

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

**DISTRICT COURT  
SIXTH DIVISION**

**Heydi De Leon Rodriguez** :  
 :  
v. : **A.A. No. 15 – 093**  
 :  
**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 25<sup>th</sup> day of January, 2016.

By Order:

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

Enter:

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

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Department of Labor and Training, :  
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**FINDINGS & RECOMMENDATIONS**

**Ippolito, M.** In this case Ms. Heydi De Leon Rodriguez<sup>1</sup> 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

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<sup>1</sup> Throughout the administrative record Appellant is referred to as “Heydi De Leon.” However, on the District Court appeal form she submitted she gave her name as “Heydi De Leon Rodriguez.” I shall therefore refer to her in that manner.

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. Heydi De Leon Rodriguez was employed by Cortland Place Life Care Co., a nursing home, for nine years until April 27, 2015, when she resigned. She filed for unemployment benefits but, on June 24, 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 employer appealed from this decision and, as a result, on July 30, 2015 Referee Carol Gibson conducted a hearing on her claim — at which Ms. De Leon Rodriguez appeared pro-se and two representatives of the employer appeared telephonically. Referee Hearing Transcript, at 1.

In her decision, issued on July 31, 2015, Referee Gibson made the following Findings of Fact:

The claimant had worked for the employer, a nursing home, for nine years and was last employed as a cook/chef on April 27, 2015. The claimant indicates that during that last few years of her employment, there had been issues with staffing and having sufficient food in stock to serve the residents. The claimant had

verbally expressed her issues with her manger. The claimant states there had been turnover in the Food Service Director position and that her issues were not addressed. The claimant indicates she would sometimes have to shop and pay for products and then be reimbursed by the employer. A new Director of Food Service began employment three weeks before the claimant's separation. He had a meeting with all staff to indicate he would be addressing the staffing issues and that he would be positing openings. The claimant still felt the issues were not being addressed and that she could no longer work in that environment. The claimant states on that last day she was feeling ill and asked a co-worker if they could cover her shift. The claimant went into work for part of the day. She had a meeting with human resources and the director of nurses. The claimant made a decision in that meeting to separate from her employment. The claimant did not give notice or speak with her manager before leaving her job. The claimant did not have other employment at the time of her leaving.

Referee's Decision, July 31, 2015, at 1. Based on these findings, Referee Gibson formed the following conclusions regarding Ms. De Leon Rodriguez's separation:

...

In order to show good cause for leaving her job the claimant must establish and prove the job unsuitable or that she had no other alternative but to terminate her employment. The burden of proof rests solely with the claimant. There has been insufficient evidence and testimony presented to establish that either of these conditions existed at the time the claimant left her job. While there may have been staffing issues in the workplace, the testimony indicates that issue was in the process of being resolved. The testimony has not established this situation left the claimant with no alternative but to leave her job. If the claimant was dissatisfied with the current working conditions, she could have secured other employment prior to leaving her job. In the absence of sufficient evidence to establish job unsuitability, it is determined the claimant's leaving is

without good cause under the above section of the Act and she must be denied benefits in this matter.

Referee's Decision, July 31, 2015, at 2. Thus, the Referee found Ms. De Leon Rodriguez to be disqualified from receiving benefits because she left work without good cause. On this basis, she was declared ineligible to receive benefits. Id.

Ms. De Leon Rodriguez filed an appeal, which the Board of Review considered on the basis of the record generated by the Referee. On September 11, 2015, the members of the Board of Review issued a unanimous decision holding that the decision of Referee Gibson was a proper adjudication of the facts and the law applicable thereto. Decision of Board of Review, September 11, 2015, at 1. Accordingly, the decision of the Referee was affirmed. Id.

Finally, on October 9, 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. ...

The instant case will turn on the application of this section to Ms. De Leon Rodriguez's circumstances.

### 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 stated, in Harraka v. Board of Review of Department of Employment Security,<sup>5</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

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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 Department 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).

<sup>5</sup> 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 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 hearing conducted by the Referee), I have concluded that the Board's decision in the instant case (finding Ms. De Leon Rodriguez 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

When Ms. De Leon Rodriguez's testimony began, she confirmed for the Referee that on September 1, 2004 she began work at Cortland Place, earning \$15 per hour as one of the nursing home's cooks, working mainly on the 5 a.m. to 1:30 p.m. shift. Referee Hearing Transcript, at 7-9.

Ms. De Leon Rodriguez left Cortland Place only “a couple of months” after Mr. Lorenzo was brought in as its new food service director. Referee Hearing Transcript, at 10. Claimant said she talked to Mr. Lorenzo the week before and told him they needed more help. Referee Hearing Transcript, at 9-10. She testified that he agreed with her and said they would be hiring more people. Referee Hearing Transcript, at 10.

According to Ms. De Leon Rodriguez, the kitchen had been understaffed since 2013. Referee Hearing Transcript, at 10. And, despite Mr. Lorenzo’s assurances, it did not appear to her that they were hiring people. Referee Hearing Transcript, at 11. Ms. De Leon Rodriguez testified that the kitchen sometimes had insufficient food to feed the patients, requiring her to send for food (with her own money, subject to reimbursement). Id. She also complained that management was not prompt in fixing equipment when it broke down. Id.

Claimant testified that on her last day she was not feeling well but had to go in because there was no one to cover the beginning of her shift. Referee Hearing Transcript, at 11-12. Because of this, she decided to see the human resources department; when she did, the human resources officer summoned the Director of Nurses to join them; together, they responded to her complaints by telling Claimant that they would “see” and “fix it.” Referee Hearing

Transcript, at 12. Ms. De Leon Rodriguez then decided to quit. Referee Hearing Transcript, at 13.

At this juncture the Referee asked Ms. De Leon Rodriguez why did she not stay at Cortland Place while she looked for a new position. Referee Hearing Transcript, at 13. She said that the decision was made in “that moment” because nobody would cover for her. Id.

Given the opportunity for cross-examination, Mr. Lorenzo asked why she did not call him to tell him she was going to leave. Referee Hearing Transcript, at 14. She answered that she did, but he failed to pick-up the phone. Id. To this, he responded that he never received a call. Id.

And then, Mr. Lorenzo’s testimony began. Referee Hearing Transcript, at 15. He stated that he started at Cortland Place on April 3, 2015, while Ms. Rodriguez had been there since September of 2004. Id. And, according to him, he had only been there three weeks when she left. Id.

Mr. Lorenzo told Referee Gibson that he was in the process of interviewing and hiring people when Claimant left. Referee Hearing Transcript, at 16. He further indicated that he had informed the staff of his plans for the food-service department at a meeting he conducted two days after he started there. Id. He particularly asked the staff to be patient with him — which,

according to him, everyone was, except for Claimant. Referee Hearing Transcript, at 16-17.

Mr. Laurenzo indicated that Ms. De Leon Rodriguez did bring up staffing issues to him. Referee Hearing Transcript, at 17. But he denied that Ms. De Leon Rodriguez had to buy any items from her own pocket during his tenure. Referee Hearing Transcript, at 18.

Next, Ms. Karen Falcone, who was also a cook at Cortland Place, testified. Referee Hearing Transcript, at 21. She testified that when Mr. Laurenzo first assumed his duties, he did conduct a meeting, at which he asked for teamwork while he hired additional staff, which, he reminded them, takes time. Id. Ms. Falcone stated that on April 27, 2015, Ms. De Leon Rodriguez sent Ms. Falcone a text message — asking her to take over for her because she was sick. Referee Hearing Transcript, at 22. Ms. De Leon Rodriguez responded by text, expressing her thanks. Id. And Claimant thanked Ms. Falcone again when she appeared to take over. Id.

## **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,<sup>6</sup> thousands of cases have applied these three principles. And considering a claimant’s eligibility for benefits under § 28-44-17, we must remember that the claimant bears the burden of proving that she or he quit for good cause.

Applying § 28-44-17 to the instant case, we note that the testimony of Claimant and that of her manager, while differing slightly, are generally in accord. Ms. De Leon Rodriguez was working for Cortland Place when a new food service manager was hired. He told the staff he would be making positive changes; for example, he said he would be hiring additional staff. But before this program could be implemented, Ms. De Leon Rodriguez quit.

Ms. De Leon Rodriguez quit on the spur of the moment because, despite being ill, she had to report to work (until Ms. Falcone could relieve her). Moreover, she was also disappointed by management’s reaction to her complaint, which she apparently believed was rather tepid. Claimant was also unconvinced that the new manager was really going to hire additional staff.

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<sup>6</sup> See P.L. 1936, ch. 2333, enacted on May 5, 1936.

However, the Board of Review, adopting the findings and conclusions of Referee Gibson as its own, concluded that Ms. De Leon Rodriguez acted precipitously — failing to give the new manager a fair chance to institute remedial measures. As a result, the Board did not find that Claimant was under any degree of compulsion to quit when she did. On this basis, her departure from Cortland Place was deemed to be without good cause.<sup>7</sup> The testimony of Mr. Lorenzo — that the understaffing issue Claimant had raised was, in fact, being addressed — was undoubtedly competent evidence upon which the Board could logically base such a decision.

Under the Administrative Procedures Act, it is the Board of Review which has the prerogative 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 Mr. Lorenzo to be the more credible. Referee's Decision, July 31, 2015, at 2.

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<sup>7</sup> This assumes that (had the conditions under which Claimant was working not improved) she would have been justified in quitting before she located a new position. That is a far tougher question than the one presented in the instant case — one which I need not, and shall not, address.

**C**  
**RESOLUTION**

Pursuant to the Rhode Island Administrative Procedures Act, Gen. Laws 1956 § 42-35-15(g), a decision of the Board of Review must be upheld unless it is, 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>8</sup> Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.<sup>9</sup> Accordingly, the Board's decision (adopting the finding of the Referee) that Claimant voluntarily terminated her employment without good cause (by quitting before improvements could reasonably be made) 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>8</sup> Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

<sup>9</sup> 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.2.

**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 25, 2016

