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

Timothy P. Martin	:	
	:	
v.	:	**A.A. No. 2024 - 014**
	:	
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 24th day of September, 2024.

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

By Order:

/s/
Clerk

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FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case, the District Court, exercising the jurisdiction granted to it by G.L. 1956 § 28-44-52, must decide whether the Department of Labor and Training Board of Review (the Board) erred when it held that Mr. Timothy P. Martin (Claimant or Appellant) would be disqualified from receiving unemployment insurance benefits because he quit his prior position without good cause within the meaning of G.L. 1956 § 28-44-17. This matter has been referred to me for the making of findings and recommendations pursuant to G.L. 1956 § 8-8-8.1. Doing so, and for the reasons I shall now set forth, I have

concluded that the instant case ought to be AFFIRMED. I so recommend.

I

Facts and Travel of the Case

Appellant Timothy Martin worked for the Thomas C. Slater Compassion Center) as a Patient Advisor until July of 2023. He filed a claim for unemployment benefits on August 30, 2023, with an effective date of August 27, 2023. *See* "Claim Data" section of DLT FORM 480 (which may be found in the 42-page Electronic Record (*ER*) attached to this case, at 25). His last day of physical work was April 9, 2023, when he was injured in a car accident which forced him out of work and onto Temporary Disability Insurance (TDI).

Mr. Martin told the DLT adjudicator who interviewed him by telephone that while he was out on TDI, he spoke to the Director of the Center, Ms. Jamie Stack, and requested a raise, from $15.00 per hour to $17.00 per hour. *See* "Claimant Statement" section of DLT Form 480 (*ER* at 25). According to the summary recorded by the adjudicator, the conversation unfolded in this manner:

> On July 13, Jamie told me she could get me $16.00 per hour. I told her that I deserved $17, and that I would not come back for anything less than that. She said, "ok, goodbye." That was it.

Id. His subsequent efforts to revive the negotiations went unanswered. *Id*. Mr. Martin was cleared to return to work on August 28, 2023. *Id*.

Although the adjudicator was unable to speak to anyone at the Center, the Employer's position was ascertained from the Form 425 it returned. The Center reported that Claimant quit voluntarily because he was dissatisfied with his wages. *See* "Internal Notes" section of DLT Form 480 (*ER* at 26). According to the Employer, Claimant gave the Center an ultimatum. *Id*.

Then, on October 16, 2023, the adjudicator, acting as a designee of the Director of the Department of Labor and Training, issued a Decision which found that Claimant had quit his job without good cause within the meaning of G.L. 1956 § 28-44-17, since he had not shown that his dissatisfaction with his wages placed him in a situation "which left [him] with no reasonable alternative that to place [himself] in the state of total unemployment." *See Dec. of Director,* at 1 (*ER* at 52, 89). Nor had he shown that his job was unsuitable. *Id*.

Mr. Martin filed an appeal. See *Request for a Hearing Before the Board of Review* and *Claimant Internet Appeal* forms, *ER* at 38-39. As a result, a telephonic hearing was scheduled before a Referee employed by the Board of Review on November 8, 2023. However, Mr. Martin failed to call in for the hearing. In consequence, the Referee, Mr. Palangio, issued a decision dismissing Mr. Martin's appeal for want of prosecution. *Dec. of Referee I* (November 8, 2023), at 1 (*ER* at 41). When Mr. Martin discovered his error (perhaps when he received the decision electronically), he sent an email to the Board apologizing

and asking that the hearing be rescheduled. *ER* at 40. His request was granted, and a new hearing was set for December 6, 2023. *Referee Hr'g Tr.* at 1; *ER* at 11.[1]

At the hearing, Claimant Martin was the sole participant. *Ref. Hr'g Tr.* at 1-4. After the testimonial oath was administered to him and the contents of the file were enumerated, the Referee asked Mr. Martin to explain why he missed the first scheduled hearing. *Id.* at 5. Claimant responded that it was his fault alone. *Id.* at 5-6.

The Referee then addressed the circumstances of Mr. Martin's separation from the Slater Compassion Center by reading to him, verbatim, from the adjudicator's summary of his statement (which was excerpted *supra* at 2) and asked if it was accurate. *Id.* at 6-7. Mr. Martin responded "Yeah, it's accurate for the most part." *Id.* at 7. The Referee then asked if there was anything he wanted to add; he said no. *Id.* With that, the Referee closed the hearing. *Id.*

On December 7, 2023, the Referee issued his decision. The Referee's findings of fact regarding the leaving-for-good-cause issue read as follows:

> The claimant was a patient advisor for the Thomas C. Slater Compassion Center for eighteen months last on April 9, 2023. The claimant was earning fifteen dollars per hour.

[1] The hearing transcript begins on page 11 of the Electronic Record. Henceforth, all citations regarding the hearing shall be made solely to the transcript page.

> The claimant was involved in an auto accident. He was out of work on approved leave. When he was ready to return to work in July 2023, he reported to the director of the organization that we wanted a raise to seventeen dollars per hour. The Director reported back to the claimant that she could raise his salary only to sixteen dollars per hour. The claimant responded to the Director: "… I deserve seventeen dollars per hour, and that I would not come back for anything less than that."
>
> The employer then told the claimant "Ok, goodbye." That was the end of the employee/employee relationship.

Dec. of Referee II (December 7, 2023), at 1 (*ER* at 21). This finding led him to formulate certain conclusions on the good-cause issue:

> The claimant is denied unemployment benefits under Section 28-44-17 of the Rhode Island Employment Security Act, as he has failed to show that his job became unsuitable to the point where he had no reasonable alternative than to quit his job and place himself in a complete state of Unemployment. The claimant gave an ultimatum to his employer. It was the claimant who caused this separation with the ultimatum.

Dec. of Referee II (December 7, 2023), at 3 (*ER* at 23). Based on this set of conclusions, the Referee affirmed the Decision of the Director regarding Claimant's disqualification pursuant to § 28-44-17. *Id.*

Thereafter, the Board of Review considered the matter based on the record assembled by the Referee, as it is permitted to do under G.L. 1956 § 28-44-47. *Bd. of Review Dec.* at 1 (*ER* at 7). In a decision issued on January 18, 2024, the Board adopted the decision of the Referee as its own and found that

the Referee's decision constituted a proper adjudication of the facts and the applicable law. *Id.*

II
Standard of Review

The standard of review applicable to this appeal is provided by G.L. 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.' " *Guarino v. Department of Social Welfare,* 122 R.I. 583, 584, 410 A.2d 425 (1980) (citing G.L. 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. Bd. of Review of the Department of Employment Security,* 104 R.I. 503, 246 A.2d 213 (1968). Under the Rhode Island Supreme Court's construction of § 42-35-15(g), this Court must uphold a decision of the Board "… if it is supported by legally competent evidence." *Kyros v. Rhode Island Dep't of Health,* 253 A.3d 879, 884-85 (R.I. 2021) (quoting *Endoscopy Associates, Inc. v. Rhode Island Dep't of Health,* 183 A.3d 528, 532 (R.I. 2018)).

In evaluating specific circumstances which might constitute "good cause" to quit, the Court confronts a mixed question of law and fact. *D'Ambra v. Board of Review, Department of Employment Security,* 517 A.2d 1039, 1040 (R.I. 1986). Where the record supports only one conclusion, the case must be decided as a matter of law. *D'Ambra,* 517 A.2d at 1041. But, if more than one reasonable conclusion could be reached, the agency decision must be affirmed. *Id*.

The Supreme Court of Rhode Island recognized in *Harraka, ante,* 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.

Harraka, 98 R.I. at 200, 200 A.2d at 597.

III

Applicable Law

A

The Statute

Our review of this case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically touches on the concept of voluntary leaving without good cause; G.L. 1956 § 28-44-17, provides:

> **28-44-17. Voluntary leaving without good cause.** – (a) … For benefit years beginning on or after 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 earnings greater than, or equal to, eight (8) times his or her weekly benefit rate for performing services in employment for one or more employers subject to chapters 42 — 44 of this title.
> ….

Based upon the language of this statute, we see that eligibility for unemployment benefits under § 17 has three prerequisites — *first,* that the claimant *left* his or her prior employment; *second,* that the resignation was *voluntary; and third,* that the claimant left the position *for good cause,* as defined in § 17. Finally, it is well-settled that, to be eligible for unemployment benefits, a worker who leaves her position voluntarily bears the burden of proving that she did so for good cause.

B

The Element of "Good Cause" — the Case Law

In a series of cases during the last half-century our Supreme Court has endeavored to clarify the meaning of "good cause," as that term is used in § 28-44-17. Let us review a sampling of these cases, beginning with *Harraka v. Board of Review of Department of Employment Security,* 98 R.I. 197, 200 A.2d 595 (1964), in which the Court considered the petition of Mr. Joseph Harraka, who, upon his discharge from the armed forces, accepted employment in the chemical industry, but quit after one week, due to a reaction to the chemicals with which he was working. *Harraka,* 98 R.I. at 198-99, 200 A.2d at 596. He inquired — but was told that other work was not available. *Harraka,* 98 R.I. at 199, 200 A.2d at 596-97.

Mr. Harraka applied for benefits under the ex-serviceman's provision, but his claim was denied by the Director; the ruling was affirmed by the Board

of Review, which found that one week was not a sufficient period in which to determine the suitability of the position. *Harraka*, 98 R.I. at 199-200, 200 A.2d at 596-97. Moreover, the Board held that Mr. Harraka's reasons for leaving were personal and not of a "compelling nature;" therefore, his reasons for leaving did not constitute good cause within the meaning of the Employment Security Act. *Id*. The Superior Court affirmed. *Id.*

In considering Mr. Harraka's appeal, the Supreme Court rejected the view that the "good cause" element of § 28-44-17 requires that the claimant's reason for quitting be of a "compelling nature." *Harraka,* 98 R.I. at 201, 200 A.2d at 596. Instead, the Court announced 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.

Harraka, 98 R.I. at 201, 200 A.2d at 597-98 (Emphasis added). Applying this standard, the Court reversed the decision below, finding Mr. Harraka had good cause to leave his employment. *Harraka*, 98 R.I. at 203, 200 A.2d at 598-99.

Four years later, the Court issued a brief opinion addressing good cause in *Cahoone v. Bd. of Rev. of Dep't of Emp't. Sec.,* 104 R.I. 503, 246 A.2d 213 (1968). Claimant Cahoone, a gentleman experienced in the art of building and repairing boats, accepted temporary employment driving a truck for the post office during the Christmas rush; he quit after one day. *Cahoone,* 104 R.I. at 504-05, 246 A.2d at 214. As recounted by the Court, the Board of Review's decision denying benefits to Mr. Cahoone under § 28-44-17 was grounded on its conclusion that *he did not terminate for job unsuitability,* but because he was assigned to drive a truck, and not to deliver mail, which he preferred. *Cahoone*, 104 R.I. at 505-06, 246 A.2d at 214 (Emphasis added). A Superior Court Justice (Weisberger, J.) affirmed the Board's decision, finding that, while reasonable minds might have reached a contrary result, the limitations on his review imposed by § 42-35-15(f) and (g) prevented him from modifying or reversing the administrative decision. *Cahoone*, 104 R.I. at 506-07, 246 A.2d at 214. And the Supreme Court agreed. *Cahoone*, 104 R.I. at 507, 246 A.2d at 214.

In *Murphy v. Fascio,* 115 R.I. 33, 340 A.2d 137 (1975), the Court considered the claim of Ms. Kathleen Murphy, who left her position with a local manufacturer in order to marry and relocate with her new husband to the state of Georgia. *Murphy,* 115 R.I. at 34, 340 A.2d at 138. The Court first decided that

the question (whether resigning to marry and relocate constituted good cause to quit) was one of law — to be resolved by asking whether "it comports with the policies underlying the Employment Security Act." *Murphy,* 115 R.I. at 36, 340 A.2d at 139. Next, the Court reminded us that "… 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, id.*, (citing G.L. 1956 § 28-42-2 (Emphasis added)). The Court found that Ms. Murphy's reasons for quitting did not meet this *beyond-the-employee's-control* standard. *Murphy,* 115 R.I. at 36, 340 A.2d at 139. And even though, in *Harraka*, the Court had rejected the Board's view that good cause had to be a reason of a "compelling nature," the Court disallowed Ms. Murphy's claim, finding that her reason for leaving did not "involve the kind or degree of compulsion which the legislature intended 'good cause' should entail[,]" proclaiming —

> 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 (Emphasis added).[2]

The most recent § 28-44-17 case we shall review is *Rocky Hill School, Inc. v. Department of Labor and Training, Board of Review,* 668 A.2d 1241 (R.I.

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[2] The Court employed the *Murphy* standard in *Powell v. Dep't of Emp. Sec., Bd. of Review,* 477 A.2d 93 (R.I. 1984), in which the Court reversed the Board of Review's decision (affirmed by the District Court) denying benefits to the claimant, a public relations person who resigned rather than issue a misleading press release, fearing it would damage his reputation in his field irretrievably. *Powell*, 477 A.2d 96-97.

1985), a case in which benefits were granted by the Board of Review to a teacher named Geiersbach who quit his position at the Rocky Hill School in order to accompany his wife — who also had been a Rocky Hill teacher — to Colorado, where she had obtained a new and better position. *Rocky Hill,* 668 A.2d at 1241. The District Court affirmed. *Id*. The Supreme Court held that the Board had been correct when it noted a "subtle but significant distinction" between Ms. Murphy's claim and Mr. Geiersbach's — that he was already married. *Rocky Hill,* 668 A.2d at 1243. The Court proclaimed "* * * that public policy requires that families not be discouraged from remaining together." *Rocky Hill,* 668 A.2d at 1244. And so, it found that the Claimant did indeed have good cause to quit. *Id*.

The application of the *Rocky Hill* holding was limited from its inception, because, in *Murphy*, the Court had previously declined to accord good-cause status to an act of quitting and relocating *to get* married. It should be noted that the holding in *Rocky Hill* was subsequently codified within subsection 28-44-17(a)(2). *See* P.L. 2010, ch. 23, art. 22, § 2. In any event, relocation for any other reason has not been held to constitute good cause. Therefore, the District Court has regarded the *Rocky Hill* case as a narrow exception to the general principle that those who relocate for personal reasons are ineligible to receive unemployment benefits.

C

The Element of Good Cause Generally — In Sum

From the foregoing review of our Supreme Court's § 17 literature, we can see that, to establish "good cause," the Claimant's reasons for quitting must not only meet the *Murphy* test of involving a "substantial degree of compulsion," but must also satisfy the *Harraka* test that the work had become in some manner unsuitable for the claimant. It is because of this latter requirement that successful assertions of "good cause" are, with few exceptions, work-related.

IV

Analysis

As required, Mr. Martin's Notice of Appeal, filed with this Court on February 21, 2024, was accompanied by a statement of the grounds upon which he believed the Board erred in denying his claim for benefits. *See Statement of Grounds for Appeal,* dated February 21, 2024.[3] In that document, Mr. Martin made one argument.

Quite simply, in this appeal, Mr. Martin asserts that he did not quit his job.[4] Appellant asserts that while he was out of work due to the car accident, he did everything he could to get back to work. *Statement,* at 1. Mr. Martin stated that he asked for an additional dollar per hour raise because he "really needed" $17.00 per hour. *Statement*, at 2. To this, he received a message back saying "Goodbye, thank you for your time at Slater." *Id*. When he "immediately"

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[3] This document may be found in the electronic record attached to this case under the docket entry "02/21/2024 Administrative Appeal Filed," on pages 2 and 4.

[4] Claimant has not argued that he had good cause to quit because his demand for a raise was denied. It would have been entirely unavailing. Issues regarding current wages, as opposed to a reduction, are universally seen as not constituting good cause to quit. *See* 76 AM. JUR. 2d Unemployment Compensation § 128, *Reduction in Pay* (May 2024 Update) (asserting that while dissatisfaction with current wages does not constitute good cause for quitting, a substantial reduction may be found to be). Consequently, there are few cases on point. Two New York cases involving rejected requests for pay increases must suffice: *In re Burman,* 288 A.D. 2d 539, 539-40, 731 N.Y.S.2d 812, 813 (2001) *and In Matter of Claim of Naughton,* 242 A.D. 2d 812, 661 N.Y.S. 2d 1022, 1022-23 (1997). In each, the rejection of a pay raise was found not to constitute good cause for leaving one's employment.

wrote back saying he would take less money, he was rebuffed — and was told that his termination paperwork was already submitted. *Id.*

Clearly, this is an argument that was not made before the Referee. When asked by the Referee at his hearing, Mr. Martin did not repudiate the statement he had given the Department's adjudicator. *See* discussion *supra* at 4 (quoting *Ref. Hr'g Tr.* at 6-7). Then, he did not deny that he had presented his employer with an ultimatum. *Id.* He stated that he had nothing additional to offer. *Id*. Without doubt, the Referee (and the Board by adopting the Referee's decision as its own) had a right to rely on this testimony. Consequently, the Referee, based on the competent evidence and testimony that had been presented before him, made a finding that Mr. Martin voluntarily left his job.

Accordingly, because this factual argument (*i.e.,* that he did not quit), was not made at the hearing Mr. Martin was afforded, it must be deemed abandoned under the "raise or waive" rule. *State v. Yon,* 161 A.3d 1118, 1128 (R.I. 2017).[5] In sum, I find that the Decision of the Board of Review was supported by legally competent evidence of record.

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[5] Our Supreme Court has not definitively declared that the raise-or-waive rule should be applied in administrative appeals. *East Bay Comty. Dev. Corp. v. Zoning Bd. of Review of the Tn. of Barrington*, 901 A.2d 1136, 1153 (R.I. 2006). But there is certainly dicta to that effect. *See Randall v. Norberg,* 121 R.I. 714, 721, 403 A.2d 240, 244 (1979) (citing § 42-35-15(g)(1)). In any event, the rule has been applied to preclude consideration of issues not raised at the administrative level by the Superior Court. *See Neuschatz v. Reitsma,* 2004 WL 1351325, at *5-*7 (Super.Ct. 5/24/2004) (Court applied the raise-or-waive rule to the

V
Conclusion

For the forgoing reasons, I recommend that this Court find that the decision of the Board of Review is not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. G.L. 1956 § 42-35-15(g)(6). Neither is it contrary to law or made upon unlawful procedure. G.L. 1956 § 42-35-15(g)(3),(4),(5). Substantial rights of Appellant Martin were not prejudiced. I must therefore recommend that the Decision made by the Board of Review be AFFIRMED.

/s/
Joseph P. Ippolito
MAGISTRATE

September 24, 2024

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issues appellant failed to raise before the DEM's hearing officer) *and Mild, Inc. v. Reitsma,* 2004 WL 2821638, at *5 (Superior.Ct. 5/24/2004) (Superior Court applied the raise-or-waive rule to Appellant's failure to object to DEM's Motion for Default before the hearing officer).