STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**

SIXTH DIVISION

Franklin Mejia	:	
	:	
v.	:	**A.A. No. 12 - 166**
	:	
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, 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 hereby DISMISSED because it was filed beyond the prescribed appeal period.

Entered as an Order of this Honorable Court at Providence on this 16th day of November, 2012.

By Order:

____/s/_____
Stephen C. Waluk
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. In this case Mr. Franklin Mejia urges that the Board of Review of the Department of Labor and Training erred when it held that he was ineligible to receive employment security benefits because he quit without good cause. 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 Gen. Laws 1956 § 8-8-8.1. Unfortunately, this Court will not be able to address the merits of this instant appeal: because

claimant brought this appeal after the applicable appeal period had expired, I must recommend his appeal be dismissed.

I. FACTS & TRAVEL OF THE CASE

Mr. Franklin Mejia worked for Workforce Unlimited, a temporary employment agency, for six months until January 26, 2012. He filed a claim for benefits but the Director deemed him ineligible because he had quit without good cause within the meaning of Gen. Laws 1956 § 28-44-17. He took an appeal and a hearing was held before Referee Patrick Carroll on May 10, 2012. In his decision, issued on June 5, 2012, the Referee found the following facts:

> 2. FINDINGS OF FACT
> …
> Claimant stated he repeatedly contacted his employer for new assignments following January 26, 2012 and that the employer was not available or did not have work. Employer provided credible testimony regarding its availability, its contact with the claimant and multitude of times where the claimant did not respond. Further, the employer presents payroll records indicating that claimant did not appear and work for a day during the relevant periods of time.

Decision of Referee, June 5, 2012, at 1. Based on the foregoing facts, the Referee — after quoting extensively from Gen. Laws 1956 § 28-44-17 — came to the following conclusions:

> The credible testimony offered by the employer, most specifically dealing with the open assignments made available to the claimant, demonstrates that the claimant did not voluntarily quit his job with

> good cause pursuant to Section 28-44-17 of the Rhode Island Employment Security Act, but that he abandoned his job. The claimant's failure to report to his employer and make himself available for work resulted in his separation from this employer and, therefore, is disqualified from receiving benefits under Rhode Island General Law 28-44-17.

Decision of Referee, June 5, 2012, at 3. Based on this reasoning, Referee Carroll held that Claimant Mejia voluntarily quit and should be disqualified from receiving unemployment benefits pursuant to Gen. Laws 1956 § 28-44-17.

Claimant appealed and the Board of Review reviewed Mr. Mejia's case. On July 26, 2012 the Board issued a unanimous opinion finding that the Decision of the Referee was a proper adjudication of the facts and the law applicable thereto. Finally, on August 30, 2012, Mr. Mejia filed a complaint for judicial review in the Sixth Division District Court.

II. APPLICABLE LAW

This case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically touches on voluntary leaving without good cause; Gen. Laws 1956 § 28-44-17, provides:

> **28-44-17. Voluntary leaving without good cause.** – An individual who leaves work voluntarily without good cause shall be ineligible for waiting period credit or benefits for the week

> 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 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; however, 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.

In the case of Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 201, 200 A.2d 595, 597-98 (1964), the Rhode Island Supreme Court noted 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.

Later, in Murphy v. Fascio, 115 R.I. 33, 340 A.2d 137 (1975), the Supreme Court elaborated that:

> 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.
>
> and
>
> * * * 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, 115 R.I. at 35, 340 A.2d at 139.

III. 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]

The Supreme Court of Rhode Island recognized in Harraka, supra page 4, 98 R.I. at 200, 200 A.2d at 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

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

> 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.

IV. ANALYSIS

As stated above in the travel of the case, the Board of Review rendered its decision on July 26, 2012, but Claimant's appeal was not submitted until August 30, 2012 — 35 days later — after the thirty day appeal period had expired. See Gen. Laws 1956 § 42-35-15(b). While Mr. Mejia did not explain his tardiness in his complaint, any explanation, 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, Mr. Mejia's appeal must be dismissed.

CONCLUSION

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

/s/
Joseph P. Ippolito
MAGISTRATE

NOVEMBER 16, 2012