STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

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

Ana E. Centeno	:	
	:	
v.	:	**A.A. No. 13 - 041**
	:	
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 instant matter is AFFIRMED except that the order of repayment is modified for the reasons explained in the attached opinion.

Entered as an Order of this Court at Providence on this 13th day of May, 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. Ana E. Centeno urges that the Board of Review of the Department of Labor and Training erred when it found that she left her employment at SDH Education East 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. 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 that follow I conclude

that the Board of Review's decision on the issue of disqualification is supported by substantial evidence of record and should be affirmed; however, for reasons I shall also explain, I shall recommend that the order of repayment be modified.

I. FACTS AND TRAVEL OF THE CASE

The following outline of the facts and travel of this case will be sufficient for our purposes — Claimant Centeno worked for SDH Education East for five and one-half years as a utility worker until August 11, 2011. She filed for and received unemployment benefits but in a decision dated October 25, 2012 a designee of the Director determined that Claimant would be disqualified from receiving benefits pursuant to Gen. Laws 1956 § 28-44-17 because she voluntarily quit her position without good cause.[1]

Claimant filed a timely appeal and a hearing was held by Referee Carl Capozza on November 27, 2012. At the hearing, Claimant testified telephonically; no employer representatives participated. In his December 7, 2012 decision, Referee Capozza made the following findings of fact:

The claimant had been employed as a utility worker for the

[1] In point of fact, the Director issued two decisions rescinding the Claimant's right to receive benefits. They were divided by "benefit years." The first considered the period from 9/10/11 through 8/4/12 and an order of repayment in the amount of $9,443.00; the second concerned the period from 8/11/12 through 10/13/12 and repayment in the amount of $1,987.

> employer for approximately 5-½ years until her last day of work, August 11, 2011. Prior to that date the claimant notified the employer that she was leaving to relocate to the State of Florida effective August 28, 2011. Since the claimant notified the employer she would not continue working beyond that date, the employer did not place her on or notify her of any other schedule. The claimant relocated to the State of Florida on September 1, 2011 and filed for benefits effective September 11, 2011 and received benefits for the weeks ending September 10, 2011 through [October 13, 2012] in the total amount of [$ 11,430.00.] [2]

Referee's Decision, December 7, 2012, 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 her job the claimant must establish and prove her job was unsuitable or that she had no reasonable alternative. Based on the credible testimony and evidence in this case, it is determined that the claimant voluntarily left her job to relocate to the State of Florida for personal reasons, providing her notice to the employer who then did not continue to place her on its schedule. Under these circumstances, I find that the claimant left her job voluntarily and without good cause for personal reasons concerning her desire to relocate to the State of Florida. Leaving one's job for the purpose of relocating to another

[2] As stated above in footnote 1, the Director had issued two decisions, one for each of the pertinent "benefit years." Although Referee Capozza consolidated the Director's decisions for hearing (undoubtedly a wise choice), he too issued a separate written decision for each period. The bracketed material inserted in the quotation above reflects the full period and the combined amount of repayments ordered.

> state for personal reasons has been determined not good cause under the statute. Under these circumstances, it is determined that the claimant voluntarily left her job without good cause and not entitled to benefits.

Referee's Decision, December 7, 2012, at 2. Accordingly, the Referee affirmed the decisions of the Director and found that Claimant was disqualified from receiving benefits because she had quit her position without good cause.

Claimant filed a timely appeal and, on January 23, 2013, the members of the Board of Review unanimously issued two Decisions affirming the Referee — finding his decisions to constitute proper adjudications of the facts and the law applicable thereto; moreover, the Referee's decisions were adopted as the Decisions of the Board. Thereafter, Ms. Centeno 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.' "[3] The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.[4] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[5]

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

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3 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).

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

5 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).

> 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 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

Based on the testimony received at the hearing he conducted and the documents contained in the administrative record, Referee Capozza found that Claimant Centeno quit her 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 evidence of record, I must recommend that this Court affirm the Board's decision.

A.

Claimant indicated she left her position in order to relocate to Florida. Referee Hearing Transcript, at 8. She informed her employer that she would work until August 28, 2011, but after she submitted her letter, she was not given any more hours. Referee Hearing Transcript, at 7-8. She said she moved for health reasons — such as arthritis and "getting colds." Referee Hearing Transcript, at 8. However, she proffered no documentation tending to show that such a move was medically necessary. Referee Hearing Transcript, at 9. Accordingly, there is no evidence in the record to show that the Claimant's interest was more than the lifestyle preference or climate preference that any person might express.

Of course, Ms. Centeno's decision to leave Rhode Island 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.[6] Quite simply, Claimant never alleged that her position with this employer had become unsuitable. Referee Hearing Transcript, passim.

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 Ms. Centeno quit for personal reasons and not for grounds that would constitute "good cause" within the meaning of section 28-44-17.

B.

As related above, the Director ordered Claimant to repay — in toto — $11,430, 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

[6] 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 Ms. Centeno's case.

> 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.[7] To find the legislature employed the term fault in a broader sense of a simple error would be — in my view — to render its

[7] 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."

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 failed to notify the Department that she had quit her job, when generating those benefits totaling [$11,430.00] [8] Under the circumstances, I find the claimant is overpaid those benefits and at fault for the overpayment because she failed to notify the Department of the exact circumstances of her separation. Based on these considerations, it is determined that it would not defeat the purposes for which the Employment Security Act was designed to require her to repay those benefits totaling [$11,430.00] as previously determined by the Director under Section 28-42-68 of the Act.

Referee's Decision, December 7, 2012, at 2. So, the Referee found fault based on the Claimant's failure to notify the Department that she had 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 Ms. Centeno never claimed — at the hearing before the Referee— that she properly informed the Department that she had voluntarily quit her position at SDH Education East. And, in my opinion, the Claimant's failure to be frank with the Department of Labor and Training regarding this fundamental fact does indeed

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

support a finding of fault. I therefore recommend that the Decisions of the Board of Review requiring repayment of funds she received be affirmed — in principle. In the next section I shall explain why, as I mentioned at the outset, that the order of repayment must be modified.

C.

We have now considered both issues addressed by the Referee and the Board of Review. But, I believe I must address, sua sponte, a third question — the potential impact of Gen. Laws 1956 § 28-44-39. It is this section which authorizes the Director to reconsider prior decisions he has made regarding a claimant's eligibility for benefits or the amount of benefits to be received. Thus, it is pursuant to the authority of section 28-44-39 that the Director issued his October 25, 2012 decisions, which were the first step in the current controversy. However, section 28-44-39 places a specific time limitation on the Director's authority to reconsider decisions:

> * * * The director may at any time within one year from the date of determination either upon the request of the claimant or on his or her own motion reconsider that determination if he or she finds that an error in computation or in identity has occurred in connection with it, or that additional wages pertinent to the status of the claimant has become available, or if that determination was made as a result of a non-disclosure or misrepresentation of a material fact. * * * (Emphasis added).

Gen. Laws 1956 § 28-44-39(a)(1)(i). Thus, the Director's ability to revise prior decisions is confined to a one year period.

This statute may be applied to the instant case simply and easily. When he rendered his decisions, the Director could not revise any determination of Ms. Centeno's eligibility that had been made prior to October 25, 2011. Therefore, all benefits received prior to the week ending October 22, 2011 must be regarded as settled and unaffected by the Director's decisions.[9] Her eligibility for benefits during the period from August through October, 2011 is, as a matter of law, reinstated. She may not, therefore, be ordered to repay unemployment benefits received during this period.

D.

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, including the question of

[9] By setting aside the finding of disqualification for all periods prior to October 25, 2011 the Court is, in effect, treating the receipt of each week's benefits as a separate determination. I believe this practice is equitable to both the Department and its clientele.

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.[10] Accordingly, the Board's decision (adopting the finding of the Referee) that claimant voluntarily terminated her employment without good cause (as defined by § 17) is supported by the reliable, probative and substantial evidence of record and must be affirmed, albeit with the modification to the order of repayment explained in section V-C of this opinion.

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 substantial evidence of record and was not clearly erroneous. GEN. LAWS 1956 § 42-35-15(g)(3).

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

/s/
Joseph P. Ippolito
MAGISTRATE

MAY 13, 2013

[10] Cahoone, supra at 7, n. 4, 104 R.I. at 506, 246 A.2d at 215 (1968). See also D'Ambra v. Bd. of Review, Dept. of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986). See also Gen. Laws § 42-35-15(g), supra at 6-7, and Guarino, supra at 7, n. 3.