

**STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
DISTRICT COURT**

SIXTH DIVISION

Lisa A. Stenmark :
 :
v. : **A.A. No. 12 - 172**
 :
Department of Labor and 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, 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** except the order of repayment is **REVERSED**.

Entered as an order of this Court at Providence on this 27th day of September, 2012.

By Order:

_____/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

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

Lisa A. Stenmark :
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Department of Labor and Training, :
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Ms. Lisa Stenmark urges this Court to set aside a decision rendered by the respondent Board of Review of the Department of Labor and Training which was adverse to her efforts to receive employment security benefits. Jurisdiction for appeals from the decisions of the Department of Employment and Training Board of Review is vested in the District Court by Gen. Laws 1956 § 28-44-52. These matters have been referred to me for the making of findings and recommendations pursuant to General Laws 1956 § 8-8-8.1.

I. FACTS AND TRAVEL OF THE CASE

During 2011 and 2012 Ms. Stenmark — a spouse of a member of the

active-duty military — was receiving unemployment benefits when — in April of 2012 — the Director issued a decision indicating that she should repay certain benefits she had previously received. The Director decided that in 2011 and 2012 Ms. Stenmark received an excessive amount of unemployment benefits because she failed to accurately report her earnings from a part-time job with Lakewood Liquors to the Department, breaching a duty imposed upon her by Gen. Laws 1956 § 28-44-7. See Director's Decision, April 20, 2012. The Director found Ms. Stenmark at fault for this overpayment and, under the authority of Gen. Laws 1956 § 28-42-68, ordered her to make repayment in the amount of \$1,112.00 plus interest.

Ms. Stenmark appealed and a hearing was held on June 19, 2012 before Referee William Enos. On June 22, 2012 Referee Enos issued a decision in which he affirmed the Director. In doing so he made the following Findings of Fact:

Claimant testified that she was entering her net wages and not her gross wages.

The Director determined that she did not note the proper information covering her earnings. As a result, she was considered to be at fault in this overpayment and declared overpaid in the amount of \$1,112.00 plus \$5.48 interest under Section 28-42-68 of the Rhode Island Employment Security Act.

Referee's Decision, June 22, 2012, at 1. As a result of these findings, the Referee concluded that Ms. Stenmark failed to accurately report her wages:

The claimant failed to properly report earnings during this time. She is required to report any warnings (sic) to properly determine her partial benefits if eligible.

Referee's Decision, June 22, 2012, at 1. He also found her to be subject to a repayment order:

A finding of fault must be made. Fault is establishing that the claimant contributed to the overpayment. Since the claimant did not provide the proper information at the time of filing, she is at fault in creating the overpayment. She is subject to the recovery provisions of Section 28-42-68 of the Rhode Island Employment Security Act.

Referee's Decision, June 22, 2012, at 2. Ms. Stenmark appealed once more and on August 23, 2012 the Board of Review unanimously found the Referee's decision to be a proper adjudication of the facts and the law applicable thereto. Claimant filed a timely appeal in the Sixth Division District Court on September 5, 2012.

II. APPLICABLE LAW

A. Partial Benefits.

Gen. Laws 1956 § 28-44-7 provides:

28-44-7. Partial unemployment benefits. – For weeks beginning on or after July 1, 1983, an individual partially unemployed and eligible in any week shall be paid sufficient benefits with respect to that week, so that his or her week's wages, rounded to the next higher multiple of one dollar (\$1.00), as defined in 28-42-3(25), and his or her benefits combined will equal in amount the weekly benefit rate to which he or she would be entitled if totally unemployed in that week..

As one may readily observe, section 7 provides that a person who would be otherwise eligible for benefits may work without being disqualified from receiving benefits; instead, the wages they earn will be offset against the benefits to which they would be otherwise entitled to receive.

B. Repayment.

Gen. Laws 1956 § 28-42-68 provides in pertinent part:

(a) Any individual who, by reason of a mistake or misrepresentation made by himself, herself, or another, has received any sum as benefits under chapters 42 - 44 of this title, 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 that sum 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 on the benefits at the rate set forth in § 28-43-15. * * *

(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.

(Emphasis added). Thus, repayment is not mandated in every instance where a claimant has been incorrectly paid. Subsection (b) of section 28-42-68 clearly indicates that repayment cannot be ordered where (1) the recipient is without fault and where (2) recovery would not defeat the purposes of the Act.

III. STANDARD OF REVIEW

The standard of review by which the court must proceed is established in Gen. 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.’”¹ The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions

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).

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.

² Cahoone v. Board of Review of the Dept.of Employment Security, 104 R.I. 503, 506, 246 A.2d 213 (1968).

³ Cahoone v. Board of Review of Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213 (1968). Also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039 (R.I. 1986).

IV. ANALYSIS

A. Wage Reporting.

In this case the Board upheld the determination of the Director that claimant had failed to correctly report her earnings in violation of Gen. Laws 1956 § 28-44-7. In this record there is no suggestion that the computation made by the Department on this question regarding claimant's earnings is inaccurate. Accordingly, I accept the veracity of the Department's computation without reservation. I therefore find — as the Director and the Board of Review did — that claimant was indeed overpaid.

B. Repayment.

But I do disagree with the Board's adjudication of the second question presented in this case, wherein the Director ordered repayment. As I recounted above, Referee Enos sustained the Director's order of repayment because he found that the “ * * * claimant contributed to the overpayment.” Referee's Decision, June 22, 2012, at 2. And because he found a causative link between claimant's inaccuracies and the overpayment, the Referee ordered repayment.

But the repayment statute requires more — it requires a finding of fault. In my view “fault” implies more than a mere causative relationship, it implies moral responsibility in some degree — if not an evil intent per se, at least

indifference or a neglect of one's duty to do what is right.⁴ To find the legislature employed the term fault in a broader sense of a simple error would be — in my view — to render its usage meaningless.

Clearly there is no proof Ms. Stenmark acted with wrongful intent. She conceded that she reported her net earnings, not her gross. Referee Hearing Transcript, at 10-12. Although wrong, to me this does not seem patently deceitful. Referee Hearing Transcript, at 8. There is nothing in the record to show how the Department instructs claimants on the proper way to answer, which they may well do.⁵ In light of all these circumstances, I believe the order of repayment made in this appeal is clearly erroneous and must be set aside.

CONCLUSION

Pursuant to Gen. Laws 1956 § 42-35-15(g), 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. When

⁴ In the Webster's Third New International Dictionary (2002) at 839 the first definition of fault applicable to human conduct defines "fault" as "3: A failure to do what is right. a: a moral transgression." This view is longstanding. As Noah Webster stated in the first edition of his American Dictionary of the English Language (1828), "Fault implies wrong, and often some degree of criminality."

⁵ It should be noted that Ms. Stenmark was self-reporting on the Department's automated telephone system or on its web-based system. She was not being interviewed by a staff member who could explain the questions. When an agency adopts a self-reporting system, it must expect, and allow for some degree of confusion.

applying this standard, the Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.⁶ Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.⁷

Upon careful review of the evidence, and applying the standard of review and the principles of law outlined above, I recommend that this Court find that the decision of the Board of Review be AFFIRMED regarding its finding that Ms. Stenmark failed to accurately report her wages but I recommend that the associated order of repayment be REVERSED, as being contrary to fact and law.

_____/s/_____
Joseph P. Ippolito
MAGISTRATE

SEPTEMBER 27, 2012

⁶ Cahoone, *supra* at 5, fn. 2.

⁷ Cahoone, *supra* at 5, fn. 2. See also D'Ambra v. Bd. of Review, Dept. of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986). See also Gen. Laws § 42-35-15(g), supra at 4-5 and Guarino, *supra* at 5, fn. 1.

