STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

April M. Doran	:	
	:	
v.	:	**A.A. No. 13 - 034**
	:	
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 Board of Review's decision on the issue of complainant's late appeal is REVERSED AND REMANDED.

Entered as an Order of this Court at Providence on this 29th day of April, 2013.

By Order:

_____
Stephen C. Waluk
Chief Clerk

Enter:

_____
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. Ms. April M. Doran comes before the Court seeking judicial review of a final decision rendered by the Board of Review of the Department of Labor and Training, which dismissed Ms. Doran's appeal due to lateness. As a result of the Board's ruling, a previous decision of a Referee denying claimant employment security benefits was allowed to stand. 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 stated below, I conclude that the Board's decision on the issue of the dismissal for lateness should be reversed and the matter remanded for further consideration; I so recommend.

FACTS & TRAVEL OF THE CASE

The facts and travel of the case may be briefly stated: Ms. April M. Doran was employed by the Providence School Department for six years as a behavior support staff member until October 19, 2012, when she resigned. She filed for unemployment benefits on October 24, 2012 and, on November 21, 2012, a designee of the Director of the Department of Labor and Training found her eligible for benefits. The employer appealed and a hearing was scheduled before Referee Gunter A. Vukic on December 18, 2012. In a decision dated December 20, 2012, Referee Vukic reversed the Director's decision, finding Ms. Doran had quit without good cause within the meaning Gen. Laws 1956 § 28-44-17.

Ms. Doran filed an appeal on January 10, 2013 — six days after the appeal period had expired (on January 4, 2013). As a result, the Chairman of the Board of Review sent Ms. Doran a letter dated January 15, 2013 urging her to explain why her appeal was filed tardily. She responded in an e-mail dated January 22, 2013, in which she stated — "I was late in putting in my

appeal because I received the denial letter late. I didn't receive the letter in the mail until after the New Year holiday."

After receiving this message two members of the Board issued a decision denying Ms. Doran's appeal. The Board held that "The claimant has failed to justify the late filing of the appeal in the instant case and the appeal is denied and dismissed." Decision of Board of Review, February 14, 2013, at 1. From this decision the Member Representing Labor dissented, finding that the tardiness of her appeal had been justified by her representation that she had received the Referee's decision only after the first of the year. Id. Ms. Doran filed an appeal in the Sixth Division District Court on February 26, 2013.

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

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

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 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 Referee (referred is set by Gen. Laws 1956 § 28-44-46, which provides:

> After a hearing, an appeal tribunal shall promptly make findings and conclusions and on the basis of those findings and conclusions affirm, modify, or reverse the director's determination. Each party shall promptly be furnished a copy of the decision and supporting findings and conclusions. This decision shall be final unless further review is initiated pursuant to § 28-44-47 within fifteen (15) days after the decision has been mailed to each party's last known address or otherwise delivered to him or her; provided, that the period may be extended for good cause.

(Emphasis added). Note that while subsection 46 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, on appeal, the District Court) has permitted late appeals when good cause was shown.

ANALYSIS

The time limit for appeals from decisions of a Referee to the Board of Review is established in Gen. Laws 1956 § 28-44-46 to be 15 days. The decision of the Referee in this case may be found in the record. On page 2 of that decision is a section headlined "APPEAL RIGHTS" in which the 15-day appeal period is clearly explained. Thus, without doubt, claimant had notice of the appeal period.

Accordingly, the sole issue before the Court is whether the decision of the Board of Review that Claimant had not shown good cause for her late appeal was supported by substantial evidence of record or whether it was clearly erroneous or affected by other error of law.

As noted above, a majority of the Board of Review found that Claimant "failed to justify" the lateness of her appeal. Decision of Board of Review, February 14, 2013, at 1. I must infer from this finding that the members did not find her explanation truthful, since I do not believe that

the Board could plausibly have found that if she had received the decision on January 2, 2013 (at the earliest), she remained obligated to file an appeal virtually eo instante. In my view, such a finding would have been so violative of fundamental fairness that it would have to be set aside as being "arbitrary and capricious." See Gen. Laws 1956 § 42-35-15(g)(6).

But although the Board seems to have made a credibility finding, it did not provide Ms. Doran with an opportunity to explain her tardiness directly. No hearing was held. Accordingly, I believe the Board's procedure in this matter did not comport with fundamental due process, which consists of notice and the opportunity to be heard. See Morrissey v. Brewer, 408 U.S. 471, 480-90 (1972).[4]

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.[5] Stated

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[4] I do not wish to be misunderstood as implying that the Board's practice of making a letter inquiry regarding the reasons for a late appeal must be regarded as deficient in all cases. When an appellant responds with an explanation that is per se insufficient to justify a late appeal, it may be perfectly appropriate for the Board to rule forthwith. But that was not the case here.

[5] Cahoone v. Board of Review of the Department.of Employment

differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[6] However, the procedure followed by the Board must not have been unlawful. Gen. Laws 1956 § 42-35-15(g)(3). Accordingly, because I believe the Board's decision to dismiss Ms. Doran's appeal for lateness did not comport with fundamental due process, I believe it must be set aside and the case remanded so that the Board may consider the case on the merits.

CONCLUSION

Upon careful review of the record, I recommend that this Court find that the decision of the Board of Review was affected by error of law. Gen. Laws 1956 § 42-35-15(g)(3),(4).

Accordingly, I recommend that the decision of the Board be REVERSED and REMANDED.

/s/
Joseph P. Ippolito
MAGISTRATE

APRIL 29, 2013

Security, 104 R.I. 503, 246 A.2d 213 (1968).

[6] Cahoone, supra n. 5, 104 R.I. at 506, 246 A.2d at 215 (1968). See also Gen. Laws § 42-35-15(g), supra at 3-4 and Guarino, supra at 4, fn. 1.