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

CHARLES J. FOGARTY, in his capacity as Director of the RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING, Plaintiff	:	
v.	:	**A.A. No. 11-61**
DEPARTMENT OF LABOR AND TRAINING, BOARD OF REVIEW and GERALDINE ASHER Defendants	:	

JUDGMENT

This cause came on before Gorman 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 affirmed.

Dated at Providence, Rhode Island, this 17th day of February, 2012.

Enter: **By Order:**

/s/ **/s/**

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CHARLES J. FOGARTY, in his capacity as Director of the RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING, Plaintiff	:	
v.	:	**A.A. No. 11-61**
DEPARTMENT OF LABOR AND TRAINING, BOARD OF REVIEW and (GERALDINE ASHER) Defendants	:	

DECISION

This suit was filed to overturn a ruling by the Rhode Island Department of Labor and Training, Board of Review which found Geraldine Asher eligible to receive unemployment benefits because her voluntary separation from her job was for good cause. This court has jurisdiction under Rhode Island General Laws 1956 § 42-35-15.

I. PROCEDURAL HISTORY AND FACTS

The issues presented in this case were raised after a long-time employee of Verizon of New England, a telecommunications company, accepted an offer from the employer and agreed to the termination of her employment. Three days after

her last day at work, the employee filed a claim for unemployment benefits, which was denied by the Director of the Rhode Island Department of Labor and Training, the plaintiff in this case. The director ruled that because the employee left her job voluntarily, and without good cause for doing so, § 28-44-17 barred her from collecting unemployment benefits. The worker appealed that decision Following an evidentiary hearing at which Ms. Asher testified, and which was attended by a representative of the employer, the director's decision was affirmed by a referee. Another appeal was lodged, and the board of review in a two to one vote reversed the decision,[1] finding that the worker left work for good cause and, therefore, could not be denied benefits under § 28-44-17. The board of review relied on the facts presented before the referee, and made the following findings of fact:

> The claimant was employed as an administrative assistant. The claimant's job was declared surplus. The claimant was notified of an employer reduction in force (RIF) program for employees determined to be surplus employees. The employer offered the claimant a one-time enhanced incentive offer/enhanced income protection plan (EIIP) whereby the employer, in exchange for certain monetary benefits made to the claimant would assign the claimant a termination date. The claimant accepted the offer and the employer assigned the claimant a termination date of June 19, 2010. In past reductions in the work force, the employer has assigned surplus Rhode Island employees to other employer offices outside the state. The claimant's separation from employment occurred on June 19th. At the time of the separation, the claimant's age was fifty-nine. The employer and

[1] The industry representative filed a short dissent stating that there was not sufficient evidence to show that if she did not leave, she would be assigned to an office in another state.

claimant are subject to a no layoff clause contained in the collective bargaining agreement.

Based on the evidence presented, the board concluded that the employee had a reasonable belief that she would be fired or offered an out-of-state position with a reduction in pay[2] if she did not agree to leave as part of the proposed incentive plan. The referee's decision was reversed, and the Director of the Department of Labor and Training filed his complaint here in the district court.

II. DISCUSSION

The Rhode Island Employment Security Act (Title 28 Chapters 42-44 of the General Laws of Rhode Island 1956) establishes a comprehensive program to address problems relating to unemployment. The portion of the act dealing with benefits available to workers is found in Chapter 44 of Title 28. Section 21-44-17 provides in relevant part that "[a]n individual who leaves work voluntarily without good cause shall be ineligible" for benefits.

Exactly what constitutes "good cause" under this statute has been the subject of a number of opinions in cases decided by the Rhode Island Supreme Court. As noted in an earlier decision, Sivo v. Department of Labor and Training, A.A. No. 04-115 (Dist. Ct. 4/19/06)(Gorman, J,), the language used when applying this part

[2] The hearing transcript and exhibits do not provide information relating to a possible reduction in pay. However, in the "appeal information" furnished by Ms. Asher she said that her husband was "totally handicapped" and that she needed to be close to him.

of the statute to specific facts can be confusing. This was recognized by the court in Powell v Department of Employment Security, Board of Review, 477 A.2d 93, 96 (R.I. 1984), when it said "we have given apparently conflicting definitions to the phrase 'good cause.'"[3] The court in Powell was able to harmonize the various treatments of this issue saying that "the key to this analysis is whether petitioner voluntarily terminated his employment because of circumstances that were effectively beyond his control." 477 A.2d at 96-97.

Ordinarily, in evaluating specific circumstances which might constitute "good cause," the court must deal with a mixed question of law and fact. D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1040 (R.I. 1986). Where the record supports only one conclusion, the case must be decided as matter of law. Id. at 1041. On the other hand, if more that one

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[3] In an early case, Harraka v. Board of Review of Department of Employment Security, 200 A.2d 595, 597 (R.I. 1964), the court said:

> 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.

Then, in Murphy v. Fascio, 340 A.2d 137, 139 (R.I. 1975) a claimant was found ineligible after the court explained that the law "was intended to protect individuals from the hardships of unemployment the advent of which involves a substantial degree of compulsion." But in a 1995 case, the court noted that "[o]nce again, we reject an interpretation of good cause that would require an element of compulsion." Rocky Hill School, Inc. v. State of Rhode Island Department of Employment and Training, Board of Review, 668 A. 2d 1241, 1244 (R.I. 1995).

reasonable conclusion could be reached, the agency decision will be affirmed. Ibid.

In the case under consideration, there is uncontradicted testimony that the employee thought that if she did not agree to the termination package, she risked losing pension benefits and that she might be asked to work in another state.[4] This case is very much like the facts presented in Colavita v. Department of Labor and Training, Board of Review, A.A. No. 04-30 (Dist. Ct. 6/9/05)(Moore, J.), which also involved a reduction in the number of employees at Verizon. There, three individuals, each with more than 20 years with the company, and one worker who had 5 years service, were found to have established "good cause" for accepting a severance package from the company.[5]

The court need not determine whether the circumstances in this case establish good cause as a matter of law. The conclusion reached by the board is

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[4] Ms. Asher testified:

> I got 33 years; do I risk the chance of losing the 33 years or all, everything that I, you know, compiled over the years.
>
> * * *
>
> And take the chance of staying and then maybe somewhere down the line, they could say, okay, um, we don't need you in Rhode Island. But we're gonna put you here, there, or wherever. . Ref. Hearing Tr., p 6, 7.

[5] These cases are distinguishable from Hill v. Department of Labor and Training, Board of Review, A.A. No. 00-54 (Dist. Ct, 9 /6/01)(Quirk, J.), where the facts indicated that there was virtually no chance that the worker would be fired or laid off.

clearly reasonable in light of the circumstances presented in the record. The decision of the board of review is supported by reliable, substantial evidence.

III. CONCLUSION

After a careful review of the record in this case, the court is satisfied that the board's decision is supported by substantial, probative evidence, and, therefore, the decision is affirmed.