STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

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

Timothy J. Lynch	:	
	:	
v.	:	**A.A. No. 13 - 169**
	:	
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.

Entered as an Order of this Honorable Court on this 25th day of February, 2014.

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 Mr. Timothy Lynch urges that the Board of Review of the Department of Labor and Training erred when it held that he was not entitled to receive employment security benefits because he 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 the reliable, probative, and 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.

I
Facts and Travel of the Case

The facts and travel of the case are these: after separating from his employment as Director for Business Development for Exel, Inc., on April 30, 2013, Mr. Timothy J. Lynch applied for unemployment benefits. However, on June 12th, a designee of the Director issued a decision finding him to be disqualified from the receipt of unemployment benefits for sixteen weeks because he was in receipt of a severance package equal to sixteen weeks of his former salary, as provided in Gen. Laws 1956 § 28-44-59. Claimant appealed from this decision and on July 11, 2013 Referee Carol A. Gibson conducted a hearing on the matter. Claimant appeared telephonically; but no one appeared on behalf of the employer or the Department.

The Referee issued a decision the same day, on July 11, 2013, in which she made the following findings of fact:

> **2. <u>Findings of Fact:</u>**
>
> The claimant had worked for the employer, Exel Inc., for three years through April 30, 2013, when he was laid off from his job. The employer provided the claimant with a severance agreement. The confidential separation agreement and release indicates that the company paid the claimant $47,315.00, representing sixteen weeks of

> salary. As a result of this agreement, the Department of Labor and Training disqualified the claimant from the receipt of benefits for sixteen weeks from his last day of work, April 30, 2013. The claimant disputes this determination. The basis of the claimant's appeal is an email he received from the employer on April 30, 2013. The email indicates that the claimant would receive severance, one week for each year of service and an additional $38,443.52 in recognition of an account he secured for the employer. The email indicates that "the bonus plus the severance coincidentally came to sixteen weeks," which was a total of $47,315.00. The email continues and indicates "in lieu of calling the money bonus for the purposes of the separation, they called it severance," as bonus pay is not normally paid out to employees who are not employed when they (sic) bonus is paid. The claimant states that he should only be disqualified for three weeks as he was employed for three years with the employer and he does not consider the other monies severance pay. The claimant began a new job on July 8, 2013.

Decision of Referee, July 11, 2013, at 1. Based on these findings, the Referee, after quoting from section 28-44-59, issued the following Conclusions:

> * * *
> The testimony and evidence establish that as part of the claimant's separation and agreement with the employer, he received the equivalent of sixteen weeks of pay which the employer termed severance pay. Although claimant does not believe this was the intent of the agreement, this is how the agreement was written by the employer. All monies paid to the claimant were considered severance pay. It is therefore found and determined that this pay falls under the above section of the Act that addresses severance pay or dismissal pay. The sixteen (16) week period was calculated according to the above section of the Act and denied benefits through the week ending August 17, 2013.

Referee's Decision, July 11, 2013, at 2. Accordingly, Referee Gibson affirmed the Director's decision denying benefits to Mr. Lynch. Referee's Decision, July 11, 2013, at 2.

Claimant filed an appeal on July 22, 2013. Then, on September 5, 2013, a majority of the members of the Board of Review issued a decision finding the decision of the Referee was a proper adjudication of the facts and the law applicable thereto. Decision of Board of Review, September 5, 2013, at 1. Accordingly, the decision rendered by the Referee was affirmed.

Thereafter, on October 4, 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, shall 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 of fact[2] Stated

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[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).

[2] Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

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.

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

[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).

review the facts of record, which emanate primarily from the transcript of the hearing conducted by Referee Gibson and the documents Claimant received from Exel.

Mr. Lynch conceded that — when he applied for benefits online — he told the Department he had received $47,315.00 in severance pay covering sixteen weeks of pay. Referee Hearing Transcript, at 8-9. Nevertheless, the Claimant pressed his claim on the basis of an explanatory email he received regarding his final payout. Referee Hearing Transcript, at 9-10 and Exhibit D-3, p. 3.

In that document Mr. Scott M. Guthrie, Vice-President of Business and Customer Development, explained to Mr. Lynch how his final payout was calculated. See Exhibit D-3, p. 3. In a nutshell, he received three weeks' pay because he had been with the company for three years and he received $38,443.52 as a reward for his successful efforts bringing in the Campbell Soup Company as a client. Id. Notably, Mr. Guthrie explained that because Exel does not customarily pay bonuses to former employees, this amount would be designated severance. Id.

Claimant's position is that because the $38,443.52 supplement to his severance was "for" or "in recognition of" his efforts in gaining the Campbell Soup account, it was not severance pay. With this fundamental assumption I must disagree. Section 28-44-59 is very expansive, employing as it does the term "any remuneration." In my view, only "regular pay" would be exempt from the ambit of

this section. And by "regular pay" I mean the employee's weekly pay that was due and owing at the time of separation, however that amount may be calculated — whether by salary, hourly rate, or commission.

And while I have considered whether the Board of Review should have treated Mr. Lynch's Campbell Soup "reward" as a commission, I have concluded that the Board committed no error by declining to do so. From Mr. Guthrie's email we see that the dollar figure given to Claimant was not a percentage of the amount of the Campbell Soup account, but rather a percentage of his sales goal for the year. And there is nothing in the record to show that Mr. Lynch had a contractual right to such monies.[4]

In addition, the Board of Review had every right — in finding the monies paid to Mr. Lynch was part of his severance package — to rely on a document, contained in the record, entitled "Confidential Separation Agreement and Release," in which the second item of "Consideration" was the total amount of funds received, ($47,315.00), which is noted as "representing 16 weeks of Employee's base salary."

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[4] Indeed, it appears that the bonus was not yet payable. That is why it was treated as severance, because otherwise, Mr. Lynch would not have received it.[4]

I may also comment concerning Mr. Lynch's reference to the sixteen week figure was coincidental and not something that was negotiated. See e.g. Referee Hearing Transcript, at 17. It's immaterial whether it was or was not, since the Department is fully authorized by section 59 to make that calculation. See Gen. Laws 1956 § 28-44-59, supra at 4.

In sum, for the foregoing reasons, I conclude that the Board of Review did not err in treating the $38,443.52 payment Mr. Lynch received from Exel as a part of his severance package.

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.[5] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[6]

After a thorough review of the entire record, I find that the Board of Review's decision to deny Mr. Lynch unemployment benefits for sixteen weeks pursuant to § 28-44-59 of the Rhode Island Employment Security Act was not "clearly erroneous in view of the reliable, probative and substantial evidence on the

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[5] Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213 (1968).

[6] Cahoone, supra n. 5, 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.

whole record" on the fundamental principle of the disqualification in weeks that severance pay was received.

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

/s/
Joseph P. Ippolito
MAGISTRATE

February 25, 2014