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

Robert Mignacca	:	
	:	
v.	:	**A.A. No. 12-103**
	:	
Department of Labor and Training,	:	
Board of Review	:	

JUDGMENT

This cause came before Houlihan 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 of Review is affirmed.

Dated at Providence, Rhode Island, this 14th day of April, 2014.

Enter: By Order:

/s/ /s/

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

Robert Mignacca	:	
	:	
v.	:	**A.A. No. 12 – 103**
	:	
Department of Labor and Training,	:	
Board of Review	:	

DECISION

Houlihan, J. Mr. Robert Mignacca filed the instant complaint for judicial review of a final decision of the Board of Review of the Department of Labor and Training, which held that he was not entitled to receive employment security benefits based upon proved misconduct. Jurisdiction for appeals from the decision of the Department of Employment and Training Board of Review is vested in the District Court by Gen. Laws 1956 § 28-44-52. 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; accordingly the appeal is denied.

FACTS AND TRAVEL OF THE CASE

Mr. Robert Mignacca (hereinafter the "Claimant") was employed by the Boys &

Girls Club of Rhode Island at Oakland Beach for eleven months as an Open Door Director, until he was terminated on January 6, 2012. According to his employer he was terminated for failure to enter member information into the institution's database. Department Exhibit 1. Claimant applied for employment security benefits. A hearing officer initially awarded the Claimant benefits. Department Exhibit 3, dated January 31, 2012. On February 7, 2012 his employer objected to the receipt of any such benefits. Boys and Girls club letter. A Referee conducted a full hearing on March 1, 2012. On March 12, 2012, the Referee found Claimant had clearly violated known company policy and was thereby terminated for proved misconduct rendering him ineligible for benefits. Decision of Referee, March 12, 2012. After an appeal, this decision was affirmed by the Board of Review on April 20, 2012. Decision of Board of Review, dated April 20, 2012.

Claimant filed an appeal and the matter came before the District Court.

Findings Of Fact:

Referee William Enos made the following findings of fact:

> Claimant worked as an Open Door Director Oakland Beach for Boys and Girls Clubs of Rhode Island for eleven months, last on January 5, 2012. The employer testified that there is a strict company policy about keeping members records up to date into a database. The employer testified that failure to enter members information into the database constitutes gross negligence and puts the members at risk by not having the required emergency contact information or liability releases in one central place in case of an emergency. The employer testified that the

> claimant did not put forty members vital records into the organization's database. When this was discovered the employer issued a formal disciplinary action and warning on December 9, 2011. This warning stated that this was to be corrected immediately or it could lead to termination. The employer testified that the claimant, when shown this warning, stated it is not his priority and has no time to do it. The employer testified that on January 5, 2012 the files were still not in the database and the claimant was terminated for failure to properly input vital membership member's information into the database. The claimant's statement to the Department of Labor & Training stated that he was never written up for anything and the reason he was terminated was that they were making changes and going in a different direction. The claimant testified that he had a problem logging onto the computer system because there was a general log in password and if anyone was on when he was trying to log in, the system would not allow him to do so. The claimant testified that he took his job very seriously and his responsibility was with the children and families in the branch, although the applications were not in the database, he had the complete files in his administrative office. The claimant testified that he was not just the Open Door Director; he had other responsibilities and duties like the Career Launch Staff member preparing the GED preparation program.

Decision of Referee, March 12, 2012 at 1-2. Based on these findings, the Referee pronounced the following conclusions:

> **2. Conclusion:**
> * * *
> In cases such as this, the burden of establishing proof of misconduct is on the employer. That burden has been met.
> I find that the credible testimony and evidence submitted at this hearing showed that the claimant clearly violated known company policy. Therefore, I find that sufficient credible testimony has been provided to support the employer's position that the claimant was discharged for proven misconduct.

Decision of Referee, March 12, 2012 at 2. Accordingly, the Referee found Claimant

was disqualified from receiving benefits pursuant to Gen. Laws 1956 § 28-44-18. Id. at 3.

Thereafter, a timely appeal was filed by the claimant and the matter was reviewed by the Board of Review. In a decision dated April 20, 2012, the members of the Board of Review unanimously held that the decision of the Referee was a proper adjudication of the facts and the law applicable thereto. Accordingly, the Board determined that claimant was disqualified from receiving unemployment benefits; the Decision of the Referee was thereby affirmed.

Claimant filed an appeal within the Sixth Division District Court on May 3, 2012. The Claimant's Memorandum was received on July 24, 2012 and the Department's on September 19, 2012.

II

APPLICABLE LAW

This case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically touches on disqualifying circumstances; 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 through a preponderance of evidence that the claimant's action, in connection with his work activities, constitutes misconduct as defined by law.

III

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 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.

---

1 Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5).

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

3 Id.

IV

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 due to misconduct as provided by section 28-44-18?

V

ANALYSIS

In a decision issued on by the Referee on March 12, 2012 the Claimant was denied unemployment benefits due to the finding that "the claimant clearly violated known company policy." Decision of Referee, appeal No. 20120761, p. 2. In making this finding the Referee decided sufficient credible evidence was submitted by the Employer. Id.

At a hearing conducted on March 1, 2012 the Employer testified Claimant was presented with a written warning regarding the submission of membership information to the database. (Tr. at 10.) This warning was presented to the Claimant at the Oakland Beach branch Boys and Girls club on December 9, 2011. Employers 1, entitled "Formal Disciplinary Action & Warning." This letter was presented and read

to the Claimant. Id. The letter described the importance of entering membership information into the database, Claimant's failure to enter membership information into the database, the company policy regarding memberships and database as well as an admonition that failure to adhere to the policy could result in termination. Id. The Employer testified that as of January 5, 2012, after a staff meeting, thirty outstanding memberships had not been submitted to the database. (Tr. at 15.) The Claimant was fired on January 6, 2012. Id.

The Claimant contested this point, testifying that the membership information had been taken from him by another employee who took responsibility to enter the information in the database. (Tr. at 40.) Claimant also testified that problems with the computer system impeded his ability to enter information into the database. (Tr. at 41.) Ultimately, Claimant agreed some twenty seven individuals had not been entered into the database at the time he had been discharged. Id. at 55.

The Referee found the "credible evidence and testimony" established proof of misconduct. Decision of Referee, appeal No. 20120761, p. 2. Based upon the testimony cited above, this Court does not find the decision to be clearly erroneous, arbitrary or capricious or an unwarranted exercise of discretion. Similarly, there has been no assertion of any violation of constitutional or statutory provisions, acts in

excess of statutory authority, unlawful procedure or other error of law. As such, the Court finds none exists.

VI

CONCLUSION

As stated above, pursuant to the applicable standard of review, this Court is not authorized to substitute its judgment for that of the Board of Review. See Gen. Laws 1956 § 42-35-15(g), supra at 7 and Guarino, supra at 8, n. 1. In other words, the role of this Court is not to choose which version of events – the employer's or the claimant's – is more credible; instead, it is merely to determine whether the Board's decision, in light of the evidence of record, is clearly erroneous. Therefore, for the reasons stated above, especially my personal review of the record, particularly the testimony given at the hearing before the Referee — summarized above — I believe the Board's decision is not erroneous in view of the reliable, probative and substantial evidence. Gen. Laws 1956 § 42-35-15(g)(5).

Accordingly, the decision of the Board is AFFIRMED.