STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

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

Workforce Unlimited, Inc.	:	
	:	
v.	:	**A.A. No. 15 - 005**
	:	
Department of Labor and Training,	:	
Board of Review	:	
(Francisco Casillas)	:	

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 12th day of August, 2015.

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 Workforce Unlimited, Inc. seeks judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor and Training which permitted its former employee, Mr. Francisco Casillas, 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 Mr. Casillas was supported by the facts of the case and the applicable law and should be affirmed; accordingly, I so recommend.

I
FACTS AND TRAVEL OF THE CASE

Mr. Francisco Casillas worked for the temporary worker employment agency known as "Workforce Unlimited" for four months until January 8, 2014, when he was laid off due to a lack of work. Claimant filed for, and began to receive, unemployment benefits. In a corrected decision dated October 21, 2014, the Director deemed Mr. Casillas ineligible to receive benefits because he left the employ of Workforce Unlimited without good cause within the meaning of Gen. Laws 1956 § 28-44-17, because he "… failed to maintain contact with [his] temporary employer as required." See Director's Corrected Decision, October 21, 2014, at 1. He was also order to repay benefits he had received from January until May, 2014, in the amount of $4, 205.00. Id.

Mr. Casillas appealed from this decision and Referee Carl Capozza held a hearing on the matter on November 24, 2014. Mr. Casillas appeared with counsel; the employer was represented by its President and a manager. In his decision issued on November 29, 2013, Referee Capozza made the following Findings of Fact regarding claimant's termination:

> **2. FINDINGS OF FACT:**
> The claimant had been employed as a temporary employee on a full-time basis until his last day of work on January 8, 2014, at which time he was informed there was no further work and that he was laid off due to a lack of work. The claimant immediately notified the employer of that advisory which was confirmed by the temporary agency. No other suitable work was offered to the claimant, although requested. The claimant, as a result, filed his claim for benefits. In the meantime, the claimant did maintain contact with the employer.

Referee's Decision, November 24, 2014, at 1. Then, analyzing the case under Gen. Laws 1956 § 28-44-17, the Referee concluded that Claimant Casillas did not quit, but was laid off:

> **3. CONCLUSION:**
> …
> Based on the credible testimony and evidence presented in this case, I find that the claimant was laid off from his employment with the temporary employment agency and was in compliance with the terms of contract by notifying the agency accordingly. The claimant, however, was offered no further work as he was advised none was available. Accordingly, it is determined that since the claimant was laid off due to a lack of work, he cannot be denied benefits as previously determined by the Director.
> …

Referee's Decision, November 24, 2014, at 1. Accordingly, Referee Capozza found Claimant to be eligible to receive benefits. He therefore reversed the decision of the Director denying benefits.

Workforce Unlimited filed an appeal and the matter was reviewed by the Board of Review. On December 26, 2014, 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 January 15, 2015, Workforce Unlimited filed a 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.** – (a) … For benefit years beginning on or after July 1, 2012, and prior to July 6, 2014, 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 greater than, or equal to, his or her weekly benefit rate for performing services in employment for one or more employers subject to chapters 42 – 44 of this title. * * *
>
> (b) 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 <u>failure by a temporary employee to contact the temporary help agency upon completion of the most recent work assignment to</u>

> seek additional work unless good cause is shown for that failure; provided, 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. (Emphasis added)

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.' " 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). The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact. Cahoone v. Board of Review of the Dept.of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968). Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result. 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 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 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 he left work without good cause pursuant to section 28-44-17?

V
ANALYSIS
A
Facts of Record
1
The Testimony of Mr. Casillas

Because the case came to Referee Capozza on a theory of a voluntary quit, per Gen. Laws 1956 § 28-44-17, Mr. Casillas testified first. Referee Hearing Transcript, at 8 et seq. In answer to questions from the referee, he stated that he had worked for Workforce Unlimited for four and a half months at a full-time assignment at a business called "Town Dock" in Johnston. Referee

Hearing Transcript, at 8-9. Claimant said that on January 8, 2014 he was called into the office by a manager named "Chris" that he was being laid-off, along with fifteen other people. Referee Hearing Transcript, at 11.

The next day, Mr. Casillas went to the Workforce Unlimited office and told Ms. Berrios, a manager, about the lay-off. Referee Hearing Transcript, at 12-13. But, she knew about them. Referee Hearing Transcript, at 13. He said he went back to the office the next week and again spoke to Ms. Berrios, whom he called "Paulo." Id. She again told him there was no work and that she would call him. Referee Hearing Transcript, at 14. He said he filed for unemployment because he was told he could collect. Id.

Under questioning by Mr. Andrew Wilkes, President of Workforce Unlimited, he denied that he had been offered work the week after his lay-off at a company called "Seawatczh," on first or second shift. Referee Hearing Transcript, at 15. But he said he went back checking on work for two to three weeks. Referee Hearing Transcript, at 16. With that, his testimony ended. Id.

2

Testimony of Mr. Andrew Wilkes

Mr. Wilkes began his testimony by indicating his company had a policy of providing work to those who wish it. Referee Hearing Transcript, at 16. He testified that Mr. Casillas was offered first or second shift work at Seawatczh.

Referee Hearing Transcript, at 16-17. When prodded by the Referee, Mr. Wilkes indicated that it was his belief that "Margie" conveyed the offer. Referee Hearing Transcript, at 17. He added that Mr. Casillas accepted the offer (for first shift work) but was a "no call, no show." Referee Hearing Transcript, at 17-18.

3

Testimony of Ms. Margie Berrios

Ms. Berrios began by indicating she offered the position to Mr. Casillas personally, over the phone. Referee Hearing Transcript, at 18-19. She believed it was him she spoke to because she called the number she had on file. Referee Hearing Transcript, at 19. But when the ride went to pick him up, he was not there; Ms. Berrios tried to call him, but his phone was off. Referee Hearing Transcript, at 20-21. She confirmed that Mr. Casillas did ask for work when he picked up his last check. Referee Hearing Transcript, at 22.

B

POSITION OF THE PARTIES

1

Position of the Appellant/Employer

In its Memorandum, Workforce expends little attention on the particulars of Claimant's discharge. Appellant's Memorandum of Law, at 2. In the portion of the Memorandum that is dedicated to the § 28-44-17 issue, it concentrates on

summarizing the testimony of its witnesses. Id. But, the bulk of its Memorandum is dedicated to asking this Court to find that that Claimant Casillas should have been disqualified from receiving unemployment benefits because he failed to satisfy the obligation declared in Gen. Laws 1956 § 28-44-12 that he did not search for work, either with Workforce or with other employers. Appellant's Memorandum of Law, at 3-4.

2

Position of the Appellee/Claimant

In his Memorandum, Claimant Casillas presents three arguments.

The first is that Workforce Unlimited does not have standing to bring this appeal because it failed to satisfy its obligation, contained in Gen. Laws 1956 § 28-44-38(c), to respond to the Department's initial inquiry regarding his termination. See Appellee's Memorandum, at 2.

Secondly, Claimant identifies those portions of the transcript (regarding his testimony and that of Ms. Berrios) which support the Board's finding that he reported his lay-off and contacted Workforce seeking additional work. See Appellee's Memorandum, at 3-7.

Finally, Claimant responds to Workforce's argument that he did not provide proof of an adequate work search. See Appellee's Memorandum, at 7. Mr. Casillas urges that the lack of testimony on this point is attributable to the

fact that the issue was never raised before the Referee. Id. He asserts the he was not given notice on the question, only on the "voluntary quit" issue under § 28-44-17.

C
DISCUSSION

Two points must be made at the outset of our analysis of this case — one legal, one factual.

The legal point to be made is that those who work through temporary employment agencies have a special duty — if they wish to receive unemployment benefits — to maintain contact with their agency after an assignment has ended in order to solicit future work. See Gen. Laws 1956 § 28-44-17, supra at 4-5.

The factual point to be made relates to the Referee's Findings of Fact. Referee Capozza found that (1) Mr. Casillas was laid off, (2) he informed his employer (Workforce Unlimited) of that fact, and (3) he sought but was not offered further work by the employer. These findings, if supported by reliable, probative, and substantial evidence of record, are certainly dispositive of the § 17 issue of the receipt of unemployment benefits by persons like Mr. Casillas, who are employed by temporary employment agencies.

1

The Substantive (§ 17) Issue

There is no question that the Claimant's testimony was sufficient, if believed, to support the Referee's findings; moreover, the employer's representatives conceded those points.

The employer's position was that, thereafter, Mr. Casillas refused a job — a circumstance which, if found to be true, will cause the Claimant to be disqualified under Gen. Laws 1956 § 28-44-20. But, strictly speaking, that issue was not before the Referee. It had not been referenced in the Decision of the Director. And, as far as I can see, the Claimant was not given notice of that issue. So, we could end our analysis at this point and uphold the Referee's § 17 decision.

Nevertheless, if we assume arguendo that the § 20 issue was before Referee Capozza, we are faced with the ineluctable conclusion that Claimant's testimony — that he did not receive any further offers of work from Workforce generally and Ms. Berrios in particular — would be sufficient to support the Referee's finding to that effect.

2

The Section 38 Issue

Mr. Casillas argues that Workforce Unlimited failed to comply with the mandate, set forth in § 28-44-38(c), that employers respond in a timely manner to inquiries from the Department regarding the separation of former employees; and if they do not —

> …the employer shall have no standing to contest any determination to be made by the director with respect to the claim and any benefit charges pursuant to it, and the employer shall be barred from being a party to any further proceedings relating to the claim.

The language of this provision is straightforward; as a result, it must be applied literally, at all stages of administrative and judicial proceedings. It does not appear that the bar can be waived.

However, we cannot dismiss the employer's petition for judicial review at this juncture because no findings were made on this issue below; and, this Court is not permitted to add to the administrative record. Therefore, we would have to remand the instant matter to the Board for findings to be made. But, in light of my recommendation for affirmance on the substantive (§ 17) issue, doing so would be, in my view, a waste of the Board's precious resources.

3

The Availability (Job Search Issue)

In a like manner, I believe the alternative issue raised by the employer — Mr. Casillas' failure to engage in a work search as required by § 28-44-12 — is also non-justiciable; it too is not properly before the Court.

The job-search issue was not discussed by the Director, the Referee, or the Board of Review in the decisions they issued. As far as I can see, the employer did not raise it at any point in the proceedings below, going all the way back to its response to the Department's inquiry in the DLT 480 form. See Department's Exhibit No. A-1. As a result, the Board of Review did not give Claimant Casillas notice that the issue would be discussed. It would therefore have been a violation of fundamental due process for the Referee and the Board to raise it sua sponte; it would likewise be improper for this Court to address it in this appeal.[1]

[1] I agree fully with the argument made by Claimant that the Department has full authority to inquire into the Claimant's compliance vel non with the mandate of § 12 that all claimants be able to work, available for work, and be engaged in an adequate search for work. Appellee/Claimant's Memorandum of Law, at 7.

C
RESOLUTION

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), ante at 6 and Guarino, ante 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 — (1) Claimant did not leave his employment voluntarily but was terminated not for misconduct, and (2) that he fulfilled the other requirements of § 17 pertaining to workers for temporary employment agencies — is well-supported by the reliable, probative and substantial evidence of record. Gen. Laws 1956 § 42-35-15(g)(5),(6). Neither was it affected by error of law. Gen. Laws 1956 § 42-35-15(g)(3),(4).

VI
CONCLUSION

Accordingly, I recommend that the decision rendered by the Board of Review in this matter be AFFIRMED.

/s/
Joseph P. Ippolito
MAGISTRATE

AUGUST 12, 2015