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

William J. Lefebvre, Jr.	:	
	:	
v.	:	**A.A. No. 10-0225**
	:	
Department of Labor & Training, Board of Review	:	

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this administrative appeal William J. Lefebvre, Jr. urges that the Department of Labor and Training Board of Review erred when it denied his request to receive Employment Security Benefits. Jurisdiction for appeals from the Department of Labor and Training Board of Review is vested in the District Court pursuant to Gen. Laws 1956 § 28-44-52. This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. Employing the standard of review applicable to administrative appeals, I find that the decision of the Board of Review finding that the claimant voluntarily left his employment without good cause within the meaning of Gen. Laws 1956 § 28-44-17 is supported by substantial evidence of record and was not affected by error of law; I therefore recommend that the decision of the Board of Review be affirmed.

FACTS & TRAVEL OF THE CASE

Claimant Lefebvre was employed for twenty-one years by Ralco Industries, the last eleven of which as a night shift supervisor. His last day of work was June 3, 2010. He filed

for Employment Security benefits but on June 25, 2010, the Director of the Department of Labor and Training found that the claimant had voluntarily left his employment without good cause within the meaning of Gen. Laws 1956 § 28-44-17 and denied the claim. The claimant filed a timely appeal and on September 28, 2010 a hearing was held before Referee Raymond Maccarone. At the hearing the claimant and an employer representative — Mr. David Peterson — appeared and testified. Referee Hearing Transcript dated September 28, 2010 at 1.

In his September 29, 2010 decision the referee made the following findings of fact:

> The claimant had been working for this company approximately twenty-one years with the last eleven years as a night shift supervisor. The claimant worked twelve hour days. The claimant stated that he repeatedly had difficulty with the plant manager who was rude to him, used profanity and was generally an overall difficult person to work with. The claimant also was instructed by this plant manager on numerous occasions to inform his employees that there would be overtime especially on Saturdays. The claimant and other employees had been working approximately sixty hours per week. The claimant became upset at this primarily because it was always on a last minute notice, usually by a Wednesday or Thursday. The claimant felt that the confrontation with the employees was too difficult and had occurred too often for him to continue working. On the last day of work the claimant was informed that overtime again would be necessary and at that time he became upset and left this position.
>
> He further indicated that this issue and the treatment by the plant manager were the major factors in this separation. The general manager who had appeared indicated that the plant manager was difficult on occasion and had been spoken to concerning his interactions not just with the claimant but with other employees. The information provided reveals that the claimant voluntarily left this job when he was instructed to inform his employees that there would be overtime work on Saturday and at that time the claimant left.

Referee's Decision, at 1-2. Based on these findings, the Referee made the following conclusions:

> In the instant case the claimant last worked on June 3, 2010. The claimant voluntarily left his job after he was informed by his immediate supervisor that overtime would be worked on Saturday. I find the claimant's leaving in this matter to be without good cause. The claimant has not demonstrated that that the employer's request in this matter was unreasonable or that this request made the job unsuitable. The claimant has not demonstrated that he was left without any reasonable alternatives other than to terminate his employment at that time. Therefore, the claimant cannot be allowed benefits in this matter.

Referee's Decision, at 2. Thus, the referee determined that the Claimant voluntarily left his employment without good cause within the meaning of Section 28-44-17 of the Rhode Island Employment Security Act. Referee's Decision at 2. Accordingly, he affirmed the decision of Director. Id., at 3.

The claimant filed a timely appeal on October 5, 2010 and the matter was reviewed by the Board of Review. The Board did not conduct an additional hearing, but instead chose to consider the evidence submitted to the Referee pursuant to General Laws 1956 § 28-44-47. In its decision, dated October 20, 2010, the Board of Review affirmed the decision of the referee, finding it to be an appropriate adjudication of the facts and law applicable thereto and adopted the referee's decision as their own. See Decision Board of Review, October 20, 2010, at 1. Claimant then filed an appeal to this court for judicial review.

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.

In the case of Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 201, 200 A.2d 595, 597-98 (1964), the Rhode Island Supreme Court noted that a liberal reading of good cause would be adopted:

> To view the statutory language as requiring an employee to establish that he terminated his employment under compulsion is to make any voluntary termination thereof work a forfeiture of his eligibility under the act. This, in our opinion, amounts to reading into the statute a provision that the legislature did not contemplate at the time of its enactment.
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> In excluding from eligibility for benefit payments those who voluntarily terminate their employment without good cause, the legislature intended in the public interest to secure the fund from which the payments are made against depletion by payment of benefits to the shirker, the indolent, or the malingerer.
> However, the same public interest demands of this court an interpretation sufficiently liberal to permit the benefits of the act to be made available to employees who in good faith voluntarily leave their employment because the conditions thereof are such that continued exposure thereto would cause or aggravate nervous reactions or otherwise produce psychological trauma.

Later, in Murphy v. Fascio, 115 R.I. 33, 340 A.2d 137 (1975), the Supreme Court elaborated that:

> The Employment Security Act was intended to protect individuals from the hardships of unemployment the advent of which involves a substantial degree of compulsion.

Murphy, 115 R.I. at 37, 340 A.2d at 139.

and

> * * * unemployment benefits were intended to alleviate the economic insecurity arising from termination of employment the prevention of which was effectively beyond the employee's control."
> Murphy, 115 R.I. at 35, 340 A.2d at 139.

An individual who voluntarily leaves work without good cause is disqualified from receiving unemployment security benefits under the provisions of § 28-44-17. See Powell v. Department of Employment Security, 477 A.2d 93, 96 (R.I. 1984)(citing Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 201, 200 A.2d 595, 597 (1964)). In order to establish good cause under § 28-44-17, the claimant must show that his or her work had become unsuitable or that the choice to leave work was due to circumstances beyond his or her control. Powell, 477 A.2d at 96-97; Kane v. Women and Infants Hospital of Rhode Island, 592 A.2d 137, 139 (R.I. 1991). The question of what circumstances constitute good cause for leaving employment is a mixed question of law and fact, and "when the facts found by the board of review lead only to one reasonable conclusion, the determination of 'good cause' will be made as a matter of law." Rocky Hill School, Inc. v. State of Rhode Island Department of Employment and Training, Board of Review, 668 A.2d 1241, 1243 (R.I. 1995) (citing D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1040 (R.I. 1986)).

STANDARD OF REVIEW

Judicial review of the Board's decision by the District Court is authorized under § 28-44-52. The standard of review which the District Court must apply is set forth under G.L.

1956 § 42-35-15(g) of the Rhode Island Administrative Procedures Act ("A.P.A."), which provides as follows:

> The court shall not substitute its judgment for that of the agency as to 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:
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> (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.

The scope of judicial review by this Court is limited by § 28-44-54, which, in pertinent part, provides:

> The jurisdiction of the reviewing court shall be 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 regardless of statutory or common law rules, shall be conclusive. 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. Department of Social Welfare, 122 R.I. 583, 588, 410 A.2d 425, 428 (1980) (citing § 42-35-15(g)(5)).

Stated differently, this Court will not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact. Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968). "Rather, the court must confine itself to review of the record to determine whether "legally competent evidence" exists to support the agency decision." Baker v. Department of Employment & Training Bd. of Review, 637 A.2d 360, 363 (R.I. 1993) (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). "Thus, the District Court may reverse factual

conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record." Baker, 637 A.2d at 363.

ANALYSIS

In this case, the Board determined that claimant left his job without good cause within the meaning of § 28-44-17 of the Rhode Island Employment Security Act. I believe this finding is supported by substantial evidence. It is uncontested that claimant quit his job. The only question is whether he did so with good cause. I conclude he did not.

Claimant began his testimony before the Referee by telling a story which he meant as background to his working conditions.

It began one evening when he received a phone call from an employee's girlfriend, saying he'd be late. Referee Hearing Transcript, at 7. However, the fellow never came in. Referee Hearing Transcript, at 8. The next day when he came in Mr. Bennett — the plant manager — berated him, using strong language. Id. He indicated this was an example of what he would experience one or twice per week. Referee Hearing Transcript, at 9. He indicated Mr. Bennett was not difficult with other people. Referee Hearing Transcript, at 10. And he testified he did not go above his head to the front office, because " * * * he [Mr. Bennett] would get mad" and he [claimant] " * * * didn't want nothing to happen * * * ." Referee Hearing Transcript, at 11-12. Finally, claimant stated Mr. Bennett had never threatened his job. Referee Hearing Transcript, at 14.

Claimant then told the story of the night he quit.

This particular Wednesday afternoon, he went in as usual at 4:00 pm, even though his shift was 6 pm to 6 am. Referee Hearing Transcript, at 16. Mr. Bennet, who was sitting at his

desk, told claimant " * * * you guys have to work Saturday." Referee Hearing Transcript, at 18. Although his testimony was unclear, it seems Mr. Lefebvre objected, indicating it was hard to tell the guys on a Wednesday. Id. He indicated late announcements of Saturday overtime led to confrontations with his men and explanations as to why they could not come in. Referee Hearing Transcript, at 16-19.

At this point, Mr. Lefebvre testified — " * * * I just had enough and, and just that was it. You know I just couldn't take it anymore." Referee Hearing Transcript, at 22. Accordingly, claimant quit — stressed by the amount of work and what he considered Mr. Bennett's ill treatment. Referee Hearing Transcript, at 22-23.

Next, the employer's representative — Mr. David Peterson, the General Manager — testified. He indicated all employees had been told — " * * * if there's something going on, come in and see me." Referee Hearing Transcript, at 26. He indicated that claimant's position was not in jeopardy. Referee Hearing Transcript, at 29. He explained that overtime was being used extensively in this time frame because production was behind due to equipment issues. Referee Hearing Transcript, at 31.

In sum, after examining the record, it appears Mr. Lefebvre quit because of a combination of scheduling issues (i.e., too much work) and personal conflict issues (regarding Mr. Bennett).

In my experience, scheduling difficulties are seldom regarded as being sufficient to provide a factual basis for a finding that a claimant was required to quit " * * * because of circumstances that were effectively beyond [her] control[,]", which is a necessary predicate to a finding of good cause under section 17. See Powell v. Department of Employment

Security, 477 A.2d 93, 97 (R.I. 1984). Scheduling issues are not generally regarded as a good reason to immediately quit under section 17 because the claimant has the option of seeking another, more suitable, position prior to quitting and becoming unemployed. This Mr. Lefebvre could have done; his job was not in jeopardy. He could have kept his job at Ralco while looking for more work more to his liking. Also, claimant could have sought the intervention of Mr. Peterson, and solicited him to ameliorate the situation.

Mr. Lefebvre could also have approached Mr. Peterson on the issue of Mr. Bennett's alleged harassment. He also failed to avail himself of this potential avenue of redress. This makes it impossible to find claimant had no alternative but to quit on June 3, 2010.

In light of these factors, I find that the Referee's finding that claimant lacked good reason to quit within the meaning of section 17 is not clearly erroneous. Because the referee's conclusions are supported by substantial evidence, I must recommend that the referee's decision (which was adopted as the decision of the Board of Review) be affirmed.[1]

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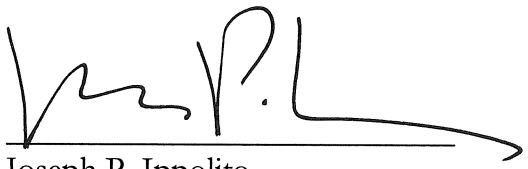
[1] Nothing in my analysis, in whole or in part, should be taken as an implied criticism of Mr. Lefebvre's decision to quit his position. Leaving a job is a life decision as well as an economic one. Neither I nor the referee is in a position to judge the wisdom of the undoubtedly difficult decision claimant made to leave Ralco. My focus here is solely on the standard for quitting established in section 28-44-17 and the cases that have construed that statute.

CONCLUSION

After a thorough review of the entire record, this Court finds that the Board's decision to deny claimant Employment Security benefits under § 28-44-17 of the Rhode Island Employment Security Act was not "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record" 42-35-15(g)(3)(4). Neither was said decision "arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion." Section 42-35-15(g)(5)(6). On findings of fact and as to the weight of the evidence, this Court shall not substitute its judgment for that of the administrative agency. Substantial rights of the claimant have not been prejudiced. Accordingly, I recommend that the decision of the Board be affirmed.



Joseph P. Ippolito
Magistrate

February 7, 2011

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

William J. Lefebvre, Jr.	:	
v.	:	**A.A. No. 10 - 0225**
Dept. of Labor & Training, Board of Review	:	

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 decision of the Board of Review is AFFIRMED.

Entered as an Order of this Court at Providence on this 7th day of FEBRUARY, 2011.

By Order:

Melvin Enright
Acting Chief Clerk

Melvin J. Enright
Acting Chief Clerk

Enter:

Jeanne E. LaFazia
Chief Judge