STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**

SIXTH DIVISION

Rosa I. Alcantara	:	
	:	
v.	:	**A.A. No. 13 - 073**
	:	
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 22nd 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. Rosa I. Alcantara 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. Alcantara'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. Alcantara 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. Alcantara worked as a cleaner for Heritage Healthcare, which operates the Rhode Island Veterans' Home, for seven months until November 8, 2012. She applied for unemployment benefits and in a decision dated December 10, 2012 the Director deemed her ineligible to receive benefits because she left the employ of Heritage without good cause within the meaning of Gen. Laws 1956 § 28-44-17. Ms. Alcantara appealed from this decision and Referee William Enos held a hearing on the matter on January 30, 2013. In his decision issued on February 1, 2013, Referee Enos made the following Findings of Fact regarding claimant's termination:

> **2. FINDINGS OF FACT:**
> Claimant worked as a Cleaner for Heritage Healthcare for seven months. The claimant voluntarily quit when she became angry after a counseling session with her manager on November 8, 2012. The claimant quit with no prior notice on November 8, 2012. The employer stated that the claimant's job was not in jeopardy and was just going to be given a corrective warning. The claimant's manager had noticed on November 6, 2012 that the dayroom needed further cleaning and instructed the claimant to clean it up. The employer stated that the claimant refused and walked away. The claimant stated that she did not do so as instructed because it was the end of the day. The claimant stated that she was doing a good job and felt insulted when questioned. The claimant did not want to sign or accept the warning because she was not going to dirty her name. The claimant was also afraid that the warning would effect her retirement.

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

> **3. CONCLUSION:**
> * * *
> I find that the claimant in this case voluntarily left work without good cause when she placed herself in a total state of unemployment. Therefore, I find that the claimant left work voluntarily without good cause.

Referee's Decision, February 1, 2013, at 2. Accordingly, Referee Enos 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 February 28, 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 April 23, 2013, Ms. Alcantara 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.** – 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.' "[1] The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of 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

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[1] Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing R.I. Gen. Laws § 42-35-15(g)(5).

[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, 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

Our analysis of the instant case must begin with an observation that the testimony of the two sides was largely consistent. Both the claimant and the employer agree that Ms. Alcantara quit because the quality of her cleaning was questioned. And so, after a brief summary of the testimony taken at the hearing before the Referee, we shall address the legal effect of this behavior.

A.

In her testimony before the Referee, Ms. Alcantara testified, with the assistance of an interpreter, that she was called into the office by "Miss Lucy" and given a warning because the auditorium had not been cleaned well. Referee Hearing Transcript, at 7. She refused to sign the warning she felt if there were any future complaints, they would be believed. Id. She felt that she was doing her job well. Referee Hearing Transcript, at 7-8, 15. In fact, she felt that she did a better job than other cleaners. Referee Hearing Transcript, at 8.

The manager of the Veterans' Home, Ms. Lucy Costa, also testified. Referee Hearing Transcript, at 9 et seq. She indicated that on November 6, 2012 she took Ms. Alcantara to the dining room and pointed out deficiencies in the manner of its cleaning. Referee Hearing Transcript, at 9-10. At this point, Ms. Alcantara walked away from her. Referee Hearing Transcript, at 10. And at three o'clock she punched out and went home. Referee Hearing Transcript, at 13.

Ms. Costa spoke to Ms. Alcantara on November 8, 2012. Referee Hearing Transcript, at 13. At that time she gave her a written warning. Id. But Ms. Alcantara refused to sign the paper because "she was not going to dirty her name." Id. According to Ms. Costa, Claimant then took off her ID card and her uniform shirt and said she was quitting. Referee Hearing Transcript, at 13.

B.

And, as a question of law, 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). Specifically, 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 Anderoni v. Department of Employment and Training, Board of Review, A.A. No. 94-71 (Dist.Ct. 7/22/96)(DeRobbio, C.J.).

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 5-6 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 return to work after being disciplined is well-supported by the reliable, probative and substantial evidence of record and must be affirmed.[4]

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

[4] The Board of Review rendered its decision on February 28, 2013, but Claimant's appeal was not submitted until to this Court until April 23, 2013 — 54 days later — well after the thirty day appeal period established by law had expired. See Gen. Laws 1956 § 42-35-15(b). While Ms. Alcantara did not explain her tardiness in her complaint, any explanation, however meritorious, would have been of no avail; quite simply, the District Court is not authorized to extend the appeal period, which has been held to be jurisdictional. See Considine v. Rhode Island Department of Transportation, 564 A.2d 1343, 1344 (R.I. 1989)("… the District Court does not possess any statutory authority to entertain appeals that are filed out of time." 564 A.2d at 1344.). See also Dub v. Dept. of Employment Security Board of Review, A.A. No. 90-383 (Dist.Ct. 1/23/92) (SaoBento, J.)(" * * * [complainant's] failure to comply with the procedural requirements of § 42-35-15(b) also invalidates his claim for relief." Slip op. at pp. 7-8. Emphasis added). Notwithstanding Ms. Alcantara's apparent failure to comply with this mandate, in light of the fact that the Board of Review has not yet submitted a motion to dismiss on this ground, I have chosen to address the merits of Claimant's appeal.

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

MAY 22, 2013