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

Miguel A. Jimenez	:	
	:	
v.	:	**A.A. No. 12 - 029**
	:	
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 and the matter remanded to the Board of Review for referral to the Director for the calculation of the eligibility-offset described in the attached opinion.

Entered as an Order of this Court at Providence on this 5th day of March, 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. This matter is before the Court on the complaint of Mr. Miguel A. Jimenez seeking judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor & Training, which held that Mr. Jimenez was not entitled to receive employment security benefits. 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. This matter has been referred to me for the making of 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 on the issue of disqualification. I shall, however, recommend that the decision be modified on a subsidiary issue — as I shall explain at length below.

I. FACTS & TRAVEL OF THE CASE

The facts and travel of the case are these: Mr. Jimenez was employed as a security officer for six months by the Providence Housing Authority, replacing an employee on family medical leave. After the employee returned, Mr. Jimenez was given fewer hours until finally, on September 24, 2011, he resigned. He filed for unemployment benefits but on October 29, 2012 the Director determined that claimant was eligible to receive unemployment benefits because he quit his employment without good cause.

Claimant appealed from this decision and on November 28, 2011 Referee Gunter A. Vukic held a hearing on the matter. In his decision, issued on December 2, 2011, the Referee made the following Findings of Fact regarding claimant's separation:

> **2. FINDINGS OF FACT:**
> … The claimant was hired to replace a security officer on family medical leave. Claimant worked five to six shifts per week until the coworker's return. The claimant then began working two shifts per week and filling in as needed. The claimant complained about the lack of hours. Claimant was a no call no show September 9 and September 10. Employer supervisor (sic) telephone (sic) the claimant to investigate his absence. The claimant resigned for lack of hours. Claimant relocated out of state shortly thereafter.

Referee's Decision, December 2, 2011, at 1. Based on these findings the Referee came to the following Conclusion:

> **3. CONCLUSION:**
> * * *
> In order to show good cause for leaving employment, the claimant must show that the work had become unsuitable or that the claimant was left with no reasonable alternative but to resign. The burden of proof rests solely on the claimant. Insufficient testimony and no evidence has been provided to support either of the above conditions.
>
> The claimant had the reasonable alternative of continuing to work the assigned and fill-in shifts as needed, applying for partial Employment Security benefits, or searching for new employment before placing himself into a position of total unemployment.
>
> Therefore, I find and determined (sic) that the claimant left his job without good cause under the above Section of the Act. (Emphasis added).

Referee's Decision, December 2, 2011, at 2. Accordingly, Referee Vukic found claimant to be disqualified from receiving benefits.

Claimant filed an appeal and the matter was reviewed by the Board of Review. On January 10, 2012, 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, on January 27, 2012, the claimant filed a complaint for judicial review in the Sixth Division District Court.

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 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.

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]

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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).

The Supreme Court of Rhode Island recognized in Harraka, 98 R.I. at 200, 200 A.2d at 597 (1964) that a liberal interpretation shall be utilized in construing and applying the Em ployment 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.

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 properly disqualified from receiving

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[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

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

V. ANALYSIS

The Board of Review, relying on the Referee's decision, found claimant quit his position at the Providence Housing Authority without good cause within the meaning of section 28-44-17. For the reasons I shall now state, I believe the Referee's analysis is logically sound; I further believe his ultimate decision finding a disqualification is not clearly erroneous or based on error of law — as far as it goes. However, before concluding, I shall discuss one area where I believe the decision must be amended. I must therefore recommend that it be affirmed, with a certain proviso.

A. The Disqualification Issue.

I believe the issue of claimant's disqualification vel non need not detain us long. Quite simply, I agree with the Referee's conclusion that the claimant — who apparently took the position knowing he was replacing an employee on leave[4] — had a reasonable alternative to quitting: viz., working all available shifts and requesting partial unemployment benefits to help make up his lost income. This he chose not to do. Referee Hearing Transcript, at 14. Accordingly, I believe he was properly disqualified under section 28-44-17.

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

But I believe this conclusion gives rise to a further question which the Referee and the Board did not address: What is the effect of this finding? Is it full or partial disqualification? Applying longstanding precedents of this Court, I believe the answer to this question must be the latter.

B. The Offset Issue.

As stated above, on October 21, 2011, the Director, based on the finding of leaving without good cause, determined claimant Jimenez to be disqualified from receiving unemployment benefits; in the ruling he was specifically told — "… This disqualification will end when you have at least (8) weeks of covered employment after week ending 09/17/11 and in each of those eight weeks, you have earnings equal to or greater than $148.00." Decision of Director, Exhibit D2, at 1. This language is repeated, almost verbatim, in the decision of Referee Vukic — "Benefits are denied for the week ending September 17, 2011 and until he has had at least (8) weeks of work and in each of said weeks has earned an amount equal to or greater than $148.00." See Decision of Referee, December 2, 2011, at 2. Based on this phraseology being used, it appears that these decisions ruled claimant to be *entirely, not partially,* disqualified from receiving benefits.

And so, we must inquire: Is this total bar to the receipt of benefits

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[4] See Referee Hearing Transcript, at 14-15.

correct? I believe not. For the reasons that follow, I conclude that a claimant who loses a full-time job, who then works part-time for a period, and who then quit the part-time position without good cause should not generally be completely disqualified from receiving benefits. Doing so would be contrary to the manner in which part-time earnings are treated in analogous circumstances.

First, the Rhode Island Employment Security Act provides that a claimant who is laid-off from a full-time position who is working part-time may collect benefits, subject to an offset based on the worker's part-time earnings. See Gen. Laws 1956 § 28-44-7. Secondly, this Court has long held that a worker who is laid-off from a full-time position who then quits a part-time position (without good cause) may nonetheless collect benefits — subject to an offset for that income voluntarily forgone. See Craine v. Department of Employment and Training, Board of Review, A.A. No. 91-25, (Dist.Ct.6/12/91) (DeRobbio, C.J.)(Claimant lost a full-time job, then took leave from a part-time job; *Held,* partial benefits would be awarded pursuant to § 28-44-7). The rule of Craine provides that although the claimant has left his part-time position in circumstances which would have, if viewed in isolation, triggered a disqualification under section 28-44-17 [Leaving Without Good Cause], he is not fully disqualified. And, in Palazzo v. Department of Labor

and Training, Board of Review, A.A. No. 10-55 (Dist.Ct. 10/19/2010), this Court extended the holding in Craine to a claimant who, while collecting benefits because of the loss of her job as a medical technician, was then fired from her position at Dunkin Donuts over attendance issues. This Court held in that the wages Ms. Palazzo lost due to her termination for cause would be treated as an offset from her ongoing benefits. From this holding we may infer a broader rule: that one who is eligible for benefits based on the loss of a full-time job will not be totally disqualified if she then separates from a part-time job under disqualifying circumstances. Thus, the Craine rule was extended to include section 18 cases in Palazzo.

After applying the foregoing statutes and precedents, I have concluded Mr. Jimenez' situation falls within the ambit of this Court's holdings in Craine and Palazzo. Although he had not yet claimed partial benefits, he was certainly eligible for them, as the Referee noted.[5] I do not believe he should be penalized for not having yet claimed partial benefits at the time of his separation. I believe fairness requires that the offset-rule should be made fully applicable to him

[5] Mr. Jimenez was only working 16 hours per week, which is clearly part-time employment. Referee Hearing Transcript, at 13.

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.[6] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[7] Accordingly, the Board's decision (adopting the finding of the Referee) that claimant voluntarily terminated his employment at the Providence Housing Authority without good cause within the meaning of section 17 is well-supported by the evidence of record.

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

7 Cahoone, supra n. 6, 104 R.I. at 506, 246 A.2d at 215 (1968). See also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986). See also Gen. Laws 1956 § 42-35-15(g), supra p. 6 and Guarino, supra p. 6, fn.1.

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 of Review be AFFIRMED on the issue of disqualification. As explained in this opinion, I further recommend that the matter be referred by the Board to the Director for a determination of claimant's part-time earnings at the Housing Authority. Once this is done, the Department will be able to compute the benefits to which Mr. Jimenez is entitled — which shall be determined by calculating the benefits to which he would have been entitled based on his loss of his full-time position, subject to an offset for the wages he voluntarily gave up by quitting his subsequent part-time position.

/s/
Joseph P. Ippolito
MAGISTRATE
MARCH 5, 2012