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

Moses Craig Jr.	:	
	:	
v.	:	**A.A. No. 2023 - 056**
	:	
Department of Labor and Training,	:	
Board of Review	:	

O R D E R

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 and the memoranda of counsel, 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 hereby REMANDED to the Board of Review for the issuance of a new decision.

Entered as an Order of this Court at Providence on this 9th day of September, 2024.

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

By Order:

/s/
Clerk

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F I N D I N G S & R E C O M M E N D A T I O N S

Ippolito, M. In this case the District Court, exercising the jurisdiction granted to it by G.L. 1956 § 28-44-52, must decide whether the Department of Labor and Training Board of Review (the Department) erred when it held that Mr. Moses Craig Jr. (Claimant or Appellant) would be disqualified from receiving unemployment insurance benefits because he quit his prior position without good cause within the meaning of G.L. 1956 § 28-44-17. This matter has been referred to me for the making of findings and recommendations pursuant to G.L. 1956 § 8-8-8.1. Doing so, and for the reasons I shall now set forth, I have concluded that the instant case must be REMANDED to the Board of Review for the issuance of a new decision. I so recommend.

I

Facts and Travel of the Case

Appellant Moses Craig Jr. worked for the Rhode Island Department of Corrections (DOC) as a Correctional Officer until March 28, 2023, when he quit. He filed a claim for unemployment benefits on March 31, 2023, with an effective date of March 26, 2023. *See* "Claim Data" section of DLT FORM 480 (which may be found in the 145-page Electronic Record (*ER*) attached to this case, at 45, 82). He told the DLT adjudicator who interviewed him by telephone that he quit because of a "hostile work environment." *See* "Claimant Statement" section of DLT Form 480 (*ER* at 45, 82). The adjudicator also spoke to a representative of the Employer, who indicated that "he left work due to concerns about performance." *See* "Employer Statement" section of DLT Form 480 (*ER* at 46, 83).

Then, on September 26, 2023, the adjudicator, acting as a designee of the Director of the Department of Labor and Training, issued a Decision which found that Claimant had quit his job without good cause within the meaning of G.L. 1956 § 28-44-17, since he had not shown that "a situation existed which left [him] with no reasonable alternative that to place [himself] in the state of total unemployment." *See Dec. of Director,* at 1 (*ER* at 52, 89). Nor had he shown that his job was unsuitable. *Id*.

Mr. Craig filed an appeal. As a result, a telephonic hearing was scheduled before a Referee employed by the Board of Review on May 31, 2023.

Claimant Craig represented himself; the DOC was represented by Mr. Rui Diniz, who was assisted by Counsel. *Ref. Hr'g Tr.* at 1-3; *ER* at 6-8.[1]

After the witnesses were sworn and the contents of the file were enumerated, the Referee questioned Mr. Craig, who said he had been with the DOC for ten years, and that his last day of actual work was December 3, 2022. *Ref. Hr'g Tr.* at 8. Appellant testified that between December 3, 2022, and the date of his resignation, March 28, 2023, he was out of work, because of his mental health; he said he was "paranoid." *Id.* at 11. However, he conceded that a doctor did not write him out of work. *Id.* at 11-12. Mr. Craig said he quit by sending an email to Assistant Director Rui Diniz. *Id.* at 9-10 (the email in question, which became Employer's Exhibit No. 1, may be viewed in the *ER* at 63-64 and at 68-69).

In response to a question posed by the Referee, Claimant Craig confirmed that he received, from the State's Department of Administration, Division of Human Resources, a letter in response to complaints he had made on February 27, 2023, regarding being subjected to retaliation and discrimination based on his race and country of origin. *Id.* at 12-13 (the letter may be viewed in the *ER* at 58). Specifically, the Division declared there was "insufficient evidence found to support the allegations contained" in his complaint. *Id.* at 12; *ER* at 58.

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[1] The hearing transcript begins on page 6 of the Electronic Record. Henceforth, all citations regarding the hearing shall be made solely to the transcript page.

Under questioning by Counsel for the DOC, Mr. Craig stated that he had been ordered to transfer to a different building by Assistant Director Ruiz, but he refused to transfer. *Ref. Hr'g Tr.* at 17-18. He also declined to have his probationary period (relating to his promotion to the rank of Lieutenant) extended. *Id.* He conceded that he was never demoted from his promotion to Lieutenant and he was still in his original probationary period. *Id.* at 19. Additionally, he agreed that he could have returned to his original position as a correctional officer. *Id.* at 19-20.[2] Finally, he agreed that he was never told that he was going to be dismissed by the Department of Corrections. *Id.* at 23.

The second and final witness was Mr. Diniz. Regarding the complaint Mr. Craig had made before he resigned, Mr. Diniz stated that the Human Resources Division is "separate" from the DOC and he had no knowledge of their investigation until the "outcome letter" was issued. *Id.* at 23-24. Moreover, he was not interviewed by Human Resources in that effort. *Id.* at 24.

On broader matters, the witness stated that he had been employed by the DOC for 32 years. *Id.* He stated that in his current position, as Assistant Director for Institutions and Operations, which he had held for three years, his responsibilities included all the facilities on the grounds and for the daily operations of all the institutions. *Id.* Accordingly, he was responsible for

[2] Mr. Craig advanced the notion that had he returned to his original position he would have lost his seniority. *Ref. Hr'g Tr.* at 19-22.

promotions and probationary reports, and hirings, firings and resignations. *Ref. Hr'g Tr.* at 24-25.

Turning to Mr. Craig's separation from the DOC, Mr. Diniz testified that Mr. Craig resigned by means of a resignation letter. *Id.* at 25. At the time, the Claimant was still in his original, six-month probationary period in the rank of Lieutenant. *Id.* The Assistant Director then explained that if Mr. Craig had not successfully concluded his probationary period, he would have been returned to his prior position as a Correctional Officer at the intake unit, though he would have needed to protect this right before the expiration of the six-month probationary period. *Id.* at 26.

Mr. Diniz stated that Mr. Craig received two different probationary reports. *Id.* at 27. One was from the Warden and Assistant Warden of High Security and the other from a Captain Attala. *Id.* When inquiry was made, the Assistant Director stated that the Warden of High Security is of the same race as Mr. Craig. *Id.*

Mr. Diniz also testified that he wanted Mr. Craig to succeed in his new rank, which is why he suggested that his probationary period be extended, and he be transferred to another facility — given that he had made claims against the supervisor where he was then stationed. *Id.* at 28. He further testified that the DOC had no intention of terminating Mr. Craig. *Id.* at 29.

Appellant Craig was then given the opportunity to rebut the DOC's evidence and testimony. He said that he was never told that the Assistant Director wanted to help him; that was never communicated. *Ref. Hr'g Tr.* at 30. To the contrary, he was told that "it looks bad for you if they want you to go to a different building." *Id.* Regarding the negative report from the Deputy Warden, he noted that while she stated that he often offends people, she also said that he had a knowledge of the job and a positive attitude. *Id.* As to the second report, he stated that it was written by his supervisor a few days after he had filed a formal complaint with Human Resources against him. *Id.* at 31.

On June 1, 2023, the Referee issued his decision. The Referee's findings of fact regarding the leaving-for-good-cause issue read as follows:

> The claimant was a correctional officer for Rhode Island Department of Corrections for ten years last on December 3, 2022. The claimant quit this job as he felt he was working in a hostile work environment.
>
> The claimant took his complaint to his employer. The employer then referred his complaint to the Department of Administration Human Resource Department. In a March 21, 2023 letter, human resources found no evidence of the claimants allegations (Investigation Letter/Director's Exhibit #3). After that letter, the claimant quit his job (Resignation Email/Employer Exhibit #1).

Referee's Decision, at 1 (*ER* at 60). This finding led him to formulate certain conclusions on the good-cause issue:

> The claimant is denied unemployment benefits under Section 28-44-17 of the Rhode Island Employment Security Act, as he has failed to show that his job became unsuitable

> to the point where he had no reasonable alternative than to quit his job and place himself in a complete state of Unemployment.

Referee's Dec. at 2 (*ER* at 61). Based on this set of conclusions, the Referee affirmed the Decision of the Director regarding Claimant's disqualification pursuant to § 28-44-17. *Id*. at 3 (*ER* at 62).

Thereafter, the Board of Review considered the matter based on the record assembled by the Referee, as it is permitted to do under G.L. 1956 § 28-44-47. *Bd. of Review Dec.* at 1 (*ER* at 2). In a decision issued on December 5, 2023, the Board adopted the decision of the Referee as its own and found that the Referee's decision constituted a proper adjudication of the facts and the applicable law. *Id*.

II
Standard of Review

The standard of review applicable to this appeal is provided by G.L. 1956 § 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.' " *Guarino v. Department of Social Welfare,* 122 R.I. 583, 584, 410 A.2d 425 (1980) (citing G.L. 1956 § 42-35-15(g)(5)). The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact. *Cahoone v. Bd. of Review of the Department of Employment Security,* 104 R.I. 503, 246 A.2d 213 (1968). Under the Rhode Island Supreme Court's construction of § 42-35-15(g), this Court must uphold a decision of the Board "… if it is supported by legally competent evidence." *Kyros v. Rhode Island Dep't of Health,* 253 A.3d 879, 884-85 (R.I. 2021) (quoting *Endoscopy Associates, Inc. v. Rhode Island Dep't of Health,* 183 A.3d 528, 532 (R.I. 2018)).

In evaluating specific circumstances which might constitute "good cause" to quit, the Court confronts a mixed question of law and fact. *D'Ambra v. Board of Review, Department of Employment Security,* 517 A.2d 1039, 1040 (R.I. 1986). Where the record supports only one conclusion, the case must be decided as a matter of law. *D'Ambra,* 517 A.2d at 1041. But, if more than one reasonable conclusion could be reached, the agency decision must be affirmed. *Id.*

The Supreme Court of Rhode Island recognized in *Harraka, ante,* 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.

Harraka, 98 R.I. at 200, 200 A.2d at 597.

III

Applicable Law

A

The Statute

Our review of this case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically touches on the concept of voluntary leaving without good cause; G.L. 1956 § 28-44-17, provides:

> **28-44-17. Voluntary leaving without good cause.** – (a) … For benefit years beginning on or after July 6, 2014, 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 earnings greater than, or equal to, eight (8) times his or her weekly benefit rate for performing services in employment for one or more employers subject to chapters 42 — 44 of this title.
> ….

Based upon the language of this statute, we see that eligibility for unemployment benefits under § 17 has three prerequisites — *first,* that the claimant *left* his or her prior employment; *second,* that the resignation was *voluntary; and third,* that the claimant left the position *for good cause,* as defined in § 17. Finally, it is well-settled that, to be eligible for unemployment benefits, a worker who leaves her position voluntarily bears the burden of proving that she did so for good cause.

B

The Element of "Good Cause" — the Case Law

In a series of cases during the last half-century our Supreme Court has endeavored to clarify the meaning of "good cause," as that term is used in § 28-44-17. Let us review a sampling of these cases, beginning with *Harraka v. Board of Review of Department of Employment Security,* 98 R.I. 197, 200 A.2d 595 (1964), in which the Court considered the petition of Mr. Joseph Harraka, who, upon his discharge from the armed forces, accepted employment in the chemical industry, but quit after one week, due to a reaction to the chemicals with which he was working. *Harraka,* 98 R.I. at 198-99, 200 A.2d at 596. He

inquired — but was told that other work was not available. *Harraka,* 98 R.I. at 199, 200 A.2d at 596-97.

Mr. Harraka applied for benefits under the ex-serviceman's provision, but his claim was denied by the Director; the ruling was affirmed by the Board of Review, which found that one week was not a sufficient period in which to determine the suitability of the position. *Harraka*, 98 R.I. at 199-200, 200 A.2d at 596-97. Moreover, the Board held that Mr. Harraka's reasons for leaving were personal and not of a "compelling nature;" therefore, his reasons for leaving did not constitute good cause within the meaning of the Employment Security Act. *Id*. The Superior Court affirmed. *Id.*

In considering Mr. Harraka's appeal, the Supreme Court rejected the view that the "good cause" element of § 28-44-17 requires that the claimant's reason for quitting be of a "compelling nature." *Harraka,* 98 R.I. at 201, 200 A.2d at 596. Instead, the Court announced 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.

Harraka, 98 R.I. at 201, 200 A.2d at 597-98 (Emphasis added). Applying this standard, the Court reversed the decision below, finding Mr. Harraka had good cause to leave his employment. *Harraka*, 98 R.I. at 203, 200 A.2d at 598-99.

Four years later, the Court issued a brief opinion addressing good cause in *Cahoone v. Bd. of Rev. of Dep't of Emp't. Sec.,* 104 R.I. 503, 246 A.2d 213 (1968). Claimant Cahoone, a gentleman experienced in the art of building and repairing boats, accepted temporary employment driving a truck for the post office during the Christmas rush; he quit after one day. *Cahoone,* 104 R.I. at 504-05, 246 A.2d at 214. As recounted by the Court, the Board of Review's decision denying benefits to Mr. Cahoone under § 17 was grounded on its conclusion that *he did not terminate for job unsuitability,* but because he was assigned to drive a truck, and not to deliver mail, which he preferred. *Cahoone*, 104 R.I. at 505-06, 246 A.2d at 214 (Emphasis added). The Superior Court Justice (Weisberger, J.) affirmed the Board's decision, finding that, while reasonable minds might have reached a contrary result, the limitations on his review imposed by § 42-35-15(f) and (g) prevented him from modifying or reversing the administrative decision. *Cahoone*, 104 R.I. at 506-07, 246 A.2d at 214. The Supreme Court agreed. *Cahoone*, 104 R.I. at 507, 246 A.2d at 214.

In *Murphy v. Fascio,* 115 R.I. 33, 340 A.2d 137 (1975), the Court considered the claim of Ms. Kathleen Murphy, who left her position with a local

manufacturer to marry and relocate with her new husband to the state of Georgia. *Murphy,* 115 R.I. at 34, 340 A.2d at 138. The Court first decided that the question (whether resigning to marry and relocate constituted good cause to quit) was one of law — to be resolved by asking whether "it comports with the policies underlying the Employment Security Act." *Murphy,* 115 R.I. at 36, 340 A.2d at 139.

Next, the Court reminded us that "… 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, id.*, (citing G.L. 1956 § 28-42-2 (Emphasis added)). The Court found that Ms. Murphy's reasons for quitting did not meet this *beyond-the-employee's-control* standard. *Murphy,* 115 R.I. at 36, 340 A.2d at 139. And even though, in *Harraka*, the Court had rejected the Board's view that good cause had to be a reason of a "compelling nature," the Court disallowed Ms. Murphy's claim, finding that her reason for leaving did not "involve the kind or degree of compulsion which the legislature intended 'good cause' should entail[,]" proclaiming —

> 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 (Emphasis added).[3]

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[3] The Court employed the *Murphy* standard in *Powell v. Dep't of Emp. Sec., Bd. of Review,* 477 A.2d 93 (R.I. 1984), in which the Court reversed the Board of Review's decision (affirmed by the District Court) denying benefits to the claimant, a public relations person who resigned rather than issue a misleading press release, fearing it would damage his reputation in his field irretrievably. *Powell*, 477 A.2d 96-97.

The most recent § 28-44-17 case we shall review is *Rocky Hill School, Inc. v. Department of Labor and Training, Board of Review,* 668 A.2d 1241 (R.I. 1985), a case in which benefits were granted by the Board of Review to a teacher named Geiersbach who quit his position at the Rocky Hill School in order to accompany his wife — who also had been a Rocky Hill teacher — to Colorado, where she had obtained a new and better position. *Rocky Hill,* 668 A.2d at 1241. The District Court affirmed. *Id*. The Supreme Court held that the Board had been correct when it noted a "subtle but significant distinction" between Ms. Murphy's claim and Mr. Geiersbach's — that he was already married. *Rocky Hill,* 668 A.2d at 1243. The Court proclaimed "* * * that public policy requires that families not be discouraged from remaining together." *Rocky Hill,* 668 A.2d at 1244. As such, it found that the Claimant did indeed have good cause to quit. *Id*.

The application of the *Rocky Hill* holding was limited from its inception, because, in *Murphy*, the Court had previously declined to accord good-cause status to an act of quitting and relocating *to get* married. It should be noted that the holding in *Rocky Hill* was subsequently codified within subsection 28-44-17(a)(2). *See* P.L. 2010, ch. 23, art. 22, § 2. In any event, relocation for any other reason has not been held to constitute good cause. Therefore, the District Court has regarded the *Rocky Hill* case as a narrow exception to the general principle that those who relocate for personal reasons are ineligible to receive unemployment benefits.

C

The Element of Good Cause Generally — In Sum

From the foregoing review of our Supreme Court's § 17 literature, we can see that, to establish "good cause," the Claimant's reasons for quitting must not only meet the *Murphy* test of involving a "substantial degree of compulsion," but must also satisfy the *Harraka* test that the work had become in some manner unsuitable for the claimant. It is because of this latter requirement that successful assertions of "good cause" are, with few exceptions, work-related.

D

The Element of Good Cause — Medical Issues

It is certainly true that illness or other medical necessity has been recognized as good cause to quit by this Court. However, the Board of Review has been much more receptive to assertions that a claimant had good cause to quit based on medical necessity when a claimant's subjective complaints have been supported by medical opinion. *Compare Megalli v. Dep't of Emp't & Training Bd. of Review,* A.A. No. 94-92, (Dist.Ct. 7/3/95) (Rahill, J.) (Claimant, who left job due to stress after three months' employment, was found to be not entitled to receive benefits; affirmed, where medical evidence was equivocal and no causal relationship was established) *and Nowell v. Dep't of Emp't & Training Bd. of Review,* A.A. No. 94-87, slip op. at 6-7 (Dist.Ct. 12/6/94) (Cenerini, J.) (Board of Review found claimant not entitled to benefits; affirmed, where claimant's stress and epilepsy claims were not supported by medical evidence)

with Talbot Treatment Ctr. Inc. v. Dep't of Emp't & Training Bd. of Review, A.A. No. 91-190, (Dist.Ct. 6/25/92) (DeRobbio, C.J.) (Board of Review found claimant resident assistant entitled to benefits, and employer appealed; affirmed, where medical testimony supported claim that stress of position, including confrontation with a patient, was negatively affecting claimant's diabetes). The principles set forth in the foregoing decisions have been reiterated in the following, more recent, cases: *Corrente v. Dep't of Emp't & Training Bd. of Review,* A.A. No. 2018-005, slip op. at 15-17 (Dist.Ct. 3/26/2018) (Claimant's resignation was found to be without good cause where her claim of work-related stress was unsupported by medical evidence or testimony); *Centeno v. Dep't of Emp't & Training Bd. of Review,* A.A. No. 2013-041, slip op. at 9-10 (Dist.Ct. 5/13/2013) (Good cause not shown by Claimant who resigned in order to move to Florida due to health reasons such as arthritis and "getting colds" in the absence of documentation showing such a move was "medically necessary" and proof that her position had become unsuitable).

E

The Requirements of Administrative Decision-Making by the Board

It is the Court's duty to ensure that the decisions of the Board comport with the mandates of § 28-44-17 and the other substantive provisions of the Employment Security Act which determine eligibility. But, in addition to evaluating the propriety of the *substantive* rulings which the Board has made, we must also determine whether, while entertaining Claimant's appeal, the

Board acted in accord with the *procedural* directives set forth in law. Among these is the mandate that the Board issue decisions which make findings of fact upon address all pertinent issues.

For instance, the Act requires Referees, to "… inquire into and develop all facts bearing on the issues …." Moreover, Referees must make findings and conclusions on all pertinent issues. G.L. 1956 § 28-44-46. A similar mandate is made applicable to Decisions of the Board of Review by § 28-44-52.[4]

Also relevant is the comparable provision of the Administrative Procedures Act (APA), G.L. 1956 § 42-35-12.[5] While that statute is not, strictly speaking, applicable to Board of Review hearings,[6] our Supreme Court has indicated that Board hearings may be guided by the principles underlying APA provisions. *See Foster-Glocester Reg'l Sch. Comm. v. Bd. of Review, Dep't of Labor & Training,* 854 A.2d 1008, 1018 (R.I. 2004) (citing *DePasquale v. Harrington,* 599 A.2d 314, 315-16 (R.I. 1991)). Applying these principles, the Rhode Island Supreme Court has held that:

> The absence of required findings makes judicial review impossible, clearly frustrating § 42-35-15, the statute for

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[4] The latter provision comes into play in the instant case because the Board of Review adopted the Referee's decision as its own.

[5] Section 42-35-12 provides, in pertinent part:

> Any final order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

[6] *See* G.L. 1956 § 42-35-18(c)(1).

> review under which the plaintiffs filed their complaints, and fails to satisfy the requirements of § 42-35-12.

E. Greenwich Yacht Club v. Coastal Res. Mgmt. Council, 118 R.I. 559, 569, 376 A.2d 682, 687 (1977). As a result, "[a]n administrative decision that fails to include findings of fact required by the statute cannot be upheld." *Sakonnet Rogers, Inc. v. Coastal Res. Mgmt. Council,* 536 A.2d 893, 896 (R.I. 1988) (citing *E. Greenwich Yacht Club,* 118 R.I. at 569, 376 A.2d at 687). This is true "[e]ven if the evidence of record, combined with the reviewing court's understanding of the law, is enough to support the order …" *Sakonnet Rogers,* 536 A.2d at 897 (quoting 3 Kenneth C. Davis, *Administrative Law Treatise,* § 14.29 at 128 (2d Ed. 1980). Quite simply, "… the court may not uphold the order unless it is sustainable *on the agency's findings and for the reasons stated by the agency*." *Id.* (Emphasis added).

IV
Analysis

As required, Mr. Craig's Notice of Appeal, filed with this Court on August 16, 2023, was accompanied by a statement of the grounds upon which he believed the Board erred in denying his claim for benefits. *See Statement of Grounds for Appeal,* dated August 11, 2023.[7] Near the outset of that document, Claimant stated that he had to leave his position at the DOC "because I am not

[7] This document may be found in the electronic record attached to this case under the docket entry "8/17/2023 Administrative Appeal Filed." Indeed, in that document Claimant Craig gives a *thorough* exposition of his experiences during his last months of service at the DOC.

willing to subject myself to a hostile and toxic work environment and also an environment that is filled with dishonesty." *Id*. at 2. This statement may fairly be said to encapsulate the position he took at the hearing before the Referee.

However, near the conclusion of his Statement, Mr. Craig stated:

> I left work on December 3, due to a decline in my mental health (sleeplessness, anxiety, depression, among others). I sought mental health treatment with Anchor and Revive Therapeutic Services.

Statement of Grounds for Appeal, at 5. As was explained *ante* in Part III-D of this opinion, claimants whose work environments have triggered clinically identifiable medical or psychological effects have been determined to have possessed good cause to quit within the meaning of § 28-44-17, though the Board of Review and this Court have generally held that, if such a claim is to be successful, it must be supported by the opinion of a medical practitioner.

However, in the instant case, no such expert testimony or evidence was introduced before the Referee. In fact, Mr. Craig conceded in his testimony that, regarding his extended absence from work during the period from his last day of physical work to his resignation, no doctor had ever written him out of work. *Id*. at 12. In any event, because this argument (*i.e.,* that the hostile work environment had physical and psychological effects on him), was not made to

the Board or its Referee, it must be deemed waived under the "raise or waive" rule. *State v. Yon,* 161 A.3d 1118, 1128 (R.I. 2017).[8]

We must evaluate this appeal solely on the grounds that Mr. Craig raised below — that is, that he was subjected to a hostile and toxic work environment and an environment that is filled with dishonesty. The Referee (and the Board since it adopted the Decision of the Referee as its own) found these allegations and the testimony and evidence in support of them to be insufficient. This finding was made without any specificity; the Referee merely found that Mr. Craig "… failed to show that his job became unsuitable to the point where he had no reasonable alternative than to quit his job and place himself in a complete state of unemployment." *Dec. of Ref.* at 2.

Did the Referee find that Mr. Craig's testimony (in part or in whole) was incredible or did he find that the allegations, though true, were not sufficient to prove unsuitability? Additionally, why, if such was the finding, was it insufficient? Because there was no indication that Mr. Craig was about to be

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[8] Our Supreme Court has not definitively declared that the raise-or-waive rule should be applied in administrative appeals, *East Bay Comty. Dev. Corp. v. Zoning Bd. of Review of the Tn. of Barrington*, 901 A.2d 1136, 1153 (R.I. 2006). But there is certainly dicta to that effect. *See Randall v. Norberg,* 121 R.I. 714, 721, 403 A.2d 240, 244 (1979) (citing § 42-35-15(g)(1)). In any event, the rule has been applied to preclude consideration of issues not raised at the administrative level by the Superior Court. *See Neuschatz v. Reitsma,* 2004 WL 1351325, at *5-*7 (Super.Ct. 5/24/2004) (Court applied the raise-or-waive rule to the issues appellant failed to raise before the DEM's hearing officer); *Mild, Inc. v. Reitsma,* 2004 WL 2821638, at *5 (Super.Ct. 5/24/2004) (Superior Court applied the raise-or-waive rule to Appellant's failure to object to DEM's Motion for Default Judgment before the hearing officer).

fired or because Claimant could have returned to his position as a Correctional Officer? Or, regarding his acting position as a Lieutenant, because Mr. Craig could have agreed to have his probation extended and be reassigned to another building? These are but a few of the many rationales upon which a negative finding could have been based.

As it undertakes its review of Board's decision, this Court is entitled to some clarity as to the reasoning which is the basis of the Board's ruling on the mixed question of law and fact which was before them — *i.e.,* whether Mr. Craig had good cause to quit under § 28-44-17. *See D'Ambra v. Board of Review, Dep't of Employment Security,* 517 A.2d 1039, 1041 (R.I. 1986). We are really not given any reasoning in the instant case, just the ultimate decision of disqualification.

Accordingly, I believe the Referee's decision did not satisfy the requirement that he make findings and conclusions on all pertinent issues, as provided in G.L. 1956 § 28-44-46 (for "appeal tribunal," or referee, decisions); and, when his decision was adopted by the Board of Review as its own, it became subject to the requirements of G.L. 1956 § 28-44-52.[9]

In its present form, the Board's decision is unreviewable. I have further concluded that it does not conform to law. *See* G.L. 1956 § 42-35-15(g)(4). Moreover, our Supreme Court has made it clear that this Court is not

[9] The latter provision comes into play in the instant case because the Board of Review adopted the Referee's decision as its own.

authorized to amend deficient Board of Review decisions. *See generally Beagan v. Dep't of Labor and Training Bd. of Review,* 162 A.3d 619 (2017).

V
Conclusion

Accordingly, I must recommend that the instant matter be REMANDED to the Board of Review so that a new decision with appropriate conclusions may be issued.

/s/
Joseph P. Ippolito
MAGISTRATE

September 9, 2024