STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

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

Suzanne Card	:	
	:	
v.	:	**A.A. No. 14 - 034**
	:	
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 December, 2014.

By Order:

/s/
Stephen C. Waluk
Chief Clerk

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

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

Suzanne Card	:	
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v.	:	**A.A. No. 14 - 34**
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Department of Labor and Training,	:	
Board of Review	:	

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. Suzanne M. Card urges that the Board of Review of the Department of Labor and Training erred when it found that she left her employment at Factory Mutual Insurance 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. These matters have 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 is supported by reliable,

probative, and substantial evidence of record and should be affirmed; I so recommend.

I
FACTS AND TRAVEL OF THE CASE

An outline of the facts and travel of this case may be stated briefly: Claimant worked as a Senior Administrative Assistant for Factory Mutual Company (FM Global) for five years until July 8, 2014, when she relocated to Florida. She filed for unemployment benefits effective September 15, 2014. In a decision dated November 26, 2013 a designee of the Director determined the claimant was disqualified from receiving benefits pursuant to Gen. Laws 1956 § 28-44-17 because she voluntarily quit without good cause.

Claimant filed a timely appeal and a hearing was held by Referee William Enos on December 23, 2013. At the hearing, Claimant testified telephonically; a representative of the employer also testified. In his December 30, 2013 decision, Referee Enos made the following findings of fact:

> The claimant worked as a Sr. Administrative Assistant for Factory Mutual Insurance Company for 5 years. The claimant stated that she voluntarily quit her job to accompany her husband who had a job offer in Florida. The claimant stated that her husband's job offer in Florida did not work out and he is actively looking for work. The claimant stated that she is actively looking for work. The employer stated that the claimant had been talking about retiring and building a retirement home in Florida with her husband. The employer stated

> that the claimant had planned this move and bought a lot in Florida on June 12, 2013 and sold her house in RI on August 28, 2013. The next day the claimant sent in her resignation letter. The employer stated that they had continued work for the claimant had she chose to stay.

Referee's Decision, December 30, 2013, at 1. Based on these findings, and after quoting extensively from Gen. Laws 1956 § 28-44-17, Referee Enos made the following conclusions:

> * * * I find that the claimant, in this case, voluntarily left work without good cause when she resigned her position to move to Florida. The claimant testified that her husband had not secured employment in Florida. Therefore, I find that the claimant left work voluntarily without good cause.

Referee's Decision, December 30, 2013, at 2. Accordingly, the Referee affirmed the decision 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 February 5, 2014 the members of the Board of Review issued a unanimous decision affirming the Referee's decision — finding it to be a proper adjudication of the facts and the law applicable thereto; moreover, the Referee's decision was adopted as the Decision of the Board. Thereafter, Ms. Card filed a complaint for judicial review in the Sixth Division District Court.

II
APPLICABLE LAW

A
General Rule

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.

B

Exception to the General Rule

The general rule is that benefits are not provided to Claimants who have quit a position for personal reasons. Two exceptions are plausibly pertinent to Ms. Card's circumstances.

1

Relocating to Accompany a Spouse to a New Position

Another 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 and Training, Board of Review, 668 A.2d 1241 (R.I. 1995), a case in which benefits were granted to 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.

2

Quitting to Assume New Position

This Court has long held that an employee who quits in order to assume a new position does so with good cause, as that term is defined in section 28-44-17.[1] But, in order to invoke this rule, the claimant must have had a definite job commitment.[2] Anything less is not deemed a good cause to quit.

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. —**
> * * *

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[1] Deion v. Department of Employment Security Board of Review, A.A. No. 82-406 (Dist.Ct. 09/22/1983)(McOsker, J.)(Board of Review found claimant plumber not entitled to benefits; Affirmed, where record supported Board's determination that claimant left part-time position with grocery store without a definite commitment as to a new position).

[2] Medeiros v. Department of Employment and Training Board of Review, A.A. No. 94-228 (Dist.Ct. 05/19/1995)(DeRobbio, C.J.)(Claimant quit to take new job; denial of benefits affirmed, where claimant quit before he got start date on new job; Perry v. Department of Employment and Training Board of Review, A.A. No. 90-143 (Dist.Ct. 10/15/1991)(DeRobbio, C.J.)(Denial of benefits affirmed where Claimant gave notice after merely hearing about availability of another job.

> (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]

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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).

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 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 § 28-44-17?

V
ANALYSIS

Based on the testimony received at the hearing he held and the documents contained in the administrative record, Referee Enos found that Claimant 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 record, I must recommend that this Court affirm the Board's decision.

A

Claimant Card testified first. Referee Hearing Transcript, at 6 et seq. She explained her relocation to Florida thusly —

> Well, I left my position at FM Global because I wanted to join my husband in Florida whose employment has terminated from (inaudible) and he was pursuing another opportunity in Florida. However, that didn't work out for him and he is now actively searching for work and collecting benefits. So, I felt I had no other alternative than to leave my position to join him ah, since I could commute back and forth and my – – My personal situation in Coventry I had to sell my home because I was unable to maintain that home on my own and the financial burden of staying in Rhode Island was not feasible and another burden I had my (inaudible) – – My (inaudible) had to be sold of a repair that needed to be done to the home and I had no medical coverage since my husband lost his position and it was – – Ah, the stress factor was impacting my health and I had made a decision for my own personal well-being to leave my position and move onto Florida.

Referee Hearing Transcript, at 6.

Mr. Jeff Bauman, FM Global's Vice-President, testified that Ms. Card last worked on July 8, 2013; thereafter, she went out on medical leave thereafter. Referee Hearing Transcript, at 8. She was expected back to work on September 2. Id. But, on August 29, 2013, they received an e-mail indicating she would not be returning to work on September 2, 2013. Id. Mr. Bauman was not aware that Ms. Card ever submitted any medical documentation justifying her medical leave. Referee Hearing Transcript, at 9. Finally, he indicated that continued full-time work was available to Ms. Card had she not relocated to Florida. Referee Hearing Transcript, at 10-11.

On cross-examination, Ms. Card maintained that medical documentation had been submitted to the human resources department. Referee Hearing Transcript, at 11. She also clarified that her husband had been following-up on an "opportunity" in Florida, but he did not have a firm job offer. Referee Hearing Transcript, at 11-13.

B

Ms. Card'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. In

her testimony Ms. Card did not allege that her position with this employer had become unsuitable. Referee Hearing Transcript, passim.

Moreover, I do not believe our Supreme Court's opinion in Rocky Hill is controlling here. There, the Court held that a claimant who has quit a position in order to relocate with a spouse who has obtained a new job out of state has terminated for good cause, as that phrase is defined in section 28-44-17; the Court's ruling in Rocky Hill undeniably carved out an exception to the principle that disqualifies claimants who quit their positions for personal reasons. The record is clear that Mr. Card did not have a new position lined up in Florida, only the hope of one. In Rocky Hill, the offer to Mr. Geiersbach's wife was firm. Therefore, Rocky Hill is thereby distinguishable and we must hold that it affords no safe harbor to Ms. Card's claim.[6]

Accordingly, I must conclude that the Referee — based on the record before him, which in large part consisted of Claimant's testimony — was fully

[6] As related ante, in Part II-B-2 of this opinion, one who quits a position to accept a new and firm job offer quits with food cause. However, one who quits in anticipation of such an offer does not. I see no reason why this rule, which is applicable to the principal party (i.e., the affected employee himself or herself) should not be applied as well to the claim of a secondary party (i.e., the spouse).

justified in finding that claimant quit for personal reasons and not for grounds that would constitute "good cause" within the meaning of § 28-44-17.

C

Pursuant to Gen. Laws 1956 § 42-35-15(g), the decision of the Board of Review 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. 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 without good cause within the meaning of section 17 — because she quit even though her husband had not yet received a firm job offer in Florida — is not clearly erroneous and is supported by reliable, probative, and substantial evidence of record and must be affirmed.

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[7] Cahoone, ante at 8, n. 4, 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), ante at 6-7, and Guarino, ante at 8, n. 3.

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 the reliable, probative and substantial evidence of record and was not clearly erroneous. Gen. Laws 1956 § 42-35-15(g)(5).

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

/s/
Joseph P. Ippolito
MAGISTRATE

DECEMBER 22, 2014