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

Jacqueline L. Carnaggio	:	
	:	
v.	:	**A.A. No. 12 - 031**
	:	
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.

Entered as an Order of this Court at Providence on this 21st 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. In this matter Ms. Jacqueline L. Carnaggio urges that the Board of Review of the Department of Labor & Training erred when it found her disqualified from receiving unemployment benefits pursuant to Gen. Laws 1956 § 28-44-17 because she had quit her prior position without good cause. 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 of findings and recommendations pursuant to General Laws 1956 § 8-8-8.1. For the reasons stated below, I conclude that the decision issued by the Board of Review denying benefits to Ms. Carnaggio was supported by the facts of the case and applicable principles of law. Accordingly, I have concluded it should be affirmed; I so recommend.

FACTS & TRAVEL OF THE CASE

Ms. Carnaggio worked for the employer at one of its Dunkin' Donuts shops for five years until April 2, 2011. She filed a claim for unemployment benefits but the Director deemed her ineligible because she resigned without good cause within the meaning of Gen. Laws 1956 § 28-44-17. Claimant appealed from this decision and Referee Nancy L. Howarth held a hearing on the matter on November 7, 2011: the claimant appeared pro-se with two witnesses, an employer representative appeared telephonically. In her decision, issued on November 8, 2011, the Referee made the following Findings of Fact regarding claimant's termination:

> **2. FINDINGS OF FACT:**
> The claimant was employed in the position of counter help by the employer. On March 19, 2011 the claimant overcharged a customer by twenty-seven cents. She returned that amount to the customer. The claimant's manager was in the area with (sic) this occurred. The assistant manager subsequently stated loudly that, according to the employer's policy, the customer could have received the order at no charge under the circumstances. She instructed the claimant not to make such a mistake in the future. The claimant had previously complained to her supervisor regarding this assistant manager's treatment of her. The supervisor discussed the situation with the assistant manager and believed that the problem had been resolved. The assistant manager did have the authority to correct the claimant when errors were made. At the end of her shift on March 19, 2011 the claimant informed her supervisor that she was giving two weeks' notice, due to the assistant manager's ongoing treatment of her.

Referee's Decision, November 8, 2011, at 1. Based on these findings the referee formed the following Conclusion:

> **3. CONCLUSION:**
> * * *
> In order to establish that she had good cause for leaving her job, the claimant must show that the work had become unsuitable or that she was faced with a situation that left her no reasonable alternative other than to terminate her employment. The burden of proof in establishing good cause rests solely with the claimant. In the instant case, the claimant has not sustained this burden. There is insufficient evidence of record to indicate that the work itself had become unsuitable. The evidence and testimony presented at the hearing establish that the claimant did have reasonable alternatives available to her, other than to terminate her employment. If she was dissatisfied with the work environment, the claimant could have requested a transfer to one of the employer's other stores, or she could have found a job with a different employer, prior to leaving her position. Since the claimant had reasonable alternatives available to her, which she chose not to pursue, I find that her leaving is without good cause under the above Section of the Act. Accordingly, benefits must be denied on this issue.

Referee's Decision, November 8, 2011, at 2. Accordingly, Referee Howarth found claimant to be disqualified from receiving benefits.

Claimant filed an appeal and the matter was reviewed by the Board of Review. On January 5, 2012, the Board of Review unanimously affirmed the decision of the Referee, finding it to be a proper adjudication of the facts and the law applicable thereto. Thereafter, on February 2, 2012, the claimant filed a complaint for judicial review in the Sixth Division 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; 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.

STANDARD OF REVIEW

The standard of review is provided by R.I. Gen. Laws § 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 page 4, 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 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.

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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, 506, 246 A.2d 213, 215 (1968).

3 Cahoone v. Board 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 Employment Security, 517 A.2d 1039 (R.I. 1986).

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 unemployment benefits because she left work without good cause within the meaning of section 28-44-17?

ANALYSIS

By adopting the decision of the Referee as its own, the Board of Review found claimant quit her position without good cause. In particular, the Referee — who did not comment upon the nature or degree of claimant's alleged mistreatment in her conclusion — found claimant had alternatives to quitting: she could have requested a transfer to another shop in the employer's organization or sought new employment before quitting. For the reasons that follow, I have concluded that the Board's decision is supported by substantial evidence of record and is not clearly erroneous.

In *theory*, mistreatment of an employee by a supervisor has long been recognized as a good reason to quit within the meaning of section 17. E.g. Harrison v. Department of Employment and Training Board of Review, A.A. No. 93-85 (Dist.Ct. 3/8/94) (Thompson, J.)(Denial of benefits reversed where claimant quit after being harassed by his supervisor and called names). But see Jennings v. Department of Employment and Training Board of Review, A.A. No. 91-64 (Dist.Ct. 7/1/91)(DeRobbio, C.J.)(Denial of

benefits affirmed where claimant — a retail store worker — quit after being addressed by supervisor in front of customers).

However, in *practice*, the application of this principle has been limited by the Board — which has repeatedly ruled the employee must explore all avenues of redress or amelioration of the situation before taking the drastic step of quitting. E.g. Andreoni v. Department of Employment and Training Board of Review, A.A. No. 96-52 (Dist.Ct. 7/22/96)(DeRobbio, C.J.)(Denial of benefits affirmed where claimant did not inform employer of supervisor's alleged harassment of claimant) and Barbera v. Department of Employment and Training Board of Review, A.A. No. 96-38 (Dist.Ct. 5/6/96)(DeRobbio, C.J.)(Denial of benefits affirmed where claimant did not inform higher management of supervisor's alleged harassment of claimant). In other cases the Board has simply found that — in light of the circumstances — the claimant should have sought other employment before quitting. See e.g. Tanzi v. Department of Employment and Training Board of Review, A.A. No. 93-172 (Dist.Ct. 5/32/94)(DeRobbio, C.J.) (Denial of benefits affirmed where claimaint should have sought new employment before quitting due to unfair criticism). Finally, the District Court affirmed the denial of benefits where a claimant declined an offer of a transfer to a new location, away from supervisor with who she had a conflict. Boisvert v. Department of Employment Security Board of Review, A.A. No. 77-271 (Dist.Ct. 2/12/82)(Beretta, J.).

Claimant quit because she believed she had been treated badly. She testified that after she overcharged a customer 27 cents, a co-worker — named "Mary" —

commented that the girl could have gotten her order for free and that the person on the register can't be making mistakes; feeling this was the last straw that broke the camel's back, Ms. Carnaggio thereupon gave two weeks' notice. Referee Hearing Transcript, at 9-10. She testified she felt belittled in front of her co-workers. Referee Hearing Transcript, at 11. Her boyfriend testified she would come home emotionally distressed. Referee Hearing Transcript, at 14.

The Board of Review adopted the Referee's ruling that the conduct of the shop employee "Mary" was not such as would constitute good cause to quit as defined in section 17. This decision is not inconsistent with the principles and case precedents enumerated above. Accordingly, I cannot find that the decision of the Referee is clearly erroneous in light of the reliable, probative and substantial evidence of record.

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 5 and Guarino, supra at 5 fn.1. The scope of judicial review by the District Court is also limited by General Laws section 28-44-54 which, in pertinent part, provides:

> **28-44-54. Scope of judicial review – Additional Evidence – Precedence of proceedings. –** The jurisdiction of the reviewing court shall be confined to questions of law, and in the absence of fraud, the findings of fact by the board of review, if supported by substantial evidence regardless of statutory or common law rules, shall be conclusive.

Accordingly, the Board's decision (adopting the finding of the Referee) that claimant voluntarily terminated her employment without good cause is supported by the evidence of record and must be affirmed.

CONCLUSION

Upon careful review of the evidence of record, 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 be AFFIRMED.

/s/
Joseph P. Ippolito
MAGISTRATE

MARCH 21, 2012