

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

Adam Kapusta

v.

Department of Labor and Training,
Board of Review

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:

A.A. No. 2015 - 099

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 Board of Review's decision is AFFIRMED on the issue of eligibility but the order of repayment is VACATED.

Entered as an Order of this Court at Providence on this 27th day of January, 2016.

By Order:

_____/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. DISTRICT COURT
SIXTH DIVISION

Adam Kapusta :
 :
v. : A.A. No. 2015 - 099
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Department of Labor and Training, :
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Mr. Adam Kapusta urges that the Board of Review of the Department of Labor and Training erred when it held that he would be disqualified from receiving unemployment benefits because he was not fully available for work within the meaning of Gen. Laws 1956 § 28-44-12. 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 instant matter should be AFFIRMED on the issue of eligibility; I so recommend.

I
FACTS AND TRAVEL OF THE CASE

Mr. Kapusta had received unemployment benefits when he failed to attend a Reemployment Eligibility Assessment Program (REA) follow-up appointment on May 13, 2015 at his local netWorkri office; the purpose of such meetings is to check on the work-search efforts the claimant has made.¹ Because of this, a designee of the Director issued two decisions, each of which found that Claimant should be disqualified from receiving further benefits. The Director found this failure constituted a violation of Rules 17(K) and 17(I) of the Rules of the Department of Labor and Training for the Unemployment Insurance and Temporary Disability Insurance Programs (June, 2014 rev).

In the first decision, issued on May 26, 2015, numbered 1516208, the Claimant's disqualification was based solely on his failure to appear at the May

¹ Mr. Kapusta had attended an REA orientation on April 13, 2015, at which the work search obligations had been explained to him. Director's Decision, Exhibit No. A-2.

13th meeting; the disqualification was made effective with the week-ending May 16, 2015. See Exhibit No. A2. In the second decision, which was issued on May 27, 2015 and which was numbered 1516867, the Director found that Mr. Kapusta failed to provide adequate work-search records; accordingly, Claimant was disqualified from receiving benefits, effective on the week-ending April 18, 2015. See Exhibit No. A1. He was also ordered to repay the benefits he had received.²

Mr. Kapusta appealed and a hearing was held before Referee Carl Capozza on June 24, 2015, at which time Claimant, who appeared telephonically, was the sole witness. On June 30, 2015, the Referee issued two decisions. In the first decision, No. 20151704 (which tracked the Director's decision in No. 1516867), he found the following facts:

The claimant attended Reemployment Eligibility Assessment Program (REA) orientation on April 13, 2015. During that orientation the claimant was advised that he would need to submit work search records to the Department during his REA follow up appointment on May 13, 2015. Claimant was provided a work search form to be completed. Information provided by the local

² During the weeks ending April 18, 2015, April 25, 2015, May 2, 2015, and May 9, 2015, Mr. Kapusta had received benefits totaling \$656. See Exhibit No. A1.

netWorkri office to the Department of Labor and Training indicated the claimant had failed to provide a work search record as required for the weeks ending April 18, 2015 through May 9, 2015 as requested.

Claimant received benefits for the weeks ending April 18, 2015, April 25, 2015, May 2, 2015 and May 9, 2015, totaling \$656.00 through certification information provided on Tele-Serve.

Referee's Decision, Nos. 20151704/1516867, June 30, 2015, at 1. Based on the findings recited above regarding Claimant's failure to submit his work-search records — and after quoting from Rule 17(K) — Referee Capozza pronounced the following conclusions:

Based on the credible testimony and evidence presented in this case I find that the claimant has failed to establish good cause for his failure to appear at a follow-up REA program on May 13, 2015 with a verifiable work search record for the weeks requested, weeks ending April 18, 2015 through May 9, 2015. Under these conclusions it must be determined that the claimant is subject to disqualification of benefits for the weeks ending April 18, 2015 through May 9, 2015 as previously determined by the Director under the above Section and Rule. The claimant is denied benefits beginning with the week ending April 18, 2015 and until he has met the availability requirements.

Referee's Decision, Nos. 20151704/1516867, June 30, 2015, at 2. It is notable that Referee Capozza cited — as the applicable authority — not only Rule 17, but also Gen. Laws 1956 § 28-44-12, the section under which claimants are disqualified from receiving benefits if they are not available for work, are not

able to work, or are not adequately searching for work. Referee’s Decision, Nos. 20151704/1516867, June 30, 2015, at 1-2. Apparently, although it was not specified, it was his failure to comply with this third commandment of § 12 for which Referee Capozza found Claimant Kapusta ineligible to receive benefits.

Referee Capozza’s findings in the second decision were somewhat briefer — he simply found that Mr. Kapusta failed to appear at the May 13, 2015 REA follow-up appointment. Referee’s Decision, Nos. 20151705/1516208, June 30, 2015, at 1. And he concluded, after citing § 28-44-12 and quoting Rule 17(K), that Claimant’s failure to do so violated these provisions. Id.

Mr. Kapusta filed an appeal from these decisions and the matter was considered by the Board of Review. On August 20, 2015, the Board of Review issued a decision which held that the decision of the Referee was a proper adjudication of the facts and the law applicable thereto. Decision of Board of Review, at 1. Accordingly, the decision of the Referee was affirmed. We may note in passing that the Board’s Member Representing Labor dissented, commenting that forcing a Claimant to miss a job interview in order to attend a meeting with the Department seemed “counter-productive.” Id.

Thereafter, on October 19, 2015, Mr. Kapusta filed a pro-se complaint for judicial review in the Sixth Division District Court.

II
APPLICABLE LAW

A

Rule 17(K)

One aspect of this case centers on the application of Rule 17(K) of the Unemployment Insurance Rules, which provides:

K. An individual who fails to report to an office of the Department of Labor and Training when notified of an appointment, fails to provide any documentation requested by the Department or fails to comply with an instruction given by the Director or his/her designee shall be denied benefits for the week in which such failure occurs unless the reason for such failure to comply with the Department's requirements is based upon good cause as shall be determined by the Director.

Under Rule 17(K), a Claimant who fails to appear at a meeting with the Department forfeits eligibility for benefits for the week in which the failure occurs.

B

Section 28-44-12 — Availability

This case also centers on the application of the following provision of the Rhode Island Employment Security Act, which enumerates one of the

several grounds upon which a claimant may be deemed ineligible to receive unemployment benefits. Gen. Laws 1956 § 28-44-12(a), provides:

28-44-12. Availability and registration for work. — (a) An individual shall not be eligible for benefits for any week of his or her partial or total unemployment unless during that week he or she is physically able to work and available for work. To prove availability for work, every individual partially or totally unemployed shall register for work and shall:

(1) File a claim for benefits within any time limits, with any frequency, and in any manner, in person or in writing, as the director may prescribe;

(2) Respond whenever duly called for work through the employment office; and

(3) Make an active, independent search for suitable work.

(b) * * *.

As one may readily observe, § 12(a) requires claimants to be able and available for full-time work and to actively search for work. It is the burden of the claimant to prove compliance with these requirements.

III

STANDARD OF REVIEW

The pertinent 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.’ ”³ The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.⁴ Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.⁵

³ 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)).

⁴ Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

⁵ Cahoone, 104 R.I. at 506, 246 A.2d at 215. Also, D’Ambra v. Board of Review, Dept. of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

The Supreme Court of Rhode Island recognized in Harraka v. Board of Review of the Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595, 597 (1964) that a liberal interpretation shall be utilized in construing and applying the Employment Security Act:

* * * eligibility for benefits is to be determined in the light of the expressed legislative policy that “Chapters 42 to 44, inclusive, of this title shall be construed liberally in aid of their declared purpose which declared purpose is to lighten the burden which now falls upon the unemployed worker and his family.” G.L. 1956, § 28-42-73. The legislature having thus declared a policy of liberal construction, this court, in construing the act, must seek to give as broad an effect to its humanitarian purpose as it reasonably may in the circumstances. Of course, compliance with the legislative policy does not warrant an extension of eligibility by this court to any person or class of persons not intended by the legislature to share in the benefits of the act; but neither does it permit this court to enlarge the exclusionary effect of expressed restrictions on eligibility under the guise of construing such provisions of the act.

IV

ANALYSIS

A

Evidence of Record — The Testimony of Mr. Kapusta

We shall summarize the testimony and evidence received at the hearing conducted by Referee Capozza, at which the sole witness was Mr. Kapusta. Referee Hearing Transcript, at 1. It is important to note that Referee Capozza

bifurcated the hearing — first considering the work-search issue contained in Nos. 20151704/1516867; and secondly considering the issue of his failure to appear at the scheduled meeting in Nos. 20151705/1516208.

As his testimony began, Mr. Kapusta agreed that, at the first meeting on April 13, 2015, he was told that he would have to report back on his work-search efforts in thirty days. Referee Hearing Transcript, at 6. And he conceded that he was also instructed to keep a record of his work search. Referee Hearing Transcript, at 7.

But throughout this colloquy, Mr. Kapusta reiterated that he was told that if he failed to appear at the follow-up meeting, his benefits “would just stop.” Referee Hearing Transcript, at 6-9. And, he added, by the date of the follow-up, he had obtained a new job. Referee Hearing Transcript, at 8. As a result, he had last received benefits for the week ending May 9, 2015. Id.

The Referee then closed the work-search portion of the hearing and moved on to the second issue — his disqualification for the week ending May 16, 2015 based on his failure to appear at the meeting. Referee Hearing Transcript, at 14 et seq. And when it was quickly established that he was not seeking benefits for that week (because he had gone back to work by that point

in time), the second portion of the hearing ended abruptly, since both parties realized the second issue was moot. Referee Hearing Transcript, at 14.

B
Rationale

And let us begin with the Board's ruling that Claimant's failure to attend the follow-up meeting violated the mandates of Rule 17(K). I agree with the Board (and the Referee and Mr. Kapusta) that the issue is moot — and thereby non-justiciable. We need not mention it further.

As to the second issue, Claimant conceded that (1) he was told to keep a record of his efforts to find work and (2) that he failed to present such a record when requested. And the record is clear that he did not. Therefore, the Board's disqualification of Mr. Kapusta on this issue is, without doubt, fully supported on the record. I shall therefore recommend that this finding be affirmed.

V
RECOUPMENT

Finally, the Director ordered Claimant to repay \$656,⁶ pursuant to Gen. Laws 1956 § 28-42-68, which provides in pertinent part:

⁶ See Director's Decision, May 27, 2015 (No. 1516867), contained in the administrative record as Department's Exhibit No. A1.

(a) Any individual who, by reason of a mistake or misrepresentation made by himself, herself, or another, has received any sum as benefits under chapters 42 - 44 of this title, in any week in which any condition for the receipt of the benefits imposed by those chapters was not fulfilled by him or her, or with respect to any week in which he or she was disqualified from receiving those benefits, shall in the discretion of the director be liable to have that sum deducted from any future benefits payable to him or her under those chapters, or shall be liable to repay to the director for the employment security fund a sum equal to the amount so received, plus, if the benefits were received as a result of misrepresentation or fraud by the recipient, interest on the benefits at the rate set forth in § 28-43-15.

* * *

(b) There shall be no recovery of payments from any person who, in the judgment of the director, is without fault on his or her part and where, in the judgment of the director, that recovery would defeat the purpose of chapters 42 - 44 of this title.

Thus, repayment is not mandated in every instance where a claimant has been incorrectly paid, but only where the claimant was not at fault and where recovery would not defeat the purposes of the Act. In my view “fault” implies more than a mere causative relationship for the overpayment, it implies moral responsibility in some degree — if not an evil intent per se, at least indifference or a neglect of one’s duty to do what is right.⁷ To find the legislature employed

⁷ In the Webster’s Third New International Dictionary (2002) at 839, the first definition of fault applicable to human conduct defines “fault” as “3: A failure to do what is right. a: a moral transgression.”

the term fault in a broader sense of a simple error would be — in my view — to render its usage meaningless. With this in mind, we may now turn to the circumstances of the overpayment in the instant case.

When reviewing the Director's order, the Referee found that:

* * * based on the credible testimony and evidence presented in this case I find that the claimant is overpaid benefits for the weeks in issue totaling \$656.00. It is further determined that the claimant is at fault for the overpayment because he failed to report to the follow up mandatory appointment and requested work search.

Accordingly, it is determined that it would not defeat the purpose for which the Employment Security Act was designed to require repayment of those benefits to the Department of Labor and Training as previously determined by the Director under the above Section of the Act.

Referee's Decision, Nos. 20151704/1516867, June 30, 2015, at 2-3. So, the Referee found fault based on Claimant's failure to report to the follow up meeting and failed to provide documentary evidence of his work search. In my view, both reasons are insufficient, viewed separately or in tandem, to establish fault on Mr. Kapusta's part within the meaning of § 28-42-68.

Of course, because it is moot, we have not commented on the issue of Claimant's failure to attend the follow-up meeting. Nevertheless, I must state that the Referee's reliance on this fact in affirming the repayment order is

rather jarring. Without deciding the rightness or wrongness of Mr. Kapusta's decision, I do not believe the point raised in the dissent in this case is at all wrong-headed — the primary purpose of the Department of Labor and Training is to help people get work, and only secondarily to provide them with funds when they are unemployed through no fault of their own. As a matter of law and public policy, I cannot find that attending a job interview, which apparently led to a job, constitutes “fault” within the meaning of § 28-42-68.⁸

We may now turn to the second ground upon which Referee Capozza found fault — Claimant's failure to present proof of his job search. And while I find this ground to be more substantial than the first, I find it too to be unconvincing. In my view, all one need do to see the truth of the situation is to take a step back from the minutia of his situation.

Mr. Kapusta collected unemployment benefits for three weeks and found a new position. On these facts, I believe that we must conclude that Claimant was looking for a new position during the three weeks that he collected benefits. Why? — because he (quickly) found one. Having reviewed

⁸ Indeed, had Mr. Kapusta decided otherwise (to skip the job interview), someone else might have been hired — and that would have defeated the purpose of the Act.

hundreds of cases wherein claimants have been unemployed for many weeks (where they were receiving benefits and where they were not), it seems that the Department (and the Board) was simply unable to acknowledge (and accept) that it had something of a success story in this case. Mr. Kapusta availed himself of unemployment benefits only briefly; I find no “fault” on his part as that term is defined in § 28-44-68.

VI CONCLUSION

Applying the applicable standard of review, and upon careful review of the evidence, I recommend that this Court find that the decision of the Board of Review (affirming the decision of the Referee) on the issue of disqualification 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). I therefore recommend that the decision of the Board be AFFIRMED except that the order of repayment is VACATED.

_____/s/
Joseph P. Ippolito
Magistrate
JANUARY 27, 2016

