STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**

SIXTH DIVISION

Robert G. Earle	:	
	:	
v.	:	**A.A. No. 11 - 143**
	:	
Department 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 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 AFFIRMED.

Entered as an Order of this Court at Providence on this 20th day of December, 2011.

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, Magistrate In the instant complaint Mr. Robert G. Earle urges that the Board of Review of the Department of Labor & Training erred when it held that he was not entitled to receive employment security benefits based upon proved misconduct. Jurisdiction to hear and decide appeals from decisions made by the Board of Review is vested in the District Court by Gen. Laws 1956 § 28-44-52. This matter has been referred to me for the making for 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 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

The facts and travel of the case are these: Mr. Robert G. Earle worked for TCL Inc. as a truck driver for five months. After he was cited for a red light violation in December of

2010, the employer warned him that he must adhere to all traffic laws or face termination. On March 21, 2011 he exceeded the maximum amount of continuous hours. Finally, on March 25, 2011 he was cited for speeding in Connecticut. He was terminated.

He filed an application for unemployment benefits immediately but on June 8, 2011, the Director determined him to be disqualified from receiving benefits pursuant to the provisions of Gen. Laws 1956 § 28-44-18, because he was terminated for misconduct. Complainant filed an appeal and a hearing was held before Referee Nancy Howarth on July 18, 2011. On August 31, 2011, the Referee held that Mr. Earle was disqualified from receiving benefits because he was terminated for proved misconduct. In her written Decision, the referee found the following facts:

> The claimant was employed as a truck driver by the employer. The claimant received a warning on March 8, 2011 for driving through a red light on December 3, 2010. The warning indicated that he must adhere to all city, state and federal regulations and laws or he would be subject to termination. The claimant violated the 14 hour rule, since he worked more than 14 hours without a break on March 21, 2011. The claimant received a speeding citation from the State of Connecticut on March 25, 2011 for driving 15 or more miles per hour over the speed limit. The claimant was terminated on March 28, 2011 due to violation of the employer's safety policy.
> Decision of Referee, August 31, 2011 at 1.

Based on these facts, the referee came to the following conclusion:

> * * *
> The burden of proof in establishing misconduct rests solely with the employer. In the instant case, the employer has sustained its burden. The evidence and testimony presented at the hearing establish that the claimant had three safety violations within a three month period, despite a prior warning. I find that the claimant's actions were not in the employer's best interests and, therefore, constitute misconduct under the above Section of the Act. Accordingly, benefits must be denied on this issue.

Decision of Referee, August 31, 2011 at 2.

Claimant appealed and the matter was reviewed by the Board of Review. On September 30, 2011, the Board of Review issued a unanimous decision in which the decision of the referee was found to be a proper adjudication of the facts and the law applicable thereto; further, the referee's decision was adopted as the decision of the Board. Decision of Board of Review, September 30, 2011, at 1.

Finally, Mr. Earle filed a complaint for judicial review in the Sixth Division District Court on October 11, 2011.

APPLICABLE LAW

This case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically addresses misconduct as a circumstance which disqualifies a claimant from receiving benefits; Gen. Laws 1956 § 28-44-18, provides:

> **28-44-18. Discharge for misconduct. —** 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 at least eight (8) weeks of work, and in each of that 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. Any individual who is required to leave his or her work pursuant to a plan, system, or program, public or private, providing for retirement, and who is otherwise eligible, shall under no circumstances be deemed to have been discharged for misconduct. If an individual is discharged and a complaint is issued by the regional office of the National Labor Relations board or the state labor relations board that an unfair labor practice has occurred in relation to the discharge, the individual

> shall be entitled to benefits if otherwise eligible. 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 the case of Turner v. Department of Employment and Training, Board of Review, 479 A.2d 740, 741-42 (R.I. 1984), the Rhode Island Supreme Court adopted a definition of the term, "misconduct," in which they quoted from Boynton Cab Co. v. Newbeck, 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 as defined by law.

STANDARD OF REVIEW

The standard of review is provided by Gen. Laws 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.' "[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. 197, 200, 200 A.2d 595, 597 (1964) that a liberal interpretation shall be utilized in construing the Employment Security Act:

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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. Board of Review of Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968). See also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

> * * * 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 (adopting the decision of the Referee) 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.

ANALYSIS

The Board adopted the referee's factual conclusion that claimant exceeded the allowable number of violations for a truck driver in the employ of TCL Inc and further found that, as a matter of law, these actions constituted proved misconduct. See Gen. Laws 1956 § 28-44-18.

The Referee's factual conclusions are abundantly supported by the testimony and evidence elicited at the hearing before the referee. At the hearing, the employer presented a witness who related Mr. Earle's traffic violations. See Testimony of Employer's Witness Matthew Leonard, Referee Hearing Transcript, at 7-12, passim. Read in its entirety, the witness's testimony provides substantial evidence of the infractions which led TCL to

terminate claimant. The witness explained that when, in March of 2011, TCL learned Mr. Earle had been cited for running a red light in New York in December of 2010, he was given a warning — that he must obey all traffic laws or face termination — which he signed. Referee Hearing Transcript, at 8-11, 13. Two weeks later, a speeding citation in Connecticut triggered his firing. Referee Hearing Transcript, at 9-10.

During his testimony, Mr. Earle denied he was ever warned that additional citations would result in termination. Referee Hearing Transcript, at 14. But, as stated above, the court must give deference to the Board's findings of fact. For our purposes, it is sufficient that the Referee's factual findings are fully supported by the record.

And legally, it cannot be doubted that repeated violations by a truck driver operating a company vehicle is conduct which is adverse to the employer's best interests. Mr. Earle's behavior thus meets the standard of proved misconduct contained in section 28-44-18.

Pursuant to the applicable standard of review described supra at 4-5, 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. This Court is not permitted to substitute its judgment for that of the Board as to the weight of the evidence; accordingly, the findings of the agency must be upheld even though a reasonable fact-finder might have reached a contrary result.

Applying this standard of review and the definition of misconduct enumerated in Turner, supra, I must recommend that this Court hold that the Board's finding that claimant

was discharged for proved misconduct in connection with his work — by garnering traffic citations — is well-supported by the record and should not be overturned by this Court.

CONCLUSION

Upon careful review of the evidence, I find that the decision of the Board of Review on the issue of claimant eligibility for benefits is not affected by error of law. GEN. LAWS 1956 § 42-35-15(G)(3),(4). Further, it is also not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; nor is it arbitrary or capricious. GEN. LAWS 1956 § 42-35-15(G)(5),(6).

Accordingly, I recommend that the decision of the Board of Review be AFFIRMED.

_____/s/_____
Joseph P. Ippolito
Magistrate

December 20, 2011