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

Teresa A. Cobar	:	
	:	
v.	:	**A.A. No. 12 - 226**
	:	
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 and the memoranda of counsel, 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 DISMISSED for lateness.

Entered as an Order of this Court at Providence on this 24th day of December, 2012.

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

Teresa A. Cobar	:	
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v.	:	**A.A. No. 2012 – 226**
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Department of Labor and Training,	:	
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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. Teresa A. Cobar filed the instant complaint for judicial review of a final decision of the Board of Review of the Department of Labor and Training, which held that she was not entitled to receive employment security benefits based upon proved misconduct. This matter has been referred to me for the making for Findings and Recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. Unfortunately, this Court will not be able to address the merits of the instant appeal: because claimant submitted her complaint after the applicable appeal period had expired, I must recommend her appeal be dismissed.

I. FACTS & TRAVEL OF THE CASE

The facts and travel of the case are these: Ms. Teresa A. Cobar worked for Children's Friend & Services for three years until she was terminated on June 6, 2012. She filed an application for unemployment immediately but on July 18, 2012, the Director determined her to be ineligible to receive benefits pursuant to the provisions of Gen. Laws 1956 § 28-44-18, because she was terminated for proved misconduct.

The Claimant filed an appeal and a hearing was held before Referee William Enos on August 14, 2012. On August 15, 2012, the Referee held that Ms. Cobar was disqualified from receiving benefits because she was terminated for proved misconduct. In his written Decision, the Referee made Findings of Fact, which are quoted here in pertinent part:

> Claimant worked as a Spanish Interpreter for Children's Friend & Services for three years last on June 4, 2012. The employer testified and produced evidence that showed that the claimant signed for the company policies and procedures. The employer testified that they called the claimant into the office and told her they were investigating the complaint and for the claimant not to talk to or contact anyone concerning these allegations. The employer testified that the claimant left that meeting and immediately called and spoke to the client even after they instructed of her to have no contact until the investigation was completed. The employer testified that the claimant was immediately terminated. The claimant testified that she did not ask the client to borrow anything and the only thing she ever

> took from a client was a mango. The claimant testified that she did not need to borrow money from anyone. The claimant testified that she did not call the client in question but was called by the client. The claimant then recanted and said that she did call the client because the client left her a voicemail.

Decision of Referee, August 15, 2012 at 1. Based on these facts, the Referee came to the following conclusion:

> * * *
> I find that sufficient credible testimony and evidence has been provided by the employer to support that the claimant's actions were not in the employer's best interest. Therefore, I find that the claimant was discharged for disqualifying reasons entitled to benefits under Section 28-44-18 of the Rhode Island Employment Security Act.

Decision of Referee, July 16, 2012 at 2. Claimant appealed and the matter was reviewed by the Board of Review. On September 26, 2012, a majority of the members of the Board of Review issued a decision in which the decision of the Referee was found to be a proper adjudication of the facts and the law applicable thereto; further, the Referee's decision was adopted as the decision of the Board. Decision of Board of Review, September 26, 2012, at 1.

Finally, Ms. Cobar filed a complaint for judicial review in the Sixth Division District Court on November 7, 2012.

II. 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

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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).

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 the 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:

> * * * 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.

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

[3] Cahoone v. Board 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

III. ANALYSIS

As stated above in the travel of the case, the Board of Review rendered its decision on September 26, 2012, but Claimant's appeal was not submitted until November 7, 2012 — 42 days later — after the thirty day appeal period had expired. See Gen. Laws 1956 § 42-35-15(b). While Ms. Cobar did not explain her tardiness in her 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 her claim for relief." Slip op. at 7-8. Emphasis added). As a result, Ms. Cobar's appeal must be dismissed.

Employment Security, 517 A.2d 1039 (R.I. 1986).

IV. 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 after the expiration of the prescribed appeal period.

____/s/_____
Joseph P. Ippolito
MAGISTRATE

DECEMBER 24, 2012