STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

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

Yurki De Leon Padilla	:	
	:	
v.	:	**A.A. No. 15 – 078**
	:	
Department of Labor and Training,	:	
Board of Review	:	

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 Court at Providence on this 28th day of December, 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

Yurki DeLeon Padilla	:	
	:	
v.	:	**A.A. No. 15 – 078**
	:	
Department of Labor and Training,	:	
Board of Review	:	

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 Ms. Yurki DeLeon Padilla 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. Yurki DeLeon Padilla was employed by the Qualified Resources staffing agency on assignment to Cinerama Jewelers for several months until May 1, 2015, when her assignment was terminated at the latter's request. She filed for unemployment benefits but, on May 14, 2015, a designee of the Director deemed her ineligible to receive benefits because she resigned without good cause within the meaning of Gen. Laws 1956 § 28-44-17. The Claimant appealed from this decision and, as a result, Referee John Palangio conducted a hearing on July 1, 2015, at which Ms. De Leon Padilla appeared pro-se; two representatives of the employer also appeared. Referee Hearing Transcript, at 1.

In his decision, issued on July 1, 2015, Referee Palangio made the following Findings of Fact:

> The claimant was an assembler for Cinerama Jewelers for several months through Qualified Resource staffing agency last on May 1, 2015. On that day a representative from the staffing agency informed the claimant that Cinerama did not want her to return as a result of absenteeism.
>
> The claimant did not contact Qualified Resources after that date to look for work.
>
> On September 24, 2014, the claimant signed a contract with

> Qualified Resources. In that contract the claimant is directed to "check in every week for additional work" (Employer's Exhibit #1). The employer did have additional work for the claimant.

Referee's Decision, July 1, 2015, at 1. Based on these findings, and after quoting extensively from § 28-44-17, Referee Palangio formed the following conclusions regarding Ms. De Leon Padilla's separation:

> The claimant is denied benefits under Section 28-44-17 of the Rhode Island Employment Security Act as she violated her contract and Section (b) of the above mentioned Act by not maintaining contact with the Qualified Resources.

Referee's Decision, July 1, 2015, at 2. Thus, the Referee found Ms. De Leon Padilla to be disqualified from receiving benefits because she left work without good cause — not in the sense that she formally quit, but in the peculiar sense presented in § 28-44-17(b) — in that she failed to keep in touch with Qualified, a temporary help agency, after her previous assignment ended, and after Qualified directed her to do so. On this basis, she was declared ineligible to receive benefits. Id.

Ms. De Leon Padilla filed an appeal, which the Board of Review considered on the basis of the record generated by the Referee. On August 4, 2015, the members of the Board of Review issued a unanimous decision holding that the decision of Referee Palangio was a proper adjudication of the facts and the law applicable thereto. Decision of Board of Review, August 4, 2015, at 1.

Accordingly, the decision of the Referee was affirmed. Id.

Finally, on September 1, 2015, the Claimant filed a complaint for judicial review in the Sixth Division District Court.

II
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. (Emphasis added).

As we shall see, the instant case will turn on the application of subsection (b) to Ms. De Leon Padilla's situation.

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.'"[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]

The Supreme Court of Rhode Island stated, in Harraka v. Board of Review of Department of Employment Security,[4] 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

---

1 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)).

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 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).

4 98 R.I. 197, 200, 200 A.2d 595, 597 (1964).

> 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 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 Ms. De Leon Padilla quit 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 – THE HEARING

As the hearing began, the Referee observed that Ms. De Leon Padilla had been separated from her work assignment at the insistence of the Qualified's client. Referee Hearing Transcript, at 8. He therefore questioned whether the case, which had come to him under § 28-44-17 (voluntary quit), should be

addressed instead under § 28-44-18 (misconduct). Id. But Ms. Marisol Rodriguez, a recruiter for Qualified, clarified that, while Ms. De Leon Padilla's work assignment with the client had ended, she had not been terminated from the employ of Qualified. Referee Hearing Transcript, at 8-9. She added that Qualified opposed Ms. De Leon Padilla's claim for benefits because she had not kept in touch with Qualified to get a new assignment, as she was required to do by an agreement she had signed with Qualified. Id. And so, the Referee decided the matter would proceed as a voluntary quit. Referee Hearing Transcript, at 9.

As Ms. De Leon Padilla's testimony began, the Referee asked her whether she had contacted Qualified after her assignment at Cinerama had ended (on May 1, 2015). Referee Hearing Transcript, at 10-12. She said no. Referee Hearing Transcript, at 10.

Ms. De Leon Padilla testified that she had gone into the office and Marisol (Ms. Rodriguez) told her they would call when something became available. Id. Ms. De Leon Padilla gave Ms. Rodriguez her home telephone number. Id. And Ms. De Leon Padilla denied Ms. Rodriguez told her she needed to communicate with Qualified. Referee Hearing Transcript, at 12. As a result, she did not stay in contact with the agency. Referee Hearing Transcript, at 13.

Ms. De Leon Padilla did not deny that she signed a contract with Qualified, reiterating that she was not told she had to call-in within 72 hours. Referee Hearing Transcript, at 13-14.

Ms. Rodriguez then testified on behalf of the employer. Referee Hearing Transcript, at 15. She testified that, when she received the e-mail from Cinerama (declining to use Ms. De Leon Padilla any further), she began trying to reach her; but as she was doing so, she saw that Ms. De Leon Padilla had come into the office; and so, Ms. Rodriguez spoke to Ms. De Leon Padilla right then and there. Referee Hearing Transcript, at 16-17. Ms. Rodriguez denied she ever told Ms. De Leon Padilla that Qualified would call her when there was work. Referee Hearing Transcript, at 17. Instead, Ms. Rodriguez told her that she should "keep checking in for work." Id.

Ms. Rodriguez also presented the document in which Ms. De Leon Padilla agreed that — "Upon completion of an assignment I understand I must contact QRI within 72 hours and every week thereafter to check in for additional work. I must notify QRI immediately of any changes in my phone number and address. If I fail to check for any additional work after my assignment ends, I will be considered to have voluntarily quit." Referee Hearing Transcript, at 18-19 quoting Employer's Exhibit No. 1.

According to Ms. Rodriguez, Qualified did have jewelry and other general labor work for Ms. De Leon Padilla. Referee Hearing Transcript, at 19. She indicated the last time she heard from Ms. De Leon Padilla, she was screaming when she picked up the phone. Referee Hearing Transcript, at 19-20.

Ms. De Leon Padilla then responded; she stated that Ms. Rodriguez was "lying a lot." Referee Hearing Transcript, at 21. She said that she did not call because Ms. Rodriguez said that she would be calling. Referee Hearing Transcript, at 21, 23. She added that, during that period, her daughter was in the hospital. Referee Hearing Transcript, at 21. Finally, Ms. De Leon Padilla denied she yelled at Ms. Rodriguez over the phone. Referee Hearing Transcript, at 22.

B

DISCUSSION

Based on our reading of § 28-44-17, ante at 4-5, we may discern that it enumerates, in subsection (a), 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). Without doubt, in the almost 80

years since Rhode Island's "Unemployment Compensation Act," was enacted,[5] thousands of cases have applied these three principles.

But the resolution of the instant case does not turn on subsection 28-44-17(a); it turns on that portion of § 28-44-17(b), enacted in 1997,[6] which requires the employees of temporary help agencies to report back to the agency to seek additional work whenever their previous assignment ends.[7] And a temporary worker's failure to do is deemed an instance of "leaving without good cause" — which disqualifies the worker from receiving unemployment benefits. It was on this basis that Ms. De Leon Padilla's claim for benefits was opposed by her former employer.

Applying § 28-44-17(b) to the facts of the instant case, we note that the testimony of Claimant and her manager stand in stark conflict. Ms. De Leon Padilla testified that she was told she would not be required to repeatedly contact Qualifed; instead, they would call her. Referee Hearing Transcript, at 12. The manager, Ms. Rodriguez, gave sworn testimony to the contrary — that she told Ms. De Leon Padilla she needed "to keep checking in for work." Referee Hearing Transcript, at 17. And so, if Claimant's version of events is credited, she

---

5 See P.L. 1936, ch. 2333, enacted on May 5, 1936.

6 See P.L. 1997, ch. 70, enacted on July 1, 1997.

7 See highlighted portion of § 28-44-17(b), quoted ante at 4-5.

must be found eligible; if the employer's version is believed, benefits must be denied. Of course, since the case arose under § 28-44-17, Claimant bore the burden of proof on this question.

Under the Administrative Procedures Act, it is the Board of Review which has the authority to evaluate the persuasiveness of the evidence it receives at its hearings. See Part III of this opinion, ante at 5-7. And in this case the Referee seems to have found the testimony given by Ms. Rodriguez to be the more credible. Referee's Decision, July 1, 2015, at 2. And, it is indisputable that competent evidence (i.e., Ms. Rodriguez's testimony) supported such a finding.

C
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.[8] Stated differently, the findings of the agency will be

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

upheld even though a reasonable mind might have reached a contrary result.[9] Accordingly, the Board's decision (adopting the finding of the Referee) that Claimant voluntarily terminated her employment without good cause (by failing to maintain contact with Qualified) is supported by the reliable, probative and substantial evidence of record. I must therefore recommend that her disqualification under § 28-44-17 (Leaving without good cause) 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 be AFFIRMED.

/s/
Joseph P. Ippolito
Magistrate
December 28, 2015

[9] Cahoone, ante n.8, 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 5, and Guarino, ante at 6, n.1.