

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

DISTRICT COURT

Damaris Espinal

:
:
:
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:
:

v.

A.A. No. 12 - 00149

Department of Labor & Training,
Board of Review

JUDGMENT

This cause came on before Jabour J. on Administrative Appeal, and upon review of the record and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Board is affirmed.

Dated at Providence, Rhode Island, this 15th day of January, 2013.

Enter:

By Order:

_____/s/_____

_____/s/_____

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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, Damaris Espinal (hereinafter cited as “claimant”) was not entitled to receive employment security benefits and that claimant was over paid benefits which must be recovered from the claimant.

FACTS & TRAVEL OF THE CASE

Claimant was employed at Access Healthcare (“Employer”) from September 13, 2010 until February 28, 2012 when she quit her job. Claimant filed for Employment Security benefits. The Director determined that the claimant left her job without good cause within the provisions of Section 28-44-17 of the Rhode Island Employment Security Act. A timely appeal was filed; a hearing before the Referee was conducted on June 14, 2012. The claimant and two (2) Employer representatives appeared and testified.

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

voluntarily with cause within the meaning of Section 28-44-17 of the Rhode Island Employment Security Act.

Section 28-44-17 provides as follows:

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

(a) An individual who leaves work voluntarily without good cause shall be ineligible for waiting period credit or benefits 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. For the purposes of this section, “voluntary leaving work with good cause” shall include:

- (1) sexual harassment against members of either sex;
- (2) voluntarily leaving work with an employer to accompany, join or follow his or her spouse to a place, due to a change in location of the spouse’s employment, from which it is impractical for such individual to commute; and
- (3) the need to take care of a member of the individual’s immediate family due to illness or disability as defined by the Secretary of Labor; provided that the individual shall not be eligible for waiting period credit or benefits until he or she is able to work and is available for work. For the purposes of this provision, the following terms apply:
 - (i) “immediate family member” means a spouse, parents, mother-in-law, father-in-law and children under the age of eighteen (18);
 - (ii) ”illness” means a verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant leave, paid or otherwise; and
 - (iii) ”disability” means all types of verified disabilities, including mental and physical permanent and temporary disabilities and partial or total disabilities.

(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 order to establish that she had good cause for leaving her job the claimant must show that the work had become unsuitable or that she was faced with a situation that left her with no reasonable alternative but to terminate her employment. The burden of proof in establishing good cause rests solely with the claimant.

In reaching a decision, the Referee found that the claimant has not sustained this burden. The record was void of sufficient evidence to indicate that either of the above situations existed. The evidence and testimony presented at the hearing establish that the claimant voluntarily left her job without notice to the employer when she stopped reporting for her scheduled shifts. The claimant left her job due to personal issues and due to dissatisfaction with her hours and the distance to the client’s homes. The Referee found claimant’s leaving under these circumstances is without good cause under the above Section of the Act. Accordingly, benefits must be denied in this matter.

The second issue in this case was whether or not the claimant is overpaid Employment Security benefits and subject to recovery under the provisions of Section 28-42-68 of the Rhode Island Employment Security Act.

28-42-68. RECOVERY OF ERRONEOUSLY PAID BENEFITS. – (a) Any individual who, by reason of a mistake or misrepresentation made by himself or another, has received any sum as benefits under chapters 42 – 44, 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 such that such 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 thereon at the rate set forth in section 28-43-15. That sum shall be collectible in the manner provided in section 28-43-18 for the collection of past due contributions. All interest received hereunder shall be credited to the unemployment security interest fund created by section 28-42-75.

(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.

The claimant requested and received Employment Security for the week ending March 3, 2012 without disclosing she had voluntarily left her job. Based on the claimant’s failure to disclose information regarding her separation from employment, she received Employment Security benefits during a period of

disqualification. The Referee concluded that the claimant is at fault for the overpayment and subject to make restitution.” (Referee Decision 2 and 3).

An appeal before the Board of Review was held on June 22, 2012. 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.’

¹ The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.² Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.³

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 issues 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

¹ 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).

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

³ 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).

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).

On appeal, claimant argues that the decision was unfair and warrants an opportunity to prove eligibility to receive unemployment benefits. This Court finds that the Referee heard extensive testimony from both Employer representatives as well as the claimant. Claimant admits that she left the job because she didn't want to work 2 hours here or there. (Tr. 17). She also admitted that she worked for her Employer approximately one and half year, and knew that the job was place to place (Tr. 23). Lastly, she admitted that when she was a "no show" at work, despite the Employer calls to her contact number, she did not call the Employer about personal issues. She further stated that she did not want to go back to the job and was looking for another job. (Tr. 22).

The Employer testified that it operates a per diem health care agency. Claimant stopped reporting for shift duty. Two telephone calls were made on March 4 and March 5 to the claimant. Finally, on March 11, the claimant called and reported that her sister died. When the Employer called back to express condolences to the family, the Employer learned that there was no death in family. The Employer considered the claimant a voluntary quit because claimant stated that she was concentrating on school.

With regard to the erroneously paid benefits, the claimant failed to disclose information regarding her separation from unemployment. Claimant received benefits in a week to which she was not entitled to receive. In totality of the circumstance, this Court cannot find that the Referee rulings, which were affirmed by Board, were not supported by the evidence.

The Referee had ample, probative and reliable evidence to support the decision that the claimant quit voluntarily without good cause and that claimant was overpaid for benefits.

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. The Board's findings that claimant left work voluntarily without good cause and therefore was not entitled not benefits; that recovery of overpayment of benefits was appropriate are sustained by the evidence. Whitelaw v. Board of Review, Department of Employment Security, 185 A.2d 104 (1962).

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.