

STATE OF RHODE ISLAND
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

Lucas Santos

v.

Department of Labor and Training,
Board of Review

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A.A. No. 2026 - 48

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, 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 Board of Review's decision is AFFIRMED.

Entered as an Order of this Court at Providence on this 7th day of October, 2026.

By Order:

_____/s/_____
Jamie Hainsworth
Chief Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND
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v.

6AA-2026-00048

Department of Labor and Training,
Board of Review

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Mr. Lucas Santos (“Claimant” or “Appellant”) urges that the Board of Review of the Department of Labor and Training (“the Board”) erred when it held that he was ineligible to receive unemployment benefits pursuant to G.L. 1956 § 28-44-12 (Availability), because he was unavailable for work during a period in which he was travelling outside the country. 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. This matter has been referred to me for the making of findings and recommendations, as authorized by G.L. 1956 § 8-8-8.1. For the reasons I shall now relate, I have concluded that the decision of the Board in this case should be AFFIRMED; I so recommend.

I

Facts and Travel of the Case

A

The Initial Claim and the Director’s Decision

Mr. Lucas Santos filed a claim for employment security benefits on July 23, 2025, with an effective date of October 5, 2025. *See* DLT FORM 480 (Claim Data) (which

may be found in the 80-page Electronic Record (*ER*) attached to this case, at 49).¹ As a result, he began to receive benefits. However, on January 26, 2026, Claimant was interviewed by an adjudicator employed by the Department of Labor and Training (the Department) regarding the circumstances of his claim. As synopsisized by the adjudicator, he stated:

I am requesting benefits effective 100525. I went on a trip in Europe. I was backpacking. I was still applying for jobs and was physically able and looking for full time work at that time I will email you my work search logs by 012726 at 11:30am. If I was offered a job I would have just tole (sic) them my situation and when I could start work. I was there from 100625 through 110425. I would have told them I could have started on 110525. I understand my rights to appeal and to certify weekly. Claimant provided work search log.

See DLT FORM 480 (Claimant Statement); *ER* at 49. Then, on January 29, 2026, the adjudicator, acting as a designee of the Director of the Department of Labor and Training, decided that Claimant was *not* eligible to receive benefits because he did not satisfy the requirement that he be available to perform fulltime work, as provided in G.L. 1956 § 28-44-12. *See Dec. of Director*, January 29, 2024, at 1; *ER* at 69. Claimant filed a timely appeal of this decision via the internet. *See Claimant Internet Appeal*, *ER* at 71-74.

B

Proceedings before the Referee

Upon receiving Mr. Santos's appeal, the Board of Review assigned the matter to one of its hearing officers, known as *referees*, to conduct a telephonic hearing into the matter at 9:30 a.m. on March 6, 2026; notice was given by email of this hearing. *ER* at 77.

But Claimant did not participate in the hearing. And so, the Referee issued a Decision dismissing Claimant's appeal; he wrote:

¹ Henceforth, references to the electronic record attached to this case shall be styled *ER*.

This cause came before a Referee of the Board of Review on the claimant's appeal from a decision of the Director of the Department of Labor and Training. This appeal was set down to a definite date and a notice of this hearing was sent to all interested parties. The claimant did not telephone this office as directed. There being no apparent error in this case, this appeal is dismissed, and the Director's decision shall be final at the expiration of the appeal period.

Dec. of Referee I at 1; *ER* at 75. Thereafter, presumably at the request of Claimant, a new hearing date was set for March 24, 2026. Mr. Santos participated in this telephonic hearing; and Claimant's former Employer, the Greysmith Company, was represented by its Managing Executive, Mr. Brian Leite. *Ref. Hr'g Tr.* at 1, 5-6.²

After the phone connections were established, the Referee, Mr. Gunter Vukic, outlined the procedure that would be followed and the issues to be resolved — including Claimant's failure to participate in the earlier hearing and whether he was properly denied benefits because he was not *available* for work. *Ref. Hr'g Tr.* at 3-4. At this juncture, the Referee opened the formal part of the hearing — beginning by administering the testimonial oath to both witnesses. *Id.* at 5-6. Following which, he enumerated the documents in the packet which had been sent from the Department to the Board of Review. *Id.* at 7-9.

At his point, the Referee touched upon the procedural issue that was before him — whether the matter should be reopened despite the fact that Claimant failed to appear on March 6th. *Id.* at 10.

Then, turning to the availability issue under § 28-44-12, he asked Mr. Santos how he could be considered to be available for full-time work while he was out of the country. *Id.* at 11. Claimant responded that he was in communication with multiple

² The Referee Hearing Transcript begins on page 6 of the 80-page electronic record.

employers, and he had phone screen interviews with those companies. *Id.* And, if he had received an offer, and had accepted, he was “fully prepared to return and begin work immediately.” *Ref. Hr’g Tr.* at 11. He stated he could have returned in 24 to 48 hours to begin work. *Id.* at 12. Mr. Santos added that he had never refused work and that no companies were “the right fit at the time.” *Id.* at 12. He listed companies that he communicated with, by phone and by zoom. *Id.* at 13-14. Claimant Santos also testified that he was certifying weekly on-line. *Id.* at 15.

Mr. Leite also testified. *Id.* at 17. He stated that Mr. Santos was employed with the company until July 23, 2025, when he was laid off. *Id.*

On the next day, March 25, 2026, the Referee issued his decision, in which he found the following facts relating to the § 28-44-12 issue:

Following the Claimant’s July 25, 2025 layoff he filed for benefits and was approved. Claimant commenced weekly online certification. Claimant was out of the country between the week ending October 11, 2025, and November 8, 2025. Claimant continued certifying availability for full-time work without identifying the time restriction.

Dec. of Referee II, March 25, 2025, at 1; *ER* at 30. Based on the findings recited above, and after quoting from § 28-44-12, the Referee formed the following conclusions on the Availability issue:

The claimant’s out of the country travel removed him from the immediate job market thereby placing restrictions on his availability to immediately start full-time work.

Id. at 2; *ER* at 31. Thus, the Referee affirmed the Decision of the Director finding Mr. Santos to be ineligible to receive unemployment benefits because he was not fully available for work within the meaning of § 28-44-12. *Id.* at 3. Consequently, he was disqualified from receiving unemployment benefits. *Id.*

C

Proceedings before the Board of Review

Mr. Santos filed an appeal from this decision and the matter was considered by the Board of Review based on the record assembled by the Referee, as it is permitted to do under G.L. 1956 § 28-44-47. *Dec. of Bd. of Review*, at 1; *ER* at 2. In a decision issued on May 14, 2026, the Board adopted the decision of the Referee as its own and found that the Referee's decision constituted a proper adjudication of the facts and the applicable law. *Id.*

On May 26, 2026, Mr. Sanos filed the instant appeal in the Sixth Division District Court.

II

Applicable Law

As indicated *ante*, this case centers on the application of G.L. 1956 § 28-44-12(a) of the Employment Security Act, which enumerates several grounds upon which a claimant may be deemed ineligible to receive unemployment benefits. Subsection 28-44-12(a), provides:

28-44-12. Availability and registration for work. — (a) An individual shall not be eligible for benefits for any week of his or her partial or total unemployment unless during that week he or she is physically *able to work* and *available for work*. To prove availability for work, every individual partially or totally unemployed shall register for work and shall:

(1) File a claim for benefits within any time limits, with any frequency, and in any manner, in person or in writing, as the director may prescribe;

(2) Respond whenever duly called for work through the employment office; and

(3) Make an active, independent search for suitable work.

(b)

(c) No individual shall be eligible for benefits for any week in which he or she fails, *without good cause*, to comply with the requirements set forth above.

(Emphasis added). As one may readily observe, § 12(a) requires claimants to be *physically able* to work, to be *available* for full-time work and to actively *search* for work. A failure to satisfy one or more of these conditions triggers a disqualification of the claim — *unless it is predicated upon good cause*.

The test for work-availability under § 12 was set forth by our Supreme Court in *Huntley v. Dep't of Employment Security*, 121 R.I. 284, 397 A.2d 902 (1979):

The foregoing authorities persuasively suggest a rule of reason for Rhode Island under which a court faced with a question of availability for suitable work would make a two-step inquiry in the event that a claimant places any restrictions upon availability. First: are these restrictions bottomed upon good cause? If the answer is negative, the inquiry ends and the claimant is ineligible for benefits under the Employment Security Act. If the answer is affirmative, the second stage of the inquiry must be made: do the restrictions, albeit with good cause, substantially impair the claimant's attachment to the labor market? If the answer to this inquiry is affirmative, then the claimant is still ineligible for benefits under the Act.

If, on the other hand, the restrictions do not materially impair the claimant's attachment to a field of employment wherein his capabilities are reasonably marketable, in the light of economic realities, then he is still attached to the labor market and is not unavailable for work in terms of our statute. For example, if a claimant, as in several cases cited, is unavailable for work for 2 or 3 hours out of the 24, in a multi-shift industry, it would be harsh, indeed, to declare such an employee unavailable. If a claimant placed such restrictions upon availability that he would only be available 2 or 3 hours out of 24 for work of a nature which he was able to perform, however good the cause or compelling the reason, he would have in effect remove himself from the labor market and could not, therefore, be eligible for employment benefits.

Huntley, 121 R.I. at 292-93, 397 A.2d at 907. Section 12 also requires claimants to prove compliance with the job-search requirement. *See DePetrillo v. Dep't of Employment Security, Bd. of Review*, 623 A.2d 31, 33 (R.I. 1993).

III Standard of Review

The pertinent standard of review is provided by G.L. 1956 § 42-35-15(g), which provides:

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 Rev. of the Dep't of Emp't Sec.*, 104 R.I. 503, 506 (1968). In other words, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result. *Cahoone*, 104 R.I. at 506.

Our Supreme Court recognized, in *Harraka v. Bd. of Rev. of the 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

Discussion

Under § 28-44-12, one seeking unemployment benefits must demonstrate compliance with three conditions: *first*, that the claimant be *able to work* under subsection (a); *second*, that the claimant be *available for work* under subsection (a); and *third*, that the claimant is actively *searching for work* under subdivision (a)(3). In the instant case only the second of these prerequisites is contested.³ And so, this Court must decide whether the Board’s finding — that Mr. Santos failed to satisfy the availability requirement of § 28-44-12 — was supported by competent evidence of record and consistent with the applicable law; because, if it was, this Court must affirm the Board’s decision.

Beginning our analysis, this Court must concede that it knows of no prior decision rendered by this Court, or by our Rhode Island Supreme Court, which considers whether an unemployment-benefits recipient who has absented himself from the Rhode Island labor market on personal business may be deemed to be “available for work” under

³ Thus, Claimant’s repeated assertions (to the adjudicator and to the Referee) that he was looking for work while on vacation in Europe are entirely immaterial to the resolution of the instant case.

§ 28-44-12. Nevertheless, after much consideration, and for the reasons I shall now state, I have indeed concluded that the decision below must be affirmed.

Let us consider the applicable law and the evidence of record. As we quoted *supra* at 5, the first sentence of section 28-44-12 declares that

An individual shall not be eligible for benefits for any week of his or her partial or total unemployment unless during that week he or she is physically able to work and *available* for work.

Thus, by statute, Claimants must be available for work. And, pursuant to the Rules promulgated for the Unemployment Program, Claimants must certify each week that they have been available for work during that week. *See* 260-RICR-40-05-1.18(I).⁴ Note that this is a *backward-looking* certification, not a *forward-looking* one. Consequently, Mr. Santos could never honestly affirm that he had been available for work each week while he was in Europe. And so, his Claim must fail.

Significant effort has discovered few reported cases which have considered this issue. The relevant sister-state cases all emanate from New York. They uniformly reject the notion that unemployment-benefit recipients who have travelled great distances for personal reasons may be deemed “available” for work.⁵

⁴ It provides:

Any individual who fails to contact the department utilizing the Telephone Automated Payment System or Online/Internet Payment Application, or who fails to contact the Department for their scheduled telephone interview, or who fails to contact the department by any other method prescribed by the Director, or who fails to return to the department's Call Center the mail payment certification form by the end of the week following the week or weeks requested, shall not be eligible to establish credit for a waiting period or to receive benefits for the week or weeks during which such failure occurs, unless the reason for such failure is based upon good cause as shall be determined by the Director.

⁵ *See Matter of Lefkow [Comm'r of Labor]*, 208 A.D.3d 1408, 175 N.Y.S.3d 775 (2022) (Claimant travelled to Costa Rica to visit spouse and was then prevented by Costa Rican travel ban from returning to New York; Appeals Board's decision finding Claimant disqualified from receiving benefits affirmed); *Matter of Mikheil [Comm'r of Labor]*, 206 A.D.3d 1422, 171 N.Y.S.3d 606 (2022) (Claimant travelled to

In any event, as we learned in Part III of this opinion, the Board's pronouncements on factual questions must be upheld, even if a reasonable mind might have reached a contrary conclusion, so long as that finding is supported by competent evidence; certainly, the statements Mr. Santos gave early in the claim process constituted competent evidence. Therefore, the Board's decision must be AFFIRMED.

V

Conclusion

Applying the applicable standard of review, and upon careful review of the evidence, I recommend that this Court find that the decision of the Board of Review on the issue of disqualification under § 28-44-12 was not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record or arbitrary or capricious. G.L. 1956 § 42-35-15(g)(5),(6). I must therefore recommend that the decision of the Board of Review in this matter be AFFIRMED.

/s/

Joseph P. Ippolito
Magistrate

OCTOBER 7, 2026

Egypt for personal reasons but was unable to return due to COVID-19 closures and restrictions; Appeal Board's ruling denying benefits *affirmed*); *Matter of Corso [Comm'r of Labor]*, 144 A.D.3d 1367, 41 N.Y.S.3d 603 (2016) (Claimant certified that he was ready, willing, and able to work while he was vacationing in Europe; Board's finding of willful misrepresentation *affirmed* and benefits denied); *Matter of Inatomi [Comm'r of Labor]*, 116 A.D.3d 1332, 984 N.Y.S.2d 238 (2014) (Claimant was deemed ineligible for benefits while visiting Japan, since she was not available for employment; disqualification *affirmed*).

At this juncture we shall also mention that the United States District Court for the District of Massachusetts heard a cause of action under 42 U.S.C. § 1983 asserting that the Commonwealth's policy requiring that unemployment-benefit recipients must stay in the area violated his constitutional right to interstate travel. *Kelly v. Nordberg*, 848 F.Supp. 284 (D.Mass.1994). Claimant Kelly's benefits had been interrupted while he was traveling to Chicago to visit family and friends for two weeks during the holiday season. *Kelly*, 848 F.Supp. at 285. The Court declined to extend the right to travel to guarantee that one may travel without facing consequences in his or her ability to receive unemployment benefits. *Id.* at 286.

