STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**

SIXTH DIVISION

Timothy E. Clouse	:	
	:	
v.	:	**A.A. No. 13 - 136**
	:	
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 decision of the Board of Review is AFFIRMED.

Entered as an Order of this Court at Providence on this 30th day of October, 2013.

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. On May 29, 2013, a hearing was scheduled before a Referee (hearing officer) employed by the Department of Labor and Training Board of Review regarding a claim for unemployment benefits filed by Mr. Timothy E. Clouse. The specific issue to be decided by the Referee was whether Mr. Clouse's entitlement to benefits should be diminished by the amount of a private pension he was receiving, as the Department had decided. However, because Claimant Clouse failed to appear at the hearing, the Referee did not decide this issue; instead, he dismissed Mr. Clouse's appeal for want of

prosecution. The precise issue this Court must decide is whether the Board of Review's affirmance of that dismissal was legally justifiable.

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. For the reasons that follow, I recommend that the decision issued by the Board of Review in this case be affirmed, with minor modification.

I.

FACTS & TRAVEL OF THE CASE

The facts[1] and travel of the case may be briefly stated: after retiring from the employ of Tides Family Services, Claimant Clouse worked for High Roads until he was laid off. He applied for and received unemployment benefits; but, on April 2, 2013, a designee of the Director of the Department of Labor and Training issued a decision[2] finding him disqualified from

[1] Because no hearing was conducted, the following "facts" have been drawn from the Director's decision and the many items of correspondence between Mr. Clouse and the Department (and the Board of Review).

[2] Actually, two decisions were issued. The first (No. 1314749) concerned unemployment benefits paid in the period 02/11/12 to 7/14/12; the other (No.

receiving further benefits pursuant to Gen. Laws 1956 § 28-44-19.1 because he was receiving a pension. See Decision of Director, April 2, 2013, at 1. The Director also ordered repayment of $1587.00. Id.

On April 11, 2013, Mr. Clouse sent a letter to the Department's Central Adjudication Unit expressing his disagreement with the Department's decision — based primarily on his assertion that he had been told, by someone at the Department, that his pension from Tides did not affect his High Roads' claim. See Letter from T.E. Clouse to Department, April 11, 2013. Apparently, this letter was taken to be a notice of appeal and a hearing was scheduled before Referee Stanley Tkaczyk on April 30, 2013. A Notice of Hearing dated April 17, 2013 was sent to Claimant. However, Mr. Clouse failed to appear at the hearing. Accordingly, the Claimant's appeal was dismissed for want of prosecution. See Decision of Referee, May 1, 2013, at 1.

Claimant sent a further letter to the Department's Central Adjudication Unit expressing vexation that a hearing would be necessary since, as he reiterated, he had been told that his Tides pension would not affect his High Roads claim; he also indicated he would be unavailable until May 16, 2013. See May 1, 2013 Letter from T.E. Clouse to the Central Adjudication Unit. For

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1314775) considered benefits paid in the period 7/28/12 to 3/20/13.

whatever reason, the Board of Review scheduled a new hearing before Referee Carl Capozza for May 29, 2013. A new Notice — dated May 8, 2013 — was sent to Mr. Clouse. Once again, he failed to appear for the hearing. And again his appeal was dismissed for want of prosecution. See Decision of Referee, May 29, 2013, at 1.

On June 5, 2013, Mr. Clouse sent another letter to the Central Adjudication Unit of the Department of Labor and Training. Then, on July 9, 2013, the Board of Review summarily upheld Referee Capozza's dismissal of Mr. Clouse's appeal. Then, even though it had already ruled on his matter, Mr. Clouse wrote to the Board of Review indicating his confusion and soliciting its assistance regarding his issue. Finally, on August 22, 2013, Mr. Clouse filed an appeal in the Sixth Division District Court.

II.

ISSUE

The issue before the Court is whether the decision of the Board of Review affirming the dismissal of Claimant's appeal made upon improper procedure or otherwise affected by error of law?

III.

ANALYSIS

Pursuant to Gen. Laws 1956 § 42-35-15(g), the decision 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 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] Finally, 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 and applying the Employment Security Act.

In this case we cannot address the merits of Mr. Clouse's appeal, since it was dismissed on procedural grounds — i.e., because he failed to appear for a hearing on May 29, 2013. Indeed, the Claimant had also failed to appear at an

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

[4] Cahoone, supra n. 2, 246 A.2d at 215 (1968). See also D'Ambra v. Bd. of

earlier scheduled hearing, on April 30, 2013. This is confirmed by the presence in the record of a decision issued by Referee Stan Tkaczyk dismissing Claimant's appeal on May 1, 2013, which was apparently set aside by the Board in conjunction with Mr. Clouse being granted a second opportunity for a hearing — i.e., before Referee Capozza..

In any event, Mr. Clouse did not explain the reasons for his failure to appear on November 13, 2012 in any of his correspondence with the Department or the Board. But it seems he did in the complaint he filed with this Court. He said —

> … I have missed two hearings by the board but was not consulted on the dates and in one case inform the office that I would not be available to no avail (frustration) This is my fault but I felt that without a lawyer (which I could not afford) I would not be heard or able to understand what had happened. When a meeting is taken agreement on the date is common courtesy.

Complaint of T.E. Clouse, at 1. Thus, it appears that Mr. Clouse, an educated person, a teacher, intentionally failed to appear because he felt he would not do well without counsel by his side. And armed with this inference, we can begin to make sense of his letters to the Department; he was not, as it seemed, oblivious to the Board efforts to explain the appeal process to him, he was

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Review, Dept. of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

taking a rejectionist stance — he was not interested in pursuing his appeal rights, he simply wanted the Department to reevaluate the propriety of his claim.

But the Board of Review, like any adjudicatory body, has every right to regulate its proceedings and to take appropriate action when parties fail to appear. A dismissal for failure to prosecute is categorically a reasonable response to a litigant's failure to appear at a duly scheduled hearing. In this case it appears from Mr. Clouse's statement that the Board's accommodation of Mr. Clouse — when it rescheduled his hearing — was doomed to failure.

Accordingly, I cannot find that the Referee's dismissal of his appeal constituted an improper exercise of discretion or an improper procedure.

IV.

ADDENDUM

For the reasons stated in Part III of this opinion, this Court will not be able to adjudicate the propriety of the Department's orders that found that (1) Mr. Clouse received excessive employment security benefits and (2) he should reimburse the Department for these excessive amounts. Nevertheless, there is one issue I shall raise sua sponte, in the interests of justice, which concerns

what I believe to be a patent defect in the decision of the Department issued on April 2, 2013.

The defect relates to the authority of the Department to revisit or reconsider eligibility determinations. This authority is granted to the Department by Gen. Laws 1956 28-44-39(b), which provides in pertinent part:

> (b) … 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.
> (c) …

Gen. Laws 1956 28-44-39(b)(Emphasis added). But as we can see, § 39(b) grants the Director authority to revisit eligibility determinations but limits the time for making such a redetermination to one year — even in cases of nondisclosure or misrepresentation. I must therefore conclude that the Department had no authority to reconsider the propriety of the benefits it had given to Mr. Clouse more than one year prior to April 2, 2013. Accordingly, I shall recommend that orders of repayment based on earnings recalculations made regarding weeks prior to April 2, 2012[5] be vacated.

[5] Specifically, these would be the weeks of 2/11/12, 2/18/12, 2/25/12, 3/03/12, 3/10/12, 3/17/12, 3/24/12 and 3/31/12. See Director's

CONCLUSION

And so, I recommend that the Decision issued by the Board of Review in this case be affirmed. Upon careful review of the evidence, I recommend that this Court find that the decision of the Board of Review was not affected by error of law. Gen. Laws 1956 § 42-35-15(g)(4). Neither was it made upon an unlawful procedure. Gen. Laws 1956 § 42-35-15(g)(3).

Accordingly, I recommend that the decision rendered by the Board of Review in this case be AFFIRMED except as amended in Part IV of this opinion, supra at 7-8.

/s/
Joseph P. Ippolito
MAGISTRATE

OCTOBER 30, 2013

Decision, April 2, 2013, at 1.