STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

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

Jason Parks	:	
	:	
v.	:	**A.A. No. 11 - 0188**
	:	
Dept. of Labor & Training,	:	
Board of Review	:	

O R D E R

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 15th day of February, 2012.

By Order:

____/s/_____
Melvin Enright
Acting Chief Clerk

Enter:

__/s/_____
Jeanne E. LaFazia
Chief Judge

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F I N D I N G S & R E C O M M E N D A T I O N S

Ippolito, M. In this case Mr. Jason Parks seeks judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor & Training which was adverse to Mr. Parks' efforts to receive employment security benefits. Jurisdiction to hear and decide appeals from decisions made by the Board of Review is vested in the District Court by General Laws 1956 § 28-44-52. This matter has been referred to me for the making of findings and recommendations pursuant to General Laws 1956 § 8-8-8.1. For the reasons stated below, I conclude that the decision issued by the Board of Review denying benefits to Mr. Parks was supported by the facts of the case and the applicable law and should be affirmed; accordingly, I so recommend.

FACTS & TRAVEL OF THE CASE

Mr. Parks worked for the City of Warwick for nine years until June 17, 2011. He applied for unemployment benefits and in a decision dated September 1, 2011

the Director deemed him eligible to receive benefits because he resigned with good cause within the meaning of Gen. Laws 1956 § 28-44-17. The City appealed from this decision and Referee John Costigan held a hearing on the matter on September 30, 2011. In his decision, issued on October 12, 2011, the referee made the following Findings of Fact regarding claimant's termination:

> **2. FINDINGS OF FACT:**
> The claimant was employed as a laborer for approximately nine years. His last day of work was March 16, 2011. The claimant had been injured in a non-work related automobile accident on February 22, 2011 and was treated for his injuries on February 24, 2011. he continued to report to work but his injuries became worse and he was advised by his doctor to discontinue work on March 17, 2011. He was on medical leave from his job through June 14, 2011 and on June 17, 2011 the claimant notified the employer that he was not able to perform his job and submitted his resignation.

Referee's Decision, October 12, 2011, at 1. Based on these findings the Referee formed the following Conclusion:

> **3. CONCLUSION:**
> * * *
> An individual who leaves work voluntarily must establish good cause for taking that action or be subject to disqualification under the provisions of Section 28-44-17 of the Rhode Island Employment Security Act. Based on the credible testimony and evidence presented in this case, I find the claimant could have extended his leave and request reasonable accommodations from the employer that would have allowed him to maintain his employment. He did not take all the steps available to him and as a result left his job without good cause and benefits must be denied in this matter.

Referee's Decision, October 12, 2011, at 2. Accordingly, Referee Costigan found claimant to be disqualified from receiving benefits. As a result of this decision, Mr. Parks' benefits ended.

Claimant filed an appeal and the matter was reviewed by the Board of Review. On December 5, 2011, a majority of the members of the Board of Review issued a decision which found that the decision of the referee was a proper adjudication of the facts and the law applicable thereto. Accordingly, the decision of the Referee was affirmed. Thereafter, the claimant filed a complaint for judicial review in the Sixth Division District Court.

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; Gen. Laws 1956 § 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.
>
> 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.

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]

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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, Department of Employment Security, 517 A.2d 1039 (R.I. 1986).

The Supreme Court of Rhode Island recognized in Harraka, supra page 3, 98 R.I. at 200, 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 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.

ISSUE

The issue before the Court is whether the decision of the Board of Review was supported by reliable, probative, and substantial evidence in the record or whether or not it was clearly erroneous or affected by error of law. More precisely, was claimant properly disqualified from receiving unemployment benefits because he left work without good cause pursuant to section 28-44-17?

ANALYSIS

In his brief dissenting opinion, the Member of the Board of Review Representing Labor urged that because Mr. Parks quit for medical reasons, he should be declared eligible for benefits. He is of course correct regarding the general principle — medical necessity has long been deemed good cause to quit. However,

this rule is not without exceptions. The Referee found — and a majority of the Board agreed — that Mr. Parks did not have to leave his position when he did. Because I believe this finding is well-supported by the record, I must recommend the decision of the Board be affirmed.

Referee Costigan grounded his decision denying benefits to Mr. Parks on one conclusion — that Mr. Parks could have extended his leave and requested reasonable accommodations from his employer, which would have allowed him to keep his position. Referee's Decision, at 2.

This finding was certainly supported by testimony. Mr. Parks conceded that on June 20, 2011 the City inquired — ***before accepting his June 17 resignation*** — whether claimant could perform light duty work. Referee Hearing Transcript, at 35. His physician, Doctor Lancellotti, responded to this inquiry on claimant's behalf on July 5, 2011. The claimant also conceded that Dr. Lancellotti released him back to work effective August 18, 2011 with no restrictions. Referee Hearing Transcript, at 32.

The Referee could also rely on the testimony of Mr. Oscar Shelton, Personnel Director for the City of Warwick, who testified that Mr. Parks, in a private conversation, asked him whether the City would fire him so he could collect unemployment and whether, in the alternative, the City would oppose his collecting unemployment if he quit. Referee Hearing Transcript, at 32. He testified that Mr. Parks quit while he (Mr. Shelton) was continuing to explore accommodations to Mr. Parks' condition. Referee Hearing Transcript, at 42. Note — Correspondence to this

effect was produced and marked as Claimant's Exhibit No. 1 or "C-1." In addition, the Assistant Personnel Director, Ms. Jean Jordan, testified that claimant did not request an extension of his medical leave before submitting his resignation. Referee Hearing Transcript, at 54.

In my estimation, these circumstances, together with the fact that claimant withdrew his pension contributions (of nine years) on the day he submitted his resignation, do support the Referee's finding that Mr. Parks' resignation was precipitous and not truly required by his medical condition. It is clear from the exhibits and testimony that the City's personnel team was ready and willing to work with Mr. Parks to preserve his employment and that he failed to avail himself of their understanding. That his termination was utterly unnecessary may also be seen (albeit with the benefit of hindsight) in his August release to unrestricted work.

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 evidence on questions of fact, including the question of which witnesses to believe.[4] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[5] Accordingly,

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[4] Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213 (1968).

[5] Cahoone, supra n. 4, 104 R.I. at 506, 246 A.2d at 215 (1968). See also D'Ambra

the Board's decision (adopting the finding of the Referee) that claimant voluntarily terminated his employment with the City of Warwick without good cause within the meaning of section 17 is supported by the evidence of record and must be affirmed.

CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the Board of Review was not affected by error of law. GEN. LAWS 1956 § 42-35-15(G)(3),(4). Further, it was not 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, I recommend that the decision of the Board be AFFIRMED.

___/s/_____
Joseph P. Ippolito
MAGISTRATE

FEBRUARY 15, 2012

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v. Board of Review, Dept. of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986). See also Gen. Laws 1956 § 42-35-15(g), supra p. 5 and Guarino, supra p. 5, fn.1.