

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

DISTRICT COURT

Pascale Jules

v.

Dept. of Labor & Training,  
Board of Review

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A.A. No. 12 - 081

**ORDER**

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 25<sup>th</sup> day of May, 2012.

By Order:

\_\_\_\_\_/s/\_\_\_\_\_  
Melvin Enright  
Acting Chief Clerk

Enter:

\_\_\_\_\_/s/\_\_\_\_\_  
Jeanne E. LaFazia  
Chief Judge

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

<b>Pascale Jules</b>	:	
	:	
v.	:	A.A. No. 12 - 081
	:	
<b>Dept. of Labor &amp; Training,</b>	:	
<b>Board of Review</b>	:	

**FINDINGS & RECOMMENDATIONS**

**Ippolito, M.** This matter is before the Court on the complaint of Ms. Pascale Jules seeking judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor & Training. Jurisdiction for appeals from the decision of the Department of Employment and Training 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 General 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; accordingly, I recommend that it be affirmed.

## FACTS AND TRAVEL OF THE CASE

Ms. Jules filed a claim for unemployment benefits on January 27, 2011 and was awarded benefits. Then, on June 30, 2011, the Director of the Department of Labor and Training, pursuant to the provisions of Gen. Laws 1956 § 28-44-6, determined that she had been receiving benefits in an excessive amount. This overpayment, the Director decided, had occurred because — erroneously — Ms. Jules had been given credit for wages earned from a Connecticut employer — for whom she had not worked. The Director found the claimant overpaid in the amount of \$5,531.00 and ordered her to make repayment.

Claimant appealed and a hearing was held before Referee William Enos on August 18, 2011. Ms. Jules appeared but the employer and the Department did not. Ms. Jules testified that she had not worked for the Connecticut company and that she had not listed it as an employer when she filed her claim. See Referee's Decision, at 1. The Referee specifically found that Ms. Jules had not listed the employer as a matter of fact. See Referee's Decision, at 2. The Referee further found that the error came to light when the employer received notice of the claim. See Referee's Decision, at 2. When the company notified the Department of its error, a recalculation resulted. See Referee's Decision, at 2.

On December 13, 2011, Referee Enos issued his decision, in which he held that the Director was correct to eliminate the unearned wages from Ms. Jules' benefit calculation but that — despite the fact that she was overpaid — Ms. Jules

would not be subjected to a repayment order since she was not at fault. See Referee's Decision, at 2. To repeat, under the Referee's decision, Ms. Jules was not required to make repayment.

Nevertheless, Ms. Jules filed an appeal and the matter was reviewed by the Board of Review. On February 6, 2012 the Board of Review unanimously found the Referee's decision to be a proper adjudication of the facts and the law applicable thereto. To reiterate, under the Board's decision affirming the Referee, Ms. Jules was not required to make repayment.

Subsequently, claimant filed an appeal in the Sixth Division District Court.

### **STANDARD OF REVIEW**

The standard of review by which the court must proceed is established in 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.’”<sup>1</sup> The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.<sup>2</sup> Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.<sup>3</sup>

### **ANALYSIS**

In my view there is little presented in the instant case that need detain us long. Ms. Jules appears to be laboring under the misapprehension that she must repay the \$5,531.00 in excessive benefits she erroneously received. However, the Director’s decision that she ought to do so was set aside by the Referee — and the Referee’s decision was affirmed by the Board. Therefore, she is not ordered to repay the monies she incorrectly received. See Gen. Laws 1956 § 28-42-68.

On the other hand, she cannot expect to continue to receive the incorrect larger amount of benefits, which was based on wages she had not truly earned. After all, claimant conceded that she had not worked for the Connecticut company.

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<sup>1</sup> 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).

<sup>2</sup> Cahoone v. Board of Review of the Dept. of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

<sup>3</sup> Id.

Under section 28-44-6, the Department must calculate her benefits based on the wages she actually earned. This would be unlawful — and would constitute an unjust windfall to her.

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.<sup>4</sup> Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.<sup>5</sup> As stated above, my examination of the record reveals that the Referee's factual findings easily satisfied this standard of review. Accordingly, the Board's ruling (adopting the decision of the Referee as its own) that claimant's benefits would be subject to recalculation but that she would not have to repay the amounts she erroneously received is supported by the evidence of record and must be affirmed.

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<sup>4</sup> Cahoone, supra at 4, fn. 2.

<sup>5</sup> Cahoone, supra at 4, fn. 2. See also D'Ambra v. Board of Review, Department of Employment Security Board of Review, 517 A.2d 1039, 1041 (R.I. 1986). See also Gen. Laws § 42-35-15(g), supra at 3 and Guarino, supra at 4, fn. 1.

**CONCLUSION**

Upon careful review of the evidence, I recommend that this Court find that the decision of the Board of Review regarding claimant's failure to accurately report wages was not affected by error of law. General 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. General Laws 1956 § 42-35-15(g)(5),(6).

Accordingly, I recommend that the decision of the Board be AFFIRMED.

\_\_\_\_\_/s/\_\_\_\_\_  
Joseph P. Ippolito  
MAGISTRATE

MAY 25, 2012

