

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

**DISTRICT COURT  
SIXTH DIVISION**

**Nathan Costa** :  
 :  
 v. : **A.A. No. 22-211**  
 : **22-212**  
**Department of Labor and Training,** :  
**Board of Review** :

JUDGMENT

This cause came before Capraro, 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 decisions of the Board are affirmed.

Dated at Providence, Rhode Island, this 26<sup>th</sup> day of March, 2026.

Enter:

By Order:

\_\_\_\_\_/s/\_\_\_\_\_

\_\_\_\_\_/s/\_\_\_\_\_

**STATE OF RHODE ISLAND  
PROVIDENCE COUNTY, SC.**

**DISTRICT COURT  
SIXTH DIVISION**

<b>Nathan W. Costa</b>	:	
	:	
<b>v.</b>	:	<b>6AA-2022-00211</b>
	:	<b>6AA-2022-00212</b>
<b>Department of Labor and Training,</b>	:	
<b>Board of Review</b>	:	

**DECISION**

**CAPRARO, J.:** Nathan W. Costa (“Appellant”, “Claimant”) has filed this appeal challenging the Board of Review’s September, 12, 2022 decision in this matter. Appellant asks this Court to (1) reverse the Board of Review’s decisions denying employment security benefits to Appellant on the grounds of misconduct and lack of availability; (2) find that Appellant is not disqualified from receiving employment security benefits due to misconduct and lack of availability; and (3) award employment security benefits plus attorney’s fees and costs to Appellant.

The Court has jurisdiction pursuant to R.I.G.L. § 28-44-52. For the reasons stated below, I conclude that the Board of Review’s decisions should be AFFIRMED.

## I. PROCEDURAL HISTORY AND FACTS

Claimant Nathan W. Costa (“Claimant”) was employed as a regional sales manager at Power Solutions LLC, where he was a 5% member and worked for over seven years. *See* Decision of the Referee at 1. Claimant’s job requirements included business travel to maintain business relationships with customers. *Id.* On average, Claimant was making 10 in-person sales visits a month, including both day trips and overnight trips. *Id.* During the Covid-19 pandemic, Claimant worked remotely but was required to conduct in-person customer visits when possible and when the customers allowed in-person visits. *See* Hearing Transcript at 11.

In 2019, pre-pandemic, Claimant’s total sales amounted to \$896,453.79. *See* Claimant Exhibit 2 (Nathan Costa Sales Totals). In 2022, his total sales amounted to \$1,337,352.79 through May 16, 2022. *Id.* Claimant’s employer testified that his performance was considered down because metrics such as new sales and new opportunities were down. *See* Hearing Transcript at 12. The employer attributed this decline in new sales to Claimant’s refusal to visit with clients after his son was born. *Id.* At 14. Claimant had a newborn child around December 6, 2022. *Id.* After December 6, 2022, Claimant performed two in-person customer visits locally. *Id.* Claimant’s employer met with him four consecutive weeks leading up to his termination to ask him to return to in-person work. *Id.* At 10. It was at this fourth and final meeting, on May 16, 2022, where Claimant again refused to return to work and was ultimately terminated. *Id.* At 9-10.

Claimant stated that he did not refuse to make in-person sales visits, only those requiring overnight travel. *Id.* at 29. His employer stated that he was fired for poor sales

performance, resulting from his refusal to go on in-person client sales visits. *Id.* at 12-14. When asked under what conditions Claimant would have been allowed to continue in his position, Claimant's employer testified that "if [Claimant] were to go and visit clients and perform the job as it was described to him," he would have been allowed to stay on as an employee. *Id.* at 10.

On May 23, 2022, Claimant filed for Employment Security Benefits and was denied on June 9, 2022, because the Department of Labor and Training determined that Claimant "failed to meet the availability provisions of Section 28-44-12 of the Rhode Island Employment Security Act" by unreasonably restricting his availability through his refusal to go on the required overnight sales trips. *Ref. Dec.* (Appeal No. 20222288" at 1. Further, his claim was denied because he was "discharged for actions considered to be against the best interest of his employer," by refusing to go on the required sales trips as requested by his employer and therefore ineligible for benefits under § 28-44-18. *Ref. Dec.* (Appeal No. 20222287) at 1.

Claimant filed a timely appeal of both denials before the Referee, which upheld the Department's denial of Claimant's application based on his lack of availability as required by § 28-44-12 and because he was terminated under disqualifying circumstances. *Id.* at 2; *See also Ref. Dec.* (Appeal No. 20222288) at 2. Claimant subsequently filed an appeal in both matters before the Board of Review, which affirmed the Referee's Decisions on September 19, 2022. *Decision of Board of Review* at 1.

Claimant filed the present administrative appeal on October 13, 2022. *See Compl.* Claimant argues that he was not only seeking remote work and that the only restriction on

his availability was being unavailable for overnight trips. *Id.* at ¶¶ 6-8. Accordingly, Claimant argues that the Board of Review erred as a matter of law by concluding that he was unavailable for work. *Id.* at ¶¶ 21-27. As for being terminated under disqualifying conditions, Claimant argues that he did not knowingly violate a reasonable and uniformly enforced rule or policy of his employer, and that his refusal to go on overnight travel does not constitute a willful disregard of his employer's best interest. *Id.* at ¶¶ 33-37.

The within appeal comes before this Court in accordance with R.I.G.L. § 28-44-52 and § 42-35-15. Appellant, having exhausted all administrative remedies available within the Appellee agency, asks this Court to review and reverse the BOR decision, find that Claimant is not disqualified from receiving benefits for lack of availability, and award unemployment benefits as well as attorney's fees and costs. (Compl. At 5). Both Appellant and the Board have submitted briefs, which have been duly considered by this Court. *See generally* Docket.

## **II. ISSUES PRESENTED**

The within appeal raises several issues for this Court's consideration.

The first issue is whether the BOR's decision that Claimant was discharged for reasons of misconduct in connection with his work, within the meaning of § 28-44-18 of the Rhode Island Employment Security Act, was supported by reliable, probative, and substantial evidence on the whole record §42-35-15(g)(5). Accordingly, this Court must determine whether said decision was clearly erroneous, arbitrary, or capricious, or characterized by abuse of discretion or a clearly unwarranted exercise of discretion § 42-35-15(g)(6).

The second issue is whether the BOR's decision that Claimant did not meet the eligibility requirements of § 28-44-12 of the Rhode Island Employment Security Act for unduly restricting his availability was supported by reliable, probative, and substantial evidence on the whole record § 42-35-15(g)(5). Accordingly, as above, this Court must determine whether said decision was clearly erroneous, arbitrary, or capricious, or characterized by abuse of discretion or a clearly unwarranted exercise of discretion § 42-35-15(g)(6).

### **III. STANDARD OF REVIEW**

When reviewing the decision of an administrative agency, the Court "sits as an appellate court with a limited scope of review." *Mine Safety Appliances Co. v. Berry*, 620 A.2d 1255, 1259 (R.I. 1993). The Court's review is governed by the Rhode Island Administrative Procedures Act (APA) § 42-35-1.1, et seq. In pertinent part, Section 42-35-15(g) of the APA provides:

"The court shall not substitute its judgement for that of the agency as to 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 lawful 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." R.I.G.L. §42-35-15(g).

“in essence, if ‘competent evidence exists in the record, the Court is required to uphold the agency’s conclusions.’” *Auto Body Ass’n of R.I. v. State of R.I. Dep’t of Bus. Regulation*, 996 A.2d 91,95 (R.I. 2010) (quoting *R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd.*, 650 A.2d 479, 484 (R.I.1994)). When reviewing a decision under the APA, the Court may not substitute its judgment for that of the agency on questions of fact. *See Johnston Ambulatory Surgical Ass’n v. Nolan*, 755 A.2d 799, 805 (R.I.2000). The Court defers to the administrative agency’s factual determinations provided that they are supported by legally competent evidence. *See Arnold v. R.I. Dep’t of Labor and Training Bd. of Review*, 822 A.2d 164, 167 (R.I. 2003). The Court cannot “weight the evidence [or] pass upon the credibility of witnesses [or] substitute its findings of fact for those made at the administrative level.” *E.Grossman & Sons, Inc. v. Rocha*, 373 A.2d 496,500 (1977).

Accordingly, the Court will “reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record.” *Baker v. Dep’t of Emp’t Training Bd. of Review*, 637, A.2d 360, 363 (R.I. 1994) (quoting *Milardo v. Coastal Res. Mgmt. Council*, 434 A.2d 266, 272 (R.I. 1981)). The findings of the agency should be upheld even if a reasonable mind might have reached a contrary result. *See D’Ambra v. Board of Review, Dep’t of Employment Security*, 517 A.2d 1039, 1041 (R.I.1986).

The Court is free to conduct a *de novo* review of determinations of law made by an agency. *See Arnold*, 822 A.2d at 167 (citing *Johnston Ambulatory Surgical Assocs.*, 755 A.2d at 805). Thus, the Court is limited to the certified record in its determination as to whether legally competent evidence exists to support the agency’s decision. *Barrington*

*Sch. Comm. V. R.I. State Labor Relations Bd.*, 608 A.2d 1126, 1138 (R.I. 1992). Legally competent or substantial evidence is “relevant evidence that a reasonable mind might accept as adequate to support a conclusion and means [an] amount more than a scintilla but less than a preponderance.” *Caswell v. George Sherman Sand & Gravel Co., Inc.*, 424 A.2d 646, 647 (R.I. 1981).

In determining whether legally competent evidence exists within the administrative record, the Court does so in “light of the expressed legislative policy that [the Employment Security Act] shall be construed liberally in aid of [its] declared purpose is to lighten the burden which now falls on the unemployed worker and his family.” *Harraka v. Board of Review of Dep’t of Employment Security*, 200 A.2d 595, 597 (R.I. 1969) (quoting R.I. Gen. Laws § 28-42-73)

#### **IV. DISCUSSION**

##### **A. Misconduct (§ 28-44-18)**

In order to impose a disqualification under the relevant provisions of § 28-44-18, there must be proven misconduct connected with Claimant’s work. *See Turner v. Department of Employment Security* 479 A.2d 740, 741-742 (R.I. 1984). The Court in *Turner* stated that misconduct “” is limited to conduct evincing such willful or wanton disregard of an employer’s interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee,”” or “[conduct done] in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial

disregard of the employer's interests or of the employee's duties and obligations to his employer." *Id.* (quoting *Boynton Cab Co. v. Neubeck*, 237 Wis. 249, 296 N.W. 636(1941)).

The Referee's decision, which was incorporated within the Board of Review's decision, stated:

“[T]he employer bears the burden to prove by preponderance of credible testimony or evidence that the claimant committed an act or acts of misconduct as defined by the law in connection with work. For the purposes of establishing misconduct the claimant must know the rule; the rule is reasonable; the claimant knowingly violated the rule and discipline for violating the rule is uniformly enforced by the employer.” Ref. Dec. (Appeal No. 2022287) at 2.

Further, as affirmed and incorporated by the Board of Review's decision, the referee found that “[t]he claimant's job had always required company travel,” that “weeks were spent by the employer and the claimant attempting to resolve the [claimant's refusal to travel],” that “Claimant ... refused to work on site,” and that “[a]bsent a resignation and his refusal to work under the normal and customary manner he was discharged for actions considered to be against the best interest of his employer.” *Id.*

The record clearly shows that the employer repeatedly directed Claimant to resume in-person sales visits, as demonstrated by their numerous weeks of discussions on the exact topic. Claimant's brief in support of this very appeal concedes that it was the employer's “directive that [Claimant] commence overnight face-to-face sales calls.” *Brief of Claimant* at 8. Accordingly, the record demonstrates that there is substantial, probative, and reliable evidence to support the findings of fact, conclusions, and decisions of the Board of Review. As there is substantial evidence on the whole record which supports the Board's decision that Claimant was directed by his employer to resume in-person sales calls, that Claimant

repeatedly refused to resume in-person sales as directed, and that this refusal constituted a willful disregard of the employer's interests, this Court will not substitute its judgment.

In Conclusion, on the issue of misconduct, this Court finds that the decision of the Board of Review was not "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record," and that the decision of the Board of Review was not "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." G.L. § 42-35-15(g)(5)(6).

**B. Availability (§28-44-12)**

The Rhode Island Supreme Court has established that it is the claimant's burden to prove that they have met the availability requirements set out in G.L. § 28-44-12. *See Rector v. Director of Department of Employment Security*, 390 A.2d 370, 373 (R.I. 1978).

Further, the Court Specified in *Huntley* that "a court faced with a question of availability for suitable work [is to] make a two-step inquiry in the event that a claimant places any restrictions upon availability." *Huntley v. Department of Employment Security*, 397, A.2d 902, 907 (R.I.1979). The first step is to answer whether "these restrictions [are] bottomed upon good cause," and that "[i]f the answer is negative the inquiry ends and the claimant is ineligible for benefits under the Employment Security Act."

As stated above, where there is competent evidence within the record to support the conclusions of the Board of Review, this Court will not disturb those conclusions, Here, as stated above, there is competent evidence within the record that supports the conclusion that Claimant restricted his availability by refusing to report in-person to work. There is competent evidence to support the conclusion that Claimant's restriction on availability

was not bottomed on good cause. On this point, Claimant cites to foreign case law to support the notion that refusing to report in-person to work or go on in-person sales visits that involved overnight travel on the basis of his being a father to a newborn. *See* Claimant Brief on Availability at 4 (citing *Shufelt v. Dep't of Emp. & Training*, 531 A.2d 894, 898 (Vt. 1987)). However, our Supreme Court has never held that restricting availability on the basis of being a parent to a newborn satisfies the good cause requirement of *Huntley*. Further, the Court in *Shufelt* was referring to a claimant restricting their availability for 2 or 3 hours, not the situation that we are faced with here. *See Shufelt v. Dep't of Emp. & Training*, 531 A.2d 298, 898 (Vt. 1987). Here, there is competent evidence to support the Board of Review's conclusion that Claimant refused to work in-person for any sales visit that required overnight travel and the conclusion that Claimant refused to report to work in-person.

Accordingly, in light of the reliable, probative, and substantial evidence on the whole record, the decision of the board of review that claimant unduly restricted his availability by refusing to work in-person was not clearly erroneous, arbitrary, or capricious.

## V. CONCLUSION

Based on a careful review of the record, I find that the Board of Review's respective decision on the issues of Misconduct and Availability were not clearly erroneous or affected by clear error of law. G.L. 1956 § 42-35-15(g)(3),(4). Further, the decisions were not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; nor are they arbitrary or capricious, or characterized by abuse of discretion

or clearly unwarranted exercise of discretion. G.L. 1956 § 42-35-15(g)(5), (6).

Accordingly, both decisions of the Board of Review are AFFIRMED.