

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

**DISTRICT COURT
SIXTH DIVISION**

Ashley Fortes

v.

A.A. No. 6AA-2024-00056

**Department of Labor and Training,
Board of Review**

JUDGMENT

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

ORDERED AND ADJUDGED,

that the decision of the Board of Review is **AFFIRMED**.

Dated at Warwick, Rhode Island, on this 15th day of September, 2026.

Enter:

By Order:

_____/s/____

_____/s/____

STATE OF RHODE ISLAND
PROVIDENCE, Sc.

DISTRICT COURT
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A.A. No. 6AA-2024-00056

DECISION

Caruolo, J. This matter comes before the Court on appeal from a decision of the Department of Labor and Training Board of Review (“Board of Review”). The Board of Review affirmed the decision of a Referee reversing the determination of the Director of the Department of Labor and Training (“Department”). The Referee concluded that Appellant, Ashley Fortes (“Appellant”), was discharged for misconduct connected with her work and therefore was not entitled to receive employment security benefits pursuant to G.L. 1956 § 28-44-18. Appellant asks this Court to reverse, or in the alternative, remand the Board of Review’s decision.

The Court has jurisdiction pursuant to R.I.G.L. § 28-44-52. For the reasons stated below, the Board of Review’s decision is **AFFIRMED**.

PROCEDURAL HISTORY AND FACTS

A. Factual Background

This matter was initially heard pursuant to a claim for employment security benefits filed by Appellant following the termination of her employment as Program Director for CODAC, Inc. (“Employer”). *See* Record (R.). Appellant was employed by Employer for approximately four and one-half years. (Compl. ¶ 7.) She began her employment as a counselor and was promoted over time to the position of Program Director. *Id.* Her last physical day of work was April 2, 2024. *Id.* ¶ 8.

Mary Torres (“Ms. Torres”), Director of Human Resources for CODAC, stated that “CODAC discharged Appellant for ‘falsification of documentation’ because [Appellant] ‘had documented [that] she ha[d] seen patients when she ha[d] not.’” *Id.* ¶ 13. Ms. Torres further stated that “had the files not been caught, ‘they would have been sent to Medicaid to be paid for services that were not rendered, which is Medicaid fraud.’” *Id.*

On April 5, 2024, Appellant filed a claim for employment security benefits with the Department. *Id.* ¶ 12. In connection with her claim, Appellant reported that she had been discharged for Medicaid fraud on April 3, 2024. (R. at 113 (Employment Benefit Claim).) Appellant acknowledged that she had “plac[ed] a letter ‘X’ as a placeholder instead of placing comments about the content of the session . . . due to time constraints . . . because bonuses were based on how many were completed.” *Id.* In response to Ms. Torres’ report that Appellant overlapped the dates and times of some of the appointments, Appellant stated that “those notes were entered” so that she could “edit the times when [she] go[es]

back into the note.” *See* R. at 45-46 (Hr’g Tr.); *see also Id.* at 128, 136 (Visit Summary); *Id.* at 131, 135 (Visit Summary.)

At the May 28, 2024 hearing, Appellant testified before the Referee. *See generally* Hr’g Tr. Appellant testified that she “met with patients” and “marked an X as a placeholder in it[.] [She] was going to go back and put more detailed notes about the session and then officially close out the document.” *Id.* at 43. She testified that she had reported another employee, John, for documentation issues involving copied and pasted notes that did not correspond to the patient. *Id.* at 53. Appellant introduced an email thread in which another employee expressed concern that such documentation could be “flagged as fraud, if audited.” (R. at 86-88 (Email, Mar. 6, 2024).) Appellant testified that John was not terminated for documentation issues but that she and her direct support, Gabriella, who reported the incident, were discharged. (Hr’g Tr. 54-55.) Appellant was discharged on April 3, 2024. *Id.* at 31. She thereafter completed a claimant questionnaire regarding her discharge. (R. at 147 (Claimant Questionnaire).)

B. Department’s Findings

On April 23, 2024, the Department determined that Appellant was discharged for non-disqualifying reasons and allowed benefits. (R. at 150 (Decision).) In reaching its decision, the Department relied on statements from both Appellant and Employer, as well as Appellant’s discharge questionnaire. *Id.*; (R. at 113-15 (Employment Benefit Claim)); *Id.* at 147 (Claimant Questionnaire.) The Department noted that Appellant’s discharge was “considered to be for non-disqualifying reasons as there is insufficient evidence to show deliberate misconduct in connection with [Appellant’s] work.” (R. at 150.)

The Department further determined that Employer failed to timely return the Notice of Claim form mailed on April 9, 2024, thereby denying Employer standing to contest the determination. *Id.* The Rhode Island Employment Security Act, as codified in G.L. 1956 § 28-44-38(c), provides in pertinent part that:

“[i]f an employer fails without good cause . . . to return this notice within ten (10) working days of its mailing, the employer shall have no standing to contest any determination to be made by the director with respect to the claim and any benefit charges pursuant to it.” § 28-44-38(c).

As such, the Department found that Appellant’s benefits are allowed and Employer failed to return the notice as required. (R. at 150.)

C. Referee’s Findings

Following these findings, Employer appealed the Department’s decision to the Referee of the Board of Review on April 25, 2024. (R. at 153 (Appeal)); *see generally* Decision of Referee. This appeal was heard during a telephone hearing on May 28, 2024. (R. at 70 (Decision).) In her decision, the Referee addressed two issues: (1) “whether or not the [E]mployer meets the requirements of Section 28-44-38(c) of the Rhode Island Employment Security Act” and (2) “whether or not the claimant was discharged from this job under disqualifying circumstances within the provisions of Section 28-44-18 of the Rhode Island Employment Security Act.” *Id.* at 71-72.

With respect to standing, the Referee found that the Notice of Claim was mailed on April 9, 2024, and returned by fax on April 18, 2024. *Id.* at 70; *see also* R. at 94 (Proof of Notice of Claim.) Based on credible testimony, the Referee concluded that Employer returned the form timely and therefore had standing. *Id.* at 71.

Turning to misconduct, the Referee found that the credible and unrefuted evidence established that Appellant was discharged for violating a reasonably known policy. *Id.* at 72. The Referee noted that had Employer not conducted an audit, the visit would have been billed and, due to the lack of notes, the facility could have been charged with Medicaid fraud because there would be no proof that the visit occurred. *Id.* at 71. The Referee reversed the Department's findings and denied benefits. *Id.*

D. Board of Review's Findings

Appellant appealed the Referee's decision to the Board of Review on June 6, 2024. (R. at 4 (Appeal).) On June 20, 2024, the Board of Review issued a decision affirming the Referee's findings and conclusions in full. *See* Decision of the Board of Review. The Board of Review found that "the findings of the Appeal Tribunal on the factual issues which are hereby incorporated by reference constitute a proper adjudication of the facts." (R. at 2 (Decision).) Furthermore, the decision stated that the Appeal Tribunal's conclusions "as to the applicable law thereto are correct and proper and such findings and conclusions are hereby affirmed." *Id.*

APPELLANT'S MEMORANDUM

Appellant argues that the Referee and Board of Review's decision should be reversed or, in the alternative, remanded because it is premised upon errors of law, is not supported by reliable, probative, or substantial evidence, and is arbitrary and capricious. (Appellant's Mem. 4.) Specifically, Appellant contends that the Referee misapplied the statutory standard for misconduct under Section 28-44-18 by failing to properly analyze the required elements of a knowing violation of a reasonable and uniformly enforced policy

and by improperly lowering the standard for willful disregard. *Id.* at 4-6. Appellant further asserts that her use of an “X” placeholder with the intent to later complete documentation does not constitute misconduct and that the Employer failed to meet its burden of proof. *Id.* at 6. Additionally, Appellant argues that the record lacks legally competent evidence, emphasizing the absence of documentary proof of the alleged policy, inconsistencies in Employer testimony, and the improper reliance on hearsay and credibility determinations. *Id.* at 11-13.

APPELLEE’S MEMORANDUM

The Board of Review argues that the Referee properly determined that Appellant engaged in misconduct under Section 28-44-18. (Appellee’s Mem. 7.) The Board of Review asserts that the evidence demonstrated both a knowing violation of Employer policy and deliberate conduct in willful disregard of the Employer’s interests. *Id.* at 6-7. In particular, Appellant acknowledged placing placeholders in client records and signing off on incomplete documentation. *Id.* at 8. The Board of Review further maintains that the Referee was entitled to weigh the testimony and evidence, including hearsay, in making credibility determinations. *Id.* at 9-10. Accordingly, the Board of Review contends that its decision is supported by legally competent evidence and should be affirmed. *Id.* at 9.

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 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:

“(a) In violation of constitutional or statutory provisions;

“(b) In excess of the statutory authority of the agency;

“(c) Made upon unlawful 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.” Section 42-35-15(g).

In conducting its review, a Court cannot “substitute its judgment 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).

DISCUSSION

The scope of judicial review by this Court is confined to questions of law, and in the absence of fraud, the findings of fact by the Board of Review, if supported by substantial evidence, are conclusive. G.L. 1956 § 28-44-54. This Court must determine whether the decision of the Board of Review, which adopted the Referee’s findings and

conclusions, is supported by reliable, probative, and substantial evidence in the record, or whether it was affected by error of law.

A. Statutory Definition 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 that 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.” (emphasis added). *Id.*

The statute is disjunctive. *Id.* Accordingly, misconduct may be established either by showing (1) deliberate conduct in willful disregard of the employer’s interest, or (2) a knowing violation of a reasonable and uniformly enforced policy not attributable to incompetence. *Id.*

In *Turner v. Department of Employment Security, Board of Review*, 479 A.2d 740, 741-42 (R.I. 1984), the Rhode Island Supreme Court adopted a definition of misconduct that has been applied in unemployment-insurance cases. The Court held that the term, “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 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." *Id.* at 741-42 (citing *Boynton Cab Co. v. Neubeck*, 237 Wis. 249, 296 N.W. 636 (1941)).

Further, the Supreme Court has determined that "in order to determine whether an employee is ineligible for 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." *Beagan v. Rhode Island Department of Labor and Training*, 162 A.3d 619, 627 (R.I. 2017). The "[e]mployer 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).

B. Proven Misconduct

Appellant contends that the Board of Review's decision is unsupported by reliable, probative, or substantial evidence and is clearly erroneous. (Appellant's Mem. 6.) Appellant avers that her "use of an 'X' placeholder to complete notes after 24 to 48 hours does not constitute misconduct[.]" *Id.* Where misconduct is premised upon violation of employer policy, the record must support findings that: (1) the violation was knowing; (2) the policy was reasonable; (3) the policy was uniformly enforced; and (4) the violation was not the result of incompetence. *Id.*; see also G.L. 1956 § 28-44-18(a).

1. Knowing Violation

This Court considers whether the Referee relied upon sufficient evidence proving that Appellant knew of the policy and violated it. See R. The Policy Handbook provides

that “Counselors are required to maintain complete, accurate, and up-to-date records which document any and all activities and interactions with patients. Records are to be kept in a manner consistent with CODAC policies and procedures.” (R. at 142 (Policy Handbook).) During the hearing, Appellant acknowledged awareness of this requirement to properly document client visits. (Hr’g Tr. 43.) She testified that she “met with patients” and “marked an X as a placeholder in it[.] [She] was going to go back and put more detailed notes about the session and then officially close out the document.” *Id.* Appellant also acknowledged that “[c]ertain notes were an oversight” and that she “intended to go back and complete the notes[.]” *Id.* at 49. Further, Appellant conceded that she is aware of the policy regarding falsification of documentation. (R. at 147 (Claimant Questionnaire).) However, Appellant did not comply because she was “under a lot of pressure” due to “a lot of turnovers for counselors.” (Hr’g Tr. 44.) Accordingly, the record contains ample evidence indicating that Appellant knew of the policy and violated it. *See R.*

2. Reasonableness of the Policy

The documentation policy conforms to Medicaid requirements mandating complete, accurate, and timely documentation of patient encounters. *See R.* at 142 (Policy Handbook); *see also R.* at 143 (Medicaid Documentation.) According to the Medicaid documentation for behavioral health practitioners, the policy expressly warns against billing undocumented services and notes that penalties may be administrative, civil, or criminal. *Id.* at 143-44. Given the regulated healthcare environment in which Employer operates, the policy is reasonable.

3. Uniform Enforcement

Appellant argues that “other clinicians who engaged in [using placeholders] have not been disciplined and still work for CODAC.” See Appellant’s Mem. 8; *see also* Hr’g Tr. 47. However, testimony established that Gabriella was terminated for engaging in the same conduct. *Id.* at 42. Employer also distinguished between the discipline imposed on a probationary employee and that imposed on supervisory personnel. *Id.* at 39-40. The Referee was entitled to resolve credibility disputes and determine that the policy was uniformly enforced. As such, the record contains competent evidence supporting that conclusion.

4. Not the Result of Incompetence

The violation does not appear to be due to incompetence because no claim of incompetence has been raised by the parties. Appellant did not contend that she lacked the ability to understand or comply with documentation requirements. Rather, she cited time constraints and bonus structures. (R. at 113 (Employment Benefit Claim).) The Referee reasonably concluded that Appellant understood the policy and consciously signed off on incomplete documentation. (R. at 71.)

5. Deliberate Conduct in Willful Disregard of the Employer’s Interests

Even under the alternative statutory prong, the Board of Review’s decision to uphold the findings of the Referee was supported by reliable, probative, and substantial evidence contained in the whole record. § 42-35-15(g). The Referee found that Appellant failed to enter notes after seeing a client on approximately ten occasions and locked and signed documents implying completion. (R. at 70-71.) The Referee determined that “[t]he

claimant's actions were in disregard of the employer's best interest and put the employer at risk." *Id.* at 72. Had the documentation not been identified during audit, the visits would have been submitted to Medicaid for payment without proper supporting documentation, thereby exposing Employer to potential Medicaid fraud liability. *Id.* Thus, the record supports the conclusion that Appellant's actions constituted deliberate conduct in willful disregard of Employer's interests.

C. Hearsay Evidence

Appellant also challenges the Referee's credibility determinations and contends that the decision was improperly based upon hearsay testimony. (Appellant's Mem. 12-13.) As previously noted, it is well-settled that this Court cannot "substitute its judgment for that of the agency concerning the credibility of witnesses or the weight of the evidence concerning questions of fact." *Blais*, 212 A.3d at 611. Rather, it is limited "to determine whether there is legally competent evidence to support the administrative decision." *Bunch v. Board of Review, Rhode Island Department of Employment and Training*, 690 A.2d 335, 337 (R.I. 1997). Further, this Court "may not substitute [its] judgment for that of the administrative agency." *Id.* It "may reverse such findings only in instances wherein the conclusions and the findings of fact are 'totally devoid of competent evidentiary support in the record[.]'" *Id.*

With respect to hearsay, the Supreme Court recognized that the danger of a verdict based on "unreliable or confusing testimony is not present in administrative hearings because the hearing officer is trained to be an expert in his or her capacity, unlike the layperson on a jury." *Foster-Glocester Regional School Committee*, 854 A.2d at 1018. As

such, the Supreme Court has held that “hearsay evidence is admissible in administrative hearings[,] as long as it is reliable and probative and not the sole basis of the decision when contradicted by direct evidence.” *Id.* at 1018-19.

Here, Appellant argues that the Referee erred in characterizing Ms. Torres’ testimony as “credible” and “un-refuted” and maintains that the “record does not support the Board’s conclusion that [Appellant] was discharged for proven misconduct.” (Appellant’s Mem. 12.) Specifically, Appellant argues that Ms. Torres’ testimony is “uncorroborated hearsay and should have been afforded little to no weight” since Ms. Torres’ “own testimony is evidence that she lacked first-hand knowledge regarding key facts and events.” *Id.* at 12-13.

However, the Referee found that Ms. Torres’ testimony was supported by documentary evidence and Appellant’s own admissions. (Hr’g Tr. 43.) Ms. Torres testified firsthand that the admitted conduct formed the basis of Employer’s decision to terminate Appellant. *Id.* at 15-16. Ms. Torres also testified regarding Employer’s documentary policies, audit findings, and compliance concerns in the context of a workplace investigation. This Court finds that the Board of Review’s decision to affirm the findings of the Referee was “supported by reliable, probative, and substantial evidence contained in the whole record.” § 42-35-15(g).

D. Connection to the Employee’s Work

The second prong of the *Beagan* analysis, whether the misconduct was connected to the employee’s work, is satisfied. As noted above, the conduct directly concerned

Appellant's duties as Program Director and involved documentation of client services and billing compliance.

CONCLUSION

Upon careful review of the entire record, the Board of Review's decision affirming the Referee's decision is supported by substantial evidence. Thus, Appellant's appeal is hereby denied, and the Decision of the Rhode Island Department of Labor and Training Board of Review is **AFFIRMED**.