

**STATE OF RHODE ISLAND
PROVIDENCE, Sc.**

**DISTRICT COURT
SIXTH DIVISION**

Kathleen Favorite :
 :
 v. : **A.A. No. 22-192**
 :
 Department of Labor and Training, :
 Board of Review :

JUDGMENT

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

ORDERED AND ADJUDGED

The decision of the Board is affirmed.

Dated at Providence, Rhode Island, this 26th day of March, 2026.

Enter:

_____/s/_____

By Order:

_____/s/_____

STATE OF RHODE ISLAND
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

Kathleen Favorite	:	
	:	
v.	:	A.A. No. 2022-192
	:	
Department of Labor and Training,	:	
Board of Review	:	

DECISION

Houlihan, J. In this case Ms. Katherine Favorite urges that the Board of Review of the Department of Labor and Training erred when it held her liable to repay unemployment benefits totaling \$39,000. Jurisdiction to hear and decide appeals from decisions made by the Board of Review is vested in the District Court by G.L. 1956 § 28-44-52. For the reasons stated below, I have concluded that the decision rendered by the Board in the instant matter should be AFFIRMED.

I
Facts and Travel of the Case

A

Ms. Katherine Favorite (hereinafter “Claimant”) was a part-time employee at Ann and Hope when she was laid off on March 17, 2020. Tr. at 28. Claimant was averaging one hundred dollars (\$100.00) weekly at the time of her layoff. Tr. at 37. Claimant was also working full time at Calise bakery earning seven hundred forty-nine dollars (\$749.00) per week. Tr. at 25. After her layoff from her part-time job, Claimant filed online for benefits on April 2, 2020. Tr. at 9. Claimant continued to work fulltime at Calise bakery. Tr. at 11.

Claimant testified she attempted to list her income from Calise bakery in her initial filing for benefits but her claim would not “go through” when she tried to list the income from the bakery. Tr. at 29, 32. In fact, when prompted to list income from Calise bakery Claimant entered the sum of zero. Tr. at 33.

Claimant was awarded a weekly benefit of four hundred and twenty-nine dollars (\$429.00). Claimant received benefits totaling thirty-eight thousand eight hundred eight dollars (\$38,808.00) from the initial award through March 27, 2021. Tr. at 16. Throughout the entire period of receiving benefits the Claimant remained employed full time at Calise bakery. Tr. at 11.

An initial determination that Claimant was overpaid benefits was

made by the Director on April 19, 2022. Claimant properly appealed said determination and a hearing was scheduled before Referee Gunter A. Vukic on June 8, 2022. *See Referee Hearing Transcript*, at 1.

B

Proceedings before the Referee

1

The Hearing

Ms. Sherry Ruggieri testified for the Department of Labor and Training. Tr. at 3. Ms. Ruggieri, a DLT manager, testified about the process of applying for unemployment benefits, monitoring of receipt of unemployment benefits and employment as well as the individual circumstances in this matter. Ms. Ruggieri testified that anyone working full-time would be ineligible for unemployment benefits. Tr. at 18.

Ms. Ruggieri testified that the Claimant was required to list the dates of all employment where she had worked in the eighteen months prior to filing her claim. Tr. at 9. Additionally, to continue receiving benefits, Claimant was required to certify by telephone whether she had received any wages in the prior week. Tr. at 14. In each instance Claimant failed to report her full-time earnings from Calise bakery. Tr. at 15, 18. At no time did Claimant correct her filing. Tr. at 10.

Claimant's overpayment was detected through a "720" quarterly report

that was sent to Calise bakery. Tr. at 10-11. Calise bakery reported that Claimant was working full time and had been working full time through the whole period she was collecting unemployment. Id. The total collected during this period was \$38,808. Tr. at 16.

Claimant testified she tried to input her income from Calise on her application but that “it wouldn’t let me submit down at the bottom, so I thought I was doing something incorrectly.” Tr. at 29. Claimant testified she thought she only had to list the wages for the part time job she had lost. Id. She thought someone would do an evaluation and determine whether she was eligible. Id. There is no evidence that the Claimant ever attempted to contact the Department regarding her inability to input her income.

2

The Decision of the Referee

On June 10, 2022, the Referee issued his decision, in which he found the following facts relating to the § 28-42-68 issue:

Claimant is a full-time Calise and Sons Bakery employee, her employer for 20 years. Claimant also worked 5 years as a part-time night cashier at Ann & Hope.

April 2, 2020, claimant filed online for unemployment benefits as unemployed and omitted listing her continued employment as a full-time employee of 20 years with the subject employer where her average weekly earnings exceeded \$700.00. Claimant listed only the layoff from a part-time employer of 5 years where she averaged weekly

income of \$100.00. All employers during the past 18 months, prior to filing, must be identified according to the filing instructions. Claimant did not dispute the base period, 4th quarter 2018 through the 3rd quarter 2019, wages used to establish her \$429.00 weekly BYE22 benefit rate identified on her April 2, 2020 *Benefit Rate Decision*. Only base period earnings are identified for calculation purposes since no employment status is required to determine the weekly benefit rate. April 6, 2020 claimant certified *Benefits Rights and Responsibilities* that identified “to be eligible for UI, you must be unemployed through no fault of your own” and “Reporting Earnings: when requesting UI benefits, report All your gross earnings, even if you have not been paid by your employer.” Weekly certification instructions require reporting all weekly earnings and certifying whether or not the claimant worked full or part-time for the identified week. At the time of the claimant’s filing through April 18, 2020 and again effective August 8, 2020 through the present claimants were required to certify their work status and availability to work full-time. Claimant provided false responses. Weekly certification instructions included instructions on establishing a confidential pin number. Claimant established a confidential pin number and commenced certifying for weekly benefit collection.

The Department of Labor and Training Crossmatch Unit discovered what appeared to be unreported employment and wages July 24, 2021. Fraud investigation was initiated. The discovery led to the Department of Labor and Training mailing the subject employer the *Request for Certification of Earnings and Employment Compensation Recipient* that required returned within 10 working days of April 24, 2021. The employer responded confirming the claimant’s full-time employment and earnings between the weeks ending April 4, 2020 and April 24, 2021. The April 26, 2021 confirmation led to the Department of Labor and Training April 4, 2022 decision.

Referee's Decision, at 2. Based on the findings recited above, and after quoting from G.L. 1956 § 28-42-68, § 28-44-7 and §28-42-3(26), the Referee pronounced the following conclusions on this issue:

The claimant was never unemployed. The claimant was employed full-time with her employer of 20 years and earning well above her identified \$429.00 weekly benefit rate. Claimant never identified her full-time employer and did not enter weekly gross earnings. Claimant's part-time employment may have averaged \$100 per week. Claimant's unemployment benefit collection exceeded \$1000.00 weekly through the end of July 2020 and over \$600.00 thereafter. Considering the claimant's benefit collection, her annual full-time income doubled.

The claimant proffers she was unable to certify for benefits after entering her full-time employment wages. Rather than contact the Department of Labor and Training as directed disregarded the red alerts and removed the alleged earnings she reported. Claimant alleged other employees were working full-time and collecting unemployment benefits. There is no support for this allegation. Working full-time clearly fails to meet the definition of unemployment. Certifying unemployment while fully compensated for full-time work defeats the purpose of unemployment insurance.

The claimant withheld information and provided false responses to the Department of Labor and Training resulting in undue enrichment through unemployment benefits to which she was not entitled. Claimant is at fault and subject to make restitution.

Ref.'s Dec. at 3. The Referee issued his decision as follows:

The overpayment decision of the Director requiring restitution is affirmed. Claimant is overpaid \$15,654.00 in benefits for the

weeks October 3, 2020 through March 27, 2021. Claimant is at fault for the overpayment and subject to make and pay restitution according to the provisions of Section 28-42-68 of the Rhode Island Employment Security Act. *Ref.'s Dec.* at 4.¹

C

Proceedings before the Board of Review

Claimant filed a timely appeal from this decision and the matter was considered by the Board of Review. On July 27, 2022, the Board held that the Referee's decision was a proper adjudication of the facts and the law applicable thereto. *Dec. of Board of Review*, at 2.² Accordingly, the decision of the Referee was affirmed. Finally, on August 30, 2023, Claimant filed a timely complaint for judicial review in the Sixth Division District Court.

¹ Claimant was determined to be similarly responsible for an additional \$23,154.00 in a separate decision.

² This procedure is authorized by G.L. 1956 § 28-44-7, which provides in pertinent part:

... The board of review may affirm, modify, or reverse the findings or conclusions of the appeal tribunal *solely on the basis of evidence previously submitted* or upon the basis of any additional evidence that it may direct to be taken. (Emphasis added).

II Applicable Law

This case centers on the income reporting requirements of the following provisions of the Rhode Island Employment Security Act, which determine whether a claimant may be deemed eligible to receive unemployment benefits. See R.I.G.L. 1956 § 28-44-7, 28-42-3(26) and the consequences of improperly reporting pursuant to 28-42-68.

R.I.G.L. 1956 § 28-44-7 reads as follows;

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 the individual's week's wages, rounded to the next higher multiple of one dollar (\$1.00), as defined in § 28-42-3(26), and the individual's benefits combined will equal in amount the weekly benefit rate to which the individual would be entitled if totally unemployed in that week. For weeks beginning on or after May 23, 2021, through June 30, 2025, an individual partially unemployed and eligible in any week shall be paid benefits in an amount equal to the weekly benefit rate to which the individual would be entitled if totally unemployed in that week less any wages earned in that week, as defined in § 28-42-3(26), and the individual's benefits combined may not exceed in amount one hundred and fifty percent (150%) of the individual's weekly benefit rate.

R.I.G.L. 1956 §28-42-3(26) reads as follows;

The following words and phrases, as used in chapters 42--44 of this title, have the following meanings unless the context clearly requires otherwise:

(26)(i) "Partial unemployment." An employee shall be deemed partially unemployed in any week of less than full-time work if

the employee fails to earn in wages for that week an amount equal to the weekly benefit rate for total unemployment to which the employee would be entitled if totally unemployed and eligible. For weeks beginning on or after May 23, 2021, through June 30, 2025, an employee shall be deemed partially unemployed in any week of less than full-time work if the employee fails to earn wages for that week in an amount equal to or greater than one hundred and fifty percent (150%) of the weekly benefit rate for total unemployment to which the employee would be entitled if totally unemployed and eligible.

(ii) For the purposes of this subdivision and subdivision (28) of this section, “wages” includes only that part of remuneration for any work that is in excess of one-fifth (1/5) of the weekly benefit rate for total unemployment, rounded to the next lower multiple of one dollar (\$1.00), to which the individual would be entitled if totally unemployed and eligible in any one week, and “services” includes only that part of any work for which remuneration in excess of one-fifth (1/5) of the weekly benefit rate for total unemployment, rounded to the next lower multiple of one dollar (\$1.00), to which the individual would be entitled if totally unemployed and eligible in any one week is payable; provided, that nothing contained in this paragraph shall permit any individual to whom remuneration is payable for any work performed in any week in an amount equal to or greater than his or her weekly benefit rate to receive benefits under this subdivision for that week.

(iii) Notwithstanding the foregoing, for weeks ending on or after May 23, 2021, through June 30, 2025, “wages” includes only that part of remuneration for any work that is in excess of fifty percent (50%) of the weekly benefit rate for total unemployment, rounded to the next lower multiple of one dollar (\$1.00), to which the individual would be entitled if totally unemployed and eligible in any one week, and “services” includes only that part of any work for which remuneration in excess of fifty percent (50%) of the weekly benefit rate for total unemployment, rounded to the next lower multiple of one dollar (\$1.00), to which the individual would

be entitled if totally unemployed and eligible in any one week is payable. Provided, that, during the period defined in this subdivision, nothing contained in this subdivision shall permit any individual to whom remuneration is payable for any work performed in any week in an amount equal to or greater than one hundred fifty percent (150%) of their weekly benefit rate to receive benefits under this subdivision for that week.

(iv) Notwithstanding anything contained to the contrary in this subdivision, "services," as used in this subdivision and in subdivision (28) of this section, does not include services rendered by an individual under the exclusive supervision of any agency of this state, or any of its political subdivisions, by which the services are required solely for the purpose of affording relief, support, or assistance to needy individuals performing those services, or services performed by members of the national guard and organized reserves in carrying out their duties in weekly drills as members of those organizations. "Wages," as used in this subdivision and in subdivision (28) of this section, does not include either remuneration received by needy individuals for rendering the aforementioned services when that remuneration is paid exclusively from funds made available for that purpose out of taxes collected by this state or any of its political subdivisions, or remuneration received from the federal government by members of the national guard and organized reserves, as drill pay, including longevity pay and allowances.

Taken together, R.I.G.L. 1956 § 28-44-7 and 28-42-3(26) requires the Claimant to report all gross wages. R.I.G.L. 1956 §28-42-68 allows for the collection of erroneously received payments to either be deducted from future payments or subject to repayment. Additionally, R.I.G.L. 1956 §28-42-68(b) provides as follows;

(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.

III

Standard of Review

The pertinent standard of review is provided by G.L. 1956 § 42-35-15(g), a section of the state Administrative Procedures Act, which provides:

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. Board of Review of the Department of Employment Security*, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968). Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result. *Cahoone*, 104 R.I. at 506, 246 A.2d at 215. 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 the 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.

IV Analysis

The substantive issue before the Court is simply whether the Board's decision — that the Claimant was at fault for improperly reporting her income, is supported by competent evidence. If it is, we must affirm; if not, we must reverse. And, after undertaking a complete review of the record, I have concluded that the Board's decision on the issue of fault does satisfy this standard.

A Discussion — The Fault Issue

There is no dispute between the parties regarding overpayment. See respective memoranda of the parties. The issue is whether the Claimant was at fault for the overpayment, and thus liable for repayment. Blacks law dictionary defines fault as follows(relevant clause);

1. An error or defect of judgment or of conduct; any deviation from prudence or duty resulting from inattention, incapacity, perversity, bad faith, or mismanagement. See Blacks Law Dictionary(12th ed. 2024).

Several factors weigh in favor of the Board's finding of fault.

First, the Claimant acknowledged that she attempted to include her income from Calise but that the program would not permit her to submit her

application with her full-time income. Tr. at 36. The Claimant clearly had an obligation to submit her full-time income and her failure to do so establishes fault on her behalf. Further, Claimant was required to report *any* wages telephonically weekly but repeatedly failed to report her Calise wages. Tr. at 14. Claimant was clearly at fault for withholding information that would have resulted in a denial of benefits. See *Kissinger v. Com., Unemployment Compensation Bd. of Review*, 413 A.2d 753, 755(Pa. Com 1980).

Second, Claimant avers she misunderstood the award of benefits. The Board chose to disregard this position in light of the many notices Claimant received requesting she list any income she received. The Board is within its rights to reject this position. See *In the Matter of the Claim of Juneau*, 150 A.D. 3d 1525(N.Y. Sup. Ct. 3rd div. 2017).

Additionally, Claimant's position defies common sense. Claimant was making more money receiving unemployment benefits than she was when working two jobs. She made \$700 weekly working for Calise and \$100 weekly working for Ann & Hope. After the incorrect claim for benefits Claimant made \$700 weekly working for Calise and received \$438 weekly in benefits, including some additional COVID related benefits.

Claimant avers in her memorandum that she expected someone would contact her should her application for benefits had been filed in error. Tr. at 9.

The amount of benefits Claimant received should have been sufficient notice that something was amiss.

The case of *Bingham v. Department of Workforce Services*, 518 P.3d 626(Ut App 2022) provides a useful framework for the analysis of fault. This Court required three elements to establish fault. “A claimant is at fault for an overpayment if knowledge, materiality, and control are established by a preponderance of the evidence.” *Bingham* at 635, citing Utah Amin. Code R994-406-301(1).

Knowledge is established when a claimant receives information that establishes what is required for benefit eligibility. *Id.* In this matter Claimant acknowledged she was asked about her sources of income in her initial filing and failed to list income from her full-time job. *Tr.* at 36. Further, testimony at the hearing before the Referee established that Claimant was required to report all income telephonically on a weekly basis but failed to do so. *Tr.* at 14.

Materiality is established by a payment of benefits to which a claimant is not entitled. *Id.* As previously stated this is not disputed by the parties.

Lastly, control is established when a claimant is required to file weekly claims and fails to disclose her income. *Id.* This was clearly established at the hearing before the Referee. *Tr.* at 14.

Pursuant to this definition Claimant is at fault.

V

Conclusion

Applying the applicable standard of review, and upon careful review of the evidence, this Court finds that the decision of the Board of Review (affirming the decision of the Referee) on the issue of fault was not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record or arbitrary or capricious. G.L. 1956 § 42-35-15(g)(5),(6). Therefore the decision of the Board be AFFIRMED.

