received 7/16/10

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Labor and Training

Center General Complex
1511 Pontiac Avenue
Cranston, RI 02920-4407

Telephone: (401) 462-8000
TDD: (401) 462-8006

Donald L. Carcieri
Governor

Sandra M. Powell
Director

July 16, 2010

Gay Gilbert, Administrator
Office of Workforce Security
200 Constitution Avenue NW
Room S-4231
Washington, DC 20210

Dear Ms. Gilbert:

The State of Rhode Island is applying for the remaining two-thirds Unemployment Compensation Modernization incentive payment pursuant to Section 2003(a) of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Our General Assembly recently enacted changes (see attached Public Law 10-023, Article 22 Substitute A as amended, section 1) to our dependents' allowance provisions to raise the minimum allowance to $15 per dependent. In addition, the maximum dependents' allowance is limited to the greater of $50 or 25% of the individual's weekly benefit amount. This provision satisfies the federal provision that allows the state to cap the total allowance paid to an individual for dependents at $50 per week of unemployment or 50% of the individual's weekly benefit amount, whichever is less. Our state law further provides for a pro rata reduction in the dependents' allowance paid to an individual who has partial earnings at the same rate of reduction that the individual's partial weekly benefit rate is of their full weekly benefit rate. These changes take effect on January 1, 2011.

Our General Assembly also recently passed legislation (see attached Public Law 10-023, Article 22 Substitute A as amended, section 2) providing that an individual will not be disqualified from receiving unemployment benefits for separating from work for compelling family reasons as defined in Section 903(f)(3)(B) of the Social Security Act. Our state law (see attached section 28-44-17.1) already includes a provision that allows an individual who voluntarily leaves work due to circumstances directly resulting from domestic abuse to be eligible for unemployment benefits. The definitions in our law are broadly defined and do not result in the narrowing of access to unemployment benefits for victims of domestic abuse or sexual assault. These changes take effect January 1, 2011.

We have issued a Policy Memorandum (see attached Memorandum 10-PROC-CAG-1254) to staff on "Voluntary Quit or Discharge due to Illness/Disability of Immediate Family Member" to clarify the medical documentation that will be accepted to verify proof of illness or disability of an immediate family member. Documentation of the following information will be requested:

1. The name of the family member who is or is ill or disabled;
2. The claimant's relationship to the individual who was or is ill or disabled;
3. A signed statement, which documents the illness or disabled of a family member; this statement may be provided by a physician, home health care provider, nurse practitioner, or a sworn statement from the individual who is ill/injured or another

An Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities.

4. Family member. If the ill person is receiving Social Security Disability, any documentation establishing that the family member is ill or disabled is acceptable.
5. The starting date that the ill/injured or disabled family member required care by another individual; and
6. That the required care was ongoing or, if ended, the date that the need for care by the claimant ended. This information would only be relevant to the issue of the claimant being able and available for work while requesting benefits, and would not have an impact on the determination of the separation issue.

Section 28-44-18 (see attached) of our state law, provides that an individual who has been discharged for proved misconduct connected with his or her work shall become ineligible for waiting period credit or benefits. This section defines misconduct 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, provided that such violation is not shown to be as a result of the employee's incompetence." This regulation does not disqualify individuals who are discharged for absences due to compelling family reasons, or for absences resulting from domestic abuse, from unemployment benefits because misconduct attributable to compelling family reasons/domestic abuse does not constitute deliberate conduct in willful disregard of the employer's interest. In addition, our state law (see attached section 28-42-73) also requires that these provisions "shall be construed liberally in aid of their declared purpose, which declared purpose is to lighten the burden that now falls on the unemployed worker and his or her family." Based on this provision, RI Courts have recognized that a liberal interpretation shall be utilized in construing and applying the Employment Security Act.

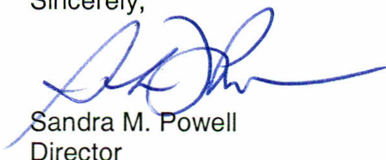
Our General Assembly also recently passed legislation (see attached Public Law 10-023, Article 22 Substitute A as amended, section 2) providing that an individual will not be disqualified from receiving unemployment benefits for voluntarily leaving work with an employer to accompany a spouse to another location. Our state law provides that good cause includes; voluntarily leaving work with an employer to accompany, join or follow his or her spouse to a place, due to a change in location of the spouse's employment, from which it is impractical for such individual to commute. These changes take effective January 1, 2011. Rhode Island has also followed a precedent setting court decision, Rocky Hill v. State Department of Employment and Training, Board of Review (see attached) to allow individuals who separate from employment to follow their spouse. The legislation, court decision, and the liberal interpretation of the law, require our agency to find that an individual who quits work to accompany a spouse to another location had good cause to leave employment.

I hereby certify that this application is submitted in good faith with the intention of providing benefits to unemployed workers who meet the eligibility provisions on which the application is based. I further certify that the above cited laws are permanent and not subject to discontinuation under any circumstances other than repeal by the legislature.

Rhode Island intends to use these funds to meet the increased costs of providing unemployment benefits in accordance with the recently enacted changes and to improve the overall solvency of its Employment Security Fund.

If you have any questions on this application, please feel free to contact me or Raymond Filippone, Assistant Director of Income Support, at 401-462-8415 or rfilippone@dlt.ri.gov.

Sincerely,



Sandra M. Powell
Director

SMP/raf/cg

Cc: H. O'Brien

Memorandum

10-PROC-CAG- 1254

To: **Administrative Staff, UI Managers and Staff**

From: **Raymond Filippone, Assistant Director, Income Support**

Date: July 6, 2010

Subject: **Voluntary Quit or Discharge due to Illness/Disability of Immediate Family Member and Discharge as a result of absenteeism due to Domestic Violence**

There have been recent changes to the Rhode General Laws, Section 28-44-17, Voluntary Leaving without good cause. This legislative change relates specifically to the exceptions to the disqualifications for leaving work. Effective January 1, 2011, leaving work for "good cause" includes the following:

> **(3) the need to take care for a member of the individual's immediate family due to illness or disability as defined by the Secretary of Labor;** provided that the individual shall not be eligible for waiting period credit or benefits until he or she is able to work and is available for work. For the purposes of this provision, the following terms apply:
>
> i. "immediate family member" means a spouse, parents, mother-in-law, father-in-law, and children under the age of eighteen (18);
> ii. "illness" means a verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant leave, paid or otherwise; and
> iii. "disability" means all types of verified disabilities, including mental and physical disabilities, permanent and temporary disabilities, and partial and total disabilities.

Illness or disability means a verified illness or disability which necessitates the care of the ill person for a period of time longer than the employer is willing to grant leave (paid or otherwise).

To make a determination regarding leaving work to care for a family member, adjudication staff should request the following information:

- The name of the family member who was or is ill or disabled;
- The claimant's ~~name and~~ relationship to the individual who was or is ill or disabled;
- A signed statement from one of the following approved sources which documents the illness, injury, or disability of the family member. This statement may be provided by:
    1. A physician;
    2. A home health care provider;
    3. A nurse practitioner or other qualified health care professional;
    4. A sworn statement from the individual who is ill/injured or another family member; or
    5. Documentation from Social Security Disability that establishes the family member is ill or disabled.
- The starting date that the ill/injured or disabled or disabled family member required care by another individual; and
- That the required care was ongoing or, if ended, the date that the need for care by the claimant ended. This information would only be relevant to the issue of the claimant being able and available for work while requesting benefits and would not have an impact on the determination on the separation issue.

The statutory changes made to 28-44-17 were necessary for Rhode Island to be certified by the US Department of Labor (USDOL) for incentive payments under the American Recovery and Reinvestment Act (ARRA). In addition, ARRA requires that "an individual not be disqualified from regular unemployment compensation for **separating** from employment if that **separation** is for any compelling family reasons." Therefore, under RI General Laws 28-44-18, Discharge for Misconduct, an employee who is discharged because they were required to care for an ill/injured or disabled family member would not be disqualified from receipt of benefits. This also includes any individual who is absent due to a domestic violence issue, or whose absence is due to a fear of domestic violence to their family or personal self.

Application of misconduct standard to separating due to compelling family reasons/domestic abuse:

When a discharge occurs as a result of something that the claimant did or neglected to do because of compelling family reasons, it should not be considered misconduct under 28-44-18 since it is presumed to be neither a deliberate violation of company policy, nor a negligent act.

- For example, if an employer discharges an individual when the individual has informed the employer of expected absences from work to care for an ill child, the individual must be considered to have separated from work due to compelling family reasons, and, misconduct should not be found. Likewise, if an individual is found to have been absent due to domestic violence, or a fear of domestic violence to a family member or personal self, the individual is considered to be separated for compelling family reasons and should not be denied benefits as misconduct would not be found in connection with the work under 28-44-18.
- Be aware that there are circumstances where misconduct may exist despite the presence of what otherwise would be compelling family reasons. An example of this would be a situation in which an employer discharges an individual for excessive absenteeism and only after the separation does the individual indicate the absences were to care for a member of his/her immediate family. However, this can only be determined through your investigation.
  - You must look at the circumstances that occurred at the point of separation and explore the final incident that caused the separation. Was the claimant unable to contact the employer to notify them of the absence because a family member was in the hospital or the claimant was in a shelter, or in hiding due to a threat of or occurrence of domestic abuse? If so, was the claimant's ability to contact the employer impeded by this incident? If the claimant's ability to contact the employer is impeded, you should not find misconduct in connection with the work. For example: An individual did not make contact for several days to notify the employer as they were in shelter. In this scenario, you may reasonably rule that the claimant was discharged due to absenteeism connected to a compelling family reason and no misconduct can be found.
  - If the individual is discharged due to chronic absenteeism and only after the separation does the claimant notify the employer that his/her prior absences were due to compelling family reasons, a finding of misconduct may be found. The failure of the employee to notify the employer of the reason for the absences was not caused by the need to care for the family member, but was due to action or inaction on the employee's part in failing to notify the employer that a compelling family issue was present. However, if it is found that the claimant did not notify the employer of the reason for the absences as it was due to domestic abuse issues that the claimant did not want to be public, this should be found as an absence due to compelling family issues/domestic abuse and no finding of misconduct should occur.

The general rule is if the need to care for an ill/injured or disabled immediate family member or a domestic abuse issue was the reason(s) the employee did or did not do something that then led to discharge, the separation is not due to misconduct.

If you have any questions, please see your manager.

Chapter 023
2010 -- H 7397 SUBSTITUTE A AS AMENDED
Enacted 06/12/10

A N A C T
MAKING APPROPRIATIONS FOR THE SUPPORT OF THE STATE FOR THE FISCAL YEAR ENDING JUNE 30, 2011

Introduced By: Representative Robert A. Watson
Date Introduced: February 04, 2010

It is enacted by the General Assembly as follows:

ARTICLE 1 RELATING TO MAKING APPROPRIATIONS IN SUPPORT OF FY 2011
ARTICLE 2 RELATING TO BORROWING IN ANTICIPATION OF RECEIPTS FROM TAXES
ARTICLE 3 RELATING TO SUPPLEMENTAL SECURITY INCOME PAYMENTS
ARTICLE 4 RELATING TO BUDGET RESERVE FUND
ARTICLE 5 RELATING TO CAPITAL DEVELOPMENT PROGRAM
ARTICLE 6 RELATING TO DEBT MANAGEMENT ACT JOINT RESOLUTIONS
ARTICLE 7 RELATING TO GOVERNMENT RESTRUCTURING
ARTICLE 8 RELATING TO RESTRICTED RECEIPT ACCOUNTS
ARTICLE 9 RELATING TO REVENUES
ARTICLE 10 RELATING TO RHODE ISLAND RESOURCE RECOVERY CORPORATION
ARTICLE 11 RELATING TO MAKING REVISED APPROPRIATIONS IN SUPPORT OF FY 2010
ARTICLE 12 RELATING TO PUBLIC UTILITIES COMMISSION CATV ASSESSMENT
ARTICLE 13 RELATING TO EDUCATION AID
ARTICLE 14 RELATING TO MENTAL HEALTH LAW
ARTICLE 15 RELATING TO HOSPITAL UNCOMPENSATED CARE
ARTICLE 16 RELATING TO PENSION REFORM
ARTICLE 17 RELATING TO GENERAL PUBLIC ASSISTANCE – HARDSHIP CONTINGENCY FUND
ARTICLE 18 RELATING TO TREATMENT ALTERNATIVES TO STREET CRIME
ARTICLE 19 RELATING TO CHILDREN'S HEALTH ACCOUNT
ARTICLE 20 RELATING TO MEDICAL ASSISTANCE
ARTICLE 21 RELATING TO MEDICAID REFORM
ARTICLE 22 RELATING TO UNEMPLOYMENT INSURANCE
ARTICLE 23 RELATING TO MOTOR VEHICLE REIMBURSEMENTS
ARTICLE 24 RELATING TO EFFECTIVE DATE

=======
LC01130/SUB A
=======

ARTICLE 22 SUBSTITUTE A AS AMENDED

RELATING TO UNEMPLOYMENT INSURANCE

SECTION 1. Section 28-44-6 of the General Laws in Chapter 28-44 entitled "Employment Security – Benefits" is hereby amended to read as follows:

28-44-6. Weekly benefits for total unemployment – Year established – Dependents' allowance. -- (a) The benefit rate payable under this chapter to any eligible individual with respect to any week of his or her total unemployment, when that week occurs within a benefit year, shall be, for benefit years beginning on or after October 1, 1989, four and sixty-two hundredths percent (4.62%) of the wages paid to the individual in that calendar quarter of the base period in which the individual's wages were highest;

(2) Provided, that the benefit rate shall not be more than sixty-seven percent (67%) of the average weekly wage paid to individuals in employment covered by the Employment Security Act for the preceding calendar year ending December 31. If the maximum weekly benefit rate is not an exact multiple of one dollar ($1.00), then the rate shall be rounded to the next lower multiple of one dollar ($1.00).

(3) The average weekly wage of individuals in covered employment shall be computed as follows: On or before May 31 of each year, the total annual wages paid to individuals in covered employment for the preceding calendar year by all employers shall be divided by the monthly average number of individuals in covered employment during that preceding calendar year, and the quotient shall be divided by fifty-two (52). That weekly benefit rates shall be effective throughout benefit years beginning on or after July 1 of that year and prior to July 1, of the succeeding calendar year.

(4) The benefit rate of any individual, if not an exact multiple of one dollar ($1.00), shall be rounded to the next lower multiple of one dollar ($1.00).

(b) An individual to whom benefits for total or partial unemployment are payable under this chapter with respect to any week shall, in addition to those benefits, be paid with respect to each week a dependents' allowance of ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) or five percent (5%) of the individual's benefit rate whichever is greater for each of that individual's children, including adopted and stepchildren, or that individual's court appointed wards who, at the beginning of the individual's benefit year, is under eighteen (18) years of age, and who is at that time in fact dependent on that individual, including individuals who have been appointed the legal guardian of such child by the appropriate court. The total dependents' allowance paid to any individual shall not exceed the greater of fifty dollars ($50) or twenty-five percent (25%) of the individual's benefit rate. Notwithstanding the above, the total amount of the dependents' allowance paid to individuals receiving partial unemployment benefits for any week shall be based on the percentage that their partial weekly benefit rate is compared to their full weekly benefit rate.

(2) The dependent's allowance shall also be paid to the individual for any child, including an adopted child or a stepchild, eighteen (18) years of age or over, incapable of earning any wages because of mental or physical incapacity, and who is dependent on that individual in fact at the beginning of the individual's benefit year.

(3) In no instance shall the number of dependents for which an individual may receive dependents' allowances exceed five (5) in total.

(4) The weekly total of dependents' allowances payable to any individual, if not an exact multiple of one dollar ($1.00), shall be rounded to the next lower multiple of one dollar ($1.00).

(5) The number of an individual's dependents, and the fact of their dependency, shall be determined as of the beginning of that individual's benefit year. Only one individual shall be entitled to a dependent's allowance for the same dependent with respect to any week. As to two (2) or more parties making claim for an allowance for the same dependent for the same week, the benefit shall be provided to the party who has actual custody of the dependent or in the case of joint custody, to the party who has physical possession of the dependent.

(6) Each individual who claims a dependent's allowance shall establish his or her claim to it to the satisfaction of the director under procedures established by the director.

(7) This subsection shall be effective for all benefit years beginning on or after ~~July 1, 1985~~ January 1, 2011.

SECTION 2. Section 28-44-17 of the General Laws in Chapter 28-44 entitled "Employment Security – Benefits" is hereby amended to read as follows:

28-44-17. Voluntary leaving without good cause. -- (a) 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 with good cause" shall include:

(1) sexual harassment against members of either sex;

(2) voluntarily leaving work with an employer to accompany, join or follow his or her spouse to a place, due to a change in location of the spouse's employment, from which it is impractical for such individual to commute; and

(3) the need to take care for a member of the individual's immediate family due to illness or disability as defined by the Secretary of Labor; provided that the individual shall not be eligible for waiting period credit or benefits until he or she is able to work and is available for work. For the purposes of this provision, the following terms apply:

(i) "immediate family member" means a spouse, parents, mother-in-law, father-in-law and children under the age of eighteen (18);

(ii) "illness" means a verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant leave, paid or otherwise; and

(iii) "disability" means all types of verified disabilities, including mental and physical disabilities, permanent and temporary disabilities, and partial and total disabilities.

(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 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; 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.

SECTION 5. Sections 1 and 2 of this Article shall take effect on January 1, 2011, and Sections 3 and 4 shall take effect on July 1, 2010.

TITLE 28
Labor and Labor Relations

CHAPTER 28-44
Employment Security – Benefits

SECTION 28-44-17.1

§ 28-44-17.1 Voluntary leaving as protection from domestic abuse. – (a) An individual shall be eligible for waiting period credit or benefits if that individual voluntarily leaves work due to circumstances directly resulting from domestic abuse, as defined in chapter 8.1 of title 8, and the individual:

(1) Reasonably fears future domestic abuse at or on route to or from the individual's place of employment;

(2) Wishes to relocate to another geographic area in order to avoid future domestic abuse against the individual or the individual's family; or

(3) Reasonably believes that leaving work is necessary for the future safety of the individual or the individual's family.

(b) When determining whether an individual has experienced domestic abuse for the purpose of employment benefits, the department of labor and training shall require that the individual provide documentation of domestic abuse, including, but not limited to, police or court records, or other documentation of domestic abuse from a shelter worker, attorney, member of the clergy, or medical or other professional from whom the individual has sought assistance.

(c) All documentation of evidence shall be kept confidential unless consent for disclosure is given by the individual.

TITLE 28
Labor and Labor Relations

CHAPTER 28-44
Employment Security – Benefits

SECTION 28-44-18

§ 28-44-18 Discharge for misconduct. – An individual who has been discharged for proved misconduct connected with his or her work shall become ineligible for waiting period credit or benefits for the week in which that discharge occurred and until he or she establishes to the satisfaction of the director that he or she has, subsequent to that discharge, had at least eight (8) weeks of work, and in each of that 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. Any individual who is required to leave his or her work pursuant to a plan, system, or program, public or private, providing for retirement, and who is otherwise eligible, shall under no circumstances be deemed to have been discharged for misconduct. If an individual is discharged and a complaint is issued by the regional office of the National Labor Relations board or the state labor relations board that an unfair labor practice has occurred in relation to the discharge, the individual shall be entitled to benefits if otherwise eligible. For the purposes of this section, "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, provided that such violation is not shown to be as a result of the employee's incompetence. Notwithstanding any other provisions of chapters 42 – 44 of this title, this section shall be construed in a manner that is fair and reasonable to both the employer and the employed worker.

TITLE 28
Labor and Labor Relations

CHAPTER 28-42
Employment Security – General Provisions

SECTION 28-42-73

§ 28-42-73 Construction of provisions. – Chapters 42 – 44 of this title shall be construed liberally in aid of their declared purpose, which declared purpose is to lighten the burden that now falls on the unemployed worker and his or her family.

V.Q - To follow Spouse

ROCKY HILL SCHOOL, INC. V. STATE DEPT. OF EMPLOYMENT AND TRAINING, BD. OF REVIEW
668 A.2d 1241, 106 Ed. Law Rep. 232 (R.I. 1995)

| Headnotes • Opinion • Cases Citing This Case |

ROCKY HILL SCHOOL, INC.

v.

STATE OF RHODE ISLAND DEPARTMENT OF EMPLOYMENT AND TRAINING, BOARD OF REVIEW.

No. 94-100-M.P.

Supreme Court of Rhode Island.

Dec. 7, 1995.

SYNOPSIS

Employer sought judicial review of Department of Employment and Training Board of Review's decision to grant employment security benefits to former teacher who voluntarily left his position to accompany his wife to another state. The District Court, Sixth Division, DeRobbio, J., affirmed, and employer petitioned for certiorari. The Supreme Court, Weisberger, C.J., held that teacher voluntarily terminated his employment with good cause, entitling him to employment security benefits.

Affirmed.

Lederberg, J., filed dissenting opinion.

HEADNOTES

1. SOCIAL SECURITY AND PUBLIC WELFARE 🔑409

356A ----
356AVIII Unemployment Compensation
356AVIII(D) Right to Compensation
356AVIII(D)3 Voluntary Abandonment of Employment
356Ak409 Removal to other areas.

R.I. 1995.

Teacher voluntarily terminated his employment with good cause in choosing to accompany his spouse to another state for relocation purposes, entitling him to employment security benefits. Gen.Laws 1956, § 28-44-17.

2. SOCIAL SECURITY AND PUBLIC WELFARE 🔑614

Copyright © West Group 1998. No claim to original U.S. Govt. works.

356A ----
356AVIII Unemployment Compensation
356AVIII(G) Proceedings
356AVIII(G)5 Hearing
356Ak614 Findings and conclusions.

R.I. 1995.

Question of what circumstances may be good cause for leaving employment for employment security benefits is mixed question of law and fact. Gen.Laws 1956, § 28-44-17.

3. SOCIAL SECURITY AND PUBLIC WELFARE ⚿614

356A ----
356AVIII Unemployment Compensation
356AVIII(G) Proceedings
356AVIII(G)5 Hearing
356Ak614 Findings and conclusions.

R.I. 1995.

When facts found by Board of Review on employment security benefits claim lead only to one reasonable conclusion, determination of "good cause" for leaving employment will be made as matter of law. Gen.Laws 1956, § 28-44-17.

4. SOCIAL SECURITY AND PUBLIC WELFARE ⚿280

356A ----
356AVIII Unemployment Compensation
356AVIII(A) In General
356Ak273 Construction and Operation of Statutes
356Ak280 Liberal construction or construction in favor of compensation.

R.I. 1995.

Public interest demands sufficiently liberal interpretation of employment security statute to permit benefits to employees who in good faith voluntarily leave their employment because continued exposure to work conditions would cause or aggravate nervous reactions or otherwise produce psychological trauma. Gen.Laws 1956, § 28-44-17.

COUNSEL

[*1241] John Earle, Warwick, for Plaintiff.

Valentino D. Lombardi, William G. Brody, Providence, for Defendant.

OPINION

OPINION

Copyright © West Group 1998. No claim to original U.S. Govt. works.

WEISBERGER, Chief Justice.

This case comes before us on a petition for certiorari filed by Rocky Hill School, Inc. (petitioner), which seeks review of a judgment of the Rhode Island District Court, Sixth Division, affirming the decision of the Board of Review of the State of Rhode Island Department of Employment and Training that had determined that Kenneth N. Geiersbach (claimant), a former employee of the petitioner, had voluntarily left his position with good cause and was entitled to employment security benefits. We deny the petition for certiorari and affirm the judgment of the District Court. The facts of the case insofar as are pertinent to this petition are as follows.

On June 1, 1992, claimant, a teacher employed by petitioner for thirteen years, voluntarily terminated his employment with petitioner in order to be with his spouse, who had also been employed at Rocky Hill School but had secured another position at a school in Colorado. Her contract in Colorado commenced in July 1992. Subsequently, claimant filed for employment security benefits pursuant to G.L.1956 (1986 Reenactment) chapter 44 of title 28. The applicable provision of § 28-44-17 reads as follows:

"On and after July 2, 1978, an individual who leaves work voluntarily without good cause shall be ineligible for waiting period credit or benefits until he establishes to **[*1242]** the satisfaction of the director that he has subsequent to that leaving had at least four weeks of work, and in each of those four weeks has had earnings of at least twenty (20) times the minimum hourly wage as defined in chapter 42 of this title." (FN1)

On November 9, 1992, the director of the Department of Employment and Training (DET) issued a notice of decision granting claimant employment security benefits. The director decided that claimant, who was requesting benefits effective as of October 4, 1992, had left his job with petitioner on June 1, 1992, to relocate to Colorado with his spouse and that this leaving was "considered to be with good cause under the law" and therefore "benefits are allowed if the claimant is otherwise eligible."

The petitioner filed an employer appeal, and a hearing was held before a referee of DET's Board of Review (board) on January 6, 1993. The referee held that claimant was entitled to receive employment security benefits because he voluntarily terminated his position with petitioner with good cause pursuant to § 28-44-17. Thereafter, the referee's decision was appealed by petitioner, and the matter was heard before the board on January 28, 1993. The board, after having determined that the decision of the referee was a proper adjudication of the facts of the case and the applicable law, upheld the referee's decision.

On February 20, 1993, petitioner filed a complaint for judicial review in Sixth Division District Court. The case was submitted to a District Court master, and on July 23, 1993, he recommended that the decision of the board affirming the referee's award be reversed. The trial justice disagreed and in a decision dated February 3, 1994, found that the decision of the board was not affected by error of law and thereby entered judgment on behalf of claimant. On February 22, 1994, petitioner filed a petition for a writ of certiorari, which was granted by this court on May 5, 1994.

[1] The sole issue before this court is the question of whether an employee who voluntarily terminates his employment to accompany his spouse to another state for relocation purposes has terminated for good cause under § 28-44-17, thereby entitling him to employment security benefits.

Copyright © West Group 1998. No claim to original U.S. Govt. works.

The petitioner argues that the District Court erred in affirming the board's decision that claimant voluntarily terminated his employment with good cause. The petitioner contends that no evidence has been presented that demonstrates that the advent of claimant's unemployment was attributable to a substantial degree of compulsion. The petitioner also asserts that the instant case does not adhere to the public policies articulated in G.L.1956 (1986 Reenactment) § 28-42-2. It alleges that claimant's termination of his employment was not beyond his control because he was fully satisfied with his employment at the school. The school further contends that claimant's departure was not attributable in any way to any fault or negative condition that the school itself caused or permitted.

The board contends that the District Court ruled correctly in affirming its decision that claimant was eligible for unemployment compensation benefits pursuant to § 28-44-17. The board argues that there is a subtle but significant difference between the situation in which an employee voluntarily terminates his/her employment to marry and relocate and the situation in which an employee voluntarily terminates a position to follow a spouse to another state or locality. It asserts that the latter situation is termination with good cause because of the importance of unity to an already existing family.

The law applicable to the issue before this court is found within § 28-44-17 of the Employment Security Act. This court has liberally construed the *good-cause provision* in the past in accordance with the statutory command of § 28-42-73. This statute reads as follows: "Chapters 42-44, inclusive, of this title shall be construed liberally in aid of their declared purpose which declared purpose**[*1243]** is to lighten the burden which now falls on the unemployed worker and his family."

[2] [3] "The question of what circumstances may constitute good cause for leaving employment is 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). However, we have also stated that 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. *Id.* In the case at bar, we are of the opinion that the facts as found could have led to more than one reasonable conclusion. We cannot say that the board committed an error of law or was clearly wrong in resolving the mixed question of law and fact in concluding as it did that claimant had left his employment voluntarily with good cause. Therefore, the trial justice was correct under the standards set forth within G.L.1956 (1993 Reenactment) § 42-35-15(g)(4), in upholding the decision of the board. *See Powell v. Department of Employment Security, Board of Review,* 477 A.2d 93, 95 (R.I.1984) (review must conform to the standards of § 42-35-15).

[4] Section 28-44-17 states, in part, that an individual who leaves work voluntarily without good cause shall be ineligible for waiting-period credit or employment security benefits. Therefore, one may assume that an individual who leaves work voluntarily with good cause is eligible for waiting-period credit or unemployment compensation benefits. Since our decision in *Harraka v. Board of Review of Department of Employment Security,* 98 R.I. 197, 200 A.2d 595 (1964), we have consistently held that a liberal reading of good cause would be adopted by this court. We noted in *Harraka* that "public interest demands of [the] 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. *Id.* at 201, 200 A.2d at 597-98. We further noted in *Powell,* 477 A.2d at 96, that "[t]he Legislature, in enacting

Copyright © West Group 1998. No claim to original U.S. Govt. works.

the Employment Security Act, expressed a policy of liberal construction for the declared purpose of the act, that is, to lighten the burden on the unemployed worker and his or her family. * * * This court has complied with this mandate of broad, liberal construction."

The petitioner contends that the District Court erred in affirming the board's decision to grant claimant his benefits. In support of its argument, it relies on *Murphy v. Fascio,* 115 R.I. 33, 340 A.2d 137 (1975). In that case, we held "that leaving one's employment to marry and to reside with one's intended spouse in another jurisdiction does not involve the kind or degree of compulsion which the Legislature intended" just cause to comprehend. 115 R.I. at 37, 340 A.2d at 139. The petitioner argues that the factual distinction is not so significant between *Murphy* and the instant case from either a strictly legal or a public-policy point of view so as to warrant a departure from the holding in *Murphy.* In support of this argument, petitioner contends that no evidence has been presented in this case that would demonstrate that the advent of claimant's unemployment involved a substantial degree of compulsion. It therefore concludes that a voluntary termination of employment in order to accompany a spouse to another state does not constitute good cause as required by the Employment Security Act.

The petitioner's reliance on *Murphy* as authority in the present case is misplaced. In *Murphy* the former employee terminated her position in order to marry and relocate to another state, *Murphy,* 115 R.I. at 34, 340 A.2d at 138, and we held this to be a termination without good cause. *Murphy,* 115 R.I. at 37, 340 A.2d at 139. The board contends that the District Court ruled correctly in affirming its decision to grant claimant employment security benefits. The board is correct in arguing that there is a subtle but significant distinction between the facts in the present case and the facts in *Murphy.* In the instant case, the employee terminated his employment with petitioner to follow his spouse to Colorado whereas in *Murphy* the employee terminated her employment in order to marry and relocate. The board argues not only that claimant is **[*1244]** entitled to benefits because of the importance of unity to an already existing family but also that public policy requires that families not be discouraged from remaining together. We agree.

In addition to *Murphy,* this court has had occasion in the past to interpret § 28-44-17 and the public policy associated with it. In *Harraka* we determined that an employee who quit his job in a chemical company after discovering that he had a particular sensitivity to the chemicals had good cause to terminate. *Harraka,* 98 R.I. at 203, 200 A.2d at 598. In arriving at this conclusion, we rejected an interpretation of good cause that would have required an element of compulsion. *Id.* at 201, 200 A.2d at 597. We stated that to view the statutory language as requiring an employee to prove that he terminated his employment under compulsion is to make any voluntary termination a forfeiture of eligibility for benefits under the act. *Id.* Once again, we reject an interpretation of good cause that would require an element of compulsion.

In *Powell* we held that an employee who resigned when asked to prepare a false and misleading press release had good cause to leave his position. 477 A.2d at 97. We went on to state that in the determination of what circumstances constitute good cause, the focus need not be on the degree of compulsion involved but rather on the policies articulated in the Employment Security Act. *Id.* at 96 (citing *Murphy,* 115 R.I. at 36, 340 A.2d at 139). The petitioner's public-policy argument centers on § 28-42-2 of the act. This section of the Employment Security Act "indicates that unemployment benefits were intended to alleviate the economic insecurity arising from termination of employment the

Copyright © West Group 1998. No claim to original U.S. Govt. works.

prevention of which was effectively beyond the employee's control." *Murphy,* 115 R.I. at 36, 340 A.2d at 139. The petitioner contends that the claimant's benefit claim does not adhere to the policies articulated in this statute and alleges that it is undisputed that the claimant was fully satisfied with his employment at the school and that his voluntary departure was not attributable in any way to any negative condition that the school caused or permitted. The petitioner argues that the claimant terminated his employment without good cause as his claim does not comply with the statute. We disagree and conclude that leaving one's employment to follow a spouse to another jurisdiction does constitute good cause within the definition of that term as set forth in *Harraka supra.*

For the reasons stated, the petition for certiorari is hereby denied and the writ heretofore issued is quashed. The judgment of the District Court upholding the decision of the board granting the claimant employment security benefits is affirmed, and the papers in the case are remanded to that court with our decision endorsed thereon.

MURRAY, BOURCIER and SHEA, JJ., concur.

LEDERBERG, J., dissents.

LEDERBERG, Justice, dissenting.

The holding of the majority places upon employers an obligation to subsidize the personal choices of employees--choices over which employers have no control and over which employees have absolute control. In my opinion, because such an obligation on employers can shift the burdens assigned to parties, the task of making such a determination falls to the Legislature, not to the courts. Furthermore, the majority misapplies precedent and misinterprets the intendment of the law.

General Laws 1956 (1986 Reenactment) § 28-44-17 directs that "an individual who leaves work voluntarily without good cause shall be ineligible for waiting period credit or benefits" under the Employment Security Act. In its interpretation of good cause, this court has stated:

"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* **[*1245]** *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.*" (Emphasis added.) *Harraka v. Board of Review of Department of Employment Security,* 98 R.I. 197, 201, 200 A.2d 595, 597-98 (1964).

In *Harraka,* this court held that the claimant had satisfied the good-cause requirement of § 28-44-17 in terminating his employment because of legitimate health concerns resulting from chemicals in the environment in which he worked. *Id.* at 203, 200 A.2d at 598. Similarly, in *Powell v. Department of Employment Security, Board of Review,* 477 A.2d 93 (R.I.1984), good cause was found when a claimant chose to resign rather than to prepare a dishonest press release that could have damaged his credibility in the professional community.

Copyright © West Group 1998. No claim to original U.S. Govt. works.

In *Harraka,* and *Powell,* this court found that good cause existed in circumstances in which *a condition of employment* created a real and legitimate reason for voluntary, unilateral termination of employment by an employee. These holdings provide stark contrast to the cases in which this court has found no good cause. In *Cahoone v. Board of Review of the Department of Employment Security,* 104 R.I. 503, 505, 246 A.2d 213, 214 (1968), this court held that a petitioner had not shown good cause when he terminated his employment "*not by reason of job unsuitability or an inability to perform the assigned work,* but because his assignment was to drive a truck, rather than to deliver mail, and because he was disgruntled when at the end of a long working day he found his automobile blocked." (Emphasis added.) Most notable among this court's decisions under § 28-44-17, for purposes of the instant case, is the holding in *Murphy v. Fascio,* 115 R.I. 33, 340 A.2d 137 (1975), in which this court held that voluntarily leaving one's employment to marry and reside with one's spouse in another jurisdiction is not good cause within the meaning of § 28-44-17.

The only distinction cited by the board and the majority between *Murphy* and the instant case is that in *Murphy* an unwed woman left her employment in order to marry whereas this case involves a married man leaving his employment for the sake of his wife's career. No reference was made to, and the record does not reflect, any "reason of job unsuitability" or "inability to perform the assigned work" that would justify requiring petitioner to subsidize claimant's relocation. Nor is there evidence, as in *Powell,* that petitioner in any way acted so as to justify termination by claimant of his employment.

The provision of benefits to employees who voluntarily, but with good cause, terminate the employment relationship is "intended to alleviate the economic insecurity arising from termination of employment the prevention of which was *effectively beyond the employee's control.*" (Emphasis added.) *Murphy,* 115 R.I. at 36, 340 A.2d at 139. In the instant matter, claimant may have had a good *reason* to terminate his employment, but whether that circumstance translates into *good cause* for providing benefits under the Employment Security Act is an interpretation best resolved by a legislative pronouncement.

My dissent in this case is not intended to repudiate the majority's laudable desire to protect the institution of marriage. But it is the Legislature's prerogative to decree that the preservation of marriage requires employers to subsidize the private, voluntary choices that employees make in order to accommodate their marital relationship. The Legislature, however, has not done so, and this court should not assume the role of designing an unemployment-compensation program more expansive than that provided by law and precedent.

One need look no further than the instant case to illustrate the anomalous results that will follow from the majority's holding. The petitioner is a small employer that hired the claimant and his wife, both of whom the petitioner was willing to continue in its employ. Thus, an employer supporting the very institution that the majority seeks to preserve now finds itself in the position of financing the professional-advancement opportunities of employees it treated with respect and fairness.

[*1246] For the reasons stated above, I would sustain the petitioner's appeal.

FN1. This statute was amended in 1993, the year after claimant filed for employment

Copyright © West Group 1998. No claim to original U.S. Govt. works.

security benefits, but the essential language quoted above remains the same.

Copyright © West Group 1998. No claim to original U.S. Govt. works.