

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

Cheryl A. Saccoccio :
 :
v. : A.A. No. 15 – 095
 :
Department of Labor and Training, :
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Ms. Cheryl Saccoccio 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. Cheryl A. Saccoccio was employed by Advanced Radiology, Inc., as a medical secretary, until May 18, 2015. She filed for unemployment benefits but, on June 3, 2015, a designee of the Director deemed her ineligible because she resigned without good cause within the meaning of Gen. Laws 1956 § 28-44-17. Claimant appealed from this decision and, as a result, Referee Carl Capozza held a hearing on July 2, 2015, at which Ms. Saccoccio was the sole witness.

In his decision, issued on July 3, 2015, the Referee made the following Findings of Fact regarding Claimant's separation:

2. FINDINGS OF FACT:

The claimant had been employed as a medical secretary for approximately ten years until her last day of work May 18, 2015. On that date the claimant was called into the manager's office concerning a call out on May 15, 2015. The claimant indicated she had called out due to a migraine which she suffered as a result of a supervisor alleging she had provided information to others in the office concerning the quitting of another individual. The claimant denied the allegation and further became upset when it was requested that she provide

a medical note for her absence on May 15, 2015 which was not required under the employer's policy. Because of that incident and the claimant's dissatisfaction with her supervisor's conduct toward her most recently, she quit her position.

Referee's Decision, July 3, 2015, at 1. Based on these findings the Referee formed the following conclusions on the issue of claimant's separation:

3. CONCLUSION:

* * *

In order to show good cause for leaving her job the claimant must establish and prove the job unsuitable or that she had no reasonable alternative. Based on the credible testimony and evidence presented in this case, I find insufficient evidence to establish that the claimant's job was unsuitable. She had the reasonable alternative to continue in her position and attempt to resolve her differences. However, she chose to leave her job and place herself among the unemployed. Under these circumstances, I find that the claimant voluntarily quit her [job] for personal reasons and without good cause and, therefore, not entitled to benefits as previously determined by the Director.

Referee's Decision, July 3, 2015, at 1-2. (Clarification added). Thus, Referee Capozza found claimant to be disqualified from receiving benefits because she left work without good cause.

Claimant filed an appeal and the matter was reviewed on the merits by the Board of Review. On September 17, 2015, a majority of the members of the Board of Review issued a decision holding that the

decision of the Referee was a proper adjudication of the facts and the law applicable thereto. Accordingly, the decision of the Referee was affirmed. Finally, on October 13, 2015, the Claimant filed a complaint for judicial review in the Sixth Division District Court.

II APPLICABLE LAW

This case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically touches on voluntary leaving without good cause; Gen. Laws 1956 § 28-44-17, provides:

28-44-17. Voluntary leaving without good cause. — (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. ...

In the case of Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 201, 200 A.2d 595, 597-98 (1964), the Rhode Island Supreme Court noted that a liberal reading of good cause would be adopted:

To view the statutory language as requiring an employee to establish that he terminated his employment under compulsion is to make any voluntary termination thereof work a forfeiture of his eligibility under the act. This, in our opinion, amounts to reading into the statute a provision that the legislature did not contemplate at the time of its enactment.

In excluding from eligibility for benefit payments those who voluntarily terminate their employment without good cause, the legislature intended in the public interest to secure the fund from which the payments are made against depletion by payment of benefits to the shirker, the indolent, or the 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, 115 R.I. 33, 340 A.2d 137 (1975), the Supreme

Court elaborated that:

The Employment Security Act was intended to protect individuals from the hardships of unemployment the advent of which involves a substantial degree of compulsion.

Murphy, 115 R.I. at 37, 340 A.2d at 139.

and

* * * unemployment benefits were intended to alleviate the economic insecurity arising from termination of employment the prevention of which was effectively beyond the employee's control."

Murphy, 115 R.I. at 35, 340 A.2d at 139.

III STANDARD OF REVIEW

The standard of review is provided by R.I. Gen. Laws § 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

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).

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, cited ante 5, 98 R.I. at 200, 200 A.2d at 597, 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.

² Cahoone v. Board of Review of the Dept.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).

IV ANALYSIS

When examining claims for unemployment benefits filed by persons who quit their previous positions, the issue to be determined is whether the claimant quit for good cause. We shall begin our analysis by reviewing the evidence and testimony elicited at the hearing conducted by Referee Capozza.

A The Testimony of Ms. Saccoccio

Ms. Saccoccio began her testimony by stating that she had been a medical secretary for Advanced Radiology for approximately ten years when, on May 18, 2015, she informed the MRI Department Administrator (Mr. Tkach) and her supervisor (Katie Lagor), that she was quitting because, for two years, she had been “harassed and bullied” by Ms. Lagor, and was under stress.⁴ Ms. Saccoccio felt that, because, on prior occasions, she had complained about Ms. Lagor to Mr. Tkach, the former had a

⁴ Referee Hearing Transcript, at 3-5, 11. Later in her testimony Ms. Saccoccio stated that Ms. Lagor had been her supervisor for about five years. Id., at 11.

“vendetta” against her.⁵ And the “last straw” (which caused her to quit) came when Ms. Lagor accused her of something she did not do.⁶

This incident began when a fax came in; Ms. Saccoccio picked it up and handed it to Ms. Lagor, who then took it down to Mr. Tkach.⁷ The fax concerned a prior employee — who was out on stress leave.⁸ According to Ms. Saccoccio, Ms. Lagor was then “flipping out” because others had already learned that the employee was not coming back — for which she apparently blamed Claimant.⁹ As a result of this incident, Ms. Saccoccio called in sick the next day due to a “really bad” migraine headache.¹⁰

The next work day was a Monday; and when Ms. Saccoccio reported for work she was called into a meeting with Mr. Tkach, at which she was reprimanded for missing work on the previous Friday.¹¹ In addition, they requested a medical note — which she did not have because

⁵ Referee Hearing Transcript, at 6, 11.

⁶ Referee Hearing Transcript, at 6.

⁷ Referee Hearing Transcript, at 7.

⁸ Referee Hearing Transcript, at 7.

⁹ Referee Hearing Transcript, at 7.

¹⁰ Referee Hearing Transcript, at 8.

¹¹ Referee Hearing Transcript, at 9.

she had not seen her physician; moreover, the request was contrary to the employer's rule that a physician's note was only required when the employee was absent on three consecutive days.¹²

Ms. Saccoccio testified that she had informed Mr. Tkach that she thought she was being picked on.¹³ She denied that she did not like being corrected.¹⁴

Finally, the Referee acknowledged that a letter from Ms. Saccoccio's physician had been entered into evidence.¹⁵ However, he noted that while the doctor recorded Claimant's complaints of stress, the doctor made no findings of stress.

B

The Applicable Law

The general principles of law contained in § 28-44-17 are set forth adequately in Part II of this opinion, ante at 4-5. At this juncture we shall

¹² Referee Hearing Transcript, at 9.

¹³ Referee Hearing Transcript, at 10.

¹⁴ Referee Hearing Transcript, at 11.

¹⁵ Referee Hearing Transcript, at 12. The letter was actually signed by the physician's assistant (PA). Id.

present a few additional comments concerning whether harassment (and resulting stress) can constitute good cause to quit.

To begin, this Court has recognized that stress arising from workplace harassment can be a good cause to quit under § 17.¹⁶ However, both the Board of Review and this Court have placed certain restraints on this principle. First, an employee harassed by a co-worker or supervisor must bring the matter to higher authorities, so that it may be rectified.¹⁷ Secondly, those alleging stress are generally required to provide medical proof.¹⁸

¹⁶ E.g. Newport Memorial Park v. Department of Employment and Training Board of Review, A.A. No. 90-122, at 4-6 (Dist.Ct. 9/8/1991) (DeRobbio, C.J.) (Good cause for resignation was shown where Claimant was subjected to ridicule for being a recovering alcoholic); Harrison v. Dept. of Employment and Training Board of Review, A.A. No. 93-85, at 10-12 (Dist.Ct. 3/8/1994) (Thomson, J.) (Harassment and name-calling deemed good cause to quit).

¹⁷ E.g. Barbera v. Department of Employment and Training Board of Review, A.A. No. 96-38, at 5 (Dist.Ct. 5/6/1996) (DeRobbio, C.J.) (Good cause for resignation was not shown despite allegation of harassment by supervisor where Claimant failed to report the incidents to higher management); Boisvert v. Department of Employment Security Board of Review, A.A. No. 77-271, at 2-3 (Dist.Ct. 2/12/1982) (Beretta, J.) (Benefits denied where Claimant did not bring conflict with supervisor to the attention of upper management or human resources officer).

¹⁸ E.g. Megalli v. Department of Employment and Training Board of Review, A.A. No. 94-92, at 6-7 (Dist.Ct. 7/3/1995) (Rahill, J.) (Denial of

C

Application of the Facts in Ms. Saccoccio's Case to the Law

As stated above, Claimant asserted that she was subjected to harassment by her supervisor. While the Referee seemed to accept that Ms. Saccoccio was not working in a harmonious¹⁹ setting, he essentially found conditions insufficient to justify her immediate exit from the firm. This finding was, in my view, supported by substantial evidence of record.

But, to be clear, a contrary decision would also have been supported. The Board could well have found, if it had fully credited Claimant's uncontradicted testimony (i.e., that she had been subjected to false allegations and other harassment by her supervisor which affected her health, notwithstanding her attempts to gain relief from her administrator), that she had shown good cause to quit.²⁰

benefits affirmed where stress claim was unsupported by medical documentation); Nowell v. Department of Employment and Training Board of Review, A.A. No. 94-87, at 6-7 (Dist.Ct.12/6/1994) (Cenerini, J.)(Stress and epilepsy claims found not to constitute good cause to quit where medical evidence not presented).

¹⁹ The Referee's Conclusion referred to her "differences" with management. Decision of Referee, at 1.

²⁰ The fact that, according to Ms. Saccoccio, she had been instructed to submit a doctor's note, in violation of the employer's standing policy, could well have been seen as buttressing this claim.

However, the Board of Review (adopting the Referee’s perspective on the matter) determined that Claimant’s evidence that her job had become unsuitable was unconvincing. In denying benefits to Ms. Saccoccio, Referee Capozza commented that Claimant could have stayed in her position until she found a new one. While this finding could be challenged — in light of her testimony that she already had sought relief from her administrator — a separate finding made by Referee Capozza cannot be refuted: that she provided no medical evidence that she was suffering work-related stress. Referee Capozza rightly noted that the medical note she submitted merely supported a claim of stress, not a diagnosis of same. On this basis alone the Board’s finding that Claimant did not meet her burden of demonstrating good cause to quit must be upheld.²¹

²¹ One other factor in his decision, the Referee did not comment, as he did at the hearing, that Claimant’s allegation was only supported by her own self-serving testimony. She did not provide corroborating testimony. See Referee Hearing Transcript, at 12. We understand, as I am sure the Referee did, that it would have been difficult for her former co-workers to appear in support of her claim.

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.²² Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.²³ 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.

²² Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

²³ Cahoone, ante n. 22, 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 6 and Guarino, ante at 6, n. 1.

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 29, 2016

