

STATE OF RHODE ISLAND
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

National Security Corporation	:	
	:	
v.	:	6AA – 2025 – 00050
	:	
Department of Labor and Training,	:	
Board of Review	:	
(Thomas Botelho)	:	

ORDER

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 Decision of the Board of Review is hereby AFFIRMED.

Entered as an Order of this Court at Providence on this 16th day of July, 2026.

By Order:

_____/s/_____
Jamie Hainsworth
Chief Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

National Security Corporation

:

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v.

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6AA - 2025 - 00050

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Department of Labor and Training,
Board of Review
(Thomas Botelho)

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FINDINGS & RECOMMENDATIONS

Ippolito, M. National Security Corporation filed the instant complaint for judicial review seeking relief from a final decision of the Board of Review of the Department of Labor and Training (the Board), which held that its former employee, Mr. Thomas Botelho, was entitled to receive unemployment benefits; the company maintains that he should have been disqualified from receiving benefits because he was fired for misconduct (specifically, attendance issues), as provided in G.L. 1956 § 28-44-18. This matter has been referred to me for the making of 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 supported by competent evidence of record and was not affected by error of law. I must therefore recommend that the decision rendered by the Board be AFFIRMED.

I
Facts and Travel of the Case

A
The Claim and the Initial Decision of the Department

Mr. Thomas Botelho (also “Claimant”) was employed by National Security Corporation (hereinafter “Appellant,” “the Employer,” or “NSC”) as a manager for approximately 12 months until he was terminated on February 10, 2025. *See* DLT Form 480, “Employment Data” Section, (which may be found in the electronic record (*ER*) attached to this case, at 67). Mr. Botelho filed an application for unemployment benefits on February 24, 2025. *Id.* “Claim Data” Section.

Consequently, on Thursday, March 6, 2025, an adjudicator employed by the Department of Labor and Training interviewed Mr. Botelho by telephone to determine his eligibility for unemployment benefits. *Id.* “Claimant Statement” Section. Claimant Botelho advised the adjudicator that he was terminated for poor attendance. *Id.* He told the adjudicator that, on February 3, 2025, he called out for his shift; he then visited his doctor and was “written out until 2/13/2025 due to illness.” *Id.* He provided this information to his General Manager by text message the same day. *Id.* According to Mr. Botelho, this was the proper protocol to call out. *Id.* However, on February 10, 2025, he was terminated for doing so. He stated he had received “first warnings” in November for attendance issues, but no “final warnings.” *Id.* He denied any wrongdoing. *Id.*

On the same day, the adjudicator also spoke to National Security’s General Manager, Mr. Chris Morra, who confirmed that Mr. Botelho was discharged for attendance issues. *See* DLT Form 480, “Employer Statement” Section; *ER* at 68. He had no additional details but promised to forward such information, by Monday, March 10,

2025. *Id.*

Then, on March 10, 2025, the adjudicator noted that Claimant Botelho had submitted medical documents indicating that he was unable to work during his final absence. *See* DLT Form 480, “Internal Notes” Section; *ER* at 68. On the same date, the adjudicator also noted receipt of NSC’s attendance policy and of written attendance warnings received by Claimant. *Id.*

Consequently, on March 11, 2025, the adjudicator, acting on behalf of the Director of the Department, issued a decision finding Claimant to be eligible to receive benefits, notwithstanding the provisions of G.L. 1956 § 28-44-18, because “there is no evidence to show misconduct in connection with [his] work.” *See Dec. of Director*, at 1; *ER* at 57.

B

Proceedings Before the Referee

The Employer filed an appeal from the Director’s decision. *See Request for a Hearing Before Board of Review*; *ER* at 107-08. Accordingly, a telephonic hearing was scheduled for April 24, 2025, before a hearing officer employed by the Department’s Board of Review — a “referee.” *Ref. Hr’g Tr.* at 1; *ER* at 9.¹ At the hearing, Claimant Botelho appeared; and NSC was represented by two of its employees — Christopher Morra, its Vice-President, and Lorie D’Ortona, its Office Manager. *Id.* at 1, 6.

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 made inquiry of Mr. Morra

¹ The transcript of the hearing conducted by the Referee begins on page 9 of the electronic record. Henceforth, all citations regarding the hearing will be made solely to the transcript page, and not to the page in the electronic record.

regarding whether Claimant Botelho was employed by National Security Corporation for one year as a manager. *Ref. Hr'g Tr.* at 9-10. He indicated that this was true. *Id.* at 10. Then, after the witness confirmed that Claimant was in fact terminated (on February 10th after a no-show), the Referee asked — by whom? *Id.* Mr. Morra responded that, after they tried, unsuccessfully, to reach Mr. Botelho by telephone, he was fired by a text sent by Ms. D'Ortona. *Id.* at 10-11.²

The Referee then asked Ms. D'Ortona whether she had received a medical excuse dated February 13, 2025, from Mr. Botelho's doctor. *Id.* at 11.³ She said she had not. *Id.* at 11, 12. In fact, she denied receiving any kind of medical documentation from Mr. Botelho, even though she had asked for it,⁴ and he had promised to obtain it. *Id.* at 11-12. She said this was so even though he was out for five weeks straight in October and was late twelve times in January. *Id.* at 12. And, the prior May he had been out for two weeks and one week in June — though there was some documentation then. *Id.* at 13. The witness stated that Mr. Botelho exhibited a lack of communication (or minimal communication). *Id.* And he just never came in, or he would come in late. *Id.* at 14-15.

At this juncture, Mr. Botelho began to testify. *Id.* at 16 *et seq.* He stated that he communicated with Mr. Chris Morra Sr. on the day he received the text from Ms. D'Ortona and on each day of that week. *Id.* at 17. The Referee then asked if he had ever provided medical documentation to Mr. Morra Sr. *Id.* He answered yes; and stated he kept copies. *Id.* And when the Referee asked why he had not submitted those

² At this point the Referee read the text into the record. *Id.* at 11. The exhibit may be found on page 77 of the electronic record attached to this case.

³ At this point the Referee read the letter into the record. *Id.* at 11. The exhibit may be found on page 75 of the electronic record attached to this case.

⁴ The witness later added that the owner, Chris Morra Sr. (the father of the witness) also asked Mr. Botelho for documentation. *Id.* at 14.

documents for the hearing, Claimant said that he thought he had. *Ref. Hr'g Tr.* at 17. But, according to the Referee, he had not. *Id.* However, Mr. Botelho insisted that he was in regular communication with Mr. Chris Morra Sr. *Ref. Hr'g Tr.* at 18. When asked how this could be so and Mr. Morra Jr. and Ms. D'Ortona not know about it, he stated that there was a lack of communication in that office. *Id.* at 19. But he reiterated that he gave such notes to Mr. Morra Sr. *Id.* at 20.

In response, Mr. Morra Jr. stated that there was nothing in his file to indicate that Claimant had provided any medical documentation to National Security. *Id.* at 21. And, if he had, it would have gone into the file. *Id.* at 22. Specifically, Mr. Botelho stated that he gave a medical document to Mr. Morra Sr. “around a holiday” in 2024. *Id.* at 23. Later, that was clarified to October of 2024. *Id.* at 24-25.

In his April 24, 2025 Decision, the Referee made Findings of Fact regarding the substantive issue of whether Mr. Botelho should be disqualified from receiving benefits due to misconduct, as provided in § 28-44-18. He found:

The claimant was a manager for National Security Corporation for one year last on February 10, 2025. The employer terminated the claimant for a prolonged absence. The two employers who appeared at this hearing testified the claimant did not submit or explain his long-term attendance issue, which led to termination. The claimant testified that he communicated on a regular basis and provided medical documentation to the owner of the business.

The owner of the business did not appear and thus did not testify at this hearing.

Dec. of Referee, at 1; *ER* at 6. In the following section of his decision, the Referee declared his “Conclusion” as to the instant case. He began by presenting the statutory and caselaw definitions of misconduct, as stated in G.L. 1956 § 28-44-18 and the leading cases

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 1-2; *ER* at 6-7. The Referee then set forth the burden of proof and the standard of proof:

... 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 work.

The employer did not show, through a preponderance of the evidence, that the actions of the claimant exhibited misconduct in connection with his work. The testimony of the claimant could not be refuted by any firsthand employer witness at this hearing. Therefore, unemployment benefits are granted under Section 28-44-18 of the Rhode Island Employment Security Act.

Dec. of Referee, at 2; *ER* at 7. In sum, the Referee found that the Employer had not carried its burden of proving misconduct because its representatives were unable to negate the testimony of Claimant that he provided proper medical documentation to the business's owner.

C

Proceedings Before the Board of Review

National Security then sought review by the Board of Review, which did not conduct a new hearing; instead, on June 12, 2025, the Board decided the case based on 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*, at 1; *ER* at 2.

II Applicable Law

1

Misconduct — Generally

As stated *supra*, this case involves the application and interpretation of section 28-44-18 of the Employment Security Act, which specifically addresses misconduct as a circumstance which disqualifies a claimant from receiving benefits; it provides in pertinent part:

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. ... 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 *Turner, supra*, 479 A.2d at 741-42, the Rhode Island Supreme Court adopted a definition of the term “misconduct” previously employed in *Boynton Cab Co. v. Neubeck*, 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.

However, a number of years ago, the legislature amended § 28-44-18 to permit, in the alternative, a finding of misconduct to be based on the violation of a rule promulgated by the employer. *See* G.L. 1956 § 28-44-18 *as amended by* P.L. 1998, ch. 401, § 3 *and* P.L. 1998, ch. 369, § 3, in which:

... "misconduct" is defined as ... 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. ...

Note the elements of the alternative standard: (1) the rule must be violated knowingly, (2) the rule must be reasonable, (3) the rule must be shown to be uniformly enforced, and (4) the employee must not have violated the rule through incompetence.

Proceeding under either theory, the employer bears the burden of proving by a preponderance of evidence that the claimant's actions constitute misconduct. *Foster-Glocester Reg'l Sch. Comm. v. Dep't of Labor and Training, Bd. of Review*, 854 A.2d 1008, 1018 (R.I. 2004).

Attendance Issues — Absences

Attendance issues, including absenteeism and tardiness, have been generally accepted as grounds justifying a disqualification for misconduct in appropriate cases. *See* 76 AM.JUR. 2d *Unemployment Compensation* § 91, “Absenteeism or Tardiness” (Sept. 2025 Update); 81 C.J.S. *Social Security and Public Welfare*, § 413, “Tardiness” (May 2025 Update). This is particularly true when a pattern of absences has been established. *See Broadway & Fourth Ave. Realty Co. v. Crabtree*, 365 S.W.2d 313, 314 (Ky. 1963) (Supreme Court of Kentucky declared that [t]he general rule is that “persistent or chronic absenteeism without notice or excuse in the face of continued warnings from the employer constitutes such misconduct as requires a denial of benefits”); *O’Keefe v. Tabitha, Inc.*, 224 Neb. 574, 399 N.W.2d 798 (1987) (Stating that “an employee’s chronic and excessive absenteeism demonstrates a wanton and willful disregard of the employer’s interests”); *Matter of Iglesias [Commissioner of Labor]*, 297 A.D.2d 849, 746 N.Y.S.2d 853 (2002) (Mem.) (“It is well settled that excessive absenteeism following written warnings may constitute disqualifying misconduct.”); *Moreno v. Dep’t of Emp’t & Training, Bd. of Review*, A.A. No. 1995-175 (Dist.Ct. 1/19/1996); *Roxbury v. Dep’t of Emp’t & Training, Bd. of Review*, A.A. No. 1991-101 (Dist.Ct. 8/1/1991); *Heroux v. Dep’t of Emp’t & Training, Bd. of Review*, A.A. No. 1994-220 (Dist.Ct. 1/30/1995).

However, it is widely held that absences from work for reasons of ill health do not constitute misconduct *per se*. *See* 76 AM.JUR. 2d *Unemployment Compensation* § 92, “Absenteeism or Tardiness—Absenteeism Due to Illness” (Feb. 2026 Update); 81

C.J.S. *Social Security and Public Welfare*, § 412, “Absence from Work” (March 2026 Update). And this principal has been accepted by this Court, which stated in 2014 that:

... in the abstract a rule prohibiting excessive absences is certainly reasonable, so long as it proscribes absences not beyond an employee’s control. I do not believe a rule can be deemed reasonable (for unemployment purposes) if it proscribed absences caused by a force majeure — such as an absence caused by one of our northeast hurricanes. Neither should absences caused by illness be treated as such. An employer cannot, by publishing a rule, change the nature of the human condition (particularly our vulnerability to illness)

Keegan v. Dep’t of Labor and Training, Bd. of Review, A.A. No. 2013-130, slip op. at 12-13 (Dist.Ct. 6/5/2014)).

Conversely, and as alluded to *supra*, a *failure to notify* the employer of the imminent absence (in common parlance, being a “no-call, no show”) is universally agreed to be an aggravating factor — one which will support a finding of misconduct. *See* 76 AM.JUR. 2d *Unemployment Compensation* § 92 and 81 C.J.S. *Social Security and Public Welfare*, § 412, *supra*. And this Court has accepted and applied this principal on many occasions. *See e.g. Blazer v. Dep’t of Emp’t Sec., Bd. of Review*, A.A. No. 88-030 (Dist.Ct. 8/25/1988) (Moore, J.); *Audette v. Dep’t of Emp’t Sec., Bd. of Review*, A.A. No. 91-126 (Dist.Ct. 12/11/1991) (DeRobbio, C.J.); *Lollar v. Dep’t of Labor and Training, Bd. of Review*, A.A. No. 2011-136, slip op. at 8-9 (Dist.Ct. 4/12/13); *Marzilli v. Dep’t of Labor and Training, Bd. of Review*, A.A. No. 2012-225, slip op. at 9-10 (Dist.Ct. 4/12/2013) (tardiness).

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 Soc. Welfare*, 122 R.I. 583, 588, 410 A.2d 425, 428 (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 Emp’t Sec.*, 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. Bd. of Review, Dep’t of Emp’t Sec.*, 517 A.2d 1039, 1041 (R.I. 1986).

The Supreme Court of Rhode Island recognized, in *Harraka v. Bd. of Review of Dep't of Employment Sec.*, 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

Positions of the Parties

A

Position of Appellant Employer

In its Amended Brief, filed on January 20, 2026, Appellant National Security Corporation presents four arguments in opposition to Mr. Botelho’s eligibility for unemployment benefits:

First, the Employer argues that it and Mr. Botelho were operating under an Employment Agreement, which required him to “... serve the Company and perform any duties, or any other duties at [sic] he may be assigned by the Company in any future position with the Company faithfully, with due diligence, and to the best of the Employee’s ability.” *Appellant’s Amended Brief*, at 4 (citing Agreement, ¶ 2). Under this

heading NSC, asks that it not be penalized for failing to sanction Mr. Botelho earlier. *Id.* at 4. It also references other misconduct on the part of Claimant which did not involve attendance issues. *Id.* Appellant then references the definition of misconduct presented by our Supreme Court in *Turner*. *Id.* at 5 (quoting *Turner, supra*, 479 A.2d at 741-42).⁵ And it asserts that Mr. Botelho's behavior met the standard, and that it did not constitute "mere inefficiency or negligence." *Id.* at 5 (quoting *Turner*, 479 A.2d at 742).

Second, NSC reminds us that Rhode Island is an "at-will" employment state. *Appellant's Amended Brief*, at 6 (citing *New England Stone LLC v. Conte*, 962 A.2d 30, 33 (R.I. 2009) and *Galloway v. Roger Williams Univ.*, 777 A.2d 148, 150 (R.I. 2001)). Therefore, it urges that Claimant had no right to continued employment at National Security; and it was within its rights to terminate Mr. Botelho. *Id.* at 6.

Third, Appellant asserts that Claimant, when the matter was before the Director's adjudicator, provided documents to the Department but not to it. *Appellant's Amended Brief*, at 7. NSC also alleges that Mr. Botelho's conduct during the travel of this matter violated the standard of behavior set out in Rule 11 of the District Court Civil Rules. *Id.* at 7-8.

And *fourth*, NSC argues that it had the right to terminate because employment contracts are enforceable in Rhode Island. *Id.* at 8 (citing *Vieira v. Jamestown Bridge Comm'n*, 91 R.I. 350, 357 (1960) and *State v. Yashar*, 2007 Super. Ct. LEXIS 45, at *101 (R.I.Super.Ct.3/20/2007)).

⁵ The definition of misconduct set forth in *Turner* is quoted *ante* at 8.

B

Position of the Board of Review

In its Memorandum of Law, filed on February 6, 2026, the Board of Review mounts five arguments in opposition to the Employer's appeal:

First, the Board argued that NSC failed to sustain its burden to prove misconduct within the meaning of the *Turner* case and G.L. 1956 § 28-44-18. *Board of Review's Memorandum of Law*, at 4-7. The Board quoted from *Turner*, after which it presented the following definition of misconduct, as set forth in § 28-44-18:

For 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.

Bd. of Review's Mem. of Law, at 5. The Board added that it is the employer's burden to prove misconduct. *Id.* (citing *Foster-Glocester Reg'l Sch. Comm. v. Bd. of Review*, 854 A.2d 1008 (R.I. 2004)). Moreover, the Board reminds us that it is not *this Court's* role to reevaluate whether the employer's proof was convincing, but only to determine whether the *Board's* decision was supported by competent evidence of record. *Bd. of Review's Mem. of Law*, at 5 (citing *Mooney v. Dep't of Labor and Training, Bd. of Review*, A.A. No. 2017-00064 (Dist.Ct. 10/25/2018)). The Board then presented a statement of our duty in this case in the simple manner we fashioned it almost eight years ago:

When evaluating a case under § 18 regarding an allegation of misconduct, the Court must always answer (at least) two questions. *First*, was the allegation sufficient to constitute misconduct justifying disqualification? And *second*, was the allegation proven by competent evidence?

Id. at 5 (citing *Mooney, supra*).

Then, turning to Mr. Botelho's case, the Board stated that "[i]t is well settled that an employer does *not* meet its burden of proof in misconduct cases where the Employer's case is based solely on hearsay evidence." *Id.* at 5 (citing *Hammed v. Dep't of Labor and Training, Bd. of Review*, A.A. No. 2009-06 (Dist.Ct. 05/04/2009) (Cenerini, J.); *Burrillville Racing v. Dep't of Labor and Training, Bd. of Review*, A.A. No. 2001-038 (Dist.Ct. 10/04/2001) (DeRobbio, C.J.); *Archway v. State of Rhode Island*, A.A. No. 2001-03 (Dist.Ct. 07/16/2001) (DeRobbio, C.J.)). The Board then noted that, at the hearing before the Referee, National Security was unable to refute Claimant's testimony that he was in regular communication with the owner and provided medical information to him, because the owner failed to attend the hearing. *Id.* at 6. And, the witnesses who did appear for NSC acknowledged that they did not know if this testimony was true. *Id.*

Following this argument, the Board responded to NSC's assertion that documentation was received into the record that had not been provided to the Employer in advance of the hearing, raising issues regarding whether the confines of the record were exceeded. *Bd. of Review's Mem. of Law*, at 6. However, the Board countered, and alleged that the *Employer* referenced matters not in the record in the brief submitted to this Court. *Id.* And so, the Board cited cases holding that, when considering an appeal under the Administrative Procedures Act (APA) — and appeals from the Board of Review falling within its ambit — the reviewing court is confined to a review of the administrative record. *Id.* at 7 (citing G.L. 1956 § 42-35-15(f) and *Mine Safety Appliance Co. v. Berry*, 620 A.2d 1255, 1259 (R.I. 1993), *Johnson Ambulatory Surgical Assoc's, Ltd. v. Nolan*, 755 A.2d 799, 805 (R.I. 2000), and *Barrington Sch. Comm. v. R.I. State Labor*

Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992)). Accordingly, the Board insists that this extra-record evidence ought not to be considered. *Id.* at 7.

Based on the foregoing, the Board urges that National Security did not sustain its burden of proof. *Id.*

The Board's *second* argument began with the admonition that conduct that may justify the termination of at-will employees may not warrant barring them from the receipt of unemployment benefits. *Id.* at 7-8. Regarding Mr. Botelho's case, the Board asserted that National Security did not question the truth of Claimant Botelho's statements that he was absent because he was ill. *Id.* at 8. With this in mind, the Board recalls this Court's decision in *Keegan v. Dep't of Labor & Training, Bd. of Review*, A.A. No. 2013-130, slip op. at 14 (Dist.Ct. 6/5/2014), for the proposition that absences beyond an employee's control cannot constitute misconduct. *Id.* at 8. And so, the Board urges that Mr. Botelho's absences, caused by illness, did not constitute misconduct. *Id.* at 8-9.

In its *third* argument, the Board urges that Appellant National Security did not prove a case under the alternate theory of misconduct — that is, the violation of a reasonable and uniformly enforced policy. *Bd. of Review's Mem. of Law*, at 9. The Board reminds us that, in order to succeed under this theory, an employer must prove that: (1) the rule must be violated knowingly, (2) the rule must be reasonable, (3) the rule must be uniformly enforced, and (4) the employee must not have violated the rule through incompetence. *Id.* at 9 (quoting *Coastline EMS v. Dep't of Labor and Training, Bd. of Review*, A.A. No. 2017-053 (Dist.Ct. 4/12/2018)). The Board asserts that the Employer failed to introduce any testimony or evidence on the third element — uniformity of enforcement. *Id.* at 9.⁶ And, under this same argument, the Board of Review asserts that

⁶ Indeed, the Board urges that testimony of record showed that the rule was not uniformly enforced as to Mr. Botelho. *Bd. of Review's Mem. of Law*, at 10.

Claimant's behavior did not constitute a "knowing" violation of the Employer's rule. *Id.* at 10.

For its *fourth* argument, the Board urges that Appellant was inaccurate when it stated that Claimant Botelho was not a proper party to the instant case. *Id.* at 11 (quoting G.L. 1956 § 28-44-39(c)).

And *fifth* and finally, the Board declares that this Court has no authority to order the disgorgement from Mr. Botelho of all the unemployment benefits he has previously received, as Appellant requests that we do. *Id.* at 11 (quoting G.L. 1956 § 28-42-68).⁷

V Analysis

The Appellant-Employer has vigorously argued in this case that it had the right to terminate Mr. Botelho's employment and that it did so for good cause. As a matter of law, it certainly had the right to do so, for Rhode Island is an "at will" employment state. The sole issue before the Court is whether National Security proved in the hearing conducted by the Referee that it fired Mr. Botelho for behavior which constitutes misconduct within the meaning of § 28-44-18. The Board of Review, adopting the Decision of the Referee as its own, found that the Employer did not prove its case. And, for the reasons that I shall now set forth, I must recommend that the Board of Review's decision be AFFIRMED.

To begin, the Board has indicated that National Security, in its presentation to the Referee, did not question the underlying veracity of Mr. Botelho's claim that he was ill. And my review of the record and the transcript of the hearing

⁷ Absent proof of fraud, the monies paid to a claimant while an employer's appeal is pending are non-recoverable. G.L. 1956 § 28-44-40.

supports that position. And so, since his absence due to illness could not constitute misconduct *per se*, the precise issue to be determined by the Board became whether Claimant *informed* his superiors that he would be absent, as he had a duty to do.

Mr. Botelho testified that he *did* notify his superiors; in fact, he bypassed his immediate superior and spoke to the owner, Mr. Chris Morra Sr., who was not present at the telephonic hearing. Appellant's witnesses were not able to contradict this testimony. And so, the Board found that the Employer had not satisfied its burden of proving that Mr. Botelho failed to properly advise National Security that he would be absent.

This is a factual determination that was within the province of the Board to make — one that this Court may not disturb so long as it is supported by competent evidence of record. And it was supported by competent evidence — Mr. Botelho's testimony.⁸ Accordingly, we may not set it aside.⁹

As to Appellant's remaining arguments, little need be said. *First*, National Security did not attempt to prove that any attendance rule it has promulgated has been uniformly enforced. Thus, at least one element of a policy case was simply unproven. *Second*, it is clear that the Referee did not consider documents that were not provided to the Employer. *Third*, the Claimant was a proper party to the appeal pursuant to § 28-44-39(c). And *finally*, I need not reach the legality of the Employer's request for disgorgement in light of my recommended resolution of the instant case.

⁸ However, this Court does not embrace the concept, presented by the Board in its Memorandum, that hearsay evidence cannot constitute proof of misconduct under § 28-44-18. *Board's Mem.* at 5. To the contrary, these are determinations that must be made by the Board (and its Referees) on a case-by-case basis. See *Foster-Glocester Reg'l School Comm. v. Bd. of Review*, 854 A.2d 1008, 1020-21 (R.I. 2004) (rejecting bright-line rule).

⁹ Of course, had the Board rejected Mr. Botelho's testimony as being unworthy of belief, this Court likely would have been required to give the same statutory deference to that decision as well.

V

Conclusion

Pursuant to G.L. 1956 § 42-35-15(g), the decision of the Board of Review must be upheld unless it was, *inter alia*, contrary to law, clearly erroneous in light of the reliable, probative, and substantial evidence of record, or arbitrary or capricious. This Court must affirm the Board's decision *unless* the facts found by the Board *must* lead to the conclusion that Mr. Botelho's termination by National Security Corporation *was* for reasons constituting misconduct under § 28-44-18. After a careful review of the record below, I cannot say that such a finding was required. I must therefore recommend that the Decision of the Board granting Mr. Botelho's claim for benefits be AFFIRMED.

/s/

Joseph P. Ippolito
Magistrate

July 16, 2026

