

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

DISTRICT COURT
SIXTH DIVISION

JOANNE A. MATISEWSKI,
Appellant/ Employee

:

:

VS.

: A. A. No. 12-6-0178

:

DEPARTMENT OF LABOR AND
TRAINING, BOARD OF REVIEW,
(North Kingstown School Department),
Appellee/ Employer

:

:

JUDGMENT

This matter came before Ovalles, J., on appeal from the Department of Labor and Training, Board of Review and, upon review of the record in its totality, a decision having been rendered, it is hereby,

ORDERED, ADJUDGED AND DECREED:

That the decision of the Board of Review to affirm the Referee's decision is hereby reversed and, employment security benefits previously reduced are hereby reinstated and awarded to the Appellant.

Entered as an Order of this Court at Providence, Rhode Island on this 17th day of January 2014.

ENTERED:


Rafael A. Ovalles,
Associate Judge

PER ORDER:


Clerk

Dated: 17 January, A.D., 2014

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DECISION

OVALLES, J. This matter came before the Court on appeal, pursuant to R. I. General Laws § 42-35-15(a)¹, by Appellant/ Employee who had her unemployment benefits reduced pursuant to § 28-44-19.1 of the Rhode Island Employment Security Act. The Director of the Department of Labor and Training reduced the Appellant's benefits. After a *de novo* hearing, a Referee again approved a benefits reduction of the Appellant's/ Employee's benefits. In a unanimous decision, the Board of Review affirmed the Referee's decision.

On appeal, Appellant contends that the decision of the Board of Review was erroneous and should be reversed. The Appellant raises two issues: first, whether or not the Board correctly applied R. I. G. L. § 28-44-19.1; and second, whether or not the Appellant's Due Process rights were violated. For the reasons that follow, the decision of the Board of Review is reversed.

¹ Administrative Procedures, §§ 42-35-1, 42-35-18.

FACTS AND PROCEDURAL HISTORY

Joanne Matisewski (hereinafter Appellant) worked for the North Kingstown School Department (hereinafter Appellee) for enough years to qualify for a full retirement pension (the exact number of years was not provided nor disputed). The North Kingstown School Department is exempted from the tax imposed by 26 U.S.C. § 3301. The Appellant last worked on April 15, 2012. The Appellant got a second job and, subsequently became unemployed.

The Director of the Department of Labor and Training ruled that the Appellant's unemployment benefits should be reduced as required by § 28-44-19.1 of the Rhode Island Employment Security Act. A Referee presided at a *de novo* hearing and again concluded that the Appellant's benefits were subject to a pension reduction as required under R.I.G.L. § 28-44-19.1.

The Appellant timely appealed the Referee's decision to the Board of Review. In a unanimous decision, based solely on the record, the Board of Review affirmed the Referee's decision. Thereafter, the Appellant filed a complaint for judicial review. Jurisdiction for review of the decisions of the Board of Review is vested in the District Court by R. I. G. L. § 28-44-52.

APPLICABLE RHODE ISLAND LAW

A. Standard of Review

The District Court has jurisdiction to hear appeals from the Board of Review pursuant to R.I.G.L. § 42-35-15(a). The District Court's jurisdiction is limited,

however, by R.I.G.L. § 42-35-15(g), which states in pertinent part:

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 the 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 District Court, therefore, lacks the authority to assess witnesses' credibility or to substitute its judgment for that of the Board of Review concerning the weight of the evidence on questions of fact. Link v. State, 633 A. 2d 1345 (R. I. 1993). The District Court is limited to a determination of whether the Board of Review's decision is supported by competent evidence. Nickerson v. Reitsma, 853 A. 2d 1202 (R. I. 2004); Marran v. State, 672 A. 2d 875 (R. I. 1996).

The District Court may reverse the decision of the Board of Review where the decision "is clearly erroneous in light of the reliable, probative, and substantial evidence, or where it is arbitrary or capricious or that it is characterized as an abuse of discretion." Champlin's Realty Association v. Tikoian, 989 A. 2d 431 (R. I. 2010); Costa v. The Registry of Motor Vehicles, 543 A. 2d 1307, 1309 (R. I. 1988). "Substantial evidence" is that which a reasonable mind might accept to support a conclusion. Newport Shipyard v. R. I. Commission for Human Rights, 484 A. 2d 893, 897 (R. I. 1984). However, questions of law are not binding upon a reviewing court and may be freely reviewed to determine what the law is and its applicability to the facts. Champlin's Realty Associates,

989 A. 2d @ 432; Rossi v. Employees' Retirement System of Rhode Island, 895 A. 2d 110 (R.I. 2006). Moreover, where the Board of Review's decision is in "violation of constitutional or statutory provisions" or "in excess of statutory authority of the agency," the Board's decision may be modified or reversed. R.I.G.L. § 42-35-15(g)(2).

Ultimately, the District Court is not entitled to substitute its judgment for that of the Board of Review on questions of fact "even in a case in which the court might be inclined to view the evidence differently and draw inferences different from the Board." Johnston Ambulance Surgical Associates, Inc. v. Nolan, 755 A. 2d 799, 805 (R.I. 2000). Simultaneously, the District Court has liberally construed and applied the Employment Security Act².

B. Rhode Island Employment Security Act/ Disqualifying Income

Rhode Island General Laws § 28-44-19.1 defines disqualifying income and states in pertinent part:

Disqualifying Income. – ... An individual shall be disqualified from receiving benefits for any week of his or her unemployment within any period with respect to which that individual is currently receiving or has received retirement income in accordance with the following provisions:

- 1.) The amount of compensation payable to an individual for any week which begins in a period with respect to which that individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of that individual shall be reduced, but not below zero, by an amount equal to fifty per cent (50 %) of the amount of that pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to that week, if that

² Eligibility for employment security benefits is to be determined in the light of the expressed legislative policy that "Chapters 42-44 of this title shall be construed liberally in aid of their declared purpose, which declared purpose is to lighten the burden that now falls on the unemployed worker and his or her family." R.I.G.L. § 28-42-73. The legislature having thus declared a policy of liberal construction, this court, in construing that 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. Harraka v. Board of Review of Department of Employment Security, 200 A. 2d 595, 597 (R. I. 1964).

deduction is required as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act [hereinafter FUTA], 26 U.S.C. § 3301 et seq; provided, that if the individual made no contributions to the retirement plan then the amount of the compensation payable to the individual shall be reduced, but not below zero, by the full amount of that pension, retirement, or retired pay, annuity, or other payment, which is reasonably attributed to that week.

- 2.) If at any time following May 3, 1979, subdivision (1) of this section or any provision of it is not required by federal law in order for an eligible employer to qualify for full tax credit against the tax imposed by FUTA 26 U.S.C. section 3301 et seq., then subsection (1) of this section or the provision of it is no longer required and shall have no force or effect (emphasis added).

A deduction can be taken from an employee's benefits based on the employee's receipt of a pension only where the deduction is required as a condition precedent for full tax credit against the tax imposed by [FUTA], 26 U.S.C. § 3301, et seq. Moreover, provision (1) is nullified if, by federal law, eligible employers no longer need to rely on provision (1) to qualify for a full tax credit against the FUTA tax.

DISCUSSION

The Board of Review affirmed the decision of the Referee holding that the Appellant was subject to the pension reduction of weekly benefits pursuant to § 28-44-19.1, because "the [Appellant] received from the pension in the amount of \$4,262.30 to which both she and her employer ... contributed." (Referee's decision, at p. 2, Lines 12-14). However, the decision of the Referee was not supported by competent and substantial evidence, and therefore, the Board of Review's affirmation of that decision must be reversed.

An employee who qualifies for unemployment benefits while simultaneously receiving a pension is subject to have her unemployment benefits reduced by fifty per

cent of the amount of the pension if “that deduction is required as a condition for full tax credit against the tax imposed by [FUTA], 26 U.S.C. § 3301 et seq[.]” R.I.G.L.

§ 28-44-19.1 (1). The subject of the FUTA tax and, therefore, the prospective recipient of a full tax credit against the FUTA tax, is an unemployment benefit recipient’s employer, and in this case, the Town of North Kingstown School Department (hereinafter the School Department).

Employers qualify for credit against the FUTA tax according to the specific rules set forth in § 3302. 26 U.S.C. § 3302. Therefore, in order for the Referee to deduct fifty percent of the value of the Appellant’s pension from the Appellant’s unemployment benefits, the Referee must first determine that the “deduction is required [by the School Department] as a condition for full tax credit” from the FUTA tax. Although “every employer” is subject to the FUTA tax under 26 U.S.C. § 3301, there is no evidence in the record on which the Referee nor the Board of Review could have relied upon to conclude that a deduction of the Appellant’s benefits was required as a condition for the School Department to receive a full tax credit.

Accordingly, the Board of Review’s decision is clearly erroneous in light of the reliable, probative, and substantial evidence in the record. As a consequence, in applying 28-44-19.1, the Board of Review exceeded its authority.³ Moreover, throughout the application and review process, no one provided an explanation for its failure to apply R.I.G. L. § 28-44-19.1(2), which expressly disallows the reduction of the pension benefits.

³ In as much as the ruling on the first issue is dispositive of this appeal, the second issue need not be decided.

CONCLUSION

The Board of Review's decision to affirm the Referee's decision is hereby reversed and, employment security benefits previously reduced are hereby reinstated and awarded to the Appellant.

Judgment filed simultaneously with this Decision.