STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Paula Miche	:	
	:	
v.	:	**A.A. No. 13 - 162**
	:	
Dept. 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 in part and REVERSED in part, to the extent enumerated in Part IV of the attached opinion and for the reasons explained therein.

Entered as an Order of this Honorable Court on this 25th day of November, 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. Paula Miche urges that the Board of Review of the Department of Labor and Training erred when it held that she was not entitled to receive employment security benefits because she received severance pay. Jurisdiction for appeals from decisions of the Department of Employment and Training Board of Review is conferred upon 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 rendered by the Board of Review on the issue of eligibility was 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 fundamental issues of disqualification and recoupment. I shall, however, recommend that the Board's order of recoupment be limited for reasons I shall explain below.

I

Facts and Travel of the Case

The facts and travel of the case are these: after being laid-off from her full-time position at Blue Cross on February 26, 2013, Ms. Paula Miche applied for and received unemployment benefits. Thereafter, she received a severance package. Then, on June 17th, a designee of the Director issued a decision finding her to be disqualified from the receipt of unemployment benefits and overpaid during the time-period of (the weeks ending) March 30, 2013 through May 11, 2013, because she was in receipt of a Blue Cross severance package, as provided in Gen. Laws 1956 § 28-44-59. Claimant appealed from this decision and on July 23, 2013 Referee John R. Palangio conducted a hearing on the matter. Claimant appeared and testified; but no

one appeared on behalf of the employer.

The Referee issued a decision the same day, on July 23, 2013, in which he made the following findings of fact:

> **2. Findings of Fact:**
>
> The claimant was terminated on February 26, 2013. She was in receipt of a severance agreement on that day which called to pay her $43,137.60, which would be equivalent to forty four weeks of work.

Decision of Referee, July 23, 2013, at 1. Based on these findings, the Referee, after quoting from section 28-44-59, issued the following Conclusions:

> * * *
> The claimant was in receipt of her severance agreement in February 2013. She understood the terms of that agreement when she filed for benefits in March 2013. The agreement called for the claimant to receive – to be allocated over forty four weeks. As a result the claimant will not be entitled to receive benefits until August 24, 2013.

Referee's Decision, July 23, 2013, at 2. Accordingly, Referee Palangio affirmed the Director's decision denying benefits to Ms. Miche. Referee's Decision, June 23, 2013, at 2-3.

Claimant filed an appeal on August 5, 2013. Then, on August 28, 2013, the Board of Review issued a unanimous decision finding the decision of the Referee was a proper adjudication of the facts and the law applicable thereto. Decision of Board of Review, August 28, 2013, at 1. Accordingly, the decision

rendered by the Referee was affirmed.

Thereafter, on September 25, 2013, the Claimant filed a complaint for judicial review of the Board of Review's decision in the Sixth Division District Court.

II

Applicable Law

The fundamental issue in 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 § 28-44-59, provides:

> **28-44-59. Severance or dismissal pay allocation. — …** For benefit years beginning on or after July 1, 2012, for the purpose of determining an individual's benefit eligibility for any week of unemployment, any remuneration received by an employee from his or her employer in the nature of severance or dismissal pay, whether or not the employer is legally required to pay that remuneration, shall be allocated on a weekly basis from the individual's last day of work for a period not to exceed twenty- six (26) weeks, and the individual will not be entitled to receive benefits for any such week for which it has been determined that the individual received severance or dismissal pay. Such severance or dismissal pay, if the employer does not specify a set number of weeks, such be allocated using the individual's weekly benefit rate.

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

[1] Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5).

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 v. Board of Review of Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595, 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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[2] Cahoone v. Board of Review of the Department 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. Bd. of Review, Department of Employment Security, 517 A.2d 1039 (R.I. 1986).

IV

Analysis

In order to determine whether the decision of the Board of Review (i.e., the decision of the Referee as adopted by the Board as its own) was clearly erroneous in light of the reliable, probative, and substantial evidence of record, we must review the facts of record, which emanate primarily from the transcript of the hearing conducted by Referee Palangio and the documents Claimant received from Blue Cross.

A

The Severance Pay Disqualification Issue

1

Facts of Record

Ms. Miche conceded that — as of the date of the hearing — she was receiving severance pay. But she repeatedly explained that she did not receive it immediately upon her separation on February 26, 2013, but later (as of April 26, 2013, to be exact). Referee Hearing Transcript, at 3, 8-10. While she was offered severance in the documents she received upon termination, the receipt of these funds was contingent on waiving her right to challenge her termination. She did not sign such a document — labeled a "Severance

Agreement and General Release" — until April 20, 2013. Referee Hearing Transcript, at 9-10. Thereafter, she informed the Department of Labor and Training of her severance package. Referee Hearing Transcript, at 14.[4]

2

Resolution of the Severance Pay Issue

The brief statement of the facts contained in Part IV-A-1, supra, reveals one truth above all — the facts of this case are not at all in dispute. Ms. Miche concedes that she cannot collect unemployment benefits and receive severance pay. But she believes she was entitled to receive benefits for the period from February 26, 2013 to April 20, 2013, when she waived her right to seek reinstatement through the General Release, because she was not yet receiving (or even due) severance pay at that time. And I believe her position is legally correct.

The statute, quoted supra at 4, like many other unemployment provisions, is written in terms of week-by-week eligibility. And so, a simple reading of the plain language of the statute reveals no bar to her collecting unemployment benefits in the February–April time period. The statute bars

[4] Apparently, she transmitted the documents without excessive delay. The pages of the document are date-stamped as being received by the Department on May 7, 2013. See Exhibit D2, pages 4-9.

benefits based on "… any remuneration received by an employee from his or her employer in the nature of severence or dismissal pay …." Gen. Laws 1956 § 28-44-59 (Emphasis added). Thus, since Claimant was not receiving severance pay, I conclude that she was not barred from receiving unemployment benefits in the period from February 26, 2013 through April 20, 2013.

B

Repayment of Benefits Received Pursuant to § 28-42-68.

Finally, Claimant was ordered to repay the benefits she received ($4,025.00) during the weeks ending 03/30/13, 04/06/13, 04/13/13, 04/20/13, 04/27/13, 05/04/13 and 05/11/13 by the Director pursuant to Gen. Laws 1956 § 28-42-68. See Director's Decision, June 17, 2013, contained in the record as Exhibit D2. This order was fully ratified in turn by Referee Palangio and the Board of Review. See Decision of Referee, at 2 and Decision of Board of Review, at 1. However, in light of my finding that Claimant was entitled to receive benefits through the week ending April 20, 2013 (the day she signed the waiver), it follows that the order of repayment as to the first four weeks must be set aside.

As a result, we need only address whether the Board of Review's order that Claimant must repay the benefits she received for the last three weeks of this period is erroneous. In my view, it is not.

The Department's authority to recoup wrongly paid unemployment benefits is established by Gen. Laws 1956 § 28-42-68. Of particular note is subsection (b), which provides that there can be no recovery without fault being found on the part of the recipient.

Turning to the last three weeks of benefits she received, I believe we must start with the fact that — after April 20, 2013 — Claimant knew she would begin collecting severance pay imminently. And (according to her testimony) she did — beginning on April 26, 2013. Apparently, she notified the Department somewhat promptly (although the exact date she mailed the documents in is not cited in the record); but we know (from the filemark) that they received them on May 7, 2013. Accordingly, I believe that Ms. Miche should have expected to receive the next three checks — given normal bureaucratic inertia — and she should have returned them. [5]

[5] At this juncture I should point out that Blue Cross's mistaken opinion as to her fundamental eligibility for benefits provides Claimant with no safe haven from recoupment, in light of the oft-cited principle (and legal fiction) that all citizens are presumed to know the law.

And so, in fairness, I believe Claimant is only responsible to repay the benefits she received for the weeks of April 27, 2013, May 4, 2013, and May 11, 2013.

V

Conclusion

Pursuant to Gen. Laws 1956 § 42-35-15(g), a decision of the Board of Review 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]

After a thorough review of the entire record, I find that the Board of Review's decision to deny Ms. Miche unemployment benefits pursuant to § 28-44-59 of the Rhode Island Employment Security Act was not "clearly

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[6] Cahoone v. Board of Review of the Department 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 at 5 and Guarino, supra at 5, n. 1.

erroneous in view of the reliable, probative and substantial evidence on the whole record" on the fundamental principle of the disqualification in weeks that severance pay was received; however, the Claimant was eligible for benefits during weeks that preceded her receipt of severance pay, as explained in Part IV-A of this opinion; the Board's ruling to the contrary was erroneous. See Gen. Laws 1956 § 42-35-15(g)(3)(4). The order of repayment must therefore be adjusted as explained in Part IV-B of this opinion.

Accordingly, I recommend that the decision of the Board be AFFIRMED in part and REVERSED in part.

/s/
Joseph P. Ippolito
MAGISTRATE

November 25, 2013