

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

Elma L. Valderama :
 :
v. : A.A. No. 10-217
 :
Department of Labor & Training, :
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this administrative appeal Ms. Elma L. Valderama urges that the Board of Review of the Department of Labor & Training erred when it found her ineligible to receive employment security benefits pursuant to Gen. Laws 1956 § 28-44-18 of the Rhode Island Employment Security Act. Jurisdiction for appeals from the Department of Labor and Training Board of Review is vested in the District Court pursuant to G.L. 1956 § 28-44-52. This matter has been referred to me for the making of findings and recommendations pursuant to G.L. 1956 § 8-8-8.1. Employing the standard of review applicable to administrative appeals, I find that the decision of the Board of Review finding Ms. Valderama ineligible to receive benefits to be supported by substantial evidence of record and was not affected by error of law; I therefore recommend that the Decision of the Board of Review be affirmed.

FACTS & TRAVEL OF THE CASE

Claimant had been employed by Modine Manufacturing for approximately four years until she was discharged on February 5, 2010. She filed for unemployment benefits but on April 6, 2010 the Director of the Department of Labor & Training denied her claim, finding Ms. Valderama had been discharged for disqualifying reasons under Gen. Laws 1956 § 28-44-18. The claimant filed a timely appeal and on July 26, 2010 a hearing was held before Referee William G. Brody at which the claimant and two employer representatives were present and testified. See Referee Hearing Transcript, at 1. Claimant was represented by counsel at the hearing.

In his August 26, 2010 decision, the Referee made the following findings of fact:

2. FINDINGS OF FACT:

The claimant had worked for this employer for approximately four years. During that period of time she had accumulated a number of disciplinary warnings culminating in a final warning given in October of 2009. From and after that date the claimant was in a probationary status. The claimant was discharged for leaving an assigned position to go to another location in the employer's building. The claimant's supervisor considered the claimant's action as a direct violation of his orders and sufficient insubordination to require termination.

The claimant gave various reasons for leaving the assigned location alternatively indicating that the work was finished or that the work was too difficult for the condition of her back or that she had to leave work to seek medical attention.

Based upon the credibility of the witnesses, I find that the claimant left

her assigned (sic) against the direct order of the supervisor.

Referee's Decision, at 1. Based on these findings, and after quoting the standard of misconduct found in section 28-44-18, the Referee made the following conclusions:

* * * The claimant's direct disobedience (sic) of her supervisor constituted insubordination which rose to the level of misconduct under Section 28-44-18.

Referee's Decision, at 2. Thus, the referee determined that the claimant was discharged under non-disqualifying circumstances within the meaning of Section 28-44-18 of the Rhode Island Employment Security Act. Referee's Decision, at 2. Accordingly, he affirmed the decision of the Director. Referee's Decision, at 2.

The claimant filed a timely appeal on September 10, 2010 and the matter was reviewed by the Board of Review. Then, on October 1, 2010, the Board of Review unanimously affirmed the referee's decision, finding it to be an appropriate adjudication of the facts and the law applicable thereto and adopted the referee's decision as its own. See Decision of Board of Review, at 1. On October 29, 2010, Ms. Valderama filed a complaint for judicial review in the Sixth Division District Court.

APPLICABLE LAW

Under § 28-44-18 of the Rhode Island Employment Security Act, "an employee discharged for proven misconduct is not eligible for unemployment benefits if the employer terminated the employee for disqualifying circumstances

connected with his or her work.” Foster-Glocester Regional School Committee v. Board of Review, Department of Labor and Training, 854 A.2d 1008, 1018 (R.I. 2004). With respect to proven misconduct, § 28-44-18 provides, in pertinent part, as follows:

For the purposes of this section, “misconduct” shall be defined as deliberate conduct in willful disregard of the employer’s interest, or a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee’s incompetence. Notwithstanding any other provisions of chapters 42-44 of this title, this section shall be construed in a manner which is fair and reasonable to both the employer and the employed worker. * * *

The Rhode Island Supreme Court has adopted a general definition of the term “misconduct,” holding as follows:

“ ‘[M]isconduct’ * * * is limited to conduct evincing such willful 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 employer’s interest or of the employee’s duties and employer’s interest or 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.”

Turner v. Department of Employment and Training, Board of Review, 479 A.2d 740, 741-42 (R.I. 1984)(citing Boynton Cab Co. v. Newbeck, 237 Wis. 249, 259-60, 296 N.W. 636, 640 [1941]). In cases of discharge, the employer bears the burden

of proving misconduct on the part of the employee in connection with his or her work. Foster-Glocester Regional School Committee, 854 A.2d at 1018.

STANDARD OF REVIEW

Judicial review of the Board's decision by the District Court is authorized under § 28-44-52. The standard of review is provided by G.L. 1956 § 42-35-15(g) of the Rhode Island Administrative Procedures Act ("A.P.A."), which provides as follows:

The court shall not substitute its judgment for that of the agency as to 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 constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon lawful 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."

The scope of judicial review by this Court is also limited by Gen. Laws 1956 § 28-44-54, which in pertinent part provides:

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.

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, 588, 410 A.2d 425, 428 (1980) (citing § 42-35-15(g)(5)). The Court will not substitute its judgment for that of an agency 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, 506, 246 A.2d 213, 215 (1968). “Rather, the court must confine itself to review of the record to determine whether “legally competent evidence” exists to support the agency decision.” Baker v. Department of Employment & Training Bd. of Review, 637 A.2d 360, 363 (R.I. 1993) (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). “Thus, the District Court may reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record.” Baker, 637 A.2d at 363.

ANALYSIS

At the outset, it must be noted that claimant was not fired for neglect or dereliction of her duties; she was fired for insubordination — failing to follow the direct orders of her supervisor. Insubordination has long been held to constitute misconduct within the meaning of section 28-44-18. Thus, the question to be

answered is this: Is the Board's decision that claimant failed to follow the directives of her supervisor supported by substantial evidence of record or is it clearly erroneous?

The heart of the employer's case came in the following testimony from Dan Wagner, claimant's supervisor:

EMP1: Yes. Gave her a job to do. Um, we had gone into a production meeting. We came out. She had moved to a different spot and started working there. Uh, needed her to finish what was being worked on. There were several other employees over there working as well. So, there was still work to be done there. And when we give somebody a task, we expect them to be able to complete it.

Referee Hearing Transcript, at 4. Mr. Wagner later explained that she had left the "packing" department without permission and gone back to the "sentinel" department, where she had started the day. Referee Hearing Transcript, at 6-9.

Ms. Valderama testified that she had finished her work and the supervisors, including Mr. Wagner, were in the meeting. Referee Hearing Transcript, at 10. So, Raymond gave her a job foaming sentinel side panels. Referee Hearing Transcript, at 11. She further testified Dan, when he saw her, said "okay." Referee Hearing Transcript, at 11. When, the next day, she was given the same job packing, her back was hurt and she went to the doctor's. Referee Hearing Transcript, at 12.

Obviously, Referee Brody was faced with two contradictory versions of the events which led to claimant's firing. He could have chosen to believe either. Ultimately, he fully credited Mr. Wagner's testimony that claimant had not finished

the packing job he had given her before she moved to another department. Accordingly, her removal to another work area was in direct disobedience to his instructions. Mr. Wagner's testimony provided more than substantial evidence to support the Referee's conclusion that she was terminated for proved misconduct.

Pursuant to the applicable standard of review described *supra* at 4-5, 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. This Court is not permitted to substitute its judgment for that of the Board as to the weight of the evidence; accordingly, the findings of the agency must be upheld even though a reasonable fact-finder might have reached a contrary result — by choosing to believe claimant's version of events.

Applying this standard of review and the definition of misconduct enumerated in Turner, *supra*, I must recommend that this Court hold that the Board's finding that claimant was discharged for proved misconduct in connection with her work — by failing to perform the duties service she was instructed to do — is supported by the record and should not be overturned by this Court.

CONCLUSION

After a thorough review of the entire record, this Court finds that the Board of Review's decision to deny claimant unemployment benefits under § 28-44-18 of the Rhode Island Employment Security Act was not "clearly erroneous in view of

the reliable, probative and substantial evidence on the whole record” 42-35-15(g)(3)(4). Neither was said decision “arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Section 42-35-15(g)(5)(6). Accordingly, I recommend that the decision rendered in this case by the Board of Review be affirmed.

A handwritten signature in black ink, appearing to read 'Joe P. L.', written over a horizontal line.

Joseph P. Ippolito
Magistrate

March 8, 2011

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

DISTRICT COURT

Elma L. Valderama

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v.

A.A. No. 10 - 217

Department of Labor & 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 and the memoranda of counsel, 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.

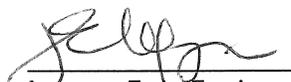
Entered as an Order of this Court at Providence on this 8th day of March, 2011.

By Order:



Melvin Enright
Acting Chief Clerk
Melvin J. Enright
Acting Chief Clerk

Enter:



Jeanne E. LaFazia
Chief Judge