STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**

SIXTH DIVISION

Patricia A. Travis	:	
	:	
v.	:	**A.A. No. 11 - 088**
	:	
Dept. of Labor & 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, 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 appeal is DISMISSED for lateness.

Entered as an Order of this Court at Providence on this 13th day of October, 2011.

By Order:

/s/
Melvin Enright
Acting Chief Clerk

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

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F I N D I N G S & R E C O M M E N D A T I O N S

Ippolito, M. This matter is before the Court on the complaint of Patricia A. Travis seeking judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor & Training, which held that Ms. Travis was not entitled to receive employment security benefits. This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. Unfortunately, this Court will not be able to address the merits of this instant appeal: because claimant perfected her appeal after the applicable appeal period had expired, I must recommend her appeal be dismissed.

FACTS & TRAVEL OF THE CASE

The facts and travel of the case may be briefly stated: After she suffered a work-related injury in January of 2009 Patricia Travis received Workers' Compensation benefits. Released by her physician to part-time, light-duty work in February of 2010, no work was available. So, she filed for unemployment benefits on April 9, 2010 but on November 12, 2010 a designee of the Director of the Department of Labor and Training ruled that claimant's base period calculation would not be backdated to the date of her injury — i.e., January, 2009.

Claimant filed a timely appeal and Referee Gunter Vukic held a hearing on the matter on March 21, 2011. In a decision dated March 28, 2011, the referee ruled that Ms. Travis' base period could not be backdated since, at the time she was cleared for part-time light–duty work, she had not reached her maximum level of improvement within one year of her injury. Decision of Referee, March 28, 2011, at 1-2, citing Gen. Laws 1956 §§ 28-42-3(A)(3) and 28-33-47. The Director's decision was thereby affirmed.

From this decision claimant filed an appeal and on May 20, 2011, the Board of Review issued a unanimous decision in which it held that the decision of the Referee constituted a proper adjudication of the facts and

the law applicable thereto; the Referee's decision was adopted as the Decision of the Board. Thereafter, on July 19, 2011, the claimant transmitted a statement of appeal to the District Court.[1]

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.

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1 The record shows that claimant filed a document with the Board of Review on or about June 15, 2011. However, since, by law, the appeal must be filed with the Sixth Division District Court — as she was advised within the Board's decision — this attempted appeal must, unfortunately, be treated as a nullity.

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.' "[2] The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.[3] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[4]

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 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

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2 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).

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

4 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).

> 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 decision on May 20, 2011; but claimant's appeal was not perfected by submitting her complaint for 60 days — on July 19, 2011 — after the thirty day appeal period had expired. See Gen. Laws 1956 § 42-35-15(b). While Ms. Travis does not explain her tardiness in her pro-se complaint, doing so would have been to 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. Travis' 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.

/s/
Joseph P. Ippolito
MAGISTRATE

OCTOBER 13, 2011