell her employer that she was a cancer patient at the Dana-Farber Clinic. Id. Claimant testified that she quit (at the beginning of September) because, when she flipped her calendar from August to September, she saw that she had six medical appointments during the month, and she “just didn’t want to ask for time off again.” Id. at 6-7. Answering a question posed by the Referee, Ms. Rodrigues said her doctor had previously taken her out of work (during chemotherapy). Id. at 7.

Ms. Rodrigues claimed that she was working under “adverse conditions” and explained that this meant that Peter Bratsos, her supervisor, was very rude

— and yelled at people. Referee Hearing Transcript, at 8. Claimant said that when she was out of work, “he would come out into the common area and yell I can’t believe she’s off again and say different things ....” Id. She said she told the human resources department about this. Id.

**b**

### **Mr. Bratsos’ Testimony**

Mr. Bratsos began his testimony by explaining the important responsibilities that Ms. Rodrigues’ position carried. Referee Hearing Transcript, at 11. Her experience in prior positions was the reason she was hired in January of 2012. Id. He added that, in comparison with the companies and institutions she was previously associated with, the staff at Talaria was rather small. Id. at 12.

Mr. Bratsos also explained that, in October of 2012, his boss decided that the responsibility for improving the system from time to time would, in the future, be handled outside the company. Id., at 12. Mr. Bratsos felt it was proper to let Ms. Rodrigues know about this decision, so that she could prepare for the lay-off. Id. And so, to accomplish this, he gave her a choice: either liberal time off to go on interviews or a four-day work-week. Id. She chose the latter. Id. The lay-off would occur when he could fill the redesigned position. Id.

But when, after several months, Mr. Bratsos could not fill the new position, he stopped interviewing and advertising for the position. Referee Hearing Transcript, at 13. As a result, when Ms. Rodrigues inquired regarding her prospects for retaining her position, he told her that the process had been terminated; he was no longer looking. Id. He also gave her the option of returning to a five-day work week. Id.

However, not everything was upbeat in their operation; there were occasions during the next two years when big projects, of the type Ms. Rodrigues was capable of managing, could not be funded. Referee Hearing Transcript, at 13-14. This caused a rather mundane work environment. Id.

Mr. Bratsos said he was accommodating when Ms. Rodrigues needed time off to take her husband for appointments due to an illness he had developed. Referee Hearing Transcript, at 14. But after a year (or year and one-half) in which she had taken an excessive amount of time off, he began to make a more detailed inquiry as to the reason for her absences, because her absences were disrupting the operation of the department. Id., at 14-15.

In particular, Mr. Bratsos categorically denied that he ever yelled, ever refused a request for time off, or ever knew that Ms. Rodrigues had cancer. Referee Hearing Transcript, at 15. He did concede that, during the last six

months of her employment, he may have asked her to schedule her appointments on Fridays. Id. And Mr. Bratsos attributed any comments he made concerning her husband's liver disease strictly to sympathy (or more precisely, *empathy*, given his knowledge of how an acquaintance had suffered with that illness). Id. at 16.

When asked by the Referee to comment on Ms. Rodrigues' testimony that she had complained to HR about his yelling and swearing, Mr. Bratsos professed the absence of any memory about the specifics of the criticism — though he was able to describe in some depth a meeting she had with HR concerning the quantity and quality of work she was assigned. Referee Hearing Transcript, at 17-18. Finally, at the conclusion of his testimony, counsel for the employer introduced an affidavit from Erica in HR regarding Claimant's complaints. See Referee Hearing Transcript, at 19, and Employer's Ex. No. 1.

## 2

### **The Board of Review Hearing**

#### **a**

#### **Ms. Rodrigues' Testimony**

At the hearing conducted by the full Board of Review on February 10, 2015, Ms. Rodrigues began her testimony by stating she had three major reasons for leaving her position. Board of Review Hearing Transcript, at 4.

The first is that she was working in a hostile environment. Board of Review Hearing Transcript, at 4. To support this assertion, she stated that her supervisor, Mr. Bratsos, would not respond to her emails in a timely way; she also stated that he would change applications she was in charge of without telling her.<sup>23</sup> She also stated that he would not allow her to make changes she thought necessary, preferring to maintain existing procedures. Id. at 6. He also would admonish her for things she had not done, and leave her out of meetings. Id. Finally, Ms. Rodrigues said that Mr. Bratsos loudly and publicly expressed displeasure regarding her absences. Id. at 7.

Ms. Rodrigues then enumerated the other two reasons for her separation: medical history infractions by the employer and the fact that she was on layoff notice for over two years. Board of Review Hearing Transcript, at 10.

She stated that when she took extended time off in 2013 (when her husband had spinal surgery) she was never advised to utilize the provisions of the Family Medical Leave Act. Board of Review Hearing Transcript, at 12-13. And she stated, more generally, that, when she asked for time off for a doctor's

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<sup>23</sup> Board of Review Hearing Transcript, at 4. But, at this time, Counsel for the Board questioned whether this issue had been before the Referee, and suggested she focus on the issue of whether the employer was improperly inquiring into the reasons for her absences; however, the Chairman indicated she should proceed in the manner she intended. Id. at 5.

appointment, Mr. Bratsos would inquire about the kind of doctor she was going to see. Id. at 14. She also described a dispute about how she should mark her time-card. Mr. Bratsos told her that HR had indicated to him that she (Ms. Rodrigues) should mark her card vacation time or leave without pay when she was sick. Id. at 14-15. But, Jennifer Gregson of HR told her she did not have to do so; since she was a salaried employee she could use sick time. Id. at 15. She also complained that Mr. Bratsos required her to send three e-mails to HR for each occasion when she took time off — the first when she requested the leave, the second when he approved the leave, and the third when she took it. Id.

She then turned to the third and final reason for her separation: the fact that she was on a notice of lay-off for two years — from August of 2012 until she left. Board of Review Hearing Transcript, at 16. But, she conceded that the advisement was made orally, and that, subsequently, Mr. Bratsos told her he was not currently looking for a replacement. Id. However, to her understanding, she would be laid-off; the only question was when. Id. at 17.

**b**

**Mr. Bratsos' Testimony**

Mr. Bratsos began his testimony by referencing his prior testimony regarding the discussion he conducted with Ms. Rodrigues after the CFO told him he would be changing directions in the computer technology area. In that

conversation, he gave her the choice of continuing to work full-time or to work a shortened schedule, giving her the opportunity to attend job interviews. Board of Review Hearing Transcript, at 28-29. This option, which also satisfied his need for consistency (and regularity) in scheduling his small department, was the one she selected. Board of Review Hearing Transcript, at 30.<sup>24</sup>

Mr. Bratsos concluded by indicating that much of what Ms. Rodrigues stated was “completely untrue.” Board of Review Hearing Transcript, at 31. He reiterated that there was no written lay-off notice and he only told her about the change of direction because he wanted to be considerate. Id. at 31-32. Finally, he denied he yelled at her. Id. at 34.

## **B**

### **POSITION OF THE PARTIES**

#### **1**

#### **Position of Appellant/Claimant Rodrigues**

In her memorandum, filed on July 15, 2015, Claimant Rodrigues makes several arguments.

First, Ms. Rodrigues urges that the decision of the Referee was defective as to a fundamental matter — the reason for her departure. Appellant’s Brief, at

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<sup>24</sup> Board of Review Hearing Transcript, at 30. At this juncture, Counsel for the employer made a statement denying that the comments of Mr. Bratsos constituted violations of HIPAA. Id.

4. She alleges that the Referee’s finding, that Claimant quit because of her supervisor’s repeated attempts to violate her right to medical privacy, was without basis. Id. She argues instead that her testimony showed that she left, at least primarily, because of a hostile work environment. Appellant’s Brief, at 5. And, Ms. Rodrigues submits that this erroneous finding affected the Decision of the Board of Review. Id.

Second, Claimant also asserts error in the Board of Review’s failure to find that Mr. Bratsos created a hostile working environment for her. Appellant’s Brief, at 6-8.<sup>25</sup> In her memorandum, she itemizes the kernels of testimony she gave in support of her allegation. Id.

Third, Ms. Rodrigues claims that the Board’s finding — the claimant chose to quit her position of employment due to an ongoing sense of dissatisfaction, which resulted from poor relationships with her co-workers — is without support in the record. Appellant’s Memorandum, at 9. According to her view of the record, the only co-worker with whom she had a poor relationship

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<sup>25</sup> In the heading of this argument Ms. Rodrigues alleges that the Board’s finding was clearly erroneous in light of the reliable, probative and substantial evidence of record. Appellant’s Brief, at 6. This is the statutory standard. See Gen. Laws 1956 § 42-35-15(g)(5), quoted ante in Part III, at 10-12. However, in the text to this argument, he urges that Board’s finding was “against the weight of the evidence.” Appellant’s Brief, at 6. Obviously, this is a less demanding standard.

was Mr. Bratsos. Id.

2

**The Employer's Position**

In its Memorandum, the Employer responded to the Claimant's three arguments seriatim.

Responding to Ms. Rodrigues' first argument, the Employer urges that the Referee's decision was not defective. Appellee's Memorandum, at 5-7. It states that Claimant did allege that management did violate HIPAA and that, from what Claimant said — in her statement to the Director and in her testimony before the Referee — it was a reason for her separation. Appellee's Brief, at 5 citing Claimant's Statement to the Director, 09/22/14, and Referee Hearing Transcript, at 6.

Within this first response, the Employer also argues that the Referee did indeed address Claimant's allegation that she had been working in a hostile work environment. Appellee's Brief, at 6. It also argues that the evidence and testimony contradicted any such allegation. Id. (citing Referee Hearing Transcript, at 11-17 and 18-20 and Affidavit of Erica Lipe dated December 9, 2014, Appellee's Exhibit No. 1 found in electronic record at 89-90).

The Employer's second reply urged that the Board of Review's findings of fact were supported by the reliable, probative, and substantial evidence of

record. Appellee's Brief, at 7-8. In this regard it cited Mr. Bratsos' testimony in which he (1) stated that he had not objected to Ms. Rodrigues' request to take time-off to care for her husband and (2) denied that he ever yelled at her. Appellee's Brief, at 7.

Additionally, the Employer urges that Claimant never complained to human resources about a hostile work environment and the accusations she did make, even in the aggregate, did not constitute an allegation of a hostile work environment. Appellee's Brief, at 8.

In its third and final response, the Employer answers nine specific allegations made by Claimant. Appellee's Brief, at 8-11. These answers may be synopsized as follows:

- Mr. Bratsos denied HR had spoken to him about yelling and swearing;
- Claimant's focus on workload issues (and not behavior issues) at the hearing was not the result of confusion, but intentional;
- Claimant did not intend to work for the Employer until she retired;
- Mr. Bratsos did not publicly complain when Claimant was absent;
- Mr. Bratsos did not create a hostile work environment by failing to say goodnight to Ms. Rodrigues;
- Mr. Bratsos did not tell Claimant that she would be laid off on August 25;

- Mr. Bratsos did not yell at a coworker for expressing gratitude to Claimant;
- Mr. Bratsos did not yell at Claimant for working on the laptop of an executive's spouse; and,
- Claimant did not go to HR to complain to about Mr. Bratsos on her last day of work.

## C DISCUSSION

Ms. Rodrigues' claim for unemployment benefits was opposed by her former employer, arguing that she did not have good cause to quit. For reasons I shall enumerate, I believe the Board of Review's decision that her reasons for leaving did not meet the § 17 standard of good cause is supported by the reliable, probative and substantial evidence of record. But before I do so, I shall digress for a discussion of another, subordinate, issue that is presented in this case — whether she resigned voluntarily.

### 1 Voluntariness

In my view, Ms. Rodrigues' departure from Talaria was not an involuntary leaving as that principle is defined in Kane, ante at 8-10. As the Board of Review found, her prospective layoff was “too indefinite to be

characterized as imminent.” Decision of Board of Review, March 27, 2015, at 2.

By her own testimony, she had not been discharged. And there is no evidence in the record which even suggests that she was about to be terminated.<sup>26</sup>

Therefore, the Board’s conclusion that Ms. Rodrigues voluntarily separated from Talaria is unquestionably supported by the evidence of record and is not clearly erroneous.

## 2

### Good Cause

At the hearings conducted in this case and in her Memorandum of Law, Ms. Rodrigues’ has claimed that she worked in a hostile environment at Talaria. And, as even the employer seems to concede, she made many allegations against Mr. Bratsos of a most serious nature — all of which he denied and rebutted. And so, while there was ample evidence in favor of her allegations, there was also abundant evidence contradicting it.

Under the Administrative Procedures Act, it is the Board of Review

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<sup>26</sup> Even if we accept at face value Ms. Rodrigues’ concerns that she would ultimately have been laid off, which I am certainly prepared to do, our analysis does not change. It is my view that the Employment Security Act anticipates that a person in her predicament would stay with the job at Talaria while they sought a new position — limiting, if not preventing, an unnecessary period of unemployment and a needless pay-out from the unemployment fund. And, such a termination was not “imminent.”

which has the authority to evaluate the persuasiveness of the evidence it receives at its hearings. See Part III of this opinion, ante at 10-12. In this case, the Referee found the testimony given by Mr. Bratsos to be the more credible. Referee’s Decision, December 12, 2014, at 2.<sup>27</sup>

In this regard, the Board could rely upon Mr. Bratsos’ denial that he ever yelled at Claimant or treated her disrespectfully. See Referee Hearing Transcript, at 15, and Board of Review Hearing Transcript, at 34.

The Board also found Claimant’s allegations that the employer violated her HIPAA medical-privacy protections to be meritless. Decision of Board of Review, March 27, 2015, at 2. It may be noted that Ms. Rodrigues did not pursue the issue of HIPAA violations in her Memorandum. Neither has she responded to the Employer’s argument that employers are not within the ambit of HIPAA’s confidentiality mandates. See Employer’s Memorandum, at 6, citing 45 C.F.R. § 160.102. And so, I must conclude that the Board’s finding (that Talaria’s request for information from Ms. Rodrigues did not exceed that which is “permissible, necessary, and reasonably expected”) is neither clearly erroneous nor affected by error of law. Decision of Board of Review, March 27, 2015, at 2.

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<sup>27</sup> Since this finding was not in conflict with any of the findings made by the Board of Review, it was incorporated by reference into the decision of the Board of Review. Decision of Board of Review, March 27, 2015, at 1.

**D**  
**RESOLUTION**

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. 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.<sup>28</sup> Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.<sup>29</sup> Accordingly, the Board's decision (adopting the finding of the Referee) that claimant voluntarily terminated her employment without good cause is supported by reliable, probative and substantial evidence of record. I must therefore recommend that her disqualification under § 28-44-17 (Leaving without good cause) be affirmed.

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<sup>28</sup> Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

<sup>29</sup> Cahoone, ante n.28, 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 10-11 and Guarino, ante at 11, n.19.

**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 be AFFIRMED.

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

JANUARY 21, 2016

