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

Estrella Keoh	:	
	:	
v.	:	**A.A. No. 2023 - 083**
	:	
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 case is REMANDED to the Board of Review for the issuance of a new decision.

Entered as an Order of this Court on this 24th day of September, 2024.

By Order:

/s/

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. Estrella Keoh urges that the Department of Labor and Training, Board of Review, erred when it declared her ineligible to receive unemployment benefits. Jurisdiction to hear and decide appeals from decisions made by the Board of Review is vested in the District Court by G.L. 1956 § 28-44-52. This matter has been referred to me for the making of findings and recommendations pursuant to G.L. 1956 § 8-8-8.1. For the reasons that I shall now explain, I have concluded that the instant case must be REMANDED to the Board for the issuance of a new decision. I so recommend.

I

Facts and Travel of the Case

Ms. Estrella Keoh worked for RR International LLC as a machine operator for three years until July 17, 2023, when she quit. She applied for unemployment benefits but, on August 29, 2023, her claim was denied by a designee of the Director of the Department of Labor and Training, pursuant to G.L. 1956 § 28-44-17, based on a finding that she had voluntarily quit without good cause. Ms. Keoh filed an appeal and her matter was assigned to a Board of Review hearing officer, a "Referee," for a hearing, which was conducted on October 18, 2023.

The Referee began the hearing by identifying the participants, which were Ms. Keoh and three representatives of the employer; he then administered the testimonial oath to them. *Ref. Hr'g Tr.* at 2-3. Following this, the Referee enumerated the exhibits that had been transferred to the Board by the Department. *Id.* at 3-4.[1]

[1] At this juncture the Referee addressed two procedural issues: (1) whether the Employer failed to return the Notice of Claim form which was sent to it in a timely manner, and therefore should be barred from opposing Ms. Keoh's claim pursuant to G.L. 1956 § 28-44-38(c), and (2) whether Claimant failed to file her appeal from the Decision of the Director after the expiration of the fifteen-day appeal period. *Ref. Hr'g Tr.* at 4-6. However, since neither party has raised these issues on appeal, the rulings made by the Referee on both questions (in which he permitted the Employer to participate and the Claimant to pursue her late appeal) must be deemed the settled

Next, the Referee turned to the substantive issue at the core of the case — whether Claimant voluntarily separated from her employment for good cause, as that term is used in G.L. 1956 § 28-44-17. And so, he asked Ms. Keoh to tell him why she left her job. *Ref. Hr'g Tr.* at 7.

Claimant testified that her problem was with the manager; that he was giving her a hard time. *Id*. She testified:

> In the beginning I just — so many years I've been ignoring this — I didn't even know what he was doing and like winking his eye in my way to work in the morning, that's happened. I think it was June the same year that he like quickly moved his car. I was behind him, he moved his car to the left, it go behind my car and then (inaudible) to the left and at the time he said so many cars do you see. I didn't know what he was doing. And another incident too that in the (inaudible) location that I was driving on my way to work, I didn't know what he was doing. He was in front of me at the same time, and then he (inaudible) like I don't know. It's a crazy person and keeps laughing, look in the mirror, I was behind him and like making fun of me. He did that twice.

Id. When asked by the Referee, Ms. Keoh said she talked to HR after the second incident. *Id*. at 8. Then she added:

> … And during at work too he's — I'm telling him that something going on in the work, and when I tried to (inaudible) my work, show him that he's joking the laugh with me, he put his hands on top of my hands. He did that twice to me.

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law of the case.

Id.

Then, when the Referee asked Ms. Keoh why she omitted these allegations against the manager when she gave her statement to the DLT adjudicator, she said that she "didn't mention everything because I want to keep the job." *Ref. Hr'g Tr.* at 8; see also *DLT Form 480,* at 1-2; *ER* at 36-37. When the Referee repeated the question, she described the odor that was present at her workstation on the day she quit. *Id*. at 8-10.

The Referee then called upon the representatives of the Employer. *Id*. at 11. Mr. Tony Laura responded at the accusations that had been made against him. *Id*. at 12. After telling the Referee that he commuted down the same road from Cumberland to Lincoln for the same shift, he stated that he did not even know the type of car that she drives. *Id*. The witness denied he ever followed her in his car. *Id*. He said there was continued work available for Ms. Keoh when she quit. *Id*.

When the Referee inquired whether there was anything else he wanted to say, Mr. Laura said that there was no gasoline smell in Claimant's work area. *Id*. at 13. In response, Ms. Keoh stated that she told him many times that she did not have any air at her table. *Id*. at 15.

Ms. Keoh testified that she told Mr. Laura that she was leaving. *Id*. However, Mr. Laura testified that she did not inform him when she left

— and did not call out the next day. *Id*. at 14, 16. He called her two days later and was told "I'm out." *Ref. Hr'g Tr.* at 14, 16.

Finally, when the Referee asked if either party had anything to add, Ms. Keoh made one more allegation:

> After the incident happened in the morning when he put me bolted in the car, I'm concerned. I asked him I said you know, Tony, I'm going to look for another job because I cannot do this anymore. And he said, oh, what's going on. I said, you know, why do you do that to me in the morning. I said like that to him so and so, and then he said, oh don't worry about it, you know, it's not me. And I said, no, it's you. That's true he deny it when I confronted him because he told me in the office that I'm not smiling anymore. And he even said to me, oh, that's not me and he was smiling and everything, and he said if you need help with your car, call me. If you need a help with your machine, call me. …

Id. at 18. After she spoke for a bit more, the Referee closed the hearing. *Id*. at 18-20.

On the next day, October 19, 2023, the Referee issued his decision, in which he made the following findings of fact regarding the leaving-for-good-cause issue:

> The claimant worked as a machine operator for RR International LLC, for three years. The claimant told the adjudicator on August 25, 2023, that she quit because her throat and noise were irritated because of a gasoline smell at her work station. The claimant stated that she talked to her Plant Manager, and he did nothing to help her. The claimant testified today that she was harassed

> by the Plant Manager. The employer stated that this is all new and shocked that she would accuse him of harassment. The employer stated that the claimant has had a habit of leaving her shift without permission and on July 17, 2023, after her complaint of a gasoline odor which they do not use gasoline in the plant stated that she left without permission at 11 am and never returned. The employer stated that she continued work was available had she not quit without notice.

Dec. of Referee, at 1-2; *ER* at 32-33. On this issue, he formed the following conclusions:

> I find that the claimant quit her position without notice first because of an odor that made her sick and then saying she was harassed by her supervisor. Therefore, I find in this case the claimant voluntarily quit her job without good cause. As such the claimant is subject to the disqualification provisions of Section 28-44-17 of the Rhode Island Employment Security Act.

Dec. of Referee, at 3; *ER* at 34. And so, the decision of the Director was affirmed.

Claimant filed a timely appeal on October 26, 2023. Then, on November 28, 2023, the members of the Board issued a unanimous decision finding that the decision of the Referee was a proper adjudication of the facts and the law applicable thereto. *Dec. of Board of Review,* at 1; *ER* at 2 Accordingly, the Referee's decision was affirmed. *Id*.

II
Analysis

As it undertakes its review of the Board's decision, this Court is entitled to some clarity as to the reasoning which is the basis of the Board's ruling on the mixed question of law and fact which was before them — *i.e.,* whether Ms. Keoh had good cause to quit under § 28-44-17. *See D'Ambra v. Board of Review, Dept. of Employment Security,* 517 A.2d 1039, 1041 (R.I. 1986). Beyond the observation that Claimant's reason for quitting changed, from a noxious odor at her workstation to harassment by her supervisor, we are given none, just the ultimate decision of disqualification.[2]

Clearly, these serious allegations made by Claimant were rejected by the Referee, but his rationale is undisclosed. We are left to wonder — Did he find the allegations insufficient to justify the Claimant's separation or did he find each to be not credible? We do not know.

Accordingly, I believe the Referee's decision did not satisfy the requirement that he make findings and conclusions on all pertinent issues,

[2] While I focus on the conclusion section of the Referee's decision as being so lacking as to require remand, I do not mean to endorse the practice of making the "Findings" section of a Referee or Board of Review decision nothing more than a summary of the evidence received. Rather, it should be used to declare the true relevant facts of the controversy as they are determined by the hearing officer — the *fact-finder*. Doing so would make the task of forming sufficient conclusions much easier.

as provided in G.L. 1956 § 28-44-46; and, when his decision was adopted by the Board of Review as its own, it became subject to the requirements of G.L. 1956 § 28-44-52.[3]

We cite to these provisions from the Employment Security Act because the equivalent provision within the Administrative Procedures Act (APA), G.L. 1956 § 42-35-12,[4] is not, strictly speaking, applicable to Board of Review hearings. *See* G.L. 1956 § 42-35-18(c)(1). Nevertheless, our Supreme Court has indicated that Board hearings may be guided by the principles underlying these APA provisions. *See Foster-Glocester Reg'l Sch. Comm. v. Bd. of Review, Dep't of Labor and Training,* 854 A.2d 1008, 1018 (R.I. 2004) (citing § 42-35-10(a)); *see also DePasquale v. Harrington,* 599 A.2d 314, 315-16 (R.I. 1991) (applying G.L. 1956 § 42-35-10(a)'s ban on "[i]rrelevant, immaterial, or unduly repetitious evidence" to Division of Motor Vehicle appeals).

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[3] The latter provision comes into play in the instant case because the Board of Review adopted the Referee's decision as its own.

[4] Section 42-35-12 provides, in pertinent part: "… Any final order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings." For application of this standard in a different administrative context, *see Sakonnet Rogers, Inc. v. Coastal Res. Mgmt. Council,* 536 A.2d 893, 897 (R.I. 1988); *E. Greenwich Yacht Club v. Coastal Res. Mgmt. Council,* 118 R.I. 559, 569, 376 A.2d 682, 686-87 (1977).

In its present form, the Board's decision is unreviewable. As such, it does not conform to law. *See* G.L. 1956 § 42-35-15(g)(4). Moreover, our Supreme Court has made it clear that this Court is not authorized to emend deficient Board of Review decisions. *See generally Beagan v. Dep't of Labor and Training Bd. of Review,* 162 A.3d 619 (2017).

III
Conclusions

Accordingly, I must recommend that the instant matter be REMANDED to the Board of Review so that a new decision with appropriate conclusions may be issued.

/s/
Joseph P. Ippolito
Magistrate

September 24, 2024