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

Denise Jaiman	:	
	:	
v.	:	**A.A. No. 13 - 119**
	:	
Department of Labor and 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 8th day of October, 2013.

By Order:

____/s/_____
Stephen C. Waluk
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 case Ms. Denise Jaiman seeks judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor and Training which was adverse to Ms. Jaiman's efforts to receive employment security benefits. 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 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 Ms. Jaiman was supported by the

facts of the case and the applicable law and should be affirmed; accordingly, I so recommend.

I.

FACTS & TRAVEL OF THE CASE

Ms. Jaiman worked as the office manager in an attorney's office for ten months until November 27, 2012. She applied for unemployment benefits and in a decision dated January 10, 2013 the Director deemed her ineligible to receive benefits because she left the attorney's office without good cause within the meaning of Gen. Laws 1956 § 28-44-17. Ms. Jaiman appealed from this decision and Referee John R. Palangio held a hearing on the matter on March 20, 2013. Ms. Jaiman appeared with counsel and testified; the employer appeared and testified. In his decision issued on May 14, 2013, Referee Palangio made the following Findings of Fact regarding claimant's termination:

> **2. FINDINGS OF FACT:**
>
> The claimant was an office manager for Richard J. Corley for ten months last on November 27, 2013. On November 21, 2012 the claimant had asked her employer if he could loan her money to fix her car. The claimant told her employer the cost would be about $60. The employer directed the claimant to write a business check to herself for the repairs. The claimant later learned that the cost of the repairs was $100. She then wrote a check to herself for that amount. She did not inform her employer at the time of the difference in the amount of the check.

> When the employer learned that the check was written for $100 and not for $60, he called the claimant informed her he wished to discuss the loan and the amount. When the employer arrived at his office he had a spirited discussion with the claimant. The employer was unhappy that the claimant wrote a check for a different amount that was discussed. As a result of that discussion, the claimant left work and did not return. The employer left several messages with the claimant inquiring if she would return. The claimant did not return and did not respond to the employer's voicemails.

Referee's Decision, May 14, 2013, at 1. Then, analyzing the case under Gen. Laws 1956 § 28-44-17, which it quoted at length, the Referee concluded:

> **3. CONCLUSION:**
> * * *
> The testimony of the claimant, which was not credible, was that she voluntarily quit her position after the employer questioned her regarding the difference in the amount of her loan. The claimant testified that the employer became belligerent and accused her of stealing money. The claimant further testified that she left because she was embarrassed because her employer had yelled at her in front of other people that work in the office. Finally, the claimant testified that she was sexually harassed by her employer over a period of time.
>
> The testimony of the employer was that he was upset that the check in question was not written for $60 but rather $100. In addition, the employer testified that he was not informed of the difference in the amount until he performed his own inquiry. The employer denies yelling at the claimant and being belligerent. The employer also denies any accusation of sexual harassment toward the claimant.
>
> The claimant in this case has failed to show that her employment became unsuitable and that she had no other alternative than to put herself in a total state of unemployment as a result of a spirited discussion she had with her employer over a check. While it appears from all the testimony that the discussion that the claimant had with her employer was uncomfortable, there is no evidence presented in this case

> to show that the employer was belligerent or used profanity towards the claimant. In addition, there is no evidence presented at the hearing that the employer sexually harassed the claimant. As a result, Unemployment benefits are denied under Section 28-44-17 of the Rhode Island Employment Security Act.

Referee's Decision, May 14, 2013, at 2-3. Accordingly, Referee Palangio found Claimant to be disqualified from receiving benefits. He therefore affirmed the decision of the Director denying benefits.

Claimant filed an appeal and the matter was reviewed by the Board of Review. On June 18, 2013, the members of the Board of Review issued a unanimous 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. Then, on July 16, 2013, Ms. Jaiman filed a pro-se 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 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

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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, 246 A.2d 213 (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. Board of Review, Department of Employment Security, 517 A.2d 1039 (R.I. 1986).

> 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 the Board's decision to affirm the Department's denial of benefits to Ms. Jaiman pursuant to section 28-44-17 an appropriate one — factually and legally?

V.

ANALYSIS

Our analysis of the instant case must begin with an observation that the testimony of the Claimant and her employer was largely consistent — deviating only subtlety. Both the claimant and the employer agree that Ms. Jaiman quit after being admonished by her employer for writing a check to herself in an amount greater than that which he had authorized. Before the Referee she asserted that she had been

mistreated and that she therefore had good cause to quit. In order to evaluate the rectitude of her position, we shall now, (1) review the testimony taken at the hearing before the Referee and (2) evaluate the legal effect of these circumstances.

A.

At the hearing conducted by the Referee, Ms. Jaiman began her testimony be relating the events of November 27, 2012. Referee Hearing Transcript, at 14 et seq. He first called into the office and spoke to the Claimant, advising her that "… we need to talk about the check you wrote." Referee Hearing Transcript, at 17. She said her employer "came in pretty belligerent saying that I stole money from him." Referee Hearing Transcript, at 15, 17. According to her, the attorney was yelling at her. Id. She tried to explain, but he put off their discussion until after a meeting he was to conduct in the conference room. Referee Hearing Transcript, at 17.

She then left because she was embarrassed that he had yelled about these issues in front of the other people in the office. Id. She did not tell the employer that she was quitting. Referee Hearing Transcript, at 37. Neither did she respond to a text message from the employer inviting her to come back so they "could work this out." Referee Hearing Transcript, at 25, 37-38.

She explained to the Referee that — in a telephone conversation on November 21st — she had asked her employer to borrow money to fix her car. Referee Hearing

Transcript, at 17, 29. Although she had told him that the repair bill would be "around $60.00," she had written the check for $100.00, after finding out that the job would cost around $80.00. Referee Hearing Transcript, at 15, 23. It may be noted at this juncture that Ms. Jaiman was authorized to write and sign checks for bills in the office, although her name was not on the bank account for check-writing privileges. Referee Hearing Transcript, at 21, 30. In this case, Ms. Jaiman did not re-inquire to make sure that a check for the larger amount would be allowed. Referee Hearing Transcript, at 17.

Ms. Jaiman also testified that she had been sexually harassed while employed at the law office. Referee Hearing Transcript, at 18-19. However, she conceded she never told anyone about the offensive conduct she was now alleging. Referee Hearing Transcript, at 39.

The employer also testified. Referee Hearing Transcript, at 41 et seq. He indicated that Ms. Jaiman did not tell him the bill for the car repair would be "around $60.00," but exactly $60.00. Referee Hearing Transcript, at 41. He further testified that when he arrived at work he brought Claimant Jaiman into his private office and told her that writing a check for $100.00, when she only had permission to write a check for $60.00, was "… the same thing as stealing money from me." Referee Hearing Transcript, at 43. He then told Ms. Jaiman that she should immediately reimburse him

for all the money he had given her. Id. He stated that they would discuss the matter further after he finished speaking with several persons waiting to see him. Id. When he finished these conferences he inquired where the Claimant was; he was told she had left. Id.

The employer denied the allegations of sexual harassment absolutely. Referee Hearing Transcript, at 44-45.

B.

And, as a question of law, this Court has long held that discipline, even if imposed unfairly, does not constitute good cause to quit. See Medeiros v. Department of Employment and Training, Board of Review, A.A. No. 94-221 (Dist.Ct. 6/19/1995). The Court has rationalized that the claimant should obtain a new position before quitting. Capraro v. Department of Employment and Training, Board of Review, A.A. No. 95-151 (Dist.Ct. 9/27/1995). Specifically, criticism by a superior does not constitute good cause to quit. See Ward v. Department of Employment and Training, Board of Review, A.A. No. 96-51 (Dist.Ct. 9/4/96)(DeRobbio, C.J.) and Andreoni v. Department of Employment and Training, Board of Review, A.A. No. 94-71 (Dist.Ct. 7/22/96)(DeRobbio, C.J.).

C.

1.

As I stated at the beginning of this analysis, the two versions of events presented in this case — i.e., the Claimant's and the employer's — can largely be harmonized. To be sure, there are a few exceptions to this rule: whether or not Ms. Jaiman mentioned a definite figure when asking for the loan of the funds to fix her car is one, along with the whole issue of sexual harassment. On these issues the Referee (and the Board of Review by adopting his decision as its own) chose to credit the testimony of the employer, not Ms. Jaiman. As the (preliminary) fact-finder, doing so was certainly within his province.

Consequently, the allegation of sexual harassment was found completely wanting in merit. Such a decision was certainly supported by the employer's testimony and by the fact that Claimant had made no such allegations previously. And so, I cannot find that the decision on this point was clearly erroneous.

And with regard to the issue of the check, I believe the Board's decision can be affirmed on two different theories. First, the Board of Review could find that the employer's upbraiding of Claimant, even if unjustified, was not so severe as to justify her separation before she could find a new job. His testimony certainly supported such a finding. Second, the Board could well have found (1) that Claimant wrote a check to

herself for an amount in excess of that which had been authorized, (2) that she thereby committed misconduct (if not a crime), and (3) that she fully deserved to be reproached.

And so, applying the facts (summarized in Part V-A) to the applicable principles of law (from Part V-B), I must find that the decision that the Board of Review rendered in this case was not clearly erroneous. To the contrary, it was fully supported by the facts and the law.

2.

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 6-7 and Guarino, supra at 7, n.1. Accordingly, the Board's decision (affirming the finding of the Referee) that claimant voluntarily terminated her employment without good cause as defined in section 28-44-17 is well-supported by the reliable, probative and substantial evidence of record and must be affirmed.

VI.

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

OCTOBER 8, 2013