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

Jose L. Ruiz	:	
	:	
v.	:	**A.A. No. 14 – 108**
	:	
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

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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 Mr. Jose Ruiz urges that the Board of Review of the Department of Labor and Training erred when it held him to be disqualified from receiving unemployment benefits because it found that he had left his position without good cause as defined in Gen. Laws 1956 § 28-44-17. Jurisdiction for appeals from decisions of the Department of Labor and Training 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. Employing the

standard of review applicable to administrative appeals, I find that the decision rendered by the Board of Review on the issue of eligibility was not clearly erroneous; I therefore recommend that the decision of the Board of Review be AFFIRMED.

I
FACTS AND TRAVEL OF THE CASE

The facts and travel of the case are these: Mr. Jose Ruiz was employed by AMEX for seven months. His last day of work was March 12, 2014. He filed for unemployment benefits a few days later but on May 15, 2014 a designee of the Director issued a decision finding that Mr. Ruiz had left his employment without good cause within the meaning of Gen. Laws 1956 § 28-44-17.

Claimant appealed from this decision and on June 18, 2014 Referee Gunter Vukic conducted a hearing on the matter. Claimant appeared without counsel, as did two employer witnesses. The next day, the Referee issued a decision which affirmed the Director's previous ruling. Referee Vukic made the following findings of fact:

> The claimant was painting when the project manager requested him to show the helper how to use the painting equipment. Claimant refused and quit. The communication between the claimant and the project manager was facilitated by bilingual coworkers. The project manager summoned the claimant's brother to explain that the claimant was to cool off, go home for the day and return the

following day. Claimant insisted on resigning.

Decision of Referee, June 19, 2014, at 1. Based on these findings, the Referee pronounced the following conclusions:

> * * *
> In order to show good cause for leaving employment, the claimant must show that the work had become unsuitable or that the claimant was left with no reasonable alternative but to resign. The burden of proof rests solely on the claimant. Insufficient testimony and no evidence has been provided to support either of the above conditions.
>
> The credible testimony is that of the witnesses who testify the employer attempted to keep the claimant working in spite of his insubordination. Claimant provides no credible testimony or evidence in support.

Decision of Referee, June 19, 2014, at 1. Accordingly, Referee Vukic affirmed the Director's decision denying benefits to Mr. Ruiz.

Claimant filed a timely appeal and the matter was considered by the Board of Review; the Board did not hold a new hearing but considered Claimant's appeal on the basis of the record certified to it.[1] On July 18, 2014, the Board unanimously affirmed the decision of Referee Vukic, finding it to be a proper adjudication of the facts and the law applicable thereto; in fact, the Board adopted the Referee's decision as its own. Decision of Board of Review, July 18,

[1] This procedure is authorized by Gen. Laws 1956 § 28-44-47.

2014, at 1.

Three days later, on July 21, 2014, Mr. Ruiz filed a complaint for judicial review in the Sixth Division District Court.

II
APPLICABLE LAW

The fundamental issue in 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 it added:

> * * * 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. And in Powell v. Department of Employment Security, Board of Review, 477 A.2d 93, 96-97 (R.I. 1984), the Court clarified that "… the key to this analysis is whether petitioner voluntarily terminated his employment because of circumstances that were effectively beyond his control." See also Rhode Island Temps, Inc. v. Department of Labor and Training, Board of Review, 749 A.2d 1121, 1129 (2000).

III
STANDARD OF REVIEW

The standard of review is provided by Gen. Laws 1956 § 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]

The Supreme Court of Rhode Island recognized in Harraka, supra at 12, 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

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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, 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).

> 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

ANALYSIS

A

Evidence of Record

At the June 18, 2014 hearing conducted by Referee Vukic in this matter the first witness was Claimant Ruiz, who testified with the assistance of the Board of Review's interpreter. Referee Hearing Transcript, at 7 et seq.

Claimant began his narrative testimony by describing the events of March 12, 2014. Referee Hearing Transcript, at 10. He said that he refused to teach the person to paint because the person "was not capable of painting" and he (Mr. Ruiz) "was not capable of teaching." Id. He elaborated — "I cannot teach him because it could cause an accident because I am using a gun that is 85 pounds of pressure. And to give it to a person that has not touched a gun like that nor did he have a full mask. I am not going to train him." Id.

He testified that when he gave the manager his refusal, he was told to "punch out" and to turn-in his helmet. Referee Hearing Transcript, at 10. And

the manager told the guard not to let him in anymore. Id. In conclusion Mr. Ruiz said he was fired. Referee Hearing Transcript, at 11. He did not change his mind; he did not agree to train the co-worker. Id.

Mr. Ruiz said he learned how to paint in Puerto Rico. Referee Hearing Transcript, at 12. He could not cite any safety (OSHA) rules that prohibited him from teaching another. Referee Hearing Transcript, at 13. He stressed that this other fellow did not have the right equipment, particularly, the correct type of mask. Id. In response to a question from one of the managers, Mr. Ruiz reiterated that he did not quit. Referee Hearing Transcript, at 15-16.

AMEX was represented by Mr. Jeffrey Wigmore and Mr. Thomas Ondayko, two Project Managers for the employer. Referee Hearing Transcript, at 7. Mr. Ondayko began his testimony on behalf of AMEX by explaining that helpers hold lights for the sprayers. Referee Hearing Transcript, at 17. They have complete paint suits on. Id. He stated that when he asked Mr. Ruiz to show the helpers how to spray, the Claimant refused, and said he would take his "papers" — that he quit. Referee Hearing Transcript, at 17-18.[5]

[5] Mr. Ondayko explained that a helper who is bilingual assisted him in speaking to Mr. Ruiz. Referee Hearing Transcript, at 21.

Mr. Ondayko went to get the Claimant's brother, to tell him to go home and think about it, and come back tomorrow. Referee Hearing Transcript, at 18. Mr. Ruiz went to his trailer and then asked Mr. Ondayko if he wanted to walk him out. Referee Hearing Transcript, at 19. He did, and received Claimant's helmet and safety glasses. Id. As he concluded his testimony he stated that the helper had sprayed before, which Mr. Ruiz knew. Referee Hearing Transcript, at 23.

B

Discussion

The Board of Review found that being asked to train a co-worker to spray paint did not constitute good cause for Mr. Ruiz to quit. While this Court has long recognized that job safety concerns may satisfy the good cause standard, the cases seem to turn on issues of proof.[6] In the instant case, although he claimed to know them, Claimant cited no safety rules or regulations that he would have violated had he acceded to the directions of his manager. And none of his

[6] Cf. Phaneuf v. Department of Employment and Training Board of Review, A.A. No. 93-129, slip op. at 5-6 (Dist. Ct. 04/08/94)(District Court affirms decision denying benefits where Board found statements as to condition of forklift unfounded) with Houle v. Department of Employment and Training Board of Review, A.A. No. 95-045, slip op. at 6-7 (Dist. Ct. 11/22/95) (District Court reverses disqualification where Claimant truck driver satisfied burden of proving brake problem).

described concerns are so patently dangerous that a lay person could find them to constitute legitimate cause to quit in the absence of expert testimony, of which none was presented.

And the Referee (and the Board on appeal) had every right to rely on Mr. Ondayko's testimony that there was no issue of safety.

VI
CONCLUSION

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. Under 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.[7] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[8]

Upon careful review of the evidence, I conclude that the Board's decision disqualifying Mr. Ruiz from receiving unemployment because he quit without

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

[8] Cahoone, 104 R.I. at 506, 246 A.2d at 215 (1968). See also D'Ambra v. Board of Review, Dept. of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986) and Gen. Laws 1956 § 42-35-15(g), supra at 6-7 and Guarino, supra at 7, n. 2.

good cause is not clearly erroneous in view of the reliable, probative, and substantial evidence of record — and the applicable law. Gen. Laws 1956 § 42-35-15(g)(3),(4).

I therefore recommend that the Decision of the Board of Review rendered in this case be AFFIRMED.

/s/
Joseph P. Ippolito
MAGISTRATE

DECEMBER 22, 2014