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

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| **Maria Rosa** | : | |
| | : | |
| **v.** | : | **A.A. No. 13 - 215** |
| | : | |
| **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 7th day of March, 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 Ms. Maria E. Rosa 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. Rosa'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. Rosa 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. Rosa worked for the temporary employment agency Randstad US. Until October 2, 2013 she was assigned to Blue Cross as a customer service representative. After Blue Cross declined to have her perform further services, and since Randstad had no other assignment for her to take at that time, she applied for unemployment benefits but, in a decision dated October 31, 2013, the Director deemed her ineligible to receive benefits because she left the employ of Randstad without good cause within the meaning of Gen. Laws 1956 § 28-44-17. Ms. Rosa appealed from this decision and Referee Carl Capozza held a hearing on the matter on November 21, 2013. In his decision issued on November 29, 2013, Referee Capozza made the following Findings of Fact regarding claimant's termination:

> **2. FINDINGS OF FACT:**
> The claimant had been employed as a customer service representative by the temporary employer and assigned to a position at Blue Cross Blue Shield. After a period of only five weeks the client company notified the claimant that she failed a third test required necessary to her position and was released by the client following her last day of work October 2, 2013. Both the client company and the claimant informed the employer of that determination. While no immediate offer of further employment was made to the claimant, the employer indicated that should another assignment be available to the claimant she would be contacted. The claimant, however, indicated that she was upset with the employer because it "did not have her back."

> She further indicated that she did not want to work for this employer in the future. Although the claimant was in further contact with the employer on October 7 and October 24, it was not for the purpose of seeking additional employment from the employer but to voice her dissatisfaction with the manner in which the employer addressed the situation.

Referee's Decision, November 29, 2013, at 1. Then, analyzing the case under Gen. Laws 1956 § 28-44-17, which it quoted at length, the Referee concluded:

> **3. CONCLUSION:**
> * * *
> In order to show good cause for leaving her job the claimant must establish and prove that the job was unsuitable or that she 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 made the determination that she no longer wanted to continue with this employer and voluntarily quit her job without good cause within the meaning of the above Section of the Act and, therefore, is subject to disqualification as provided under Section 28-44-17 of the Rhode Island Employment Security Act.

Referee's Decision, November 29, 2013, at 2. Accordingly, Referee Carl Capozza 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 December 26, 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 December 31, 2013, Ms. Rosa

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.** – (a) 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. * * * (b) 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; provided, 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. (Emphasis added)

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

[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).

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 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

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[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,

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 she left work without good cause pursuant to section 28-44-17?

## V. ANALYSIS

### A.

In her testimony before the Referee, Ms. Rosa testified that she was working at Blue Cross and Blue Shield on a ninety-day "temp to permanent assignment," when she was dismissed from her assignment because she did not pass the last of a series of tests. Referee Hearing Transcript, at 7-8. She informed Andrea Harnish of Randstad what had transpired. Referee Hearing Transcript, at 9-10. She called again the next day, and spoke to Christine Maguire. Referee Hearing Transcript, at 11.

To Ms. Maguire she expressed her dissatisfaction about losing her position. Referee Hearing Transcript, at 12. She further indicated that she needed to support her family. Referee Hearing Transcript, at 12. She explained that, on a prior occasion, she had worked through a temp to permanent position through Randstad at Citizens Bank. Referee Hearing Transcript, at 13. But, she left the bank in order to pursue what she considered a better employment

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

opportunity at Blue Cross. Referee Hearing Transcript, at 13-14.

Ms. Rosa stated that she stopped in at Randstad to drop off her badge on October 7, 2013. Referee Hearing Transcript, at 16. Then, on October 24, 2013, in an effort to obtain unemployment benefits, she spoke to Ms. Maguire, and asked her why she said that Claimant quit; Ms. Maguire denied making such a comment. Referee Hearing Transcript, at 16. Ms. Maguire further stated she had nothing for Claimant. Referee Hearing Transcript, at 17.

In answer to questions posed by her counsel, Ms. Rosa denied saying that she would never work for Randstad again, even if they were the last employers on Earth. Referee Hearing Transcript, at 18. To the contrary she would accept a further assignment. Id.

Ms. Harnish testified in reponse. Referee Hearing Transcript, at 20 et seq. She stated that on October 2, 2013, Claimant called into the office at 4:44. Referee Hearing Transcript, at 20. She was angry, because she felt "something was up." Referee Hearing Transcript, at 21. She thought that people were going to be let go. Id. Ms. Harnish told Claimant that the firm would continue to look for work for her, but Claimant said she would not work for Randstad again, if it was the last place on Earth. Id. She stated that she felt that Randstad "did not have her back" regarding the assignment at Blue Cross. Referee Hearing Transcript, at 22.

Apparently, the point of contention between Claimant and Randstad grew out of a conversation between her and Ms. Maguire on October 7th. Referee Hearing Transcript, at 25. Ms. Rosa wanted a letter from Randstad indicating that she was not let go by Blue Cross due to performance; however, Randstad did not feel they were able to provide such a letter. Referee Hearing Transcript, at 25.

When Ms. Rosa came into Randstad to drop off her Blue Cross badge on October 7, 2013, Ms. Maguire again inquired whether she wanted to work for the firm again. Referee Hearing Transcript, at 28. She said no. Id.

Then, on October 24, 2013, Ms. Rosa called to ask why they had opposed her unemployment. Referee Hearing Transcript, at 32.

Finally, testifying in rebuttal, Ms. Rosa again denied that she made any statements about not wanting to work for Randstad anymore. Referee Hearing Transcript, at 34.

**B.**

Two points must be made at the outset of our analysis of this case — one legal, one factual. The legal point to be made is that those who work through temporary employment agencies have a special duty — if they wish to receive unemployment benefits — to maintain contact with their agency after an assignment has ended in order to solicit future work. See Gen. Laws 1956 § 28-

44-17, supra at 4. The factual point to be made is that there is a wide divergence in the testimony regarding what Claimant did and said after her assignment at Blue Cross was ended. Applying these points, the Referee had every right to give credit to the testimony given by the representatives of Randstad in deciding this case. Doing so, he could find that she failed to make contact with Randstad, effectively abandoning her position.

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 and Guarino, supra at 6, n.1. The scope of judicial review by the District Court is also limited by General Laws section 28-44-54 which, in pertinent part, provides:

> **28-44-54. Scope of judicial review – Additional Evidence – Precedence of proceedings. –** The jurisdiction of the reviewing court shall be confined to questions of law, and in the absence of fraud, the findings of fact by the board of review, if supported by substantial evidence regardless of statutory or common law rules, shall be conclusive.

Accordingly, the Board's decision (affirming the finding of the Referee) that Claimant voluntarily terminated her employment by failing to maintain contact with her temporary employment agency regarding her return to work after the end of her assignment with Blue Cross 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

MARCH 7, 2014