STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC DISTRICT COURT

SIXTH DIVISION

DANIELLE TOWNSEND	:	
V.	:	A.A. 10-33
DEPARTMENT OF LABOR AND TRAINING, BOARD OF REVIEW	:	

JUDGMENT

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

ORDERED AND ADJUDGED

The decision of the Board is hereby affirmed.

Dated at Providence, Rhode Island, this 21st day of March, 2011.

ENTER:

BY ORDER:

Melvin J. Enright
Acting Chief Clerk

March 21, 2011

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DANIELLE TOWNSEND	:	
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V.	:	**A.A. 10-33**
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DEPARTMENT OF LABOR AND TRAINING, BOARD OF REVIEW	:	

DECISION

Houlihan, J. This matter is before the Court on the complaint of Danielle Townsend seeking judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor & Training which held that Ms. Townsend was disqualified from receiving employment security benefits pursuant to Gen. Laws 1956 § 28-44-17, which bars those who voluntarily leave work without good cause from receiving unemployment benefits. For the reasons that follow, this Court finds that the decision rendered by the Board of Review in this case is supported by the facts of record and the applicable law and is therefore upheld.

FACTS & TRAVEL OF THE CASE

Ms. Danielle Townsend was employed by "A Place to Grow" as a daycare worker. According to her employer she was a good employee. She left work on maternity leave on April 18, 2009. Ms. Townsend was cleared to return to work by her doctor on

August 7, 2009. Ms. Townsend testified she spoke with her employer prior to August 7, 2009 and indicated she was ready to return to work as soon as she found affordable daycare. Ms. Townsend was advised to contact her employer to schedule a return to work. Ms. Townsend's employer testified Ms. Townsend was advised to fill out a staff availability form. However, the employer testified she did not hear from Ms. Townsend after this discussion and that she was unable to reach Ms. Townsend by phone. In fact, the employer testified she never heard from Ms. Townsend after she visited the workplace prior to being cleared for work on August 7, 2009.

Claimant filed for unemployment benefits and the Director found claimant disqualified from receiving benefits. Claimant filed an appeal and the matter was heard by Referee Raymond Maccarone on November 23, 2009. In a decision issued on December 15, 2009 Referee Maccarone found that "the claimant's actions in this matter, her failure to return to work after a leave of absence, is considered to be job abandonment…therefore the claimant cannot be allowed benefits in this matter." *Referee's Decision, February 26, 2009, at page 2.*

Ms. Townsend filed a timely appeal and the matter was reviewed by the Board of Review. On January 13, 2010 the Board of Review issued a decision affirming the referee's decision, finding it to be a proper adjudication of the facts and the law applicable thereto.

Thereafter, Ms. Townsend filed the instant complaint for judicial review in the Sixth Division District Court. Jurisdiction for appeals from decisions of the Board of Review is vested in the District Court by Gen. Laws 1956 § 28-44-52.

APPLICABLE LAW

This case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically touches on voluntary leaving without good cause; R.I. Gen. Laws § 28-44-17, provides:

> **28-44-17. Voluntary leaving without good cause.** – An individual who leaves work voluntarily without good cause shall be ineligible for waiting period credit or benefits for the week until he or she establishes to the satisfaction of the director that he or she has subsequent to that leaving had at least eight (8) weeks of work, and in each of those eight (8) weeks has had earnings of at least twenty (20) times the minimum hourly wage as defined in chapter 12 of this title for performing services in employment for one or more employers subject to chapters 42 – 44 of this title. * * * For the purposes of this section, 'voluntarily leaving work without good cause' shall include voluntarily leaving work with an employer to accompany, join or follow his or her spouse in a new locality in connection with the retirement of his or her spouse, or failure by a temporary employee to contact the temporary help agency upon completion of the most recent work assignment to seek additional work unless good cause is shown for that failure; however, that the temporary help agency gave written notice to the individual that the individual is required to contact the temporary help agency at the completion of the most recent work assignment to seek additional work.

To recover under this section an employee must leave both for good cause and voluntarily. Kane v. Women and Infants, 592 A.2d 137, 139(R.I. 1991).

STANDARD OF REVIEW

The standard of review is provided by R.I. Gen. Laws § 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.' "[1] The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.[2] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[3]

The Supreme Court of Rhode Island recognized in *Harraka v. Board of Review of Department of Employment Security, 98 R.I. at 200 A.2d at 597 (1964)* that a liberal interpretation shall be utilized in construing and applying 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

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[1] *Guarino v. Department of Social Welfare,* 122 R.I. 583, 584, 410 A.2d 425 (1980) *citing* R.I. GEN. LAWS § 42-35-15(g)(5).

[2] *Cahoone v. Board of Review of the Dept.of Employment Security,* 104 R.I. 503, 246 A.2d 213 (1968).

[3] *Cahoone v. Bd. of Review of Department of Employment Security,* 104 R.I. 503, 246 A.2d 213 (1968). *Also D'Ambra v. Bd. of Review, Dept of Emp. Security*, 517 A.2d 1039 (R.I. 1986).

> 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.

ANALYSIS

The Referee in this matter found the claimant ineligible by reasoning that her failure to return to work after a leave of absence is considered to be job abandonment, and that job abandonment is essentially a "voluntary quit," or leaving without good cause. See Referee's Decision 20093903 UC, at 2. The claimant counters she did not voluntarily quit but left due to a medical issue. The central issue of eligibility turns upon her availability for work once she was cleared medically. No one in this matter disputes the claimant initially left work for valid medical reasons. See Referee's Decision 20093903, at 2. The issue to be decided is whether the claimant's actions subsequent to being cleared for work by her doctor disqualify her from receiving benefits.

In this instance, the Referee chose to accept the employers' testimony regarding the parties conduct after August 7, 2009. On appeal, this Court may not substitute its judgment for the Referee's when making a judgment on credibility. Thus, this Court may not second guess the Referee's determination that the series of events described by the employer was the course of conduct between the parties after the claimant was reinstated for work by her doctor. The employer testified that after one visit to work she did not hear from the claimant nor was she able to reach her.

The Claimant's point that she left work for "good cause" does not substantively change the analysis. Surely, the fact that the claimant was signed out of

work by her doctor means she left work for good cause. The gravamen of this matter is the conduct of the parties subsequent to August 7, 2009. The Referee clearly found the claimant failed to provide the employer with information so she could be reached and that the claimant did not contact her employer.[4] Thus, the Referee was free to conclude the claimant failed to engage in employment available to her, a disqualification pursuant to R.I. Gen. Laws § 28-44-17.

During the hearing, the Referee asked the claimant about her availability for work and availability of daycare. See Tr. at pp.9-14. The issue of affordable daycare was raised, sua sponte, by the claimant. Tr. at p. 9. The Referee asked questions about the availability of daycare only after the issue was raised by the claimant. Id. The state of the record after these questions and answers indicated daycare was available and no obstacle to employment. Further, the Referee's decision was based on the claimants' failure to contact the employer and go back to work at a time when work was available to her. The Referee's decision was not at all based on stereotyping or some discriminatory rational.

CONCLUSION

Pursuant to Gen. Laws 1956 § 42-35-15(g), the decision of the Board must be upheld unless it was, *inter alia*, contrary to law, clearly erroneous in light of the substantial evidence of record, or arbitrary or capricious. When applying this standard, the Court will not substitute its judgment for that of the Board as to the weight of the

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[4] The Claimant filed an "Application for Leave to Present Additional Evidence" subsequent to her appeal. The motion suggests five basis for the request. The first basis asserts the claimant did not anticipate the employers' testimony. This is an insufficient basis to grant a motion for what would essentially be a new trial. Second, claimant asserts she did not want to inconvenience witnesses who could corroborate her version of the events. No affidavits, statements or even summaries of testimony were submitted in support of the motion. This is an insufficient basis to reopen the hearing. Third, claimant argues her attorney failed to object to leading questions and only asked one question. Claimant fails to assert how this conduct caused error or how reopening the hearing might change the result. Lastly, the claimant argues a certain line of questions pursued by the Referee were discriminatory. This is discussed inter alia.

the Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact, including the question of which witnesses to believe. Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result. The Court, when reviewing a Board decision, does not have the authority to expand the record by receiving new evidence or testimony.

Accordingly, I find that the Board's decision in 20093903 BU that claimant was ineligible for benefits pursuant to section 28-44-17 is supported by substantial evidence of record and is not clearly erroneous and is therefore sustained.

Upon careful review of the evidence, this Court finds that the decision of the Board of Review in 20093903 BU was not affected by error of law. Gen. Laws 1956 § 42-35-15(g)(3),(4). Neither was it clearly erroneous in view of the reliable, probative and substantial evidence on the whole record or arbitrary or capricious. Gen. Laws 1956 § 42-35-15(g)(5),(6).

Accordingly, the decision of the Board is hereby AFFIRMED.