

STATE OF RHODE ISLAND
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

The Tilted Barn Brewery

v.

Department of Labor and Training,
Board of Review

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:
:

A.A. No. 23-24

JUDGMENT

This cause came before O'Neill, 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 29th day of October, 2025.

Enter:

By Order:

_____/s/_____

_____/s/_____

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

**DISTRICT COURT
SIXTH DIVISION**

The Tilted Barn Brewery	:	
	:	
v.	:	6AA No. 2023-00024
	:	
Department of Labor and Training,	:	
Board of Review	:	

DECISION

O'Neill, J. In this case, The Tilted Barn Brewery filed the instant complaint for judicial review of a final decision of the Board of Review of the Department of Labor and Training, which held that a former employee, Vey Taylor (aka Vincent Taylor) was entitled to receive employment security benefits which reversed an initial denial of benefits by the Director and the decision of a hearing Referee which affirmed the Director's decision finding that Ms. Taylor was terminated from her employment for misconduct, as provided in G.L. 1956 § 28-44-18. 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 and this matter has been referred to me for my review. Employing the standard of review applicable to administrative appeals, I find that the decision of the Board of Review is supported by substantial evidence of record and was not affected by error of law. The Board's decision is therefore **AFFIRMED**.

FACTS AND TRAVEL OF THE CASE

A

The Claim and the Initial Decision of the Department

Ms. Vey Taylor, whose previous legal name was Vincent Taylor, “Claimant” was employed at The Tilted Barn Brewery, “Employer” for approximately two (2) years. Claimant was terminated from The Tilted Barn on November 29, 2022 after incidents in the month of November 2022 while Claimant was on employment probation with Employer for previous incidents. The Employer indicated that the reason for the termination was an incident which had occurred on November 17, 2022 when Claimant was leaving her shift and was asked by a shift manager to come back into the business to assist with cleaning and closing the brewery. The shift supervisor alleges that Claimant swore at the shift supervisor when asked to go back into work, however there is no dispute that Claimant went back into the business and assisted with her normal duties. Claimant was allowed to work her normal shifts in the ten (10) days between this incident and her termination date. Claimant alleges that the real reason for the termination was another incident on November 20, 2022 whereby Claimant acknowledges that she failed to replace a security rope that separated the employee parking lot. *Referee Hearing Transcript* at page 9. Claimant realized her mistake in not resecuring the rope and texted the same manager from the November 17, 2022 incident that she had not secured the rope. *Claimant’s Statement* at page 1. Claimant’s last day of employment at The Tilted Barn was November 27, 2022 and her employment was terminated on November 29, 2002. *Referee Transcript* at page 9. Claimant filed for Employment Security Benefits on November 30, 2022 and thereafter unemployment benefits were denied by the Director. *Claimant Decision* at page1. The Director of the Department of Employment and Training determined that the Claimant was terminated under disqualifying circumstances within the meaning of G.L. § 28-44-18 and

consequently denied unemployment benefits to Ms. Taylor. *Id.* Claimant appealed the Director's decision to a Referee and a hearing was conducted on January 23, 2023. Present telephonically for the hearing before the Referee were: Matt Richardson, owner of Tilted Barn Brewery; Employer's witness, Heidi Eklund; Claimant Vey Taylor and Claimant's counsel, Robert Savage. On January 25, 2023, the Referee issued a decision affirming the decision of the Director and found that Claimant was terminated for a disqualifying circumstance within the provisions of G.L. § 28-44-18. *Decision of Referee* at page 3. Claimant then appealed the decision of the Referee on February 8, 2023 to the Board of Review. On March 24, 2023 the Board of Review in a brief decision reversed the findings of the Referee stating that Employer did not sustain its burden and "did not present evidence that Claimant knowingly violated a reasonable uniformly enforced policy in place at the time of her termination.". *Decision of Board of Review* at page 3. The Employer then appealed the matter on April 20, 2023 to the District Court pursuant to G.L. § 42-35-15.

II

STANDARD OF REVIEW

The standard of review by which this Court must consider appeals from the Board of Review is provided by G.L. 1956 § 42-35-15(g), a section of the Administrative Appeals 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 and 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 appeals panel;
- (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."'¹ The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.² In other words, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.³

The Supreme Court of Rhode Island recognized in Hararak v. Board of Review of Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595, 597 (1964) that the Employment Security Act shall be interpreted liberally and stated:

...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 on the unemployed worker and his or her 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

¹ Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. laws 1956 § 42-35-15(g)(5).

² Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213 (1968).

³ Id.

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.

III

APPLICABLE LAW

This case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which addresses misconduct as a circumstance which disqualifies a claimant from receiving benefits.

The relevant statute, G.L. 1956 § 28-44-18 states:

28-44-18. Discharge for misconduct---For benefit years beginning on or after July 6, 2014, 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 that discharge occurred and until he or she establishes to the satisfaction of the director that he or she has, subsequent to that discharge, 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. Any individual who is required to leave his or her work pursuant to a plan, system, or program, public or private, providing for retirement, and who is otherwise eligible, shall under no circumstances be deemed to have been discharged for misconduct. If an individual is discharged and a complaint is issued by the regional office of the National Labor Relations board or the state labor relations board that an unfair labor practice has occurred in relation to the discharge, the individual shall be entitled to benefits if otherwise eligible. For the purposes of this section, “misconduct” is 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. Notwithstanding any other provisions of chapters 44—44 of this title, this section shall be construed in a manner that is fair and reasonable to both the employer and the employed worker.

In the case of Turner v. Department of Employment and Training, Board of Review, 479 A.2d 740, 741-742 (R.I. 1984), the Rhode Island Supreme Court adopted a definition of the term, “misconduct,” in which they quoted from Boynton Cab Co. v. Newbeck, 237 Wis. 249, 259-60, 296 N.W. 636, 640 (1941):

‘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 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 employee’s duties and obligations to his employer. On the other hand mere efficiency, 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 judgment or discretion are not to be deemed ‘misconduct’ within the meaning of the statute.

The employer bears the burden of proving through the preponderance of evidence that the claimant’s action, in connection with his work activities, constitutes misconduct as defined by law.

IV ANALYSIS

The issue presented in this case is whether the decision of the Board of Review to reverse the Referee’s ruling of the denial of awarding unemployment benefits to the Claimant was supported by reliable, probative and substantial evidence in the record or whether or not it was clearly erroneous or affected by error of law. At the hearing conducted by the Referee, the owner of The Tilted Barn presented the case that Ms. Taylor violated company policy on multiple occasions over a period of time in 2022 and was currently on probation at The Tilted Barn on the date of the incident in question, which was November 17, 2022. *Referee Transcript* at page 17. The witness for the Employer and Claimant also testified about this incident and the

version of events about this incident were obviously very different. *Referee Transcript* at pages 18-36 . When analyzing an incident such as the one that is the focal point of this case, it can be difficult to know exactly what happened, however the court can look at what happens before and after an incident such as this for some potential insight. Three facts in this case are of significance as I render the decision as to whether the Board's reversal of the Referee's decision was supported by substantial evidence and was not clearly erroneous.

The first issue that is of significance is that if an employee, especially one who was on probation at their place of employment were to swear at a manager, while at work and in front of other employees, I would submit that that is an on-the-spot valid reason for termination. The employer witness testified that Claimant swore at her after she was told she could not leave because the establishment was too busy and Claimant needed to stay. *Referee Transcript* at page 19. Claimant testified that she did not swear at the manager *Id.* at page 36. It is difficult to understand and believe that an employee who was on probation was not fired immediately after swearing at a manager while being given instructions to remain at work.

The second issue with regards to this incident is that Claimant actually stayed at work after this exchange with the manager on November 17. *Id.* If Claimant had left after being told to stay by a supervisor, then this case would be looked at differently. However, Claimant did remain at work, perhaps with not the best attitude at work, but she did remain to finish the shift. Also, of significance on this issue is that Claimant apparently followed the chain of command and approached a supervisory person to ask for the tips and if she could leave and was told "yes" by the person who was normally in charge on Thursday evenings. *Referee Hearing Transcript* at page 34. It appeared clear from the transcript that the employer witness to the referee hearing who had the exchange with Claimant on November 17, 2022 normally is not present on Thursdays, which happened to be the day of this incident

Referee Hearing Transcript at page 34. The court cannot assume that Claimant purposefully avoided the senior manager in order to leave early, but Claimant may have thought it was easier to approach the supervisor who was normally assigned as “Point” manager to Thursday evenings to gather her tips and be allowed to leave earlier than the other employees. Either way, Claimant, from what was testified to at the referee hearing, did what she normally does at the end of a shift when she is the employee who can leave early under the right circumstances.

The third factor of significance is that it is very unclear as to whether there were significant meetings, an investigation or interviews that took place at The Tilted Barn from the date of the incident until Claimant was terminated on November 27, 2022, other than the Employer testifying that he wanted to do his “due diligence” as to whether Claimant violated her probation during this November 17 incident. *Referee Hearing Transcript* at page 21. There were emails from the Employer witness and from another employee to the owner’s wife, but the email from the second employee never references the incident from November 17. Employer states that Claimant was, in fact, allowed to work her regular shifts and schedule from November 17, 2022 through November 27, 2022. This incident with the rope not being secured by Claimant on November 20, 2022 appears to have been a “last straw” with the Employers, but it was not listed as reason for her termination *Referee Hearing Transcript* at page 17. The Employers were clear that their reason for Claimant no longer working at The Tilted Barn was because of repeated incidents and this incident on November 17, 2022. *Id* at 17-18. It is my position that no investigation need be done if an employee swears at a supervisor, especially one who is on probation for prior incidents.

CONCLUSION

This court is not authorized to substitute its judgment for that of the Board of Review on factual matters. *See Gen Laws 1956 §42-35-15(g)*.

After carefully reviewing the record and travel of this case and all of the supporting evidence, I find that the Board of Review's decision, which reversed the decision of the Referee to not award Ms. Taylor unemployment benefits under G.L. §28-44-18 of the Rhode Island Employment Security Act was not "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record."⁴ I further find that the decision was not "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."⁵ Therefore the Decision of the Board granting Ms. Taylor's claim for unemployment benefits is AFFIRMED.

⁴ Gen Laws 1956 §42-35-15(g)(3)(4)

⁵ Gen Laws 1956 §42-35-15(g)(5)(6)