STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

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

Ann M. Montaquila	**:**	
	:	
v.	**:**	**A.A. No. 14 - 129**
	:	
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 and the memoranda of counsel, 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 hereby 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 Ms. Ann M. Montaquila urges that the Board of Review of the Department of Labor and Training erred when it held her to be disqualified from receiving unemployment benefits because it found that she had left her 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: Ms. Ann M. Montaquila was employed as a food preparer by Venda Ravioli, Inc., for one year. Her last day of work was December 27, 2013 — after which she was on medical leave from December 28, 2013 through May 12, 2014. At the end of her medical leave she was separated from the company. She filed a claim for unemployment benefits but on June 9, 2014 a designee of the Director issued a decision finding that Ms. Montaquila had left her employment without good cause within the meaning of Gen. Laws 1956 § 28-44-17.

Claimant appealed from this decision and on July 9, 2014 Referee Nancy L. Howarth conducted a hearing on the matter. Claimant appeared without counsel; a representative of the employer, Mr. Michael McLynch, was also present. Two days later, the Referee issued a decision affirming the Director's denial of benefits to Claimant. Referee Howarth made the

following findings of fact:

> The claimant was employed as a food-preparer by the employer. She was out of work due to a medical leave of absence from December 28, 2013 through May 12, 2014. On May 10, 2014 the claimant advised her supervisor that she would be able to return to work as of May 13, 2014. The claimant's supervisor requested a release from the claimant's doctor. The claimant requested a new schedule with two consecutive days off and a raise. The supervisor discussed the conversation with the employer and subsequently informed the claimant that her requests were denied. Since the employer failed to grant the claimant's request regarding her schedule and rate of pay, the claimant voluntarily left her job on May 12, 2014.

Decision of Referee, July 11, 2014, at 1. Based on these findings, the Referee pronounced the following conclusions:

> * * *
> In order to establish that she had good cause for leaving her job, the claimant must show that the work had become unsuitable or that she was faced with a situation that left her no reasonable alternative other than to terminate her employment. The burden of proof in establishing good cause rests solely with the claimant. In the instant case, the claimant has not sustained this burden. The record is void of any evidence to indicate that the work itself was unsuitable. The credible evidence and testimony presented at the hearing establish that the claimant voluntarily left her job when the employer refused to meet her demands regarding a scheduling change and a pay raise. The claimant did have a reasonable alternative, other than to terminate her employment. She could have continued to work for the employer under the same conditions that existed prior to her medical leave of absence. Since the claimant had a reasonable alternative available to her, which she chose not to pursue, I find that her leaving is without good cause under the

above Section of the Act. Accordingly, benefits must be denied on this issue.

Decision of Referee, July 11, 2014, at 1-2. Accordingly, Referee Howarth affirmed the Director's decision denying benefits to Ms. Montaquila.

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 August 22, 2014, the Board unanimously affirmed the decision of Referee Howarth, 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, August 22, 2014, at 1.

On September 22, 2014, Ms. Montaquila 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

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

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." 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

[2] Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d

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 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.

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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).

IV
ANALYSIS

A
Evidence of Record

At the July 9, 2014 hearing conducted by Referee Howarth in this matter the first witness was Claimant Montaquila. Referee Hearing Transcript, at 9 et seq.

Ms. Montaquila began her testimony by stating that she began working for the employer on May 2, 2013. Referee Hearing Transcript, at 9. She worked until December 27, 2013, when she went out on medical leave — originally for six weeks. Referee Hearing Transcript, at 9-11. But, she did not return to work in February; instead, she had surgery on March 25, 2014. Referee Hearing Transcript, at 10. After the surgery, her doctor's note said she would be out until May 6, 2014, but this was extended until May 12, 2014. Referee Hearing Transcript, at 13-14.

Just before she was to return, she went in to the shop on May 10, 2014 (a Saturday) to meet with her employer. Referee Hearing Transcript, at 15. Her supervisor, Mr. Michael McLynch, said they needed a release. Referee

Hearing Transcript, at 16. In response, Ms. Montaquila told him he already had it. Referee Hearing Transcript, at 17.

While she was at the store, Ms. Montaquila wanted to meet with the owner — in order to discuss her schedule and pay rate. Referee Hearing Transcript, at 18. But she was not given the chance. Id. Mr. McLynch told her he would see what he could do. Referee Hearing Transcript, at 19. When she called into the store on Monday she was told she could not speak to the owner and they were not holding her position. Id.

On cross-examination, Claimant denied Mr. McLynch asked her if there were any restrictions on her return to work. Referee Hearing Transcript, at 20. And she denied she approached him with any demands. Referee Hearing Transcript, at 21.

Then Mr. McLynch testified; and he began by giving his version of what transpired when Ms. Montaquila came to the store. Referee Hearing Transcript, at 21 et seq. He was at the prepared foods counter when Claimant spoke to him — she said she was ready to come back to work. Referee Hearing Transcript, at 22. He responded by asking if they (i.e., Venda) had a release, and whether she was returning with any restrictions. Id. Ms. Montaquila said Janice (the office manager) had the paperwork and there

were no restrictions. Id. He then said — "But there was a but, she would need to have two days off in a row being Saturday and Sunday." Id. Mr. McLynch explained that, throughout her medical leave, they had kept the schedule as it was, filling her shifts with her Sunday and Tuesday days-off built-in. Id.

And so he told her she could not have Saturdays and Sundays; nor could she have Sundays and Mondays, her counter proposal. Referee Hearing Transcript, at 23. He continued —

> … and that's when she said that she was out on TDI and it was the law that I had to take her back. And I explained to her that I need to go over the paperwork at --- 'cause the office is closed on the weekend. Uh, and I will find out what's happening basically. And she, uh, uh, she said she needed to speak to Alan, the owner. …

Referee Hearing Transcript, at 23. Mr. McLynch said that the owner had not been in the store due to a serious illness, which Claimant knew. Id. And so, he told her this would not be possible. Id. After further discussion, she revealed what she wanted to talk to the owner about: the continuous days off — and a pay raise. Referee Hearing Transcript, at 24. He said he would pass this on to the owner and he asked her to call him to verify the paperwork. Id.

But Ms. Montaquila returned to him ten minutes later, further arguing that she deserved a raise. Referee Hearing Transcript, at 25. Finally, she told him that if they would not accommodate her requests (regarding days off and a raise) she would find another job. Referee Hearing Transcript, at 25-26. And then, on Monday morning, he learned from Janice that they did not have Claimant's medical clearance paperwork. Referee Hearing Transcript, at 26.

Ms. Montaquila called Mr. McLynch on Monday the twelfth of May, he told her Venda Ravioli would not be able to meet her pay and schedule demands. Referee Hearing Transcript, at 28. She once again told him they had to do this, that it was the law, and that she would go after the company legally. Referee Hearing Transcript, at 28-29. And she did not return to work. Referee Hearing Transcript, at 29. And she did not say she would return to work under her previous conditions. Id.

B

Discussion

Even a cursory review of the testimony given by Ms. Montaquila and Mr. McLynch reveals a deep divergence between the two. The Board of Review — following the lead of Referee Howarth — embraced the employer's view of events. There can certainly be no doubt that Mr.

McLynch's testimony was competent evidence upon which the Board had every right to rely.

The employer's position is that Claimant would not work on her pre-medical leave schedule for her pre-leave remuneration. The employer urges she communicated this refusal through her statements and actions. And while that finding is certainly sufficient to support the Board's finding, it must also be noted that the Board could have also found a constructive or de facto quitting through her failure to provide Venda with a medical release, and failure to appear for work.

V
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.[5] Stated differently, the

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

findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[6]

Upon careful review of the evidence, I conclude that the Board's decision disqualifying Ms. Montaquila from receiving unemployment because she quit without 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

[6] 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 7 and Guarino, supra at 7, n. 2.