

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

DISTRICT COURT

Jennifer LaFleur

v.

Department of Labor & Training,
Board of Review

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A.A. No. 11 - 52

ORDER

This matter is before the Court pursuant to § 8-8-16.2 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 15th day of December, 2011.

By Order:

_____/s/_____
Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

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FINDINGS & RECOMMENDATIONS

Montalbano, M. In this administrative appeal Ms. Jennifer LaFleur urges that the Department of Labor and Training, Board of Review erred when it denied her request to receive employment security benefits because she quit a position without good cause. Jurisdiction for appeals from the Department of Labor and Training, Board of Review is vested in the District Court pursuant to 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 § 8-8-16.2. Employing the standard of review applicable to administrative appeals, I find that the decision of the Board of Review that the claimant voluntarily left her employment without good cause within the meaning of Gen. Laws 1956 § 28-44-17 is 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

Jennifer LaFleur was employed by RI Temps, a temporary employment agency, from October 2008 through May 28, 2010. On November 10, 2008 Ms. LaFleur (hereinafter referred to as “claimant”) was assigned by RI Temps to work at CVS. (RI Temps had been contracted by Addeco, another temporary employment agency, as a subcontractor to supply temporary employees to CVS.) Claimant accepted the CVS assignment from RI Temps and subsequently worked for RI Temps at CVS until May 28, 2010 when the assignment ended. On May 14, 2010 claimant gave RI Temps two weeks’ notice of her decision to quit her employer, indicating that: “The longs project is over on the 28th. Please consider this my two weeks notice”. Referee Hearing Transcript, Employer’s Exhibit 2. In the same May 14, 2010 email to RI Temps claimant renewed her request for a letter of experience. Claimant intended to register as a temporary employee with Addeco. Referee Hearing Transcript, at 17. Claimant did not contact RI Temps for further assignments after May 28, 2010.

On June 3, 2010 claimant filed a claim for unemployment benefits but on August 4, 2010 the Director determined that the claimant voluntarily left her job without good cause under the provisions of Section 28-44-17 of the Rhode Island Employment Security Act, and further found that the claimant was overpaid and was therefore subject to a recovery under the provisions of Section 28-42-68 of the Act. The claimant filed a timely appeal of the Director’s decision on August 10, 2010. Referee Nancy L. Howarth held a hearing on claimant’s appeal on December 2, 2010 at which time claimant appeared and testified, as did an employer representative. On December 21, 2010 the Referee

determined that the claimant had established good cause for leaving her job, and awarded benefits to claimant. Decision of Referee, December 21, 2010, at 2.

On December 24, 2010 the employer, RI Temps, filed a timely appeal with the Board of Review (hereinafter referred to as the “Board”). This appeal was heard by the Board on March 23, 2011 and on April 22, 2011 the Board issued a unanimous decision reversing Referee Howarth’s decision, finding that claimant had quit her job without good cause under Section 28-44-17 of the Act, and therefore was not eligible for benefits. Decision of Board of Review, at 2.

Thereafter, on May 20, 2011 the claimant transmitted a timely statement of appeal – along with the appropriate filing fee – to the District Court.

APPLICABLE LAW

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

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

(a) For benefit years beginning prior to July 1, 2012, 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 at least eight (8) weeks of work, and in each of those eight (8) weeks has had earnings of at least twenty (20) times the minimum hourly wage as defined in chapter 12 of this title for performing services in employment for one or more employers subject to chapters 42 – 44 of this title. ***

(b) For the purposes of this section, “voluntarily leaving work without good cause” shall include voluntarily leaving work with an employer to accompany, join or follow his or her spouse in a new locality in connection with the retirement of his or her spouse, or failure by a temporary employee to contact the temporary help agency upon completion of the most recent work assignment to seek additional work unless good cause is shown for that failure; provided, that the temporary help agency gave written notice to the individual that the individual is required to contact the temporary help agency at the completion of the most recent work assignment to seek additional work.

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

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

In excluding from eligibility for benefit payments those who voluntarily terminate their employment without good cause, the legislature intended in the public interest to secure the fund from which the payments are made against depletion by payment of benefits to the shirker, the indolent, or the malingerer. However, the same public interest demands of this court an interpretation sufficiently liberal to permit the benefits of the act to be made available to employees who in good faith voluntarily leave their employment because the conditions thereof are such that continued exposure thereto would cause or aggravate nervous reactions or otherwise produce psychological trauma.

Later, in Murphy v. Fascio, 115 R.I. 33, 340 A.2d 137 (1975), the Supreme Court elaborated that:

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

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

and

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

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

An individual who voluntarily leaves work without good cause is disqualified from receiving unemployment security benefits under the provisions of § 28-44-17. See Powell v. Department of Employment Security, 477 A.2d 93, 96 (R.I. 1984)(citing Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 201, 200 A.2d 595, 597 (1964)). In order to establish good cause under § 28-44-17, the claimant must show that his or her work had become unsuitable or that the choice to leave work was due to circumstances beyond his or her control. Powell, 477 A.2d at 96-97; Kane v. Women and Infants Hospital of Rhode Island, 592 A.2d 137, 139 (R.I. 1991). The question of what circumstances constitute good cause for leaving employment is a mixed question of law and fact, and “when the facts found by the board of review lead only to one reasonable conclusion, the determination of ‘good cause’ will be made as a matter of law.” Rocky Hill School, Inc. v. State of Rhode Island Department of Employment and Training, Board of Review, 668 A.2d 1241, 1243 (R.I. 1995) (citing D’Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1040 (R.I. 1986)).

STANDARD OF REVIEW

Judicial review of the Board's decision by the District Court is authorized under § 28-44-52. The standard of review which the District Court must apply is set forth under Gen. Laws 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 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.

The scope of judicial review by this Court is limited by § 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)).

Stated differently, this 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.

ISSUE

The issue before the Court is whether the decision of the Board of Review was supported by reliable, probative, and substantial evidence in the record or whether or not it was clearly erroneous or affected by error of law. More precisely, was claimant disqualified from receiving unemployment benefits because she left work without good cause pursuant to section 28-44-17?

ANALYSIS

In this case, the Board determined that claimant voluntarily left her job without good cause within the meaning of § 28-44-17 of the Rhode Island Employment Security Act. I believe this finding is supported by substantial evidence. It is clear that claimant quit her job. The only question is whether she did so with good cause.

Because claimant's employer was a temporary employment agency, the provisions of § 28-44-17 of the Rhode Island Employment Security Act required the claimant to contact her employer upon completion of her most recent work assignment unless good cause was shown for that failure, as long as the employer had previously given written notice to the temporary-employee claimant that she was required to contact the employer upon completion of a work assignment to seek additional work. In this case the Employer's Corporate Code of Conduct (Referee Hearing Transcript, Employer Exhibit 1) included the required written notice to claimant of the requirement to seek additional work after completion of an assignment. Claimant signed a contract which included her acknowledgment of receipt of the Employer's Corporate Code of Conduct. Referee Hearing Transcript, at 26-27. The claimant also signed an "Assignment Report Orientation" containing the same requirement to seek additional work.

Claimant's testimony before the Referee confirms that once her temporary assignment at CVS ended on May 28, 2010 she never asked RI Temps for another assignment. Referee Hearing Transcript, at 37. So the gravamen of this matter is whether the claimant has shown good cause for her failure to seek another assignment after May 28, 2010 as required by § 28-44-17 of the act. Not only did claimant fail to show good cause for her noncompliance with this statutory requirement, she gave her two-week notice to the employer that she was voluntarily leaving her job. Referee Hearing Transcript, Employer's Exhibit 2.

The Board also found as a fact that it could not be determined whether the delay of the claimant's paychecks was attributable to the employer or the claimant, but that in

all cases when the employer was advised of a payroll issue the employer acted in a timely manner. Consequently, claimant failed to establish that she quit her job with good cause because her paychecks were late.

In my view, claimant's reasons for quitting her job did not constitute good cause within the meaning of Section 17.

CONCLUSION

After a thorough review of the entire record, this Court finds that the Board's decision to deny claimant employment security benefits under § 28-44-17 of the Rhode Island Employment Security Act was not "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record" Gen. Laws § 42-35-15(g)(3)(4). Neither was said decision "arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion." Gen. Laws § 42-35-15(g)(5)(6).

Accordingly, I recommend that the decision of the Board rendered in this case be **AFFIRMED.**

_____/s/_____
Joseph A. Montalbano
Magistrate

December 15, 2011