

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

Peter J. O’Hara :
 :
v. : A.A. No. 11 - 028
 :
Department of Labor & Training, :
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Mr. Peter J. O’Hara urges that the Board of Review of the Department of Labor and Training erred when it affirmed two decisions issued by Chief Referee Maccarone dismissing Mr. O’Hara’s appeal from the Department’s decisions denying him unemployment benefits because it was filed late. Jurisdiction to hear and decide appeals from decisions made by 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. Because I conclude that the Board’s decisions are supported by substantial evidence of record and is not otherwise affected by error of law, I must recommend that the decisions of the Board of Review affirming the dismissal of his appeal be affirmed.

FACTS & TRAVEL OF THE CASE

The facts and travel of the case may be briefly stated: Mr. O'Hara, who was employed as a substitute teacher by both the Tiverton School Department and the Bristol-Warren School Department during the 2009-2010 school-year, filed a claim for unemployment benefits on June 27, 2010. On July 13, 2010 the Director issued two decisions denying benefits to Mr. O'Hara pursuant to Gen. Laws 1956 § 28-44-68, which bars benefits to those educational workers who have a reasonable expectation of employment during the next term. Claimant's single appeal from these decisions was received by the Board of Review (for assignment to a referee) on September 24, 2010. After conducting a hearing on February 2, 2011, Chief Referee Raymond J. Maccarone Jr., issued two identical decisions — one for each school department — on February 11, 2011 in which he dismissed claimant's appeal because it had been filed after the expiration of the 15-day appeal period found in Gen. Laws 1956 § 28-44-39(b).

On the late-appeal issue Chief Referee Maccarone made the following Findings of Fact:

A Notice of Disqualification was mailed to the claimant's address of record. The claimant stated he did not file an appeal as he was busy with the department requesting benefits for a different timeframe other than that of the appeal period. Claimant filed an appeal by letter dated September 24, 2010.

Referee's Decision, February 11, 2011, at 1. Based on these findings, the referee

made the following conclusions:

The issue in this case is whether or not the claimant filed an appeal out of time with good cause within the meaning of Section 28-44-39(b) of the Rhode Island Employment Security Act.

The 15-day appeal period provided for under the provisions of Section 28-44-39(b) can be extended if the individual who filed out of time had good cause for being late.

[Quotation of section 28-44-39(b) omitted]

In the instant case the claimant is requesting a late appeal of this decision. Testimony presented by the claimant in this matter is credible. His testimony does not show he was prevented in any manner from filing his appeal within the fifteen calendar day period which is allowed by statute. As a result the claimant's request for a late appeal cannot be granted at this time.

Referee's Decision, February 11, 2011, at 1-2. Accordingly, the claimant's appeal was dismissed.

Claimant sought review of these decisions and on March 8, 2011 the Board of Review unanimously issued two brief and identical decisions affirming the referee's dismissal of claimant's appeal and adopting the Decisions of the Referee as its own. Thereafter, on March 18, 2011, claimant filed a pro-se complaint for judicial review in the Sixth Division District Court.

STANDARD OF REVIEW

The standard of review is provided by R.I. Gen. Laws § 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

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, 506, 246 A.2d 213, 215 (1968).

3 Cahoone v. Bd. of Review of Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968). Also D'Ambra v. Bd. of Review, Dept of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

The Supreme Court of Rhode Island recognized in Harraka v. Board of Review of the Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595, 597 (1964) 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.

APPLICABLE LAW

The time limit for appeals from decisions of the Director is set by subsection (b) of Gen. Laws 1956 § 28-44-39, which provides

(b) Unless the claimant or any other interested party who is entitled to notice requests a hearing within fifteen (15) days after the notice of determination has been mailed by the director to the last known address of the claimant and of any other interested party, the determination shall be final. For good cause shown the fifteen (15) day period may be extended. The director, on his or her own motion, may at any time within one year from the date of the determination set forth in subdivision (a)(1) of this section reconsider the determination, if he or she finds that an error has occurred in connection with it, or that the determination was made as a result of a mistake, or the nondisclosure or misrepresentation

of a material fact. (Emphasis added)

Note that while subsection 39(b) includes a provision allowing the 15-day period to be extended (presumably by timely request), it does not specifically indicate that late appeals can be accepted, even for good cause. However, in many cases the Board of Review (or, upon review, the District Court) has permitted late appeals if good cause was shown.

ANALYSIS

The purpose of all tribunals — whether judicial or administrative — is to adjudicate cases on the merits. However, procedural parameters have to be established to avoid anarchy. The time limit for appeals from decisions of the Director to the Referee level is set in Gen. Laws 1956 § 28-44-39(b) to be 15 days. Accordingly, the issue in the case is whether the decision of the Referee (adopted by the Board of Review) that claimant had not shown good cause for her late appeal is supported by substantial evidence of record or whether it was clearly erroneous or affected by other error of law.

At the hearing before the Referee, claimant O'Hara testified concerning the reasons for his late appeal. Referee Hearing Transcript, at 6-11. He testified that his claim was divided into “weeks going back” and “weeks going forward.” Referee Hearing Transcript, at 7. He was dealing with a person at the Department of labor and Training who “might've” been named Sara, insinuating

that he relied on her advice about procedure to his detriment. Referee Hearing Transcript, at 6-7. He says he did not file a timely appeal because she told him not to. Referee Hearing Transcript, at 8.⁴ But, as the Referee indicated to claimant at the hearing, this means he was talking to her in September — after his summer disqualification would have ended. Referee Hearing Transcript, at 9-10.⁵ This was also reflected in the September 24, 2010 letter which served as his appeal demand. See Department's Exhibit No. 3, at page 2. At the end of the day, it seems Mr. O'Hara was attempting to excuse a subjective misunderstanding on his part, nothing more. Accordingly, the Chief Referee's decisions to reject this excuse were reasonable, as were the Board's decisions to affirm it.

Pursuant to Gen. Laws 1956 § 42-35-15(g), the decisions of the Board must be upheld unless it was, *inter alia*, contrary to law, clearly erroneous in light of the substantial evidence of record, or arbitrary or capricious. When applying this standard, the Court will not substitute its judgment for that of the Board as

4 This testimony is contrary to his Appeal to the District Court, received on March 21, 2011, wherein he asserts that he did file his appeal from the Director's decision in a timely fashion.

5 In other words, before September, there could not possibly have been a "going forward" claim.

And Mr. O'Hara was apparently successful on this "going forward" claim. At the hearing, Mr. O'Hara explained he had just gotten a check (*i.e.*, in February, 2011) for the period going back to September 21, 2010. Referee Hearing Transcript, at 10-11.

to the weight of the evidence on questions of fact, including the question of which witnesses to believe. Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result. The Court, when reviewing a Board decision, does not have the authority to expand the record by receiving new evidence or testimony.

The scope of judicial review by the District Court is also limited by Gen. Laws 1956 § 28-44-54 which, in pertinent part, provides:

28-44-54. Scope of judicial review – Additional Evidence – Precedence of proceedings. – The jurisdiction of the reviewing court shall be confined to questions of law, and in the absence of fraud, the findings of fact by the board of review, if supported by substantial evidence regardless of statutory or common law rules, shall be conclusive.

Accordingly, I must conclude that the Referee's decisions (accepted and adopted by the Board) that claimant did not demonstrate good cause for his late appeal from the Decision of the Director are supported by substantial evidence of record and are not clearly erroneous.

CONCLUSION

Upon careful review of the record, I recommend that this Court find that the decisions of the Board of Review were not affected by error of law. General Laws 1956 § 42-35-15(g)(3),(4). Further, they are not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record or arbitrary

or capricious. General Laws 1956 § 42-35-15(g)(5),(6).

Accordingly, I recommend that the decisions of the Board be
AFFIRMED.

 /s/
Joseph P. Ippolito
MAGISTRATE

APRIL 27, 2011

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PROVIDENCE, Sc.
SIXTH DIVISION

DISTRICT COURT

Peter J. O'Hara

v.

Dept. of Labor & Training,
Board of Review

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A.A. No. 11 - 028

ORDER

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, 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 decisions of the Board of Review are hereby AFFIRMED.

Entered as an Order of this Court at Providence on this 27th day of April, 2011.

By Order:

_____/s/_____
Melvin Enright
Acting Chief Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge