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

Christopher J. Aponte	:	
	:	
v.	:	**A.A. No. 13 - 205**
	:	
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 REVERSED.

Entered as an Order of this Court at Providence on this 20th 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. Christopher Aponte 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 quit a part-time position without good cause. Jurisdiction for appeals from decisions of the Department of Employment and Training 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. 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 clearly erroneous, not because its findings of fact were incorrect, but because it misunderstood the consequences of those findings; I therefore recommend that the Decision of the Board of Review be REVERSED on the issue of disqualification.

I
Facts and Travel of the Case

The facts and travel of the case are these: As the month of July, 2013 began, Mr. Christopher Aponte had two positions — a full-time position with Sound Effects and a 15-hour part-time position with U-Haul of Rhode Island, Inc.[1] Then, on July 2, 2013, angry that his work-product had been challenged by his superior, he quit his part-time position at U-Haul.[2] Later that month — on July 24, 2013 — he was laid off by Sound Effects.[3] He then filed for unemployment benefits. But, on August 29, 2013, the Claimant was disqualified by the Director because he had left the employ of U-Haul

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1 The part-time position at U-Haul actually came first. Referee Hearing Transcript, at 6-7.

2 Referee Hearing Transcript, at 10-12. The supervisor concurred, admitting she "snapped" at him. Referee Hearing Transcript, at 13.

3 Happily for all parties, at the hearing on September 18, 2013, Mr. Aponte reported that he had gone back to work (full-time) at Sound Effects "last week." Referee Hearing Transcript, at 6.

without good cause, within the meaning of Gen. Laws 1956 § 28-44-17.

Claimant appealed from this decision and on September 18, 2013 Referee Carl Capozza conducted a hearing on the matter. Claimant appeared without counsel, as did a representative of U-Haul.

The Referee issued a decision on September 25, 2013, in which he made the following findings of fact:

> **2. Findings of Fact:**
>
> The claimant had been employed as a part-time sales associate for approximately one and a half years until his last day of work July 2, 2013. On that date because the claimant was upset with his manager and, additionally he felt that he was not earning enough money, he decided to leave his job without notice to his employer.

Decision of Referee, September 25, 2013, at 1. Based on these findings, the Referee made the following Conclusions:

> * * *
> 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 that neither of these situations existed when the claimant decided to leave his employment due to his dissatisfaction with his wages and his manager. He failed to address either of these issues with his employer prior to leaving but left without notice to this employer. Under the circumstances I find that the claimant voluntarily quit his job without good cause within the meaning of the above Section of the Act and not entitled to benefits on this issue.

Referee's Decision, September 25, 2013, at 1. Accordingly, Referee Capozza affirmed the Director's decision denying benefits to Mr. Aponte.

Claimant filed an appeal on October 2, 2013, within the 15-day appeal period. Then, on November 14, 2013, a majority of the Board's members 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, November 14, 2013, at 1.[4] Accordingly, the decision rendered by the Referee was affirmed.

Thereafter, on December 12, 2013, the Claimant filed a complaint for judicial review 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 § 28-44-17, 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

[4] The Member Representing Labor dissented, on grounds that will be discussed later in this opinion.

> 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.

And in Powell v. Department of Employment Security, Board of Review, 477 A.2d 93, 96-97 (R.I. 1984), the Court clarified that "… the key to this analysis is whether petitioner voluntarily terminated his employment because of circumstances that were effectively beyond his control." See also Rhode Island Temps, Inc. v. Department of Labor and Training, Board of Review, 749 A.2d 1121, 1129 (2000).

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.' "[5] The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions

[5] 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[6] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[7]

The Supreme Court of Rhode Island recognized in Harraka, supra, 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 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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6 Cahoone v. Board of Review of the Dept.of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

7 Cahoone v. Bd. 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
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

A

The Claimant Left the Employ of U-Haul Without Good Cause

I believe there is no question that Mr. Aponte left the employ of U-Haul without good cause — insofar as that term is used in the Employment Security Act. He left because he was disappointed with his wages and his prospects for growth with the company. Referee Hearing Transcript, at 6-7. These are perfectly sound reasons to look for a better position. But the Act has been interpreted (for many years) as requiring a disenchanted worker to look for and acquire a new position before resigning. And so, Referee

Capozza's finding that he left without good cause is supported by more than substantial evidence of record and is not clearly erroneous.

B

The Effect of Finding Claimant Left U-Haul Without Good Cause

And having decided that the Referee's finding that Claimant left U-Haul without good cause was well-founded in fact and law, we must next determine what consequences follow therefrom.

To begin with, it is clear from the record that the Director held Claimant Aponte was fully disqualified from receiving benefits. In his August 29, 2013 decision, the Director, based on his finding that Mr. Aponte left without good cause, determined Claimant to be disqualified from receiving unemployment benefits; in the ruling he was specifically told — "… This disqualification covers the period indicated below according to Section 28-44-17: The week ending 07/06/13 and until you have 8 weeks of work with an employer who pays employment taxes, and in each of those eight weeks you have earned an amount equal to or in excess of the benefit rate on your 14 Benefit Year claim." Decision of Director, Exhibit A-2, at 1. Based on this phraseology being used, it appears that these decisions ruled claimant to be

entirely disqualified from receiving benefits.[8]

The Referee assumed that such a finding disqualified Mr. Aponte from receiving benefits based on his layoff from Sound Effects, a decision that was summarily affirmed by a majority of the Board members. But the Member Representing Labor, in his dissenting opinion, found as follows —

> I would reverse this case. While working at a full-time job, the claimant chose to quit his part-time job. The law does not require that a person must work two jobs. Subsequent to leaving the part-time job, the claimant was laid off from his full-time job. Denying benefits in this instance seems wrong. He was laid off from his job.

Decision of Board of Review, November 14, 2013, at 1.

What is the effect of this finding? Does it trigger a full or partial disqualification? Certainly, if Mr. Aponte had quit a full-time position without good cause, he would be fully disqualified from the receipt of benefits. But Claimant only worked part-time hours at U-Haul. And he quit while he still had a full-time job. For the reasons that follow, I believe the Member Representing Labor was correct, and that, in these circumstances, quitting his part-job at U-Haul has no effect on his claim for benefits, pro or con, based on his lay-off from Sound Effects.

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[8] This language was repeated in the decision of Referee Capozza. See Decision of Referee, September 25, 2013, at 2.

C
Unemployment Benefits and the Part-time Job

First, the Employment Security Act provides that a claimant who is laid-off from a full-time position who is also working part-time may collect benefits, subject to an offset based on the worker's part-time earnings. See Gen. Laws 1956 § 28-44-7.

Secondly, this Court has long held that a worker who, after being laid-off from a full-time position is receiving benefits, who then quits a part-time position (without good cause) may nonetheless collect benefits — subject to an offset for that income voluntarily forgone. See Craine v. Department of Employment and Training, Board of Review, A.A. No. 91-25, (Dist.Ct. 6/12/91)(DeRobbio, C.J.). Thus, the rule of Craine provides that although the claimant has left his part-time position in circumstances which would have, if viewed in isolation, triggered a full disqualification under section 28-44-17 — Leaving Without Good Cause — he or she is not fully disqualified, only partially.[9]

[9] More recently, this protocol has been extended to those, lawfully collecting unemployment benefits subject to an offset for earnings from a part-time job, who then lose their part-time earnings due to misconduct. They may still collect on their full-time claim, subject to an offset for wages lost through misconduct.

On the other hand, a person (who had both a full-time and part-time position) who is laid off from his part-time position may not collect benefits, because he or she is still fully employed.[10]

This claimant is in a similar position. When he quit U-Haul he had no claim. His layoff from Sound Effects must be judged independently on its merits — his part-time position and the manner in which it ended is irrelevant.

VI

Conclusion

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.[11] Stated

[10] Any such worker who claimed benefits in this situation would be deemed disqualified pursuant to Gen. Laws 1956 § 28-44-12, because he or she is not available for work.

[11] Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 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.[12]

Specifically, the Board of Review's decision (adopting the findings and conclusions of the Referee) that Claimant voluntarily terminated his employment at U-Haul without good cause within the meaning of section 17 is well-supported by the evidence of record. However, applying the provisions of section 28-44-7 and the applicable District Court precedent, I find that Mr. Aponte's claim based on his lay-off from Sound Effects should not be affected by this finding.

Upon careful review of the evidence, I recommend that this Court find that the decision of the Board of Review on the issue of Claimant's eligibility was affected by error of law. Gen. Laws 1956 § 42-35-15(g)(3),(4).

I therefore recommend that the Decision of the Board of Review be REVERSED.

/s/
Joseph P. Ippolito
MAGISTRATE

FEBRUARY 20, 2014

[12] Cahoone, supra at 8, 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 7 and Guarino, supra at 7, n. 5.