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

Odin Bazelais	:	
	:	
v.	:	**A.A. No. 13 - 085**
	:	
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

dismissing Mr. Bazelais's late appeal is hereby AFFIRMED.

Entered as an Order of this Court at Providence on this 27th day of June, 2013.

By Order:

/s/
Stephen C. Waluk
Chief Clerk

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

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

Odin Bazelais	:	
	:	
v.	:	**A.A. No. 13 - 085**
	:	
Department of Labor and Training,	:	
Board of Review	:	

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. Mr. Odin Bazelais 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 Mr. Bazelais's appeal due to lateness. As a result of the Board's ruling, a 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 affirmed; I so recommend.

FACTS & TRAVEL OF THE CASE

The facts and travel of the case may be briefly stated: Mr. Odin Bazelais was employed by Safe Environment Business systems for two years as a security officer until November 6, 2012, when he was terminated.[1] He filed for unemployment benefits on December 5, 2012 and, on January 10, 2013, a designee of the Director of the Department of Labor and Training found he had been discharged under non-disqualifying circumstances. The employer appealed and a hearing was scheduled before Referee Gunter A. Vukic on February 13, 2013. The employer's representative was the sole witness at the hearing. Mr. Bazelais did not appear. In a decision dated February 19, 2013, Referee Vukic reversed the Director's decision, finding Mr. Bazelais had been discharged for proved misconduct — specifically, abandoning his post —within the meaning Gen. Laws 1956 § 28-44-18.

[1] To be more precise regarding his tenure with the employer, Claimant had been separated in July of 2012 and was rehired in November of 2012. November 6, 2012 was his second day on the job after returning to work.

Through counsel, Joseph M. Beagan Esq., Mr. Bazelais filed an appeal on March 18, 2013 — twelve days after the appeal period had expired (on March 6, 2013). As a result, the Chairman of the Board of Review sent Mr. Bazelais a letter dated March 21, 2013 urging him to explain why his appeal was filed tardily. A response dated March 27, 2013 was transmitted to the Board by Attorney Beagan by facsimile. On the issue of the tardy appeal, Counsel stated — "In the instant case, the claimant was out of the country in his homeland of Haiti tending to his seriously ill 14 year old son. The claimant was in Haiti from 2/10/13 to 2/27/13. The claimant asks for an extension of the 15 day appeal period under the good cause exception in § 28-44-46." Counsel further explained that this trip to Haiti was the reason Claimant failed to appear at the hearing before Referee Vukic.

After receiving this message the Board of Review issued a unanimous decision dismissing Mr. Bazelais's appeal for lateness. The Board held that:

> * * *
> The claimant, through his attorney, indicates that he was out of the country and is requesting an extension of the appeal time period. However, the claimant returned on February 27, 2013, within the appeal time period, and could have filed a timely appeal. Therefore, 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, April 15, 2013, at 1. Mr. Bazelais filed a pro-se appeal in the Sixth Division District Court on May 15, 2013, the last day of the thirty-day appeal period.

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.' "[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

---

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

> 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 3 of that decision is a section headlined "APPEAL RIGHTS" in which the 15-day appeal period is clearly explained. The section also informs the parties that an appeal may be effectuated by mail, by facsimile, or by e-mail. Id. 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 his 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, the members of the Board of Review unanimously found that Claimant "failed to justify" the lateness of his appeal. Decision of Board of Review, April 15, 2013, at 1. The Board did not question Claimant's explanation, but found it deficient, because he had returned to Rhode Island a full seven days before his appeal period expired. Not only could he have filed an appeal forthwith, by facsimile or e-mail, he had more

than enough time to post an appeal. Accordingly, in my view, the Board's finding — that Claimant failed to justify his late appeal — comports with common sense, with the facts of record, and the applicable law.

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 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 Mr. Bazelais's was not clearly erroneous, I believe it must be affirmed.

---

[5] Cahoone v. Board of Review of the Department.of Employment 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 4 and Guarino, supra at 5, n. 2.

CONCLUSION

Upon careful review of the record, 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)(3),(4). Neither was it clearly erroneous in light of the reliable, probative, and substantial facts of record. Gen. Laws 1956 § 42-35-15(g)(5).

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

/s/
Joseph P. Ippolito
MAGISTRATE

JUNE 27, 2013