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

Lucia Ortega	:	
	:	
v.	:	**A.A. No. 12 - 229**
	:	
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 instant complaint is AFFIRMED.

Entered as an Order of this Court at Providence on this 24th day of December, 2012.

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 administrative appeal Ms. Lucia Ortega urges that the Department of Labor and Training Board of Review erred when it denied her request to receive employment security benefits. Jurisdiction for appeals from the Department of Labor and Training Board of Review is vested in the District Court pursuant to 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 of the Board of Review finding that the claimant voluntarily left her employment without good cause within the meaning of Gen. Laws 1956 § 28-44-17 is supported

by substantial evidence of record and was not affected by error of law; I therefore recommend that the decision of the Board of Review be affirmed.

FACTS & TRAVEL OF THE CASE

Claimant Ortega was employed for four and one-half years by Jefferson Hospitality as a housekeeper. Her last day of work was March 9, 2012. She filed for Employment Security benefits but on June 20, 2012, the Director of the Department of Labor and Training found that the claimant had voluntarily left her employment without good cause within the meaning of Gen. Laws 1956 § 28-44-17 and denied the claim. The claimant filed a timely appeal and on July 24, 2012 a hearing was held before Referee Stanley Tkaczyk. At the hearing the claimant telephonically — with the assistance of an interpreter; an employer representative — Mr. Kevin Buchanan — appeared in person and testified. Referee Hearing Transcript dated July 24, 2012, at 1.

In his September 19, 2012 decision the Referee made the following findings of fact:

> The claimant last worked for this employer a period of four and a half years through March 9, 2012. She subsequently left the job in order to relocate to Florida to reside with relatives and for a warmer climate. The claimant alleges she was medically advised to leave the job. However, there is no medical documentation in support of that allegation.

Referee's Decision, September 19, 2012, at 1. Based on these findings, the

Referee made the following conclusions:

> The question in this case is whether or not the claimant left employment voluntarily with good cause within the meaning of Section 28-44-17 of the Rhode Island Employment Security Act.
>
> An individual who leaves work voluntarily must establish good cause for taking that action or else be subject to disqualification under the provisions of Section 28-44-17.
>
> In order to establish that she left the job with good cause there must be evidence presented that the work was not suitable or that she was faced with a situation that left her no reasonable alternative but to terminate her employment. The burden in establishing good cause rests solely upon the claimant. Leaving a job for the purpose of relocation does not itself constitute good cause and benefits must be denied on this issue.

Referee's Decision, September 19, 2012, at 1. Thus, the Referee determined that the Claimant voluntarily left her employment without good cause within the meaning of Section 28-44-17 of the Rhode Island Employment Security Act. Referee's Decision, at 2. Accordingly, he affirmed the decision of Director. Id.

The claimant filed a timely appeal on February 2, 2011 and the matter was considered by the Board of Review. The Board did not conduct an additional hearing, but instead chose to review the evidence submitted to the Referee pursuant to General Laws 1956 § 28-44-47. In its decision, dated October 24, 2012, the Board of Review affirmed the decision of the

Referee, finding it to be an appropriate adjudication of the facts and law applicable thereto and adopted the Referee's decision as their own. See Decision Board of Review, March 24, 2011, at 1. Claimant then filed an appeal to this court for judicial review.

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; R.I. Gen. Laws § 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 in which the voluntary quit occurred and 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.

An individual who voluntarily leaves work without good cause is disqualified from receiving unemployment security benefits under the provisions of § 28-44-17. See Powell v. Department of Employment Security, 477 A.2d 93, 96 (R.I. 1984)(citing Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 201, 200 A.2d 595, 597 (1964)). In order to establish good cause under § 28-44-17, the claimant must show that his or her work had become unsuitable or that the choice to leave work was due to circumstances beyond his or her control. Powell, 477 A.2d at 96-97; Kane v. Women and Infants Hospital of Rhode Island, 592 A.2d 137, 139 (R.I. 1991). The question of what circumstances constitute good cause for leaving employment is a mixed question of law and fact, and "when the facts found by the board of review lead only to one reasonable conclusion, the determination of 'good cause' will be made as a matter of law." Rocky Hill School, Inc. v. State of Rhode Island Department of Employment and Training, Board of Review, 668 A.2d 1241, 1243 (R.I. 1995) (citing D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1040 (R.I. 1986)).

STANDARD OF REVIEW

Judicial review of the Board's decision by the District Court is authorized under § 28-44-52. The standard of review which the District Court must apply is set forth under G.L. 1956 § 42-35-15(g) of the Rhode Island Administrative Procedures Act ("A.P.A."), which provides as follows:

> The court shall not substitute its judgment for that of the agency as to 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.

The scope of judicial review by this Court is limited by § 28-44-54, which, in pertinent part, provides:

> 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. 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. Guarino v. Department of Social Welfare, 122 R.I. 583, 588, 410 A.2d 425, 428 (1980) (citing § 42-35-15(g)(5)).

Stated differently, this Court will not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact. Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968). "Rather, the court must confine itself to review of the record to determine whether "legally competent evidence" exists to support the agency decision." Baker v. Department of Employment & Training Bd. of Review, 637 A.2d 360, 363 (R.I. 1993) (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). "Thus, the District Court may reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record." Baker, 637 A.2d at 363.

ANALYSIS

In this case, the Board determined that claimant left her job without good cause within the meaning of § 28-44-17 of the Rhode Island Employment Security Act. I believe this finding is supported by substantial evidence. It is uncontested that claimant quit her job. The only question is whether she did so with good cause. I conclude she did not.

At the hearing before the Referee claimant testified as to the reasons why she left the employ of Jefferson Hospitality. Referee Hearing Transcript, at 17 et seq. She told Referee Tkaczyk that she left because "the job and stuff was beginning to affect her physically. And that that the only relatives that she had was in Tampa. And her kids asked her to move down with her." Referee Hearing Transcript, at 17. She also moved because the cold winters affect her. Referee Hearing Transcript, at 18. She did not have a job lined up in Florida before she moved; she had still not acquired one as of the hearing. Referee Hearing Transcript, at 17.

She testified that her doctor advised her to quit because the job was too much for her. Referee Hearing Transcript, at 18. She conceded the medical documentation she submitted did not support this statement. Referee Hearing Transcript, at 19.

Mr. Buchanan testified that Claimant asked if the company had any hotels in Tampa, indicating that she wanted to move to Florida. Referee Hearing Transcript, at 20. When he said no, Ms. Ortega resigned. Id. According to Mr. Buchanan, she submitted no medical documentation to the company stating that she was unable to continue to perform the job. Referee Hearing Transcript, at 22.

On the basis of the foregoing, I cannot state that Referee Tkaczyk committed error by finding that claimant failed to satisfy her burden of proving that she was compelled to leave her position with Jefferson Hospitality. The Referee was within his sound discretion not to credit her self-serving statement that her doctor advised her to quit. This Court has long held that credible documentation is necessary to support a leaving based on medical necessity. See Nowell v. Department of Employment and Training Board of Review, A.A. No. 94-87 (Dist.Ct. 12/6/94)(Cenerini, J.)(Board found claimant not entitled to benefits; Affirmed, where claimant's stress and epilepsy claims were not supported by medical documentation — slip op. at 7) and Fratantuono v. Department of Employment Security Board of Review, A.A. No. 78-38 (Dist.Ct. 10/15/81) (Ragosta, J.)(Board found claimant not entitled to benefits; Affirmed, where claimant's claims of medical necessity due to "nerves" were not supported by medical documentation — slip op. at 5-6).

Applying the evidence of record to the substantive law and the standard of review, I must conclude that the Referee's finding that Claimant did not demonstrate good reason to quit within the meaning of section 17 is

not clearly erroneous. I therefore recommend that the Referee's decision (which was adopted as the decision of the Board of Review) be affirmed.[1]

CONCLUSION

After a thorough review of the entire record, this Court finds that the Board's decision to deny claimant Employment Security benefits under § 28-44-17 of the Rhode Island Employment Security Act was not "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record" 42-35-15(g)(3)(4). Neither was said decision "arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion." Section 42-35-15(g)(5)(6). On findings of fact and as to the weight of the evidence, this Court shall not substitute its judgment for that of the administrative agency. Substantial rights of the claimant have not been prejudiced. Accordingly, I recommend that the decision of the Board be affirmed.

/s/
Joseph P. Ippolito
Magistrate
DECEMBER 24, 2012

[1] Nothing in my analysis, in whole or in part, should be taken as an implied criticism of Ms. Ortega's decision to quit her position and relocate to Florida. Leaving a job is a life decision as well as an economic one. Neither I nor the Referee is in a position to judge the wisdom of the undoubtedly difficult decision Claimant made to leave Jefferson Hospitality. My focus here is solely on the standard for quitting established in section 28-44-17 and the cases that have construed that statute.