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

Faustino M. Rocha, III	:	
	:	
v.	:	**A.A. No. 11 - 15**
	:	
Department of Labor & Training,	:	
Board of Review	:	

O R D E R

This matter is before the Court pursuant to § 8-8-16.2 of the General Laws for review of the Findings & Recommendations of the Magistrate.

After a de novo review of the record and the memorandum 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 REVERSED and REMANDED.

Entered as an Order of this Court at Providence on this 12th day of October, 2011.

By Order:

/s/
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

Montalbano, M. In this administrative appeal Mr. Faustino M. Rocha III 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 § 8-8-16.2. For the reasons stated below, I conclude that the Board's decision denying benefits to Mr. Rocha was made upon unlawful procedure, and that as a result claimant was denied the opportunity to develop a complete record establishing whether or not he had good cause to voluntarily leave his employment, and therefore the decision of the Board of Review should be reversed and the instant matter should be remanded to the Board of Review for further proceedings; I so recommend.

FACTS & TRAVEL OF THE CASE

The facts and travel of the case may be briefly stated: Faustino M. Rocha III was employed by Fox Enterprises, Inc. until July 5, 2010. He filed a claim for unemployment benefits but on August 10, 2010 the Director determined he had voluntarily terminated his employment without good cause within the meaning of Gen. Laws 1956 § 28-44-17 and was disqualified from receiving benefits. The claimant filed an appeal. Referee Nancy L. Howarth held a hearing on the matter on December 1, 2010 at which time claimant appeared and testified, as did two employer representatives. On December 17, 2010 Referee Howarth issued a decision affirming the Director's determination that claimant was disqualified from receiving benefits because he left work voluntarily without good cause. Decision of Referee, December 17, 2010, at 2.

From this decision claimant filed a timely appeal on December 24, 2010 and on February 10, 2011, a majority of the Board of Review issued a decision adopting and incorporating by reference the factual findings of the appeal tribunal (Referee), and affirmed the conclusions of the Referee as to the applicable law. Decision of Board of Review, at 1.

The board member representing labor, Mr. Nathaniel Rendine, dissented as follows:

> *** The claimant established a prima facia case of a hostile work environment. The employer, without explanation, informed the claimant he would not be getting a commission. The record disclosed there were other occasions.***

Decision of Board of Review, at 2.

Thereafter, on February 16, 2011, the claimant transmitted a statement of appeal – along with the appropriate filing fee – to the 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; 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.
>
> 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.

The court, as stated above, rejected the notion that the termination must be "under compulsion" or that the reason therefore must be of a "compelling nature."

STANDARD OF REVIEW

The standard of review applicable to the Court's review in this matter is provided by RI 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, supra, 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

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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). See also D'Ambra v. Bd. of Review, Department of Employment Security, 517 A.2d 1039 (R.I. 1986).

> 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 disqualified from receiving unemployment benefits because he left work without good cause pursuant to section 28-44-17?

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. However, it is quite clear that the Referee denied claimant an opportunity to present evidence that he left his employment voluntarily and with "Good Cause" due to a hostile work environment. Claimant made no less than five attempts to offer testimony that his employer, through claimant's superiors, created a work environment that aggravated symptoms of his disability, increased his anxiety and negatively affected his work performance. Referee Hearing Transcript, at 6, 7, 11, 13, 20. The Referee did not allow claimant an opportunity to present facts to support his claim that the employer created a hostile work environment.

Conversely, the employer was not given an opportunity to dispute the proferred testimony. Consequently, the Board's decision was based solely on an incident surrounding a commission check, and the Referee failed to develop a full record and unfairly denied claimant the opportunity to present testimony as to an alleged hostile work environment justifying claimant's voluntary resignation as required by Gen. Laws 1956 § 28-44-17. As such, claimant was denied a full and fair hearing on the issue of whether he, in good faith, voluntarily left his employment because "the conditions thereof are such that continued exposure thereto would cause or aggravate nervous reactions or otherwise produce psychological trauma." Harraka, ante, at 598. The decision of the Board having thus been made upon unlawful procedure, the case should be remanded for further proceedings.

The record before the Board is also not sufficiently complete to support the Referee's conclusion that the claimant's leaving was without good cause because he could have discussed his employer's decision not to pay him a commission with his supervisor's superiors, rather than resign his position. As pointed out by Mr. Rendine in his dissent, the employer informed claimant he would not be getting a commission on a car he sold without explaining this decision to claimant. Neither of the witnesses who testified on behalf of the employer had any direct knowledge on this issue. In fairness to both the employer and the claimant this issue should be fully developed on the record before the Board makes a decision as to whether the claimant voluntarily left his employment in good faith or whether he voluntarily left without good cause. Since the case is being remanded for further proceedings for the reasons stated above, all of the Section 17

issues in this case can be appropriately addressed by the Board in its decision based upon the substantial evidence in the record after a new hearing by the Board or, in the Board's discretion, after a new hearing before a Referee.

CONCLUSION

Upon careful review of the evidence I recommend that this court find that the decision of the Board of Review was made upon unlawful procedure. Gen. Laws 1956 § 42-35-15 (g) (3).

Accordingly, I recommend that the decision of the Board be REVERSED and REMANDED for the consideration of all the Gen. Laws 1956 § 28-44-17 issues discussed in this decision.

/s/
Joseph A. Montalbano
Magistrate

October 12, 2011