

PROVIDENCE, Sc.
SIXTH DIVISION

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
DISTRICT COURT

Ruby Gil

v.

Dept. of Labor & Training,
Board of Review

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:
:

A.A. No. 11 - 001

ORDER

This matter is before the Court pursuant to § 8-8-1 of the General Laws for review of the Findings & Recommendations of the Magistrate.

After a de novo review of the record, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto. It is, therefore,

ORDERED, ADJUDGED AND DECREED

that the Findings & Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the instant complaint is DISMISSED for lateness.

Entered as an Order of this Court at Providence on this 25th day of MARCH, 2011.

By Order:



Melvin J. Enright
Melvin Enright
Acting Chief Clerk

Enter:



Jeanne E. LaFazia
Chief Judge

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

Ruby Gil :
 :
v. : A.A. No. 11 - 001
 :
Department of Labor and Training, :
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Ms. Ruby Gil urges that the Board of Review of the Department of Labor & Training erred when it affirmed four identical decisions of a Board referee dismissing claimant's appeals from four separate decisions of the Director of the Department of Labor & Training adverse to her efforts to receive unemployment benefits; the referee had dismissed the appeals because they were filed late. Jurisdiction for the judicial review of the decisions of the Board of Review is vested in the District Court by Gen. Laws 1956 § 28-44-52. This matter has been referred to me for the making of findings and recommendations pursuant to General Laws 1956 § 8-8-8.1.

Of course, because Ms. Gil's appeal was dismissed for lateness, neither the referee nor the Board ever addressed the merits of her appeal. However,

this Court will not be able to decide whether the Board's decision to uphold the dismissal of Ms. Gil's case should be upheld. Unfortunately, because claimant also filed the instant appeal — to this Court — after the applicable appeal period had expired, I must recommend her appeal be dismissed for lateness.

FACTS & TRAVEL OF THE CASE

The facts and travel of the case may be briefly stated: Ruby Gil was employed by Edgerock Staffing and Ocean State Community Resource until dates in 2009. She filed claims for unemployment benefits but in four decisions dated June 2, 2010 and June 3, 2010 the Director determined that (1)(2) she had quit positions at two separate employers without good cause within the meaning of Gen. Laws 1956 § 28-44-17, (3) had failed to notify the Department of earnings while receiving benefits in violation of Gen. Laws 1956 § 28-44-13, and finally, (4) that she was ineligible for Emergency Unemployment Compensation in Rhode Island because she was also eligible for regular benefits in Massachusetts. She was declared overpaid in a combined amount of over \$18,000.00. Claimant filed appeals. On October 18, 2010 Referee Stanley Tkaczyk held a hearing on the matter but in his decision he focused on the fact that Ms. Gil's appeal had been filed late, on July 12, 2010.

In the referee's October 19, 2010 decisions he found the following facts on the lateness issue:

2. Findings of Fact:

On June 2 and June 3, 1020 respectively, the claimant was issued decisions of disqualification. By means of those decisions the claimant was informed of her appeal rights and appeal procedure. In specific, that she must file a written appeal within fifteen calendar days, including weekends and holidays, of the mailing date indicated on the decision or it would become final. The claimant alleges that during this time period she was in contact with representatives of the Department to verbally notify them of her desire to appeal. No such entry was placed in the claimant's record. Claimant further alleged that during her last contact which was prior to the expiration of her appeal rights she was informed by the representative to immediately file her appeal in written form. The fifteenth day of the appeal time period expired on June 17, 2010 and June 18, 2010 respectively. There has been no evidence or testimony presented to account for the subsequent delay until the letter postmarked July 11, 2010.

Decision of Referee, October 19, 2010, at 1. Then, after quoting section 28-44-39(b) of the Rhode Island Employment Security Act, the referee made the following conclusions:

* * * The burden of proof of establishing good cause for filing an appeal out of time rests solely upon the claimant. Although there has been conflicting testimonies presented, which was contrary to the evidence of record, taking the testimony that she was verbally advised to file her written appeal prior to the expiration date. Nevertheless, the claimant did not follow that verbal direction. The fifteenth day of the appeal period expired on June 17 and June 18, 2010 respectively. In addition, the claimant was also by means of the decisions notified of the appeal procedure to be filed, in specific a written appeal within a specific time period. There has been no good cause presented by the claimant for the subsequent delay in filing of the appeal until July 11, 2010. The claimant's position that verbal declarations should constitute an appeal is contrary to the law. In the absence of evidence to

establish good cause, I must hold that the claimant's late appeal is without good cause and the subsequent issues may not be considered.

Decision of Referee, October 19, 2010, at 2. Thus, the referee dismissed Ms. Gil's appeal because claimant had not shown good cause for her tardiness in perfecting her appeals from the Decisions of the Director. From the referee's decision claimant filed a timely appeal but on November 24, 2010 the Board of Review unanimously upheld the Referee's decisions dismissing claimant's appeals for lateness. Decision of Board of Review, November 24, 2010.

Thereafter, on January 4, 2011, claimant filed a single pro-se complaint for judicial review in the Sixth Division District Court. This Court has treated her complaint as encompassing all four Board of Review decisions in this matter.

STANDARD OF REVIEW

The standard of review by which this court must consider appeals from the Board of Review is provided by Gen. Laws 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.’”¹ The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.² Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.³

The Supreme Court of Rhode Island recognized in Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 200, 200 A.2d

1 Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing R.I. GEN. LAWS § 42-35-15(g)(5).

2 Cahoone v. Board of Review of the Dept. of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

3 Cahoone v. Board of Review of Department of Employment Security, 104 R.I. 503, 246 A.2d 213, 215 (1968). See also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

595, 597 (1964) that a liberal interpretation shall be utilized in construing 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.

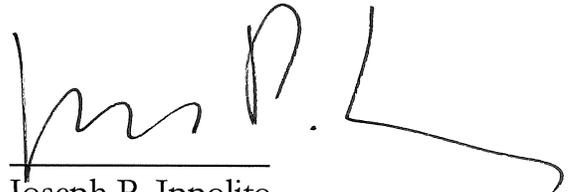
ANALYSIS

As stated above in the travel of the case, the Board of Review rendered its decisions on November 24, 2010, but claimant’s appeal was not submitted until January 4, 2011 — eleven days after the thirty day appeal period had expired. See Gen. Laws 1956 § 42-35-15(b). While Ms. Gil did not explain her tardiness in her complaint, any explanations, however meritorious, would have been of no avail; quite simply, the District Court is not authorized to extend the appeal period, which has been held to be jurisdictional. See Considine v. Rhode Island Department of Transportation, 564 A.2d 1343, 1344 (R.I. 1989)(“... the District Court does not possess any statutory authority to

entertain appeals that are filed out of time.” 564 A.2d at 1344.). See also Dub v. Dept. of Employment Security Board of Review, A.A. No. 90-383 (Dist.Ct. 1/23/92) (SaoBento, J.) (“ * * * [complainant’s] failure to comply with the procedural requirements of § 42-35-15(b) also invalidates his claim for relief.” Slip op. at pp. 7-8. Emphasis added). Thus, Ms. Gil’s appeal must be dismissed.

CONCLUSION

Upon careful review of the record in this matter, I recommend that the instant complaint for judicial review be DISMISSED because it was filed beyond the prescribed appeal period.



Joseph P. Ippolito
MAGISTRATE

MARCH 25, 2011