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

Reuben Cordeiro	:	
	:	
v.	:	**A.A. No. 13 - 182**
	:	
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 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. Reuben Cordeiro urges that the Board of Review of the Department of Labor andTraining erred when it found that he left his employment at Bloomingdale's without good cause and was therefore barred from receiving unemployment benefits pursuant to Gen. Laws 1956 § 28-44-17. 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. These matters have been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. For the reasons that

follow, I conclude that the Board of Review's decision is supported by substantial evidence of record and should be affirmed; I so recommend.

I

FACTS AND TRAVEL OF THE CASE

An outline of the facts and travel of this case may be stated briefly: Claimant worked as a sales representative for Bloomingdale's in New York City for five months until January 5, 2013. He filed for unemployment benefits and began to receive them but in a decision dated June 25, 2013 a designee of the Director determined the claimant was disqualified from receiving benefits pursuant to Gen. Laws 1956 § 28-44-17 because he voluntarily quit without good cause.[1]

Claimant filed a timely appeal and a hearing was held by Referee Carl Capozza on July 29, 2013. At the hearing, Claimant was present and testified; as was a representative of the employer. In his August 5, 2013 decision, Referee Capozza made the following findings of fact:

> The claimant had been employed as a sales representative for this employer for approximately five months until his last day of work

[1] Actually, the Director issued two decisions regarding Mr. Cordeiro — one for each benefit year at issue in his claim. Since, with the exception of the benefit weeks in question and the amount of monies received, the decisions of the Director were identical, I shall refer to them in the singular. I shall follow the same practice regarding the two decisions issued by Referee Capozza and the two decisions of the Board of Review.

> January 5, 2013. Prior to that date, the claimant provided notice that he was leaving his position in order to re-locate to the State of Connecticut. The claimant had determined that he could no longer afford the expense of living in New York and made the decision to re-locate to the State of Connecticut with friends in order to reduce his expenses. Prior to leaving his job, the claimant had not attempted to secure any new position in that state.

Referee's Decision, August 5, 2013, at 1. Based on these findings, Referee Capozza made the following conclusions:

> * * *
> An individual who leaves work voluntarily must establish good cause for taking that action or else be subject to disqualification under the provisions of Section 28-44-17.
>
> In order to show good cause for leaving his job, the claimant must establish that the job was unsuitable or that he had no reasonable alternative. Based on the credible testimony and evidence presented in this case, I find insufficient evidence to establish that either of these situations existed when the claimant made the personal decision to re-locate to the State of Connecticut. Prior to leaving, the claimant made no reasonable attempt to secure other employment in that state and rather chose to place himself in the state of Unemployment and re-locate. For these reasons, I find that the claimant voluntarily quit his job without good cause as previously determined by the Director and, therefore, not entitled to benefits.

Referee's Decision, August 5, 2013, at 2. Accordingly, the Referee affirmed the decision of the Director and found that claimant was disqualified from receiving benefits because he had quit his position without good cause.

Claimant filed a timely appeal and on September 20, 2013 the members of the Board of Review issued a unanimous decision affirming the Referee's

decision — finding it to be a proper adjudication of the facts and the law applicable thereto; moreover, the Referee's decision was adopted as the Decision of the Board. Therafter, Mr. Cordeiro filed a complaint for judicial review in the Sixth Division District Court.

II

APPLICABLE LAW

Our review of 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 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.' "[2] The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.[3] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[4]

The Supreme Court of Rhode Island recognized in Harraka, supra, 98 R.I. at 200, 200 A.2d at 597, 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 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).

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

4 Cahoone v. Board of Review of Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213 (1968). Also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039 (R.I. 1986).

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 claimant properly disqualified from receiving unemployment benefits because he left work without good cause pursuant to section 28-44-17?

V

ANALYSIS

Based on the testimony received at the hearing he held and the documents contained in the administrative record, Referee Capozza found that Claimant quit his position without good cause; on appeal, the Board of Review affirmed his decision and adopted it as its own. Because I believe this finding to be well-supported by the record, I must recommend that this Court affirm the Board's decision.

A

Claimant indicated he left his position as a sales person at Bloomingdale's in New York City in order to relocate to Connecticut to live with friends. Referee Hearing Transcript, at 5-7. He did so because he was not making enough to cover his expenses. Referee Hearing Transcript, at 6. Mr. Cordeiro

filed for unemployment benefits in New York but was told he had an open claim in Rhode Island regarding his separation from Nordstrom's. Referee Hearing Transcript, at 9-10.

Ms. Melanie Napolitano, human resources manager, informed the Referee that Mr. Cordeiro never informed his departmental manager that he was leaving — although he did inform human resources. Referee Hearing Transcript, at 14-15.

B.

Mr. Cordeiro's decision to leave New York was not only an employment decision but also a life decision, one this Claimant was certainly free to make. But relocation is a circumstance which generally makes one ineligible for unemployment benefits, because it is viewed as a personal reason for quitting.[5] Claimant did not allege that his position with this employer had become unsuitable. Referee Hearing Transcript, passim.

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[5] One limited exception to the general rule of disqualification when a claimant quits and relocates for personal reasons may be found in Rocky Hill School, Inc. v. Department of Labor & Training, Board of Review, 668 A.2d 1241 (R.I. 1995), a case in which benefits were allowed a teacher named Geiersbach who quit his position at the Rocky Hill School in order to accompany his wife — who also had been a Rocky Hill teacher — to Colorado, where she had obtained a new and better position. Rocky Hill, 668 A.2d at 1241. The Supreme Court held "* * * that public policy requires that families not be discouraged from remaining together." Rocky Hill, 668 A.2d at 1244. This exception does not apply in Mr. Cordeiro's case.

Accordingly, I must conclude that the Referee — based on the record before him, which in large part consisted of claimant's testimony — was fully justified in finding that claimant quit for personal reasons and not for grounds that would constitute "good cause" within the meaning of section 28-44-17.

C.

As related above, the Director ordered Claimant to repay — in toto — $6,097, pursuant to authority granted him by Gen. Laws 1956 § 28-42-68, which provides in pertinent part:

> (a) Any individual who, by reason of a mistake or misrepresentation made by himself, herself, or another, has received any sum as benefits under chapters 42 - 44 of this title, in any week in which any condition for the receipt of the benefits imposed by those chapters was not fulfilled by him or her, or with respect to any week in which he or she was disqualified from receiving those benefits, shall in the discretion of the director be liable to have that sum deducted from any future benefits payable to him or her under those chapters, or shall be liable to repay to the director for the employment security fund a sum equal to the amount so received, plus, if the benefits were received as a result of misrepresentation or fraud by the recipient, interest on the benefits at the rate set forth in § 28-43-15.
> * * *
> (b) There shall be no recovery of payments from any person who, in the judgment of the director, is without fault on his or her part and where, in the judgment of the director, that recovery would defeat the purpose of chapters 42 - 44 of this title.

Thus, repayment is not mandated in every instance where a claimant has been incorrectly paid, but only where the claimant was not at fault and where recovery

would not defeat the purposes of the Act. In my view "fault" implies more than a mere causative relationship for the overpayment, it implies moral responsibility in some degree — if not an evil intent per se, at least indifference or a neglect of one's duty to do what is right.[6] To find the legislature employed the term fault in a broader sense of a simple error would be — in my view — to render its usage meaningless. With this in mind, let us focus on the facts and circumstances of the overpayment in the instant case.

When reviewing the Director's order of repayment, the Referee found that:

> * * *
> The claimant filed for and received benefits for the weeks ending [February 2, 2013 through June 1, 2013][7] receiving total benefits for those weeks in the amount of [$6,097.00].[8] When filing his claim for benefits, the claimant neglected to advise the Department that he had been employed by this employer and that he had voluntarily quit his job.

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[6] In the Webster's Third New International Dictionary (2002) at 839 the first definition of fault applicable to human conduct defines "fault" as "3: A failure to do what is right. a: a moral transgression." This view is longstanding. As Noah Webster stated in the first edition of his American Dictionary of the English Language (1828), "Fault implies wrong, and often some degree of criminality."

[7] As explained above at 2, n. 1, this is the total period encompassed in the orders of repayment in both Referee decisions.

[8] Again, as explained above, this is the total benefit figure from the orders of repayment in both Referee decisions.

Referee's Decision, August 5, 2013, at 1. And based on these findings, the Referee concluded that:

> The credible testimony and evidence in this case indicates that when the claimant filed for his benefits, he failed to apprise the Department of Labor and Training that he had been employed for this employer and voluntarily quit his job. … He is, therefore, determined overpaid benefits for those weeks and at fault for the overpayment because of his nondisclosure, and, therefore, it would not defeat the purpose for which the Employment Security Act was designed to require him to repay benefits to the Department of Labor and Training as previously determined by the Director.

So, the Referee found fault based on the Claimant's failure to notify the Department that he had worked for Bloomingdale's and voluntarily resigned.

The facts and evidence of record do indeed support the Referee's conclusion. In this regard, we may begin and end with the fact that Mr. Cordeiro conceded — at the hearing before the Referee — that he did not inform the Department that he had voluntarily quit his position at Bloomingdale's in New York, even though he was asked to list his past employers when he reopened his claim online. Referee Hearing Transcript, at 10-12. He explained that he "wasn't aware he had to" because he "was never informed of Department of Labor policies." Referee Hearing Transcript, at 11-12. I find this reasoning to be a complete non-sequitur — one does not have to be an expert in the laws and policies of the unemployment program to answer factual questions correctly.

And so, at the end of the day, I believe the Claimant's failure to be frank with the Department of Labor and Training regarding this fundamental fact does indeed support a finding of fault. I therefore recommend that the Decisions of the Board of Review requiring repayment of funds he received be affirmed.

D

Pursuant to Gen. Laws 1956 § 42-35-15(g), the 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, including the question of which witnesses to believe. Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[9] Accordingly, the Board's decision (adopting the finding of the Referee) that claimant voluntarily terminated his employment without good cause within the meaning of section 17 is supported by substantial evidence of record and must be affirmed.

[9] Cahoone, supra at 7, n. 3, 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 § 42-35-15(g), supra at 6, and Guarino, supra at 7, n. 2.

VI

CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the Board of Review regarding claimant's eligibility to receive unemployment benefits was supported by the reliable, probative and substantial evidence of record and was not clearly erroneous. Gen. Laws 1956 § 42-35-15(g)(5).

Accordingly, I recommend that the decision of the Board of Review in the instant matter be AFFIRMED.

/s/
Joseph P. Ippolito
MAGISTRATE

FEBRUARY 25, 2014