

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

DISTRICT COURT

SIXTH DIVISION

LORI J. DANIS

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V.

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A.A. 08-50

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DEPARTMENT OF LABOR AND
TRAINING, BOARD OF REVIEW

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DECISION

QUIRK, J. This matter is before the Court on the complaint of Lori J. Danis, filed pursuant to Rhode Island General Laws § 42-35-15, seeking judicial review of a final decision rendered by the respondent, Board of Review, Department of Labor and Training, which upheld the finding of the Referee that the claimant, Lori J. Davis was not entitled to receive employment security benefits.

Facts and Travel

The travel of the case is as follows:

Claimant's last day of work was November 15, 2007. She filed her claim for Employment Security benefits on November 26, 2007. A Director's decision dated

December 27, 2007 determined that she was discharged from her employment for disqualifying reasons under the provisions of Section 28-44-18 of the Rhode Island Employment Security Act. Claimant filed a timely appeal of the decision. A hearing on the appeal was held on February 5, 2008, at which time claimant and two employer representatives appeared and testified. Claimant was represented by legal counsel. Referee's decision at 1.

The Referee made the following findings of fact:

Claimant had been employed for two months as a teacher's assistant in a childcare facility until her last day of work November 15, 2007. On that date claimant became upset during a discussion with the Director concerning her job performance. Claimant was advised that she would be moved to another classroom facility in the main building to which the claimant objected, left the meeting and went back to the classroom in which she had been working. She proceeded to the rear of the classroom in the open bathroom area and in the presence of children discussed her situation with another co-worker. In the meantime a co-director had followed the claimant to the area to make sure that she was okay and heard claimant refer to another co-worker as a "f...ing bitch." These actions were reported to the other co-director and owner. When she returned to the front of the building she was met by that director and told to leave. The following day when claimant contacted the employer to question where she was to report to work, she was advised that she would not be allowed in the building. She was terminated. Id.

The Referee held the claimant was not entitled to receive unemployment security benefits, based on the determination that claimant engaged in misconduct in connection with her employment and was thus disqualified pursuant to Rhode Island General Laws § 28-44-18. Specifically, the Referee concluded:

The issue in this case is whether or not the claimant was discharged under disqualifying circumstances within the meaning of Section 28-44-18 of the Rhode Island Employment Security Act.

An individual who is discharged for proved misconduct in connection with the work must be held to have been discharged under disqualifying circumstances within the meaning of Section 28-44-18.

...

In cases of termination the burden of proof to show misconduct by claimant in connection with the work rests solely upon the employer. Based on the credible testimony presented in this case I find that the employer has met the burden of proof by a preponderance of the evidence. While claimant denied unequivocally that she used any improper or inappropriate language, I find the testimony of the employer witness in that regard to be most credible. While the claimant may have become upset over the discussion, her subsequent actions in using inappropriate language in the classroom and in the presence of children was misconduct and, therefore, I find that she was discharged for disqualifying reasons and cannot be allowed benefits as previously determined by the Director. Id pg. 1 & 2.

Thereafter, a timely appeal was filed and the matter was heard by the Board of Review. A majority of the Board determined that the Referee's decision was a proper adjudication of the facts, and upheld the Referee's decision. Thereafter, Ms. Davis filed a complaint for judicial review; jurisdiction for review of the decisions of the Board is vested in the District Court by Rhode Island General Laws § 28-44-52.

The standard of review is provided by Rhode Island General 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." Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Rhode Island General Laws § 42-35-15(g)(5). The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact. Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968). Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result. Cahoone v. Board of Review of Department of Employment Security, 104 R.I. 503, 246 A.2d 213, 215 (1968). See also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

The Court has recognized 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. Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 201, 200 A.2d 595, 597 (1964).

The issue before the Court is whether the Board's determination that the Referee's decision was a proper adjudication of the facts and that the claimant engaged in misconduct in connection with her employment was supported by reliable, probative, and substantial evidence in the record and whether or not it was clearly erroneous.

A majority of the Board of Review, after noting it was prohibited by law from substituting its judgment for that of the Referee, concluded there was substantial evidence contained in the record of the proceedings to support the Referee's decision:

After review of the official record, the transcript from the Referee's hearing and the argument before the Board, it is determined that there is substantial credible evidence before the Board to conclude that the claimant's actions on November 15, 2007 constitute misconduct under Section 28-44-18 of the Act. The Referee reasonably found that the claimant's actions occurred in the vicinity of small children. Her conduct, in the near presence of the children, was in disregard of their and the employer's interest. The Referee determined the employer's witnesses to be "most" credible. Corrected Decision of Board of Review p1.

Section 28-44-18 of the General Laws of the state of Rhode Island

provides:

28-44-18. Discharge for misconduct. -- An individual who has been discharged for proved misconduct connected with his or her work shall thereby become ineligible for benefits for the week in which that discharge occurred and until he/she establishes to the satisfaction of the director that he/she has, subsequent to that discharge, had at least four (4) weeks of work, and in each of that four (4) weeks has had earnings of at least twenty (20) times the minimum hourly wage as defined in chapter 42 of this title. (Emphasis added.)

The standard for defining "misconduct" under section eighteen was provided by the Rhode Island Supreme Court in Turner v. Department of Employment Security, 479 A.2d 740, 741-42 (R.I. 1984), in which the Court quoted from Boynton Cab Co. v. Neubeck, 237 Wis. 249, 259-60, 296 N.W. 636, 640 (1940):

'[M]isconduct' . . . is limited to conduct evincing such wilful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the statute.

A review of the record of proceedings for this case reveals the primary conduct of the employee which lead to the discharge was the allegation she used serious profanities at a time and place that exposed young children, in the care of the employer, to said profanities. The Referee clearly accepted the testimony in

this regard to be true inspite of claimant's denial. In another work environment, such conduct could conceivably be construed as "an isolated incident of bad judgment" which would not rise to the level of misconduct justifying discharge (see dissenting opinion). That cannot be said in this case where the work environment was the care of young children.

A review of the entire record demonstrates that there is substantial, probative and reliable evidence to support the findings of fact, conclusions and decision of the Board of Review.

On findings of fact, as to the weight of the evidence, this Court shall not substitute its judgment for that of the administrative agency.

The scope of judicial review by the Court is also limited by General Laws section 28-44-54 which, in pertinent part, provides:

28-44-54. Scope of judicial review – Additional Evidence – Precedence of proceedings. – The jurisdiction of the reviewing court shall be confined to questions of law, and in the absence of fraud, the findings of fact by the board of review, if supported by substantial evidence regardless of statutory or common law rules, shall be conclusive.

Upon careful review of the evidence, this Court finds that the decision of the Board was not "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record," and that said decision was not "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Rhode Island General Laws § 42-35-15(g)(5)(6).

Accordingly, the decision of the Board is hereby affirmed.