STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

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

Laura Paterno	:	
	:	
v.	:	**A.A. No. 13 - 052**
	:	
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 Honorable Court at Providence on this 30th day of October, 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. Laura Paterno urges that the Board of Review of the Department of Labor and Training erred when it held that she was not entitled to receive employment security benefits because she left her prior employment without good cause. 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 in this matter is supported by the facts of record and the applicable law. I shall therefore recommend that it be affirmed.

I

FACTS & TRAVEL OF THE CASE

Ms. Laura Paterno was employed by a firm known as the Good Neighbor Alliance[1] as a Benefit Administrator until November 1, 2012, her last day of work. Near the end of her shift on that date, Ms. Paterno was involved in an unpleasant confrontation with her employer. The parties agree that, as a result of this interchange, Ms. Paterno was separated from her employment; however, they disagree on an important particular — Claimant insists she was fired, the employer asserts she quit.

Ms. Paterno applied for unemployment benefits but, on December 10, 2012, a designee of the Director deemed her ineligible because she resigned without good cause within the meaning of Gen. Laws 1956 § 28-44-17. Claimant appealed from this decision and, as a result, Referee Carl Capozza held a hearing on January 14, 2013, at which Ms. Paterno appeared, as did her former employers, Michael and Leanne Paras, and a witness, Ms. Jennifer Altimari.

In his decision, issued on January 17, 2013, the Referee made the

[1] During the hearing conducted by the Referee in this matter, it was revealed that the employer is engaged in the business of doing the health insurance

following Findings of Fact regarding Claimant's separation:

> **2. FINDINGS OF FACT:**
>
> The claimant had been employed for approximately 7 years as a full time Benefit Administrator until her last day of work, November 1, 2012. Shortly before the end of the shift the claimant became involved in a confrontation with her employer who had been requesting information concerning a customer client list. The claimant became agitated concerning the inquiry and during the process, yelled at and used inappropriate language toward her employer. During the conversation the claimant advised the employer that the employer would be hearing from her lawyer. The incident occurred approximately 15 minutes prior to the end of the shift and at the end of the shift the claimant was approached by the employer who requested that she turn in her key, at which time the claimant responded that she would not be returning.

Referee's Decision, January 17, 2013, at 1. Based on these findings — and after quoting extensively from Gen. Laws 1956 § 28-44-17 — the Referee formed the following conclusions on the issue of claimant's separation:

> **3. CONCLUSION:**
>
> * * *
>
> In order to show good cause for leaving her job the claimant must establish that the job was unsuitable or that she had no reasonable alternative. Although conflicting testimony was presented, I find, based on the most credible testimony presented, that the claimant voluntarily left her job without good cause. While the employer had requested the claimant turn in her key, she made that request with concern for her business because

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billing for its clients. Referee Hearing Transcript, at 20.

> the claimant had previously threatened to engage a lawyer. At no time did the employer advise the claimant that she was terminated. Under these circumstances, it is determined that the claimant voluntarily left her job without good cause within the meaning of the above Section of the Act as previously determined by the Director.

Referee's Decision, January 17, 2013, at 1-2. Thus, Referee Capozza found claimant to be disqualified from receiving benefits because she left work without good cause.

Claimant filed an appeal and the matter was reviewed on its merits by the Board of Review. On March 5, 2013, a majority of the members of the Board of Review issued a decision holding 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. Finally, on March 20, 2013, the Claimant filed a 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.** – 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 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.' "[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]

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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, 246 A.2d 213 (1968).

[4] Cahoone v. Board of Review of Department of Employment Security,

The Supreme Court of Rhode Island stated in Harraka, cited supra 5, 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.

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.

V

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

ANALYSIS

When analyzing a claim for unemployment benefits the first question must always be — Was the Claimant fired or did she quit? Depending on how this question is answered, follow up questions arise, such as: (a) Was the Claimant fired for proved misconduct? or (b) Did the claimant quit for good cause? And so, it is convenient for this Court, and the administrative decision-makers authorized to resolve unemployment claims, that in the great majority of cases the parties agree on this point.

However, Ms. Paterno and the Good Neighbor Alliance do not agree on the details of her separation. The Board of Review, adopting the decision of the Referee, decided that the Claimant quit. Accordingly, in the appeal, we must decide whether the Board of Review's factual determination that Ms. Paterno quit her employment at the Good Neighbor Alliance was clearly erroneous in light of the reliable, probative and substantial evidence of record. Once we have done so, I believe we will find that the secondary issues will be amenable to a ready resolution.

A

Did Claimant Quit Or Was She Fired?

At this juncture, I shall recount the evidence pertinent to the first issue — viz., whether Ms. Paterno quit or was fired.

1

Evidence of Record

Claimant explained that she was working on November 1, 2012, when, at about 4:50 p.m. (10 minutes before the end of her shift), she became embroiled in an argument with her boss, Leanne Perras, concerning why a certain client had not been cancelled. Referee Hearing Transcript, at 7-8, 16. When she attempted to respond — that the client's name was not on the list of cancellations she had been given to work from — she was told not to talk back. Referee Hearing Transcript, at 9, 16. She then assisted a client who had come into the office. Id.

She then picked up her backpack and was leaving in the car of a co-worker (who was giving her a ride to her school), when Ms. Perras asked Ms. Paterno to surrender her office key. Referee Hearing Transcript, at 10. She responded to this request by giving up her key and stating that she would not be back. Referee Hearing Transcript, at 11. According to Ms. Paterno, Ms.

Perras then stated — "Good luck in the real world." Referee Hearing Transcript, at 14.

Finally, Claimant conceded that during the argument she had used inappropriate language. Referee Hearing Transcript, at 12. Ms. Paterno conceded that Ms. Perras never stated that she was fired. Referee Hearing Transcript, at 11. But, she did not feel she could go back. Referee Hearing Transcript, at 12.

Mrs. Perras testified for Good Neighbor Alliance. Referee Hearing Transcript, at 20 et seq. To set the scene, she explained that the confrontation, which took place between Mrs. Perras in her private office and Claimant in the outer office, began when she asked Ms. Paterno why a certain customer was not being dropped and another was. Referee Hearing Transcript, at 20, 23. She denied she accused Ms. Paterno of lying (or of anything). Referee Hearing Transcript, at 21. She asked Claimant to calm down. Referee Hearing Transcript, at 21-22. But Ms. Paterno said she would be hearing from her attorney. Referee Hearing Transcript, at 22. At this juncture the customer was assisted and it was time for the staff to leave. Id.

But, as a result of the incident that had just transpired, Mrs. Perras was not comfortable with Claimant having a key to the office. Referee Hearing

Transcript, at 24-25. And so, she requested the office key be returned. Referee Hearing Transcript, at 25. Ms. Perras denied that she meant to imply by this request that Ms. Paterno was being fired. Id.

Nevertheless, at that point, Claimant said she would not be back and she (Mrs. Perras) responded that that was her choice. Id. Finally, Mrs. Perras observed that pictures of her children had been removed from Claimant's desk. Referee Hearing Transcript, at 26.

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Sufficiency of the Evidence

The Board of Review (adopting the decision of the Referee) held that Ms. Paterno voluntarily quit her position at Good Neighbor Alliance. In so doing the Board could certainly rely on the consistent testimony of Mrs. Perras and Ms. Paterno that — when asked to return her office key — Claimant stated that she would not be back. Although she did not expressly state "I quit!" the words she employed were certainly amenable to being construed as a colloquial version of a resignation. Thus, in my view, Claimant's statement was sufficient per se to form a sufficient factual basis for the Board's finding that Claimant quit her position at Good Neighbor Alliance.

Ms. Paterno urges in her memorandum that the Board of Review should have found that — by asking for her key — Mrs. Perras had implicitly (or impliedly) fired her. See Claimant's Memorandum of Law, at 3. This was certainly an inference that the Board could have drawn; but it was not one that the Board was compelled to draw.

Both parties agree that Mrs. Perras never said Ms. Paterno was fired. And, during her testimony, Mrs. Perras denied that by requesting her key she meant to fire Claimant. The Board, as the finder of fact, chose to credit that testimony. For these reasons, I must find that the Board's findings are supported by the record, they must be affirmed.

B

Did the Claimant Have Good Cause to Quit?

Having found that the Board of Review finding — i.e., that Claimant quit her position — is supported by the evidence of record, we must now turn to the second aspect of any section 17 analysis: Did the Claimant show that she quit her position for good cause? And, in my view, the answer to that question is no.

A reading of the record certified to this Court makes it clear that Ms. Paterno was highly offended by Mrs. Perras's statements to her during their argument.

But this Court has long held that discipline, even if imposed unfairly, does not constitute good cause to quit. See Medeiros v. Department of Employment and Training, Board of Review, A.A. No. 94-221 (Dist.Ct. 6/19/1995). The Court has rationalized that the claimant should obtain a new position before quitting. Capraro v. Department of Employment and Training, Board of Review, A.A. No. 95-151 (Dist.Ct. 9/27/1995). Also, this Court has held that criticism by a superior does not constitute good cause to quit. See Ward v. Department of Employment and Training, Board of Review, A.A. No. 96-51 (Dist.Ct. 9/4/96)(DeRobbio, C.J.) and Andreoni v. Depart-ment of Employment and Training, Board of Review, A.A. No. 94-71 (Dist.Ct. 7/22/96)(DeRobbio, C.J.). Having reviewed the transcript of the hearing in this case (and Ms. Paterno's testimony in particular), I detected the presence of no facts (such as deeply offensive language or behavior by the employer[5]) that would have allowed the Board to deviate from these principles in Claimant's

[5] To the contrary, Claimant conceded that she had used inappropriate language.

case.

C

Resolution

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 which witnesses to believe.[6] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[7] Accordingly, the Board's decision (adopting the finding of the Referee) that claimant voluntarily terminated her employment is supported by

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

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

reliable, probative and substantial evidence of record. I must therefore recommend that her disqualification under § 28-44-17 (Leaving without good cause) 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, the instant decision 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

OCTOBER 30, 2013