



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

**DISTRICT COURT**

**Woodward Enterprises Inc.** :  
 :  
v. : **A.A. No. 11 – 78**  
 :  
**Department of Labor and Training,** :  
**Board of Review** :

**DECISION**

**Jabour, J.** This matter is before the Court 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, (hereinafter cited as “the Board”) which affirmed a Referee’s decision that the claimant, Rosemary Buonocore (hereinafter cited as “claimant”) was entitled to receive employment security benefits.

**FACTS & TRAVEL OF THE CASE**

Claimant was employed at Woodward Enterprises (“Employer”) from January 2009 until October 7, 2010 when she was terminated. On October 8, 2010, claimant filed for Employment Security benefits. The Director determined that the claimant was discharged under disqualifying circumstances within the provisions of Section 28-44-18 of the Rhode Island Employment Security Act. A timely appeal was filed; a hearing before the Referee was conducted on March 28, 2011. The claimant and an Employer representative appeared and testified. Claimant was represented by counsel at the hearing.

The Referee engaged in fact finding to determine whether or not the claimant was

discharged from the job under disqualifying circumstances within the provisions of Section 28-44-18 of the Rhode Island Employment Security Act. In reaching a conclusion, the Referee relied on the Rhode Island Supreme Court's ruling in Turner vs. Department of Employment and Training, Board of Review, 479 A.2d 740, 741-42 (R.I. 1984). The Court adopted a general definition of the term, "misconduct" as enunciated in Boynton Cab Co. v. Newbeck, 237 Wis. 249, 296 N.W. 636 (1941):

"[M]isconduct' . . . is limited to conduct evincing such willful or wanton disregard of an employer's interest 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 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. *Id.* At 259-60, 296 N.W. at 640."

The Referee concluded that the burden of proof in establishing misconduct rested solely with the Employer. In reaching a decision, the Referee concluded that there was insufficient evidence and testimony presented at the hearing to establish that claimant's actions constituted misconduct. The Referee reversed the Director's decision and allowed payment of benefits.

An appeal before the Board of Review was held on May 2, 2011. Pursuant to Rhode Island General Laws § 28-44-47, the Board reviewed the Referee's decision and declared the decision to be the Board's decision. The Board determined that the Referee's findings and conclusions of law were a proper adjudication of the facts and applicable law. The Board affirmed the Referee's decision.

A complaint was filed for judicial review; jurisdiction for review of the Board's decision is

vested in the District Court by Rhode Island General Laws § 28-44-52.

### **STANDARD OF REVIEW**

The Administrative procedures Act sets forth the standard of review in Rhode Island General Laws § 42-35-15(g), 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.’”<sup>1</sup> The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.<sup>2</sup> Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.<sup>3</sup>

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<sup>1</sup> Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing R.I. GEN. LAWS § 42-35-15(g)(5).

<sup>2</sup> Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

<sup>3</sup> Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968). See also D’Ambra v. Board of Review, Department 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 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.

#### **ANALYSIS**

The issue before the Court is whether the decision of the Board was supported by reliable, probative, and substantial evidence in the record and whether or not it was clearly erroneous or affected by error of law. This Court “must determine whether the decision is [m]ade upon unlawful procedure” or “affected by other error of law”, Rhode Island General Laws § 42-35-15(g)(3) and (4). University of Rhode Island v. Department of Employment and Training, Board of Review, 691 A.2d 552, 554(1997).

Under the provisions of Rhode Island General Laws § 28-44-18, entitled “Discharge for Misconduct,” the definition of “misconduct” is “deliberate conduct in willful disregard of the employer’s interest, or knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be a result of the employee’s incompetence.” (emphasis added)

On appeal, Employer argues that its representative was not permitted to present other testimony regarding the claimant’s misconduct. Employer bolsters its argument by focusing on

the Referee's statement that "It's irrelevant. I won't consider it". In other words, Employer argues that the Referee "arbitrarily decided before the hearing was over that the documents were irrelevant and that she would not consider them". (Pl. Memo p. 6)

Employer's argument is misplaced. At the beginning of the hearing, the Referee engaged in a discussion with the Employer representative and the claimant's attorney regarding the marking of Exhibit 1 (Employer Reviews) and Exhibit 2 (23 page narrative). Although the claimant's attorney objected to the exhibits, the Referee stated that the documents would be "review[ed] for relevance and appropriate value" (TR 4 – 7). Also, the Employer representative wanted to give testimony regarding the "reviews" but the Referee indicated that testimony would be allowed "if necessary to go into or need to go back further". (TR at 9).

Furthermore, at the close of the hearing, the Referee explains to the parties the process and instructions regarding the decision. The Employer asks if the documents presented earlier in the hearing will be reviewed. The Referee responds affirmatively that "...it will be ... [g]iven proper weight for its probative value ... [i]t's irrelevant I won't consider it". (TR 32 – 33).

Clearly, in the totality of circumstances, this Court cannot find that the Referee ruled these documents to be irrelevant at the time of the hearing.

The Referee heard extensive testimony from both the Employer and the claimant. In addition, the claimant's attorney cross examined the Employer. (TR 9 – 31). The Employer testified that the "Peter Pots" work product was not completed in the way that the Employer wanted the job done. The Employer had discussions with the claimant. On cross examination, the Employer admitted that the claimant said that she was having trouble setting up the work. (TR 17 – 18) On the "URI" work assignment, the Employer took over completion of the job.

The Employer stated that the claimant was a “good graphic designer” but “inefficient” (TR 19 – 21).

The claimant testified that the “Peter Pots” job “was a tricky layout.” (TR at 23). As to the URI job, the claimant “was not aware that this was an issue”. (TR at 24).

The Referee had ample, probative and reliable evidence to support the decision that the claimant was discharged but not for reasons of misconduct in connection with the work. The Rhode Island Supreme Court has ruled that misconduct cannot be determined as a result of claimant’s “inefficiency, or failure in good performance as a result of inability or incapacity.” Turner, supra.

The Board affirmed the Referee’s decision. The Board’s decision must be upheld unless it was, inter alia, contrary to law, clearly erroneous in light of the evidence of record or arbitrary or capricious. This Court cannot 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.

### **CONCLUSION**

The decision of the Board of Review was not made upon unlawful procedure, affected by other error of law or clearly erroneous in view of the reliable, probative and substantial evidence of the entire record. Rhode Island General Laws § 42-35-15(g)(3),(4),(5).

Accordingly, the decision of the Board is AFFIRMED.