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

JVC FRANCHISING LLC	:	
	:	
V.	:	**A.A. No. 6AA-22-227**
	:	
DEPARTMENT OF LABOR AND TRAINING, BOARD OF REVIEW	:	

JUDGMENT

This cause came before Parrillo, J. on Administrative Appeal, and upon review of the record and memoranda of counsel, and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Board is affirmed.

Dated at Providence, Rhode Island, this 24th day of September, 2024.

Enter: By Order:

_____/s/_____ _____/s/_____

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

JVC FRANCHISING LLC	:	
	:	
V.	:	**A.A. No. 6AA-22-227**
	:	
DEPARTMENT OF LABOR AND TRAINING, BOARD OF REVIEW	:	

DECISION

Parrillo, J. The appellant, JVC Franchising, LLC, (hereinafter "Appellant" or "JVC") has filed the instant appeal challenging the November 2, 2022 decision by Board of Review reversing the Referee's decision that denied JVC's former-employee's claim for unemployment benefits. Appellant asks this Court to vacate the Board of Review's decision and reinstate the Referee's decision to deny unemployment benefits. As grounds, Appellant avers that the Referee's denial of benefits was correct because the former employee engaged in misconduct in connection with her work.

The Court has jurisdiction pursuant to R.I.G.L. § 28-44-52. For the reasons set forth in this opinion, I conclude that the Board of Review's decision should be AFFIRMED

FACTS AND TRAVEL

Claimant Amanda M. Augusta ("Claimant") worked as a full-time Sales Account Executive for JVC Franchising, LLC ("Employer") for eight years until she was terminated for insubordination on August 11, 2022. *See* Decision of the Referee ("Ref. Dec.") at 1. Employer issued a Notice of Termination to Claimant dated August 11, 2022. *See* Notice of Termination at 1. This notice stated that "during [the July 6 and August 11, 2022] training sessions, it became

very apparent that [Claimant is] not fully committed to the processes and procedures [she has] been asked to comply with on a number of occasion[s]." *Id.* The notice specifically listed Claimant's "inability to refrain from calling franchisees . . . when [the owner has] personally asked [her] not to." *Id.* The letter states that Claimant's comments that the company has issues with other employees "undermines the efforts of the company." *Id.* Further, the letter states that Claimant's "continual lack of respect for authority and the disruptive manner in which [she] has conducted [her]self is very insubordinate." *Id.*

Claimant subsequently filed for Employment Security benefits on August 12, 2022, to be effective August 14, 2022. *Id.* The Director of the Department of Labor and Training determined that she was discharged for disqualifying circumstances pursuant to G.L. 1956 § 28-44-18 and accordingly denied her application for benefits. *See* Claimant Decision, Aug. 26, 2022. Claimant filed a timely appeal of the Director's decision. *See* Ref. Dec. at 1. A hearing was held before a Referee on September 26, 2022. *Id.* The Referee affirmed the decision of the Director. *Id.* Claimant subsequently appealed the Referee's decision before the Board of Review ("Board"). *See* Decision of the Board of Review ("BOR Decision"). On November 2, 2022, the Board held a hearing on Claimant's appeal. *Id.* The Board subsequently overturned the decision of the Referee and granted Claimant's application for Employment Security benefits. *Id.* Employer filed the present appeal of the Board's decision on December 12, 2022.

The within appeal comes before this Court in accordance with R.I.G.L. § 28-44-52. The Appellant asks this Court to vacate the Board's decision and reinstate the Referee decision finding that Claimant is disqualified from receiving benefits because she was discharged for misconduct. *See* Employer Brief at 7. Both Employer and the Board have submitted briefs, which have been duly considered by this Court. *See generally* Docket.

A. Referee Hearing (September 26, 2022)

Claimant's Employer testified at the September 26, 2022, hearing that there was a team meeting on August 11, 2022, where the owner was going over sales numbers. *See* Hearing Transcript at 16. Employer testified that Claimant disagreed with the owner's sales numbers and began yelling and creating a "heated" and "uncomfortable situation." *Id.* at 16-17. Employer testified that a similar yelling incident occurred at a July 5, 2022, meeting with the owner. *Id.* at 18. Claimant testified that she was concerned that the owner repeatedly embarrassed Claimant to the company by presenting false sales data depicting her sales performance as lacking. *Id.* at 20-23. Specifically, Claimant testified that at an August 2, 2022, meeting the owner compared her to a previous employee whose sales numbers were at 45% compared to her 14%. *Id.* at 26. Claimant further testified that she expressed to the owner at that meeting that she believed his numbers were inaccurate, that he started "going off on" her, and that she refrained from speaking for the rest of the meeting. *Id.* Further, Claimant sent a screenshot of her actual figures to the owner via email, which the owner did not respond to. *Id.* at 26-29.

On August 11, 2022, Employer held another sales meeting. *Id.* Claimant testified that at this meeting, the owner again brought up her sales numbers in front of the company, indicating that they were unsatisfactory. *Id.* The owner asked Claimant if she thought her training had any merit considering her poor sales figures. *Id.* Claimant testified that she vocally expressed her disagreement with his assessment of her sales performance, that she told him to display her actual numbers on the screen for everyone to see, and that they got into a verbal altercation where she raised her voice at the owner. *Id.* at 27. She further testified that she "was not profane or verbally abusive," but rather raised her voice while "expressing [her] concern for the fact that" the owner would not acknowledge her true performance numbers. *Id.* at 28.

After conducting the hearing, the Referee issued a decision affirming the Director's denial of Claimant's application for benefits. *See* Ref. Dec. at 2. The Referee concluded that Claimant was "discharged under disqualifying circumstances under the provisions of Section 28-44-18 of the Rhode Island Employment Security Act" and therefore ineligible for benefits.

B. Board of Review (November 2, 2022)

After conducting a hearing on November 2, 2022, and soliciting testimony, the Board issued its decision on November 17, 2022. *See* BOR Decision. The Board concluded that "the Employer did not offer sufficient evidence to support a finding that Claimant was terminated for a knowing violation of a reasonable, uniformly enforced policy or that her conduct was in willful violation of the Employer's interest." *Id.* at 3. The Board determined that Claimant was issued a written warning in February 2022 for disobedience, but that the evidence presented documenting verbal warnings to Claimant was created post-termination. *Id.* at 2. Further, the Board determined that there was "no evidence of uniform enforcement of a reasonable policy." *Id.* As such, the Board concluded that Employer failed to meet its burden of proof and reversed the decision of the Referee. *Id.* at 3.

STANDARD OF REVIEW

When reviewing a decision of an administrative agency, this Court "sits as an appellate court with a limited scope of review." Mine Safety Appliances Co. v. Berry, 620 A.2d 1255, 1259 (R.I. 1993). The standard of review applied in appeals from decisions of the Board of Review is provided by R.I.G.L. § 42-35-15(g), a section of the Administrative Procedures Act, which states 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.

Regarding questions of fact, this Court may not substitute its judgment for that of the agency under review. *See* Johnston Ambulatory Sur. Assoc. v. Nolan, 755 A.2d 799, 805 (R.I. 2000) (quoting Rhode Island Public Telecommunications Authority v. Rhode Island State Labor Relations Board, 650 A.2d 479, 485 (R.I. 1994)). Our review is limited to "an examination of the certified record to determine if there is any legally competent evidence therein to support the agency's decision." Id. (quoting Barrington School Committee v. Rhode Island Labor Relations Board, 608 A.2d 1126, 1138 (R.I. 1992)). Essentially, if there is "sufficient competent evidence in the record, [this Court] must uphold the agency's decision." Id. (citing Barrington School Committee, 608 A.2d at 1138). This remains the case even if this Court "might be inclined to view the evidence differently and draw inferences different from those of the agency." Id.

This Court, in determining whether sufficient competent evidence exists withing the record, does so "in light of the expressed legislative policy that [the Employment Security Act] shall be construed liberally in aid of [its] declared purpose which declared purpose is to lighten the burden which now falls on the unemployed worker and his [or her] family." Harraka v. Board of Review of Dep't of Employment Security, 200 A.2d 595, 597 (R.I. 1969) (quoting R.I.G.L. § 28-42-73).

While this Court defers to the judgment of the agency on issues of fact, our review of an agency's determinations of law are done on a *de novo* basis. *See* Arnold v. Rhode Island Dep't of Labor and Training Board of Review, 822 A.2d 164, 167 (R.I. 2003) (citing Johnston Ambulatory Sur. Assoc., at 805).

QUESTION PRESENTED

The issue before the Court is straightforward: does there exist legally competent evidence in the record of the Board decision to justify its ruling overturning the Referee's decision in favor of Appellant denying Claimant's unemployment benefits. Specifically, is there competent evidence to support the Board's conclusion that Appellant failed to offer sufficient evidence to support a finding that Claimant was terminated for a knowing violation of a reasonable, uniformly enforced policy or that her conduct was in willful disregard of employer Appellant's interest.

ANALYSIS

In order to prevail in an action such as this, an employer must prove that the employee engaged in "misconduct" and is therefore ineligible to receive unemployment benefits. Misconduct is defined as "deliberate conduct in willful disregard of the employer's interest, or a knowing violation of a reasonable and uniformly enforced rule or policy of the employer…" R.I.G.L. 28-44-18. The Supreme Court of Rhode Island has defined "misconduct," in the context of that statute, as:

> "…conduct evincing such wilful [sic] or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such a degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employer's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in insolated instances, or good faith errors in judgment or

> discretion are not to be deemed 'misconduct' within the meaning of the statute." Turner v. Department of Employment Sec., Bd. of Review, 479 A.2d 740, 741-742 (R.I. 1984) quoting Boynton Cab Co. v. Neubeck, 237 Wis. 249, 296 N.W. 636 (1941).

In the instant case, the Appellant bore the burden of proving to the Board that the Claimant engaged in misconduct either by engaging in deliberate conduct in willful disregard to it's interest, or violated a reasonable and uniformly enforced rule or policy of the employer. The Board ruled that Appellant failed to do so and ruled for Claimant accordingly.

The Board of Review, in reversing the decision of the referee and finding for Claimant, found that Claimant was terminated when she "questioned her employer regarding his presentation of her performance issues that placed her in a negative light towards her peers." *See* BOR Decision p. 3. In so finding, the Board credited Claimant's testimony as credible, and found that her raising her voice to Mr. Berrios was in response to such review. *Id.*

This Court is mindful of the standard of review and the deference it must show to the Board and its findings of fact, discussed *supra*. While the Board did not articulate at length its rationale, a review of the entire record reveals that there does exist competent evidence to support its decision in favor of Claimant. In sum, the record reveals that Claimant was terminated for raising her voice to the owner of the company during a meeting on August 11, 2022, in which he publicly and erroneously called her out publicly for poor sales figures. The fact that there had been a prior incident of the Claimant yelling at the owner only a month earlier on July 5, 2022 that did not result in any disciplinary action is telling; had there been in place a uniformly enforced policy against yelling at the owner, then she would have been fired. Because Claimant was not fired after the July 5, 2011 incident, this Court is left with the inescapable conclusion that such policy does not exist.

Further, while Claimant raising her voice at the owner of the company by whom she is employed strikes the Court as bad professional judgment, it in no way rises to the level of "deliberate conduct in willful disregard of the employer's interest." In fact, Claimant yelled in defense of her own sales statistics, which were grossly underrepresented by the owner. The record is replete with evidence that Claimant's efforts, misguided though they may have been, were all in furtherance of *helping* the company succeed in increasing its sales, and effort that Court cannot characterize as being in disregard of the Appellant company's interests. The Board of Review's conclusion is thereby supported by competent evidence and this Court declines to disturb that ruling.

CONCLUSION

For the reasons set forth in this opinion, the decision of the Board of Review is affirmed.