

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

Nicole Majeau :
v. : A.A. No. 2015 - 096
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 16th day of May, 2016.

By Order:

_____/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
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Department of Labor and Training, :
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FINDINGS & RECOMMENDATIONS

Ippolito, M. Prompted by dire financial straits, Ms. Nicole R. Majeau moved, with seven of her eight children, to Florida, where housing had been made available to her at a cost within her means. She turns to this Court in an effort to reverse a decision of the Board of Review of the Department of Labor and Training finding that she left her employment at CCR Pharmacy, LLC, without good cause, and was therefore barred from receiving unemployment benefits pursuant to Gen. Laws 1956 § 28-44-17. 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. These matters have been referred to me for the making of findings and recommendations

pursuant to Gen. Laws 1956 § 8-8-8.1. For the reasons that follow, I find that the Board of Review's decision is not clearly erroneous in light of the reliable, probative, and substantial evidence of record; neither is it affected by error of law. Accordingly, I conclude it should be AFFIRMED; I so recommend.

I

FACTS AND TRAVEL OF THE CASE

An outline of the facts and travel of this case may be stated briefly: Ms. Majeau worked as a part-time pharmacy technician for CCR Pharmacy LLC — an independent pharmacy doing business as JB Pharmacy — for 9 years until May 22, 2015, when she quit in order to relocate to Florida, though not immediately. She filed for unemployment benefits effective May 24, 2015, but in a decision dated June 9, 2015, a designee of the Director determined that Claimant was disqualified from receiving benefits pursuant to Gen. Laws 1956 § 28-44-17 because she voluntarily quit without good cause.

Ms. Majeau filed a timely appeal and a hearing was held by Referee Carol Gibson on July 30, 2015. At the hearing, Claimant testified telephonically; a representative of the employer appeared in person. In her July 31, 2015 decision, Referee Gibson made extensive findings of fact. They may be summarized as follows —

Ms. Majeau, who had worked for CCR for 9 years, had requested part-

time hours because of her childcare responsibilities; about three years before her separation, she became a single parent, following her divorce. At the time of the hearing, she stated she was supporting all her 8 children, who ranged in age from 25 down to 12. Claimant, who took home about \$311 per week from her job, also received \$1000 per month from her ex-husband's disability insurance and \$775 in child support. Referee's Decision, July 31, 2015, at 1.

Claimant stated that she decided to move to Florida because she could not find affordable housing in the Lincoln-North Providence-Cumberland area and she was offered housing there for \$600 per month. When she left her position, on May 22, 2015, she had not secured a new position in Florida. And she did not move until June 19, 2015, after her children had finished the school year, because she needed time to move. As of the date of the hearing, she still had not found employment in Florida. Referee's Decision, July 31, 2015, at 1-2.

Based on these findings, Referee Gibson made the following conclusions:

* * *

In order to show good cause for leaving employment, the claimant must show that the work had become unsuitable or that she was faced with a situation which left her with no reasonable alternative but to resign. The burden of proof rests solely with the claimant. Insufficient testimony and evidence

have been provided to support either of the above conditions at the time that she separated from her employment. In this case, the claimant made the personal decision to relocate due to her financial situation. While the claimant indicates the rent is cheaper in Florida, she also lost income and support due to the relocation. The claimant had the option of requesting additional hours from her employer or securing a job in Florida before leaving her employment. Therefore, I find that her leaving under these circumstances is without good cause under the above section of the Act. Accordingly, benefits must be denied on this issue.

Referee's Decision, July 31, 2015, at 2-3. Accordingly, the Referee affirmed the decision of the Director and found that claimant was disqualified from receiving benefits because she quit her position without good cause. Id., at 3.

Ms. Majeau filed a timely appeal and on September 14, 2015, the Chairman of the Board of Review, sitting alone, conducted a further hearing on the case. Then, on September 18, 2015, he (on behalf of the full Board), issued a decision affirming the Referee's decision — finding it to be a proper adjudication of the facts and the law applicable thereto; moreover, the Referee's decision was adopted as the Decision of the Board. Finally, on October 13, 2015, Ms. Majeau filed a complaint for judicial review in the Sixth Division District Court.

II
APPLICABLE LAW

A

Eligibility Based on a Voluntary Leaving For Good Cause

1

The Statute

Our review of this case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically touches on the concept of 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. 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

Our Supreme Court has had occasion, from time to time, to provide guidance on the meaning of “good cause,” as that term is used in § 17.

The Cases

In Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 200 A.2d 595 (1964), the Rhode Island Supreme Court considered the petition of Mr. Joseph Harraka, who, upon his discharge from the armed forces, accepted employment in the chemical industry, but quit after one week, due to a reaction to the particular chemicals with which he was working. Harraka, 98 R.I. at 198-99, 200 A.2d at 596. He inquired, but was told that other work was not available. Harraka, 98 R.I. at 199, 200 A.2d at 596-97.

Mr. Harraka applied for benefits under the ex-serviceman's provision, but his claim was denied by the Director; the ruling was affirmed by the Board of Review, which found that one week was not a sufficient amount of time in which to determine the suitability of the position. Harraka, 98 R.I. at 199-200, 200 A.2d at 596-97. Moreover, the Board held that Mr. Harraka's reasons for leaving were personal and not of a "compelling nature;" therefore, his reasons for leaving did not constitute good cause within the meaning of the Employment Security Act. Harraka, 98 R.I. at 199-200, 200 A.2d at 597. A Superior Court justice affirmed. Harraka, 98 R.I. at 198, 200 A.2d at 596.

In considering Mr. Harraka's appeal, the Supreme Court rejected the view that the "good cause" element of § 17 requires that the claimant's reason for quitting be of a "compelling nature." Harraka, 98 R.I. at 201, 200 A.2d at 596. Instead, the Court announced 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.

Harraka, 98 R.I. at 201, 200 A.2d at 597-98. Applying this standard, the Court reversed the decision below, finding Mr. Harraka had good cause to leave his employment. Harraka, 98 R.I. at 203, 200 A.2d at 598-99.

Four years later, the Court issued a brief opinion addressing good cause in Cahoone v. Board of Review of the Department of Employment

Security, 104 R.I. 503, 246 A.2d 213 (1968). Claimant Cahoone, a gentleman experienced in the art of building and repairing boats, accepted temporary employment driving a truck for the post office during the Christmas rush; he quit after one day. Cahoone, 104 R.I. at 504-05, 246 A.2d at 214. As recounted by the Court, the Board of Review's decision denying benefits under § 17 rested on its conclusion that he did not terminate for job unsuitability but because he was assigned to drive a truck, and not to deliver mail, which he preferred. Cahoone, 104 R.I. at 505-06, 246 A.2d at 214. The Superior Court justice (Weisberger, J.) assigned to Claimant's petition affirmed, finding that, while reasonable minds might have reached a contrary result, the limitations on his review imposed by § 42-35-15(f) and (g) prevented him from modifying or reversing the administrative decision. Cahoone, 104 R.I. at 506-07, 246 A.2d at 214. And the Supreme Court agreed. Cahoone, 104 R.I. at 507, 246 A.2d at 214.

In Murphy v. Fascio, 115 R.I. 33, 340 A.2d 137 (1975), the Court considered the claim of Ms. Kathleen Murphy, who left her position with a local manufacturer in order to marry and relocate with her new husband to the state of Georgia. Murphy, 115 R.I. at 34, 340 A.2d at 138. The Court decided first decided that the question (whether resigning in order to marry

and relocate constituted good cause to quit) was one of law — to be resolved by asking whether “it comports with the policies underlying the Employment Security Act.” Murphy, 115 R.I. at 36, 340 A.2d at 139. Next, the Court reminded us that “... 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 36, 340 A.2d at 139 citing Gen. Laws 1956 § 28-42-2 (Emphasis added).

The Court found that Ms. Murphy’s reasons for quitting did not meet this standard. Murphy, 115 R.I. at 36, 340 A.2d at 139. And even though, in Harraka, the Court had rejected the Board of Review’s view that good cause had to be a reason of a “compelling nature,” the Court disallowed Ms. Murphy’s claim, finding that her reason for leaving did not “involve the kind or degree of compulsion which the legislature intended ‘good cause’ should entail[,]” proclaiming —

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 (Emphasis added).

The Court employed the Murphy standard in Powell v. Department of Employment Security, Board of Review, 477 A.2d 93 (R.I. 1984), in which the

Court reversed the Board of Review's decision (affirmed by the District Court) denying benefits to the claimant, a public relations person who resigned rather than issue a misleading press release, fearing it would damage his reputation in his field irretrievably. Powell, 477 A.2d at 96-97.

The most recent § 17 case we shall review is Rocky Hill School, Inc. v. Department of Labor and Training, Board of Review, 668 A.2d 1241 (R.I. 1995), a case in which benefits were granted by the Board of Review to a teacher named Geiersbach who quit his position at the Rocky Hill School in order to accompany his wife — who also had been a Rocky Hill teacher — to Colorado, where she had obtained a new and better position. Rocky Hill, 668 A.2d at 1241. The District Court affirmed. Id. The Supreme Court held that the Board had been correct when it noted a “subtle but significant distinction” between the Ms. Murphy’s claim and Mr. Geiersbach’s — that he was already married. Rocky Hill, 668 A.2d at 1243. “* * * that public policy requires that families not be discouraged from remaining together.” Rocky Hill, 668 A.2d at 1244. And so, it found that Claimant Geiersbach did indeed have good cause to quit. Id.

The Test

From the foregoing review of our Supreme Court's § 17 literature, we can see that, in order to establish "good cause," the Claimant's reasons for quitting must not only meet the Murphy test of involving a "substantial degree of compulsion," but must also satisfy the Harraka test that the work was in some way unsuitable. It is because of this latter requirement that successful assertions of "good cause" are, with few exceptions, work-related. We can see this in the cases just discussed — Mr. Harraka's reaction to the chemicals and Mr. Powell's reluctance to destroy his professional reputation satisfied both elements of the test; as I read the case, Ms. Murphy's desire to get married failed both parts of the test; Mr. Cahoone's aversion to driving old trucks, while work-related, did not meet the standard regarding the degree of compulsion necessary to constitute good cause. And finally, in the Rocky Hill case, the element of unsuitability was simply waived.

B

Applying the General Rule

Because of the element of job unsuitability, Claimants who have quit a position for personal reasons are generally deemed to be ineligible for benefits. This rule has been applied to a great many claimants who have

relocated for personal reasons. See Centeno v. Department of Labor and Training, Board of Review, A.A. No. 13-041, slip op. at 9-10 (Dist.Ct. 05/13/2013) (Claimant's assertion that she relocated to Florida for health reasons found insufficient where corroborating medical reports were not presented); Ortega v. Department of Labor and Training, Board of Review, A.A. No. 12-229, slip op. at 8-11 (Dist.Ct. 12/24/2012)(Claimant's assertion, that she moved to Florida for health reasons, rejected on ground it was unsupported by medical documentation). This rule has also been applied when the "personal" reason for relocating was financial in nature. Nash v. Department of Labor and Training, Board of Review, A.A. No. 12-082, slip op. at 8-9 (Dist.Ct. 6/8/2012)(Claimant left position in Florida to return to Rhode Island, where family resided, due to financial circumstances). And it applies where the Claimant relocated for financial reasons relating to housing. Cordeiro v. Department of Employment and Training Board of Review, A.A. No. 13-182, slip op. at 8-9 (Dist.Ct. 2/25/2014)(Claimant who quit sales position in New York City which was not paying enough to cover his expenses, quit and moved-in with friends in Connecticut to save money); Samson v. Department of Labor and Training Board of Review, A.A. No. 13-053, slip op. at 8-10 (Dist.Ct.05/13/2013)(After death of mother and brother,

Claimant left her position as housekeeping supervisor at local hotel, to move to Maine to maintain family home so it could be sold; denial of benefits affirmed); Salisbury v. Department of Labor and Training, Board of Review, A.A. No. 08-124, slip op. at 7-8, (Dist.Ct. 10/23/2008)(Board's denial of benefits was affirmed where claimant, forced by financial necessity to sell his Rhode Island home, took up residence in his Florida home); Delancy v. Department of Employment Security Board of Review, A.A. No. 83-60, slip op. at 4-6, (Dist.Ct.11/2/1983)(Pederzani, J.)(Board's denial of benefits was affirmed by the District Court where the claimant terminated so that she could relocate to a house in New London, CT, which she had recently inherited).

C

Exceptions to the General Rule

In this section we shall present examples of cases in which good cause to quit was found even though no evidence that the position was unsuitable for the claimant was found — or presented. As we shall see, they are often finely drawn to be limited in scope.

1

Quitting to Relocate

To my knowledge, the only case in which our Supreme Court has indicated that a personal reason (i.e., unrelated to the claimant’s work) constituted good cause to quit was Rocky Hill, discussed ante at 10, in which the Court, in the interests of family unity, accorded that status to the separation of a Claimant who had moved to accompany his spouse to a new position. The Rocky Hill holding was reined in from its inception, because, after all, in Murphy, the Court declined to accord good-cause status to an act of quitting and relocating to get married. It should be noted that the holding in Rocky Hill has subsequently been codified into subsection 28-44-17(a)(2) by P.L. 2010, ch. 23, art. 22, § 2.

2

Quitting to Assume New Position

If claimants who quit their jobs in order to accompany their spouses to new positions do so with good cause — as was settled in Rocky Hill — then, a fortiori, claimants who quit to assume new positions themselves must also do so with good cause. This exception has been circumscribed in two ways. First, in order to invoke this rule, the claimant must have had a definite commitment as to the new position; anything less will not be deemed good

cause. Medeiros v. Department of Employment and Training, Board of Review, A.A. No. 94-228 (Dist.Ct.5/19/1995)(DeRobbio, C.J.)(Claimant quit to take new job; denial of benefits affirmed, where claimant quit before he got start date on new job; Perry v. Department of Employment and Training Board of Review, A.A. No. 90-143 (Dist.Ct.10/15/1991)(DeRobbio, C.J.) (Denial of benefits affirmed where Claimant gave notice after merely hearing about availability of another job; Deion v. Department of Employment Security Board of Review, A.A. No. 82-406 (Dist.Ct.9/22/1983)(McOsker, J.) (Board of Review found claimant plumber not entitled to benefits; affirmed, where the record supported the Board’s decision that claimant left his part-time job at a store without a definite commitment as to his new position).¹

By definition, the number of claimants who collect benefits under this theory must be small, for many of the potential claimants under this theory will still be working throughout the period in which a claim for benefits would still be chargeable to the first employer. And those who have separated from their new employers must have done so in a non-disqualifying way. I also conclude that a contrary holding would dampen fluidity in the labor pool.

¹ And, following up on Rocky Hill, this Court has held that the spouse (who is precipitating the move) must have a firm job offer, not merely the “hope” of one. See Card v. Department of Labor and Training, Board of Review, A.A. No. 14-034, slip op. at 11-13 (Dist.Ct. 12/22/2014).

Quitting Because of Illness

This Court has also regarded an (extended) illness as constituting good cause to quit. Eligibility for this exception is, by its nature, circumscribed both internally and externally in relation to the unemployment insurance program — internally because those who quit a particular position due to illness may well be unable to work, and thus subject to disqualification under § 28-44-12; externally because those who must quit due to illness may be subject to disqualification from collecting unemployment insurance because they are collecting workers' compensation or temporary disability insurance (TDI) benefits. See Gen. Laws 1956 28-44-19 (Workers' Compensation exclusion) and Gen. Laws 1956 28-44-14 (weeks collecting TDI do not count toward unemployment waiting period). Abuse of this exception — and the next regarding family members' illnesses — is also checked by the judicially imposed requirement of medical evidence. See Porter v. Department of Employment and Training, Board of Review, A.A. No. 95-162, slip op. at 6-7 (Dist.Ct. 1/19/1996)(DeRobbio, C.J.)(Resignation based on back problems deemed not based on good cause in absence of medical documentation); Nowell v. Department of Employment & Training, Board of Review, A.A. No. 94-87, slip op. at 6-7 (Dist.Ct.12/6/1994)(Cenerini, J.)(Stress claim

denied in absence of statement from a healthcare professional regarding Claimant's need to leave position); Heller v. Department of Employment Security, Board of Review, A.A. No. 81-405, slip op. at 5-6 (Dist.Ct. 4/30/1985)(DelNero, J.)(Board's denial of benefits based on insufficient medical proof reversed based on doctor's letter in record); Fratantuono v. Department of Employment Security, Board of Review, A.A. No. 78-38, slip op. at 4-6 (Dist.Ct. 10/15/1981)(Ragosta, J.)(Board's denial of benefits affirmed based on lack of medical substantiation to claimant's assertion that position was affecting his nerves).

4

Quitting Because of Illness of a Family Member

As alluded to ante, this Court has also found good cause when the Claimant must quit due to the need to care for a child or other family member. Persons in this category may also be subject to disqualification under § 28-44-12 — because they would be unavailable for work. See Centeno and Ortega, ante at 12.

This scenario has now been codified into subdivision 28-44-17(a)(3) by P.L. 2010, ch. 23, art. 22, § 2.

Quitting Because of Domestic Abuse

This General Assembly has enacted a provision, Gen. Laws 1956 § 28-44-17.1, which permits persons who have quit their positions due to concerns about their safety prompted by acts of domestic violence. In essence, this provision cloaks such individuals with good cause as a matter of law. It was enacted in 2000. See P.L. 2000, ch. 340, § 1.

III

STANDARD OF REVIEW

The standard of review for appeals from the decision of the Board of Review is stated in 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 (i.e., establishing what was said or done), this Court "... is specifically prohibited from substituting its judgment for that of the agency on the weight of evidence on questions of fact." Cahoone, 104 R.I. at 506, 246 A.2d at 215. The further question of what circumstances may constitute good cause to quit one's position "is a mixed question of fact and law." D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1040-41 (R.I. 1986)(Noting that whether the Claimant had good cause to quit his position under § 28-44-17 is a mixed question of fact and law); Rhode Island Temps, Inc. v. Department of Labor and Training, Board of Review, 749 A.2d 1121, 1128 (R.I. 2000)(Whether the Claimant had good cause to refuse suitable work under § 28-44-20 is a mixed question of fact and law). See also Rocky Hill School, 668 A.2d at 1243. However, a legal question is presented if the facts found by the Board of Review lead to but one reasonable conclusion. Id.

We must affirm the Board's decision unless "substantial rights of the appellant have been prejudiced" — either because the Board's decision is "clearly erroneous" or "arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Cahoone, ante, 104

R.I. at 506, 246 A.2d at 215 quoting Gen. Laws 1956 § 42-35-15(g) and 42-35-15(g)(5) and (6). Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result. Cahoone, ante, 104 R.I. at 506-07, 246 A.2d at 215. In sum, so long as the decision of the Board is supported by “legally competent evidence,” we must affirm. Foster-Glocester Regional School Committee, ante, 854 A.2d at 1012.²

The Supreme Court of Rhode Island declared in Harraka, ante, 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

² “Legally competent evidence is defined as ‘such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance.’ Foster-Glocester, id., (citing Rhode Island Temps, Inc. v. Department of Labor and Training, Board of Review, 749 A.2d 1121, 1125 (R.I. 2000) quoting Center for Behavioral Health, Rhode Island, Inc. v. Barros, 710 A.2d 680, 684 (R.I. 1998)).

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

Based on the testimony received at the hearing he held and the documents contained in the administrative record, Referee Gibson found that Claimant quit her position without good cause; on appeal, the Board of Review affirmed her decision and adopted it as its own. It falls to us to evaluate the Board's decision by measuring it against the Standard of Review discussed in Part III of this opinion. But before doing so, it is appropriate that we should recount the testimony and evidence received by Referee Gibson at the hearing she conducted on July 30, 2015.

A

Evidence Elicited at the Hearing Conducted By the Referee

As is the custom at the Board of Review hearings conducted by its referees, the hearing began with a preliminary explanation of the procedures that would be followed; after which, the witnesses were sworn. Referee Hearing Transcript, at 3-4. Referee Gibson then enumerated and marked the exhibits that had been received from the Department. Referee Hearing

Transcript, at 5-8. Once these tasks were completed — the testimony of the witnesses began, with Claimant Majeau testifying first.

1

Testimony of Ms. Majeau

Ms. Majeau — who testified telephonically, from Florida — began her testimony by explaining why her appeal from the decision of the Director had been filed late. Referee Hearing Transcript, at 8-11. While this issue is not before us (since the employer did not file a cross-appeal from the Referee's allowance of her late appeal), some significant facts were revealed while she was addressing this issue. First, she revealed she permanently moved to Florida on June 19, 2015. Referee Hearing Transcript, at 9, 20. She could not move before that because her children were still in school. Referee Hearing Transcript, at 8. Before June 19, she was going back and forth. Referee Hearing Transcript, at 9, 20.

Ms. Majeau stated that she worked 23 hours per week, at a rate of \$16.75 per hour, as a pharmacy technician. Referee Hearing Transcript, at 11-12. She had always worked part-time hours for JB Pharmacy, she explained, because of her childcare responsibilities with her eight children. Referee Hearing Transcript, at 12-13. She added that, as they grew older, she had asked for more hours. Referee Hearing Transcript, at 8-11.

These preliminary matters have been stated, Referee Gibson asked Ms. Majeau why she had left her position on May 22, 2015. Referee Hearing Transcript, at 13. She answered thusly —

Okay. About three years ago my husband had a massive stroke which left him totally disabled, but not only physically disabled, mentally disabled as well. Which caused a lot of problems. You know, I couldn't have him in the house with the kids because he was very vulgar and violent. And he had a huge drinking problem which was another reason I couldn't have him around the kids. And this ended up in divorce and left me with the responsibility of the house and the eight children. And I just, you know, working part time — even if I had a full-time job, I would never have been able to afford the mortgage payments in Lincoln. And I worked for almost three years which is, you know, the amount of time I spent in the house trying to get these kids straightened out. And I just couldn't find anything affordable. I, I mean, I tried. I put in several bids on smaller houses. And I just, I couldn't get, I couldn't get a mortgage, you know, working a part-time job. I just didn't have the finances to keep them in Rhode Island.

Referee Hearing Transcript, at 13-14. Ms. Majeau added that she also could not find a suitable and affordable place for rent — the rent for one was \$2200 per month. Referee Hearing Transcript, at 14-16. She said she was paying \$600 per month rent in Port Charlotte, Florida. Referee Hearing Transcript, at 19.

Claimant Majeau conceded that when she left for Florida, she did not have a job, although she had some prospects, which she had not yet pursued

as of the date of the hearing. Referee Hearing Transcript, at 16, 18. She explained that she had not searched for work earlier because she had to register her kids for school and she did not want to leave them alone all day, since they did not know anyone in the area. Referee Hearing Transcript, at 19. She explained that she also received monthly child support from her ex-husband (\$675) and her children received SSI from their father (\$1,000). Referee Hearing Transcript, at 17. She told Referee Gibson that she could not secure a full-time job in Rhode Island. Referee Hearing Transcript, at 18.

2

Testimony of Mr. Paul Capuano

Mr. Paul Capuano, one of the partners in the pharmacy, testified that Ms. Majeau worked for the pharmacy as a part-time employee, working 23 to 25 hours per week, the schedule she had worked since the beginning of her tenure with the employer. Referee Hearing Transcript, at 21-22. Regarding her desire to work more hours, Mr. Capuano said she had never brought that request to him, and he had been doing the schedule since January (of 2015). Referee Hearing Transcript, at 23-24. He stated that the technicians' schedule was essentially built around her schedule and that, if she had made a request, the employer might have been able to make more hours available to her.

Referee Hearing Transcript, at 24-25. Mr. Capuano indicated that they have accommodated others in this way. Referee Hearing Transcript, at 25.

B

Evidence and Testimony Elicited at the Board of Review Hearing

The Board of Review conducted a further hearing regarding Ms. Majeau's claim on September 14, 2015. Ms. Majeau appeared, as did Mr. Capuano, who was joined by one of his partners, Mr. William Rosa. Board of Review Hearing, at 2-3. The employer was also represented by counsel. Board of Review Hearing, at 3. Witnesses were sworn. Id. The Board of Review invited the parties to present new testimony and argument. Board of Review Hearing, at 4.

Ms. Majeau took the opportunity to describe yet again her struggles as a single mother to provide her eight children with suitable housing, after having lost the family home. Board of Review Hearing, at 4-6. She could not find replacement housing which was affordable in Rhode Island. Board of Review Hearing, at 5.

When asked if she could stay in Rhode Island if she got a full-time job, she responded in two ways: first, she stated that she always worked part-time so she could perform her childcare responsibilities — that it was “impossible”

for her to work fulltime; second, she answered that her request for additional hours at the pharmacy had been rebuffed. Board of Review Hearing, at 5-6.

Ms. Majeau then said that she had a witness, whom she did not name, who would testify that she did ask for additional hours and that she looked for suitable housing and another job. Board of Review Hearing, at 6. The Chairman, who was sitting alone in this proceeding, indicated to Claimant that he did not believe such testimony would be necessary, because he was “pretty comfortable with [her] testimony there.” Id.

The Employer presented only minimal additional testimony, but did proffer two exhibits, which were read into the record, and which were received as Exhibits 1 and 2 (before the Board). Board of Review Hearing, at 7-10.

Employer’s Exhibit Number 1 was a letter addressed to “To Whom it May Concern” from Mr. Ernest D. Gazerro. In it, the pharmacy’s former lead technician for JB Pharmacy indicated that, over the years they worked together, Ms. Majeau often said that she wanted to relocate to Florida. See page 4 of the electronic record. When invited to do so by counsel for the Employer, Ms. Majeau responded to Mr. Gazerro’s letter by indicating she did say those things — when she was married. Board of Review Hearing, at

11. They had intended to relocate due to Florida eventually due to the presence of family. Id.

Employer's Exhibit Number 2 was a letter to the Board of Review from Mr. John Capuano, another of JB Pharmacy's partners; he described how Ms. Majeau (and Mr. Donald DeRita, another employee with whom she had a relationship), told him on March 11, 2016 that they would be moving to Florida, due to lower housing costs; Ms. Majeau asked that they lay her off, so she could collect unemployment. See page 5 of the electronic record. When asked, Mr. Rosa agreed with and endorsed the contents of Mr. John Capuano's letter. Board of Review Hearing, at 11.

C

Positions of the Parties

1

Appellant's Position

In her Memorandum, Appellant Majeau argues that the Referee's finding — that Claimant did not search for full-time position in Rhode Island or Florida before she quit her position — was contrary to the evidence of record. Appellant's Memorandum of Law, at 2.

And then, after describing the depths of the financial situation she was enduring, Ms. Majeau distinguished her circumstances from that of a claimant

who has relocated to take up residence in property she has acquired by inheritance or otherwise, where that same degree of urgency was not present. Appellant's Memorandum of Law, at 3-4 citing Samson, Delancy and Salisbury, ante. In a similar way, she argues that her situation also justifies her decision to relocate without having secured a new position first. Appellant's Memorandum of Law, at 5-6. Finally, she presents an extensive quotation from our Supreme Court's decision in Harraka, in which the salutary purposes of the Employment Security Act were described. Id.

2

Appellee's Position

The Appellee argues that Claimant's decision to resign was a personal one, brought on by her financial circumstances, not triggered by any action on its part. Appellee's Memorandum of Law, at 4-5. JB Pharmacy argues that moving due to financial necessity is not recognized as good cause within the meaning of § 17. Appellee's Memorandum of Law, at 5-6.

D

Discussion

1

Procedural Error — Lack of Findings

The first issue we must address is the procedure that was followed by the Board of Review. Although it heard additional testimony and received

additional exhibits, the Board did not make new (or supplementary) findings, but adopted the decision of the Referee as its own. In doing so, I believe the Board violated a statutorily mandated procedural requirement.

In Achorn v. Department of Employment Security, Board of Review, A.A. No. 81-368, (Dist.Ct. 12/6/86), Chief Judge Laliberte considered a case with a similar procedural posture. After conducting a full hearing on Ms. Achorn's appeal from a referee decision finding her disqualified from receiving benefits, the Board of Review issued a decision in which it summarily affirmed the decision of the referee, adopting the decision as its own. Achorn, slip op at 4. Reading two procedural provisions of the Employment Security Act together, the Chief Judge concluded that the Board's decision did not pass muster.

Chief Judge Laliberte began his analysis by noting a procedural requirement for board decisions; in plain language § 28-44-52 mandates that:

“Each party shall be promptly furnished a copy of the decision and the supporting findings and conclusions of the board of review. * * *” (Emphasis added)

Achorn, slip op at 4, n. 3. Next, he acknowledged a section that gives the Board great flexibility in conducting its proceedings:

This Court is aware that under G.L. 1956 (Reenactment of 1979) § 28-44-47 the Board of Review may decide a case “solely on the basis of evidence previously submitted.”

Achorn, slip op at 4.³ He then read the two provisions together:

However, § 28-44-47 does not relieve the Board of its duty to supply findings of fact, as set forth in § 28-44-52, in order that this Court may be able to determine whether the agency decision violates any of the criteria of § 42-35-15. A Board of Review decision “solely on the basis of evidence previously submitted” would be appropriate where a full hearing is held by the Board. In the case at hand, the Board held such a hearing, and it should complete the review process by supplying findings based on the evidence adduced at that hearing.

Achorn, slip op at 5. Thus, Chief Judge Laliberte drew a bright-line distinction between cases wherein the Board relies on the record of the referee hearing and cases wherein it takes in new evidence; in the former it is permissible for the Board to issue a summary decision of affirmance, in the latter it must make findings regarding the impact of that evidence. Accordingly, Chief Judge Laliberte ordered Ms. Achorn’s case remanded to the Board so that it could issue an appropriate decision.

Chief Judge Laliberte’s analysis has generally governed Board practice since 1986. However, from time to time, this Court has needed to reaffirm the vitality of these principles. Accu-Tran v. Department of Employment and Training Board of Review, A.A. No. 10-049, slip op. at 5-8 (Dist.Ct.

³ The last sentence of § 28-44-47 states — “The board of review may affirm, modify, or reverse the findings or conclusions of the appeal tribunal solely on the basis of evidence previously submitted or upon the basis of any additional evidence that it may direct to be taken.”

5/20/2010); Fryer v. Department of Employment and Training Board of Review, A.A. No. 94-265, slip op. at 8-9 (Dist.Ct.7/21/95); Benevides v. Department of Employment and Training Board of Review, A.A. No. 91-240, slip op. at 3-4 (Dist. Ct.2/12/92)(DeRobbio, C.J.). We have done so most recently in 2015, in Clarke v. Department of Labor and Training Board of Review, A.A. No. 14-153, slip op. at 21-24 (Dist.Ct. 07/16/2015).

And this case clearly falls under this Court's ruling in Achorn. The Board heard from witnesses, Ms. Majeau and Mr. Rosa, and received exhibits from two persons who did not appear. The Employer's new evidence could be said to have spoken to an issue which was not really raised (at least in a meaningful way) before the Referee — whether her move to Florida was not precipitated by necessity, but was a longstanding goal. And so, because it took testimony, I conclude the Board should have made findings on this issue. Failing to do so constituted error.

The only question left for us to consider is — Was this error harmless? However, that is a question which will be easier to answer after we have considered the other issue in this case — whether Ms. Majeau's resignation was grounded on good cause. And so, we shall return to this question.

The Good Cause Issue

The substantive question of law to be answered in the instant case is this — Did Ms. Majeau demonstrate that she left her employment in Rhode Island with good cause, as that term is used in § 17?

As we approach this question, we should keep some humility about us. The Employment Security Act is not the lodestar which guides the travels (and actions) of most Rhode Islanders. The choice Ms. Majeau made to leave Rhode Island was not only an employment decision but also a life decision, one that she was free to make for the good of her family, as she saw it. And so, nothing in this opinion should be construed as a criticism of her decision to relocate, for no such criticism was intended.

Nevertheless, quitting for relocation is a circumstance which generally makes one ineligible for unemployment benefits, because it is viewed as a personal reason for quitting, in no way implying that the job which the claimant left had become unsuitable. This is so even though our leaving-for-good-cause provision, § 17, does not contain terminology (like that in many sister-state statutes), requiring the claimant's reason for leaving to be work-related.

a

**Claimant Resigned From the Pharmacy For a Personal Reason,
Not Constituting Good Cause Within the Meaning of § 17**

i

There Is No Assertion that Claimant's Job Had Become Unsuitable

From the moment when she submitted her notice of resignation to JB Pharmacy, Ms. Majeau has persistently stated that she resigned because of her family's housing dilemma, which could not resolve here in Rhode Island. She has never alleged that her position at the pharmacy had become unsuitable. Referee Hearing Transcript and Board of Review Hearing Transcript, passim. She left for a personal reason unrelated to her position at the pharmacy.

ii

**Claimant's Departure Does Not Fall Within a Recognized Exception
to Unsuitability**

As we discussed ante, at 13-16, there are certain recognized exceptions which allow us to waive the requirement of unsuitability; they are — (1) quitting in order to relocate; (2) quitting to assume a new position; (3) quitting due to the claimant's illness or incapacity; (4) quitting to care for an ill family member; and (5), quitting due to domestic violence. None obtain here; as I shall now explain.

First, her reason for relocating does not fall within the Rocky Hill ruling or § 28-44-17(a)(2). Claimant was not accompanying a spouse. Second,

Claimant did not assume a new position when she quit; she was unemployed from her May 22, 2015 separation date until she departed for Florida on June 19, 2015; and, as of the Referee hearing, July 30, 2015, she was still not working. Third, she did not assert that she herself was ill. Fourth, she did not assert that she quit to care for a family member and she did not urge that her situation fell within the ambit of § 28-44-17(a)(3). Fifth, she did not assert that she quit because she was the victim of domestic abuse. For all these reasons, she cannot be deemed to have quit her position at JB Pharmacy for good cause.

b

Claimant's Receipt of Benefits Was Precluded By Section 28-44-12

Even if Ms. Majeau had not suffered a disqualification under § 17, she might also have suffered a fatal blow from the application of § 28-44-12, which requires proof that unemployment benefit recipients are available for work, are able to work, and are actively seeking work. By her own testimony, she was not available for work during the period prior to her June 19, 2015 departure from Rhode Island because she was going back and forth to Florida to facilitate the move, and getting her children ready to go. And she was also not available for work once she got to Florida because she was getting her children settled and did not want to leave them alone in a new

neighborhood they did not know. She also conceded that as of the July 30, 2015 hearing date, she had not yet looked for work, though she had been in Florida for more than a month.

E **Resolution**

We may begin this last portion of our analysis of this case by conceding the limitations placed on our review of decisions of the Board of Review by Gen. Laws 1956 § 42-35-15(g). Nevertheless, it is clear that Ms. Majeau's appeal must be rejected. Her reason for leaving the employ of JB Pharmacy — relocation due to financial distress — does not meet the standard for good cause to quit as set forth in § 17 and the decisions of our Supreme Court interpreting that statute.

As stated above, Ms. Majeau's motivation for leaving does not fall within the ambit of any of the previously recognized exceptions to the requirement that unemployment claimants must prove that their prior positions had become unsuitable (itself a constituent element of the good cause requirement). She quit for a personal reason — relocation made necessary by financial distress. Indeed, not only do the facts, as found by the Board, lead to this one conclusion, but the facts, when considered in the light most favorable to Ms. Majeau, lead ineluctably to this same judgment.

And so, I make this finding as a matter of law. Consequently, the only avenue by which we could grant Claimant relief would be to create an additional exception to the rule that personal reasons — i.e., justifications unrelated to the position the Claimant held — do not constitute good cause to quit. This, I decline to do.

I also believe that such an exception to the unsuitability requirement (i.e., based on the need to relocate for financial purposes) fails the ultimate test for determining good cause, as stated in the Murphy decision, ante: it does not “comport with the policies underlying the Employment Security Act” — for both theoretical and practical reasons. Murphy, 115 R.I. at 36, 340 A.2d at 139.

The theoretical impediment I see to allowing persons to receive unemployment benefits who have quit because, in their estimation, they must move for financial reasons is simply this: it would disconnect such claims from any relation to both the claimant’s prior position and the labor market generally. It would do so uniquely — at least for a judicially created exception to the unsuitability rule.

For instance, under the illness exception, claimants must prove that they are unable to perform their particular jobs. This is especially true in

stress cases. And in cases where the claimant quits to start a new job, the connection with the labor force is being maintained. But, it must be conceded, regarding the final three exceptions — (a) quitting because of domestic violence, (b) quitting to care for a family member, or (c) quitting to relocate in conjunction with a spouse’s new position — there is no link between the reason for quitting and the claimant’s prior position, though in the last the spouse has an attachment to the labor market. Nevertheless, these three exceptions also have something else in common: each has been authorized in statute by the General Assembly.⁴

Finally, a “moving due to financial necessity” exception to the unsuitability rule would be, in my view, singularly difficult for the Department of Labor and Training to administer. The agency is very experienced at gauging whether a specific job is suitable for a claimant, but evaluating whether suitable housing is available to a particular family, at an affordable cost, in a certain area, is beyond their ken, involving, inevitably, subjective ideas of fitness.⁵ The agency would be in the position of having to disprove a negative — that there was such home available.

⁴ Of course, it was created in Rocky Hill in 1995 but then codified in 2010.

⁵ What objective criteria could be used? Recall that, even in the Rocky Hill scenario, the Department can demand proof that the spouse started work

Accordingly, any further testimony from an unidentified witness regarding Ms. Majeau's efforts to find affordable and appropriate housing for her large family in Rhode Island could not change this result. I therefore find the Board of Review's procedural error, set forth ante at 28-31, constituted harmless error as a matter of law.

The decision the Board of Review 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.⁶ But, as I explained above, I believe Ms. Majeau's claim must be denied as a matter of law.

Accordingly, the Board's decision (adopting the finding of the Referee) that claimant voluntarily terminated her employment without good cause within the meaning of § 17 — because she quit to relocate to Florida — is

on a definite date. In the medical cases the Department can ask for an opinion from a physician as to the claimant's condition — or the need of the family member for care.

⁶ Cahoone, ante at 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).

not clearly erroneous and is supported by reliable, probative, and substantial evidence of record and must be affirmed.

V
CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the Board of Review regarding claimant's eligibility to receive unemployment benefits was supported by the reliable, probative and substantial evidence of record and was not clearly erroneous. Gen. Laws 1956 § 42-35-15(g)(5). Neither was it affected by error of law. See § 42-35-15(g)(4). Nor was it characterized by an abuse of discretion. See § 42-35-15(g)(6). And to the extent that it was affected by unlawful procedure, such error was harmless. See § 42-35-15(g)(3). Accordingly, substantial rights of the Appellant have not been prejudiced. See § 42-35-15(g).

Accordingly, I recommend that the decision of the Board of Review in the instant matter be *AFFIRMED*.

_____/s/_____
Joseph P. Ippolito
MAGISTRATE

MAY 16, 2016

