

STATE OF RHODE ISLAND
PROVIDENCE COUNTY, SC.

DISTRICT COURT
SIXTH DIVISION

North Providence Primary Care

Appellant,

v.

Department of Labor and Training,
Board of Review

Appellees.

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6AA-2022-00225

JUDGMENT

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

ORDERED AND ADJUDGED

The decision of the Board of Review is affirmed.

Dated at Providence, Rhode Island, this 16th day of July, 2026.

Enter:

By Order:

_____/s/_____

_____/s/_____

STATE OF RHODE ISLAND
PROVIDENCE COUNTY, SC.

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North Providence Primary Care :
Appellant, :

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Department of Labor and Training, :
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DECISION

ISHERWOOD, J. This matter comes before the Court on appeal of the Rhode Island Department of Labor and Training Board of Review’s (hereinafter “the Board”) October 31, 2022 Decision. North Providence Primary Care (hereinafter “Appellant”) now asks this Court to reverse the Board’s decision. This matter has been referred to this Court for findings and recommendations pursuant to G.L. 1956 § 28-44-52.

**I
FACTS and TRAVEL**

**A
Background**

This matter was initially heard pursuant to the denial of Michelle Palumbo’s (hereinafter “Employee”) employment security benefits following the conclusion of her

employment as a Medical Assistant at North Providence Primary Care. *See* Record (R.). Employee worked for Appellant for approximately twenty-eight (28) months and was terminated for insubordination on June 3, 2022. (Employment Benefit Claim 1.) Employee alleged that Doctor Anthony Farina (hereinafter “Dr. Farina”) was upset that he had to work on a Saturday and took this anger out on his staff. *Id.* She states that she began “swearing and yelling at the doctor” as she “just had it with the way he was treating [the staff].” *Id.* Employee admitted that she received warnings in the past for employee conduct. *Id.* According to Appellant, Employee’s statements went “against [the] employee conduct policy” of which she was allegedly aware. *Id.* at 2. While Employee walked out of work after yelling at Doctor Farina, Appellant noted that she would have been discharged for her behavior anyways. *Id.* Employee then applied for employment security benefits to be effective on May 29, 2022, but was subsequently denied. *Id.* at 1.

Employee appealed the denial of her claim. *See* Notice of Appeal. At an August 18, 2022 hearing, a representative for Appellant and Employee testified before a Referee of the Board. *See* Referee Hr’g Tr. Benedicta DelSignore, a representative for Appellant, testified that Employee “had been written up several times for her . . . way of passing within the office and not following policies and procedures.” *Id.* at 5. Appellant further noted that, on the day in question, Employee was “not following through on procedures, she was not taking patients into the room[.]” *Id.* As a result, “Dr. Farina got agitated with her and she be[gan] to yell at Dr. Farina, and then she told [him] to pull whatever it is out of his ass[.]” *Id.* Patients and other staff members were within the general vicinity and overheard this exchange. *Id.*

Employee testified that numerous factors led up to the exchange with Dr. Farina that morning. *Id.* at 6. She stated that the air conditioning in the building was not working while it was ninety (90) degrees outside. *Id.* She also stated that she was performing tasks that were not ordinarily part of her job. *Id.* Employee testified that, when she went to the restroom, Dr. Farina knocked on the door and screamed for other staff members because she was in there. *Id.* Her testimony also indicated that her psychiatrist wrote a doctor's note for her so that she could take a medical leave of absence from her job, though Ms. Delsignore was allegedly told that she would be fired if she attempted to take this leave. *Id.* at 7, 12. Appellant subsequently denied the above allegations and stated that a doctor's note was never provided by Employee. *Id.* at 12.

Employee again appealed the Referee's decision. (Notice of Appeal.) A second telephone hearing took place on October 19, 2022. *See* Board Hr'g Tr. The Board heard additional testimony from Employee who reiterated the events that transpired on June 3, 2022. *Id.* Employee testified about Dr. Farina's temperament that resulted in her alleged misconduct. *Id.* at 5-6. Specifically, she stated:

"I needed to walk by him because I had other people left for another doctor for a patient. I asked him excuse me, he wouldn't move. I had to go all the way around the other way. He was just yelling at everybody. That morning our actual manager, office manager, Denise, she had told him to get whatever was out of his butt and to get it out. He was snappy with me. He kept knocking on the bathroom door when I was in there. I had a stomach-ache that morning, saying to me what am I doing in there, and when I came out he would yell for Brenda and Denise saying she's out of the bathroom one of you I can't handle this today. And, you know, announced to everybody that I was in the bathroom." *Id.* at 6.

Again, Employee provided testimony regarding the doctor's notes that she submitted following the stress and anxiety she was suffering from as a result of her work environment. *Id.* at 7. She reaffirmed that she submitted a doctor's note but had been subsequently informed that she would be fired should she take a leave of absence. *Id.* at 8.

B Department's Findings

The Department of Labor and Training (hereinafter "the Department") denied Employee's claim. (Employment Benefit Claim.) In reaching its decision, the Department considered statements from Employee and Appellant. *Id.* Employee stated that she was discharged for misconduct following an incident with Dr. Farina where she used profane language and yelled at the doctor. *Id.* at 1. She acknowledged that she should not have spoken to him in that manner, but stated that she was unaware of any policies detailing employee misconduct. *Id.* Appellant, however, provided that other employees and patients overheard the way Employee spoke to Dr. Farina. *Id.* at 2. Appellant stated that such actions went "against [the] employee conduct policy" of which Employee "was aware." *Id.* Furthermore, Appellant noted that Employee had been warned in the past regarding her conduct. *Id.* The Department held that Employee "knew it was wrong to yell and swear at her employer and had previously been warned regarding her conduct in the workplace." *Id.* As such, the Department held that Employee's "discharge is considered to be for disqualifying reasons as [her] actions were not in [her] employer's best interest" and subsequently denied her claim for benefits. (Claimant Decision 1.)

C

Referee's Findings

Following these findings, Employee appealed the Department's decision to a Referee of the Board of Review. *See generally* Decision of Referee. This appeal was heard during a telephone hearing on August 18, 2022. *Id.* In considering the testimony before him, the Referee found that Employee was terminated from her place of work following her heated interaction with Dr. Farina. *Id.* at 1. He also noted that Employee alleged that "she brought in a doctor's note taking her out of work for two weeks and [Appellant] would not allow her to take the time." *Id.* Furthermore, the Referee found that Employee's actions resulted from her frustration as the staff was shorthanded. *Id.*

In considering this evidence, the Referee found that there was "credible[] testimony presented" by Appellant to establish that Employee was "discharged for insubordination." *Id.* at 2. The Referee stated that Employee's actions "were not in [Appellant]'s best interest and constitute misconduct in connection with her work." *Id.* As such, the Referee affirmed the decision of the Director and held that Employee was discharged pursuant to disqualifying circumstances of the Rhode Island Employment Security Act and was thus not entitled to benefits. *Id.*

D

Board of Review's Findings

On appeal, the Board issued a decision on October 31, 2022 reversing the decision of the Referee. *See* Decision of the Board. The Board considered the Appeal Tribunal Referee's decision and reviewed the evidence in the record before it. *Id.* In doing so, the Board noted that "the burden of establishing proof of misconduct is on [Appellant as]

Employer.” *Id.* at 2. The Board held that Appellant “did not offer sufficient evidence to support a finding that [Employee] was terminated for a knowing violation of a reasonable, uniformly enforced policy or that her conduct was in willful disregard of [Appellant]’s interest.” *Id.* Instead, the Board found that the evidence in the record “establishes that [Employee] was experiencing issues related to stress in her work environment and was terminated for a single heated exchange with her employer.” *Id.* As such, the Board found that Appellant failed to meet its burden and the Referee’s decision was thus reversed. *Id.*

II 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. Section 42-35-15(g) of the APA provides:

“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, interferences, conclusions, or decisions are:

- “(a) In violation of constitutional or statutory provisions;
- “(b) In excess of the statutory authority of the agency;
- “(c) Made upon lawful procedure;
- “(d) Affected by other error of law;
- “(e) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

“(f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” G.L. § 42-35-15(g).

In conducting its review, a Court cannot “substitute its judgement for that of the agency concerning the credibility of witnesses or the weight of the evidence concerning questions of fact.” *Blais v. Rhode Island Air Corporation*, 212 A.3d 604, 611 (R.I. 2019) (quoting *Beagan v. Rhode Island Department of Labor and Training*, 162 A.3d 619, 626 (R.I. 2017)). 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, Department of Employment Security*, 517 A.2d 1039, 1041 (R.I. 1986).

III ANALYSIS

This Court must determine whether there is legally competent evidence within the record to support the Board’s finding that Employee was not discharged for disqualifying reasons. As such, the Court will consider whether the evidence presented supports the Board’s finding that Appellant failed to prove that Employee engaged in misconduct as defined in the Employment Security Act.

A Sufficient Evidence of Misconduct

Section 28-44-18(a) provides that “an individual who has been discharged for proved misconduct connected with his or her work shall become ineligible for waiting period credit or benefits for the week in which the discharge occurred.” G.L. 1956 § 28-44-18(a). Misconduct is further defined as “deliberate conduct in willful disregard of the employer’s interest, or a knowing violation of a reasonable and uniformly enforced rule or

policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence." *Id.* The Supreme Court has also adopted a definition of misconduct which provides that

"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 in carelessness or negligence of such degree of 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." *Turner v. Department of Employment Security, Board of Review*, 479 A.2d 740, 741-42 (R.I. 1984) (citing *Boynton Cab Co. v. Neubeck*, 237 Wis. 249, 296 N.W. 636 (1941)).

The Court further clarified, however, that "mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgement or discretion are not to be deemed 'misconduct' within the meaning of the statute." *Id.* at 742.

The Supreme Court established a two-prong analysis to determine whether the alleged actions constituted misconduct. *Beagan v. Rhode Island Department of Labor and Training*, 162 A.3d 619 (R.I. 2017). To "determine whether an employee is ineligible for unemployment benefits based on a disqualifying reason, one must consider (1) whether there was an act of proven misconduct and (2) whether the misconduct was connected to the employee's work." *Id.* at 627. The employer claiming that an employee's "proven misconduct rendered employee ineligible for unemployment benefits has the burden of proof and must present evidence of the employee's misconduct." *Foster-Glocester Regional School Committee v. Board of Review*, 854 A.2d 1008, 1009 (R.I. 2004). At issue

before this Court is whether the Board relied on sufficient evidence when overturning the decision of the Referee.

Here, Appellant contends that the factual findings of the Board are “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or is otherwise arbitrary and capricious.” (Appellant’s Br. 6.) In support of this first argument, Appellant references the exchange that occurred on June 3, 2022, Employee’s medical note, and her history of disciplinary issues. *Id.* at 6-8. Appellant argues that the Board’s decision “directly conflicts with the evidence of the record” which sufficiently establishes that Employee’s actions constituted misconduct. *Id.* at 8.

Employee does not dispute that her conduct on June 3, 2022 was connected to her work at North Providence Primary Care. *See R.* Therefore, her eligibility for benefits depends on whether it constituted misconduct under the Act. In considering whether the evidence put forth satisfies the burden, this Court must review the entire record. *Id.*

Appellant makes three arguments in support of its appeal. *See Appellant’s Brief.* Namely, Appellant urges this Court to hold that the Board’s determination that Dr. Farina had “a heated exchange with the office manager” as opposed to his exchange with Employee was unfounded. *Id.* at 7. Appellant further avers that the Board’s finding that Employee “was removed from work for two weeks” was “clearly erroneous and against the weight of the competent evidence.” *Id.* at 7. Lastly, Appellant argues that the Board erred in determining that Employee was terminated for a single heated exchange as she had a history of disciplinary actions. *Id.* at 8. This Court briefly considers each of Appellant’s arguments in turn.

1
Heated Exchange

In looking to the record, it is evident to this Court that the Board relied on sufficient evidence in determining that Employee engaged in a heated exchange, despite also stating that an exchange occurred between an office manager and Dr. Farina. *See* Board's Decision. In a hearing with the Board, Employee testified that "our actual manager, office manager, Denise, she had told him to get whatever was out of his butt and to get it out." (Board Hr'g Tr. 6.) The Board relied on this statement in its decision. (Board's Decision.) Accordingly, the Board noted that "[Dr. Farina] was shouting at the employees and had a heated exchange with the office manager." *Id.* at 2. However, the Board also affirmed and adopted the findings of fact in the decision of the Referee which provided that Employee was the correct individual who engaged in this heated exchange. *Compare* Decision of the Board with Decision of the Referee.

It is evident to this Court that ample evidence exists within the record indicating that Employee got into a verbal altercation with Dr. Farina. *See* R. While the Board noted that this heated exchange occurred with the office manager, it is clear that the Board was still aware that Employee also engaged in "a single heated exchange with [Dr. Farina]." (Decision of the Board 2.) Despite Employee's potential mistake while testifying, and the Board's subsequent reliance thereon, the Board also referenced additional testimony and evidence indicating that it was aware that Employee was involved in this interaction. *Id.* However, this Court must further determine whether this altercation constitutes misconduct and violates any policy.

2
Medical Notes

Appellant's argument that the "Board of Review's finding that [] Employee was removed for two weeks" is unfounded. (Appellant's Br. 7.) Appellant maintains that, because "[b]oth of these [doctor's] notes were faxed to [] Appellant in the same transmission, at the same time . . . it is clear there was no removal from work for two weeks as [] Employee claimed." *Id.* In looking to the Board's decision, it is evident to this Court that the Board never made this finding. *See* Decision of the Board. Instead, the Board specifically noted that Employee "presented a medical note excusing her from work for two (2) weeks for stress, which [] Employer rejected." *Id.* at 2. The Board further stated that "Employer then required her to obtain a second medical excuse returning her to work." *Id.* The Board never held that Employee was actually out of work for two weeks. *Id.*

The Board relied on substantial evidence when reaching this conclusion. *See* Board Hr'g Tr. At the October 19, 2022 hearing, Employee testified that she received a note for her leave of absence. *Id.* at 7. However, she stated that she received this on a Tuesday night and had the next day off, so she called to see if her note had been received. *Id.* According to Employee, she was informed during this phone call that she "could not take [her] leave of absence." *Id.* She was allegedly told that doing so would result in her termination. *Id.* at 7-8. She testified that she was told that she needed a doctor's note allowing her to return to work. *Id.* at 8. Following this conversation over the phone, Employee "had [] both [notes] faxed to the office so [DelSignore] could get them faster." *Id.* Though Appellant argued that a note was never faxed to the office, the record reflects

a fax was received from Employee's doctor dated May 10, 2022. *See R.* The first note states that Employee "is unable to work for [two] weeks." (Scagnelli Note, May 10, 2022.) A second undated note provides that Employee "may return to work without any restrictions on [May 12, 2022]." *Id.*

It is evident that these medical notes were written separately, though they may have been faxed together. *See R.* Furthermore, Employee's testimony indicates that these notes were likely faxed together as a result of a telephone conversation in which she was informed that she would be terminated if she took a leave of absence. (Board Hr'g Tr. 8.) Instead, she needed a second note to clear her for work. *Id.* As such, the Board's finding was not erroneous nor was it against the weight of the evidence.

3 History of Disciplinary Actions

The record is void of evidence suggesting that Employee's actions violated a reasonable and uniformly enforced rule or policy in accordance with the statutory definition of 'misconduct' despite a history of misconduct. *See R.* While Appellant noted that Employee's statements went "against [the] employee conduct policy" of which she was allegedly aware, it failed to provide the Board with a policy that reflects this. (Employment Benefit Claim 2.)

An Ethical Conduct Agreement was signed by Employee on September 14, 2020. (Ethical Conduct Agreement.) This form details the ethical principles that employees were to "conduct [them]selves with." *Id.* at 1. One such ethical principle is "respect for others" which provides "[w]e will be open and direct in our communication, and receptive to good

influence. We will honor and value the abilities and contributions of others, embracing the responsibility and accountability for our actions in this regard[.] We will treat others fairly without bias or prejudice.” *Id.* The form further states that “[i]n the event that ethical misconduct is discovered within the office, a manager will be immediately notified, corrective actions will be taken and the director or their designee will be informed both verbally and in writing.” *Id.* According to the agreement, “[f]ailure to follow this directive will result in immediate dismissal.” *Id.* While she signed this form, however, Employee stated in her application for benefits that she was unaware of any policies and does not remember signing them. (Employment Benefits Claim 1.)

While Appellant argues that Employee had a history of disciplinary issues at work, it is clear that this Ethical Agreement has not been uniformly enforced as Employee’s previous actions did not “result in immediate dismissal” as indicated. *See R.* Appellant avers that there were “three previous disciplinary sheets provided [in the record] which related to complaints about [] Employee’s use of foul language and other professional behavior.” (Appellant’s Br. 8.) In a disciplinary report dated April 22, 2021, Employee was disciplined for “using foul language, being very loud, and swearing.” (Disciplinary Report, Apr. 22, 2021.) In another disciplinary report dated December 9, 2021, her office manager indicated that Employee has “been talked to . . . about her unprofessional and inappropriate behavior with the providers.” (Disciplinary Report, Dec. 9, 2021.) This report further indicates that “if the above infractions are not corrected immediately,” then Employee would be faced with termination. *Id.* A third disciplinary report was signed on April 21, 2022 which provided that it was Employee’s “final[] warning.” (Disciplinary

Report, Apr. 21, 2022.) It states that Employee's "[n]ext in[]fracture will result in immediate termination." *Id.*

Each disciplinary report stated that any other infractions would result in termination though Appellant never abided by this language. *See R.* Furthermore, this Court is not persuaded that an Ethics Agreement is a binding policy. *See Ethical Conduct Agreement.* This Ethics Agreement was not an employee handbook and did not detail company policy regarding misconduct or inappropriate behavior. *Id.* Rather, it provided Employee with ethical rules to be followed, such as compassion and integrity among others. *Id.* Furthermore, though the Ethics Agreement is signed and dated by Employee, Employee stated "I don't know about any policies. I don't remember signing any policies." (Employment Benefits Claim 1.) It is evident to this Court that this Ethics Agreement does not constitute a binding enforceable policy as it is not routinely used, followed, or well-known to Employee. *Id.*

Thus, the Board relied on sufficient evidence when determining that the Ethics Agreement fails to constitute a uniformly enforced rule or policy relied upon by the office. *See Decision of the Board.* The record lacks evidence of another policy in place indicating otherwise. *See R.* Appellant has failed to provide evidence that these actions constitute misconduct and in contradiction of any policy. *Id.* Appellant thus failed to satisfy its burden of proof. *Foster-Glocester Regional School Committee*, 854 A.2d 1008, 1009; *see also R.* This Court finds that the Board's decision to overturn the findings of the Referee were "supported by reliable, probative and substantial evidence contained in the whole record." § 42-35-15(g).

B
Connection to the Employee's Work

While there is a second prong in the analysis, this Court is not currently faced with the issue of whether the misconduct was connected to the employee's work. As noted above, there is no dispute that there a connection to employment exists here.

IV
CONCLUSION

After careful review of the record, the Board of Review's decision reversing the Referee's Decision denying employee unemployment benefits under Gen. Laws 1956 § 28-44-18 of the Rhode Island Employment Security Act is supported by the record and was not "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." Gen. Laws 1956 § 42-35-15(g)(3)(4). Neither was said decision "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Gen. Laws 1956 § 42-35-15(g)(5)(6). Accordingly, the decision rendered in this case by the Department of Labor and Training Board of Review is AFFIRMED.