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

Corrine McLaughlin	:	
	:	
v.	:	**A.A. No. 2024 – 052**
	:	
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 instant matter is hereby REMANDED to the Board of Review for the reasons stated in the attached opinion and for the issuance of a new Decision.

Entered as an Order of this Court at Providence on this 28th day of January, 2025.

By Order:

/s/
Clerk

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND **PROVIDENCE, Sc.**		**DISTRICT COURT** **SIXTH DIVISION**
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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. Ms. Corinne McLaughlin 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 she was not entitled to receive employment security benefits because she was fired for proved misconduct, as provided in G.L. 1956 § 28-44-18. This matter has been referred to me for the making for Findings and Recommendations pursuant to G.L. 1956 § 8-8-8.1. Employing the standard of review applicable to administrative appeals, I find that the decision of the Board of Review is legally deficient; I must therefore recommend that the instant matter be REMANDED to the Board for the issuance of a new decision.

I
Facts and Travel of the Case
A
The Claim and the Initial Decision of the Department

Claimant McLaughlin was the Director of Nursing for the Burrillville Health Center for fifteen years until December of 2023. She last worked on December 8, 2023, and was discharged on December 12, 2023. She filed an application for unemployment benefits but, on April 8, 2024, a designee of the Director of the Department of Labor and Training determined her to be ineligible to receive benefits, pursuant to the provisions of § 28-44-18, because she had been discharged for misconduct — specifically, that she was "discharged after attending a non-work related event, during which time, [she was] to be in quarantine due to a positive test result for COVID-19." *See Dec. of Director,* at 1; which may be found on page 80 of the electronic record (*ER*) attached to this case. The Director's Decision also found that the Employer was barred from contesting any determination of the Director because it failed to return the Notice of Claim within the prescribed period. *Id*. Finally, the Director determined that Claimant was overpaid in the amount of $4,230.00, and at fault for the overpayments; as a result, she was ordered to repay the benefits she received. *See Dec. of Director,* at 1-2; *ER* at 80-81.[1]

[1] A Corrected Decision was issued on April 25, 2024; it may be found on pages 77-79 of the electronic record. In the revision, the Director corrects the date of the first week of Ms. McLaughlin's period of disqualification from "the week ending 12/14/23" to "the week ending 12/16/23." The Corrected Decision also reduces the amount of the repayment that was ordered

B

Proceedings Before the Referee

1

The Hearing

Claimant filed an appeal. *See Request for Appeal; ER* at 83. Consequently, a telephonic hearing was scheduled for May 10, 2024 before Referee John Palangio. *See Ref. Hr'g Tr.* at 1, which begins on page 6 of the electronic record. The Claimant appeared and the Employer was represented by Ms. Cindy Jacob, its Human Resources person. *Ref. Hr'g Tr.* at 6-7. After the opening formalities, such as the administration of the testimonial oath to the witnesses and the enumeration of the contents of the file that the Department had transmitted to the Board, the Referee asked the Employer's representative to explain why Ms. McLaughlin should be disqualified from receiving unemployment benefits. *Id.* at 13.

Ms. Jacob began by stating that Claimant's last day of work as its Director of Nursing was December 8, 2023, and she was terminated based on the following series of events:

> … So what had happened was Corrine had tested positive for COVID on 12/7, and we have those lab results, 12/7/2023. And so, she was out of work. She was working from home, and she should have been on quarantine. We had noticed from multiple staff members saying that Corrine was out in the community with no mask on. Corrine and her husband have this side job in the holiday months where they play Mr. and

(from $4,230 to $3,525) because $705 was previously ordered to be repaid in a related case.

> Mrs. Santa Claus. And so, she was out at this event playing Mrs. Claus, and she was handling children with no mask on and that reflected her badly ---

Ref. Hr'g Tr. at 14. She indicated that the test was performed in conjunction with her work (and not a home test). *Id.* at 15. According to the witness, Claimant was tested because she was "feeling ill" with "COVID symptoms." *Id.* at 16. As a consequence, Claimant was required to be out of work for five days; after which, she could return to work while wearing an N95 mask. *Id.* at 16-17. But the witness did not know exactly what was said between the Administrator and the Claimant. *Id.* at 17.

Ms. McLaughlin was then asked to give her version of how she came to be tested for COVID. *Id.* at 17-18. She responded that, because she had "a little bit of a stuffy nose," she decided to test herself. *Id.* at 18. When she received a positive result, Claimant threw the test away and informed the infection-control nurse, who reported it to the State. *Id.* Claimant agreed that, because of her test result, she was required to "stay out" for five days, which she did. *Id.*

Ms. McLaughlin conceded that she did appear in the community as Mrs. Claus during that period. *Id.* She did so because, after her positive test result on the seventh of December, a Thursday, she tested herself on Friday and Saturday — and received negative results. *Id.* at 19. The Referee then asked Claimant whether she had a duty to report the Friday test result to her employer, she said that she did not, because she was going to take sick leave. *Id.* at 20. *Ref. Hr'g Tr.*

at 19-20. Pursuing this issue, the Referee asked her, from the viewpoint of the Employer, how it would look to an employer when an employee, the Director of Nursing, who is on sick leave, is seen in the community. *Id.* And when she said they could ask, the Referee queried the question from the perspective of a person who had been in contact with her on Thursday, and who would be worried about their exposure to the disease. *Id.* at 21-22. She reiterated that she did not believe she was required to inform her employer of her subsequent negative tests. *Id.* at 22.

Regarding her public appearance as Mrs. Claus, Ms. McLaughlin stated that she took "precautions," such as placing her chair away from Santa's, wearing gloves, and keeping hand sanitizer nearby. *Id.* As such, and in light of her negative tests, she felt that she was acted responsibly in making the public appearance. *Id.* at 23. She added that she informed the Health Center of her negative results when a representative called on Monday or Tuesday. *Id.*

On rebuttal, Ms. Jacob asserted that sick time and vacation time are not all the same. *Id.* at 24.

2

The Decision

In his May 13, 2024 Decision, the Referee made Findings of Fact on the issue of Ms. McLaughlin's separation. He wrote:

> The wage and separation form was mailed to the employer's address of record on January 5, 2024. The employer returned

the notice to the Department of Labor and Training as required by law (Employer Exhibit #2).

The claimant was the director of nursing for Burrillville Health Center for fifteen years last on December 8, 2024. On December 8, 2024, the claimant was working with several colleagues. She then reported to her employer that she was not feeling well. The employer directed the claimant to take a Covid test. The claimant tested positive for Covid. This was reported to the employer on Thursday.

The employer then directed the claimant to go home. She was allowed to work from home on the next day Friday, December 9, 2023, if she felt she could physically perform work from home. The claimant was told she would have to be out for five days, then after five days she would be allowed to return to work on day six through day ten with a KN-95 mask. This was the employer directive.

On Friday, December 9, 2023, the claimant administered a second test. This test registered a negative reading. The claimant continued to work from home and did not report the second reading to her employer.

On Saturday, December 10, 2024, the claimant took part in a community event as Ms. Santa Claus, along with her spouse, who represented Santa Claus. This was a public event in which the claimant was interacting with families.

The following Monday and Tuesday, the claimant called out sick, still reporting symptoms (Text messages/Employer Exhibit #1). The employer was alerted to the social media post on Monday showing the claimant at a public event Saturday while having Covid.

The employer then terminated the Director of Nursing for testing positive for Covid, working from home the next day as a result, and within thirty-six hours attending a public event with Covid, then calling out sick the next Monday and Tuesday, reporting symptoms of the virus.

The human resource representative (HR) was on the phone with the administrator when said administrator terminated the claimant for the above reasons on December 12, 2023. The

> credible testimony of that HR rep was that the claimant was told she was terminated. The claimant acknowledged at this hearing she was terminated on that phone call.
>
> When the claimant filed a claim for benefits with the Department of Labor effective December 31, 2023, she reported that she was laid off due to a lack of work (Claimant Certification, page 9 / Director's Exhibit #1 & Employers Exhibit #2).

Dec. of Referee (May 13, 2024), at 1-2; *ER* at 40-41. The Referee then made conclusions concerning the nature of Ms. McLaughlin's separation. To determine whether Claimant should be disqualified for misconduct, he presented the statutory and caselaw definitions of misconduct, as stated in G.L. 1956 § 28-44-18 and the leading case construing it, *Turner v. Department of Employment and Training, Board of Review,* 479 A.2d 740, 741-42 (R.I. 1984). *Dec. of Referee,* at 2-3; *ER* at 41-42. After which, he turned to the circumstances of Ms. McLaughlin's claim for benefits. He stated:

> In cases of termination, the 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 his work.
>
> I find in this case the employer has shown the actions of the claimant exhibited misconduct in connection to her work. The claimant tested positive for Covid on Thursday, December 8, 2023, while interacting with colleagues. In spite of that positive test and the employer requirement to stay out of work for five consecutive days, the claimant took part in a public event on that Saturday, December 10, 2023. The action, on Saturday, as a nurse, put several people at risk for contracting Covid. She did not report anything to her employer after Thursday, until the Monday and Tuesday, when she called out of work still reporting the Covid side effects. I find the

> claimant showed a substantial disregard for her employer's interest. She also showed disregard as a nurse and a professional in the health care field. This was not an isolated incident. The above findings of fact show multiple occasions when the claimants action showed proactive and deliberate disregard of the employer's interest over a six day period. Therefore, unemployment benefits are denied under Section 28-44-18 of the Rhode Island Employment Security Act.

Dec. of Referee, at 3; *ER* at 42. And so, the Referee affirmed the Decision of the Department disqualifying Claimant from receiving unemployment benefits pursuant to § 28-44-18. *Id.* at 4; *ER* at 43.

C

Proceedings Before the Board of Review

Ms. McLaughlin then appealed to the Board of Review, which did not conduct a new hearing; instead, the Board decided the case on the basis of the record developed by the Referee, as it has the authority to do under G.L. 1956 § 28-44-47. Employing this procedure, the full Board of Review affirmed the Referee's decision, finding it to be a proper adjudication of the facts and the law applicable thereto; the Referee's decision was adopted as the decision of the Board. *See Dec. of Board of Review,* June 3, 2024, at 1; *ER* at 2. Ultimately, Claimant filed the instant appeal.

II

Applicable Law

This case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically

addresses misconduct as a circumstance which disqualifies a claimant from receiving benefits; G.L. 1956 § 28-44-18, provides:

> **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 42 -- 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, 741-42 (R.I. 1984), the Rhode Island Supreme Court adopted a definition of the term "misconduct" previously employed in *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 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 judgment or discretion are not to be deemed 'misconduct' within the meaning of the statute.

The employer bears the burden of proving by a preponderance of evidence that the claimant's actions constitute misconduct under § 28-44-18.

III

Standard of Review

The standard of review 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. Dep't 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 Dep't of Employment Security,* 104 R.I. 503, 246 A.2d 213 (1968). Stated differently, the Board's findings will be upheld even though a reasonable mind might have reached a contrary result. *Cahoone,* 104 R.I. at 506-07, 246 A.2d at 215 (1968). *See also D'Ambra v. Board of Review, Dep't 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 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

In every case in which an employer opposes the receipt of unemployment benefits by a former employee, two questions must be addressed by the fact-finder, whether that is the designee of the Director, the Referee, or the Board of Review; they are: (1) whether the alleged conduct of the claimant, if proven, was sufficiently egregious to constitute proved misconduct *connected to his or her work*,[2] and (2) whether the alleged misconduct was proven by the employer. Now, many times, or even most times, the clause highlighted above — *connected to his or her work* — is omitted from this formulation, or quickly passed over, because the nexus between the claimant's conduct and his or her employment is patently obvious — either because the conduct in question occurred on the employer's premises or was directed toward managers, co-workers, or the employer's property. However, in the instant case, such circumstances are not present; and, as it happens, a core issue herein is, in my view, whether Claimant McLaughlin's actions, in appearing publicly, was misconduct connected to her work.

[2] The emphasized phrase is taken directly from the definition of misconduct presented in § 28-44-18, which may be reviewed *supra* at 9.

In the "Conclusion" section of its decision, the Board, after setting forth the pertinent statute and case precedent, presented the following paragraph, which comprises its entire analysis on the issue of whether committed disqualifying misconduct pursuant to § 28-44-18:

> …
> I find in this case the employer has shown the actions of the claimant exhibited misconduct in connection with her work. The claimant tested positive for Covid on Thursday, December 8, 2023, while interacting with colleagues. In spite of that positive test and the employer requirement to stay out of work for five consecutive days, the claimant took part in a public event on that Saturday, December 10, 2023. The action, on Saturday, as a nurse, put several people at risk for contracting Covid. She did not report anything to her employer after Thursday, until the Monday and Tuesday, when she called out of work still reporting the Covid side effects. I find the claimant showed a substantial disregard for her employer's interest. …

Dec. of Referee, at 3; *ER* at 42.[3] In my view, this paragraph of conclusions is deficient; to discover why, let us examine it closely.

As can be readily seen, the paragraph begins with a statement that Claimant's conduct exhibited misconduct "in connection with her work." *Dec. of Referee,* at 3. But, in what way were Claimant's actions (in appearing publicly) connected to her work. Well, the Referee does not say — at least immediately. Instead, we are presented with a recapitulation of the sequence of events: *first*,

[3] This quotation is an abbreviated version of the Referee's Conclusions, which are presented in their entirety, *supra* at 7-8. And reviewing the full quotation reveals that after the abridgment presented here, the Referee found that her actions "showed disregard as a nurse and a professional in the healthcare field."

Claimant had a positive COVID test result at work on Thursday, December 8, 2023; *second*, that she was told to stay out of work for five days; *third*, that she took part in a public event on Saturday, December 10, 2023; and *fourth*, that Claimant did not speak to her Employer until Monday or Tuesday, when she was still complaining of "side effects." *Id*. Along the way, the Referee then makes a medical finding: to wit, that Claimant put several people at risk by participating in the event. *Id*. After this, the Referee found that Claimant demonstrated "a substantial disregard for her employer's interest." *Id*.

Clearly, the Referee viewed the allegations made against Claimant as being very serious — and proven. But his rationale for finding her actions to be "connected to her work" remains undisclosed. Did he find Claimant to be disqualified for proved misconduct (a) because she attended the event or (b) because she failed to advise her Employer that she had obtained negative COVID-test readings. The decision is unclear. If it was the former, we need to know what healthcare rule or guideline this behavior violated: was it a regulation of the Health Department or a work rule promulgated by the Employer? If it was the latter, would Claimant have been required to return to work if the Employer had learned of her negative tests? We can only speculate.

And if it was Ms. McLaughlin's *participation* in the public event which is found blameworthy and disqualifying, then a particular legal analysis must be undertaken. I reference here the law surrounding those cases in which an

employer attempts to disqualify a claimant who was discharged for off-duty activities — which we shall now examine.[4]

The leading Rhode Island case on this topic is *Bunch v. Board of Review, Rhode Island Department of Employment and Training*, 690 A.2d 335 (R.I. 1997). That case considered a claim for unemployment benefits filed by Ms. Bunch, who had been the Superintendent of the Rhode Island Training School for Youth, a facility operated by the Department of Children, Youth, and Families (DCYF), until she was found to be in possession of cocaine by members of the West Warwick Police Department. *Id*. at 335-36. The Department of Labor and Training denied her application for unemployment benefits — a determination which was upheld by a Referee and the Board of Review. *Id*. at 336. However, a judge of this Court reversed the Board's ruling, based on a lack of evidence that her misconduct was related to her official duties. *Id*. at 336-37.

But the District Court's ruling was reversed by the Supreme Court of Rhode Island. *Id*. at 337-38. The Court reasoned thusly:

> In the case at bar, it is undisputed that the claimant had a position of high visibility and great responsibility. As superintendent of the training school, she had an obligation to maintain standards of conduct at the very least in compliance with the criminal law both on and off the job. To possess controlled substances and drug-related paraphernalia in her home was completely to violate those standards of conduct that the employer had a right to expect from her. Many of the young people committed to her care at the training school were

[4] *See* 76 Am. Jur. 2d *Unemployment Compensation* § 79 (October 2024 Update) *and* George L. Blum, Annotation, *Conduct or Activities of Employees During Off-Duty Hours as Misconduct Barring Unemployment Compensation Benefits,* 18 A.L.R.6th 195 (2006).

> confined for drug-related offenses. A superintendent who committed similar offenses and was criminally charged for so doing could scarcely be said to have committed a non-job-related offense. Her ability to carry out the duties of her office not only was impaired, but was totally extinguished by such conduct. …

Bunch, 690 A.2d at 337-38. The Court then concluded that "[t]he director had the right to expect from the claimant a reasonable standard of obedience to the criminal law both on and off the premises of her employment." *Id.* at 338. Based on this reasoning, the Court ruled that the decision of the Board of Review finding disqualifying misconduct was supported by "ample" competent evidence; it was therefore reinstated by the Supreme Court and the District Court ruling to the contrary was quashed. *Id.*

Since the *Bunch* decision was issued, the Rhode Island Supreme Court has addressed the issue of off-duty disqualifying misconduct on one occasion, in *Beagan v. Rhode Island Department of Labor and Training*, 162 A.3d 619, 627 (R.I. 2017). In that case, the Court found that Mr. Beagan's social media posting critical of his supervisor was not connected to his work within the meaning of § 28-44-18; the Court stated:

> … It is our opinion that Beagan's alleged misconduct lacks the connection to the workplace contemplated by § 28-44-18. It is uncontested that Morancey was "blocked" from Beagan's Facebook page, and there is no evidence that the post was directly accessible by any other employee, associate, or customer of Kemperle, Inc. Further, there is no allegation that Beagan authored the post on any electronic device belonging to his employer, nor does the content of the post relate to

> Beagan's job performance. Moreover, the employer does not have a social media policy that was introduced into evidence. *See Kirby v. Washington State Department of Employment Security,* 185 Wash. App. 706, 342 P.3d 1151, 1152-53 (2014). Beagan also specifically denied making the Facebook post while he was on the road; and the employer, which bears the burden of proof when seeking to have an employee disqualified from unemployment benefits, *Foster-Glocester,* 854 A.2d at 1018, *Foster-Glocester [Regional School Committee v. Board of Review, Department of Labor and Training,]* 854 A.2d [1008] 1018 [(R.I. 2004)] presented no contrary evidence. Given all of these facts, we are of the opinion that Beagan's statement to Morancey that he did not have access to Beagan's Facebook page alone does not support a finding that the Facebook post was connected with Beagan's work.

Beagan, 162 A.3d at 628 (fuller citation added). For these reasons, the District Court's decision (affirming a prior ruling of the Board of Review) denying benefits to Mr. Beagan was vacated. *Id*. at 628-29.

In the instant case, the Referee's decision (which the Board of Review adopted as its own) does state that "the claimant showed a substantial disregard for her employer's interest." *Dec. of Referee,* at 3. But the decision does not explain how Claimant's actions (*i.e.,* making a public appearance as Mrs. Santa) imperiled the Employer's interests, or how her actions diminished to perform in her position.

Accordingly, we must consider whether the Referee's decision satisfied the requirement that findings and conclusions be made on all pertinent issues, as required by G.L. 1956 § 28-44-46; and, when his decision was adopted by the Board of Review as its own, it became subject to the further requirements of specificity

found in G.L. 1956 § 28-44-52.[5]

And it is well-settled nationally that it is appropriate to remand insufficient administrative decisions to the administrative decision-maker. The legal treatises and encyclopedias have repeatedly said that an administrative decision which fails to address an issue presented to it is suitable for remand. *See* 2 AM. JUR. 2d *Administrative Law* § 548 (Nov. 2019 Update) (citing *Morrison v. D.C. Dep't of Employment Services,* 834 A.2d 890, 898 (D.C.2003). *See also* 73A C.J.S. *Administrative Law and Procedure* § 553 (Sept. 2019 Update) (also citing *Morrison*). In addition, an administrative decision "which ignores a clearly applicable statute is contrary to law and cannot stand." *See* 73A C.J.S. *Administrative Law and Procedure* § 339 (Sept. 2019 Update) (citing *Pelletier v. White,* 33 Conn. Supp. 769, 371 A.2d 1068 (Super. Ct. 1976)).

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[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." For application of this standard in a different administrative context, *see Sakonnet Rogers, Inc. v. Coastal Resources Mgmt. Council,* 536 A.2d 893, 897 (R.I. 1988); *E. Greenwich Yacht Club v. Coastal Resources Mgmt. Council,* 118 R.I. 559, 569, 376 A.2d 682, 686-87 (1977).

We cite to these provisions from the Employment Security Act because the equivalent provision within the Administrative Procedures Act (APA), G.L. 1956 § 42-35-12, is not, strictly speaking, applicable to Board of Review hearings. *See* G.L. 1956 § 42-35-18(c)(1). Nevertheless, our Supreme Court has indicated that Board hearings may be guided by the principles underlying these APA provisions. *See Foster-Glocester Regional School Committee v. Board of Review, Department of Labor and Training,* 854 A.2d 1008, 1018 (R.I. 2004) (citing § 42-35-10(a)); *see also DePasquale v. Harrington,* 599 A.2d 314, 315-16 (R.I. 1991) (applying G.L. 1956 § 42-35-10(a)'s ban on "[i]rrelevant, immaterial, or unduly repetitious evidence" to Division of Motor Vehicle appeals).

In its present form, the Board's decision is unreviewable. As such, 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 authorized to emend deficient Board of Review decisions. *See generally, Beagan, supra.* And so, we must remand the instant matter to the Board of Review, so that it may undertake to perform an analysis adhering to the approach and the factors enumerated in *Bunch* and *Beagan*.

V
Conclusion

Upon careful review of the evidence, I find that the decision of the Board of Review was made upon improper procedure and is affected by error of law. G.L. 1956 § 42-35-15(g)(3),(4).

Accordingly, I recommend that the instant case be REMANDED to the Board of Review for the issuance of a new decision.

/s/
Joseph P. Ippolito
Magistrate

January 28, 2025