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

Dennis Boisvert	:	
	:	
v.	:	**A.A. No. 12 - 032**
	:	
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 Mr. Dennis Boisvert urges that the Board of Review of the Department of Labor and Training erred when it found him disqualified from receiving unemployment benefits pursuant to Gen. Laws 1956 § 28-44-17 because he had quit his 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 General 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. For the reasons stated below, I conclude that the decision issued by the Board of Review denying benefits to Mr. Boisvert 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

Mr. Boisvert worked for the Wal-Mart for one year until August 31, 2010. However, he did not file his claim for unemployment benefits until July 28, 2011. Then, on September 20, 2011, the Director deemed him ineligible to receive benefits because he resigned without good cause within the meaning of Gen. Laws 1956 § 28-44-17.

Claimant appealed from this decision and Referee Gunter A. Vukic held a hearing on the matter on October 27, 2011: the claimant appeared, as did two employer witnesses. In his decision, issued on October 28, 2011, the Referee made the following Findings of Fact regarding claimant's termination:

> **2. FINDINGS OF FACT:**
> The claimant originally applied for and was hired as a temporary stocker. The claimant was moved to a full-time position during his employment. The claimant was receiving Social Security benefits and his daughter was the recipient of a college grant based on parent income. The claimant's overall income from employment was jeopardizing his pension and subsidies resulting in his request to reduce his work schedule. The claimant subsequently resigned in order to continue receiving of the benefits at full payment.

Referee's Decision, October 28, 2011, at 1. Based on these findings the Referee formed 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 fact that the claimant would potentially lose benefits based on income did not make the job unsuitable. The claimant had the reasonable alternative of continuing in his employment and making any appropriate adjustments to his personal financial situation.

> The claimant's application for benefits occurred only after he attempted to return to his former employment approximately one year after resignation.

Referee's Decision, October 28, 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 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 3, 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]

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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.

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.

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 he 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 his position without good cause. Claimant testified that he quit in order to avoid a cut in his Social Security benefits — i.e., a reduction in benefits based on his

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503, 246 A.2d 213 (1968). Also D'Ambra v. Bd. of Review, Department of Employment Security, 517 A.2d 1039 (R.I. 1986).

income. Referee Hearing Transcript, at 10-11.[4] As a matter of fact and law, the Referee found that quitting for this reason did not constitute good cause as defined in section 17. For the reasons that follow — of statutory construction and polity — I have concluded that the Board's decision affirming the Referee's decision is supported by substantial evidence of record and is not clearly erroneous.

First, an employee who quits a position may only collect benefits if his or her reason for doing so constitutes good cause within the meaning of section 17. And, as we noted above, good cause must be related to one's work; generally, personal reasons do not come within the ambit of section 17.[5] Mr. Boisvert's reason for quitting, while undoubtedly logical, was personal, and outside the definition of "good cause" found in the statute.

Second, I believe considerations of fairness and equity also militate against Mr. Boisvert's eligibility. Claimant quit — giving up wages — in order to safeguard the amount of benefits he was receiving from the federal government. To allow him to collect unemployment benefits after he quit to avoid a reduction in his Social Security benefits would result in a windfall — a paradoxical and ironic one at that. In essence, he would be trading wages for unemployment benefits. As a matter of public policy, this would obviously be wrong.

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[4] Specifically, Mr. Boisvert was subject to reimbursing the Social Security Administration for part of a college grant his daughter was receiving. Referee Hearing Transcript, at 12.

[5] Claimant grasped this concept. He stated he was not "going after" Wal-Mart, but filed for benefits later, because he could not find a job. Referee Hearing Transcript, at 9.

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 § 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 his employment without good cause is supported by the evidence of record and must be affirmed.

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 be AFFIRMED

/s/
Joseph P. Ippolito
MAGISTRATE

MARCH 21, 2012