

**STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.**

**DISTRICT COURT
SIXTH DIVISION**

Colby Chattman :
 :
v. : **A.A. No. 14 - 436**
 :
Department of Labor & Training, :
Board of Review :

ORDER

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 19th day of March, 2015.

By Order:

_____/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

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FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Colby Chattman urges that the Board of Review of the Department of Labor and Training erred when it dismissed his appeal from a decision of a referee because it was filed after the expiration of the statutorily established appeal period. 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.

I
TRAVEL OF THE CASE

The travel of the instant case may be briefly stated: Mr. Colby Chattman¹ was in benefit status when he worked part-time for Snow Management in December of 2013. In January of 2014 he reapplied for and received unemployment benefits (for the weeks ending February 1, 2014 through April 5, 2014, and for the weeks ending April 19, 2014 through May 31, 2014).² Then, on June 19, 2014, a designee of the Director of the Department of Labor and Training issued a decision finding him to be disqualified from receiving further benefits because he left Snow's employ without good cause as defined in Gen. Laws 1956 § 28-44-17.³ The Director

¹ The Board of Review refers to Claimant — whom neither the Board nor its Referee ever saw — in the feminine gender. However, the DLT 480 form created by the Department in this case states Claimant as “Sex: M.” For this reason, I have followed the contrary course.

² In point of fact, the Director issued two decisions — one covered the period of February 1, 2014 through April 5, 2014 (No. 1422014) and the second covered the period from April 19, 2014 through July 31, 2014 (No. 1419517). On appeal, No. 1422014 became 20142604 before the Referee and the full Board; and No. 1419517 became 20142605 before the Referee and the Board. For convenience, we shall refer to the decisions issued at each stage of the proceedings in the singular.

³ See Decisions of Director, June 19, 2014, (Nos. 1422014 and 1419517), at 1.

also ordered repayment of \$ 4,610.00.⁴

Mr. Chattman filed an appeal (on July 3, 2014) and a hearing was set before Referee William Enos on July 30, 2014; however, Mr. Chattman failed to appear at the hearing. Accordingly, he dismissed the Claimant's appeal for want of prosecution, stating —

This cause came before a Referee of the Board of Review on claimant's appeal from a decision of the Director. This appeal was set down to a definite date for a hearing and notice of said hearing was sent to all interested parties. The hearing was scheduled for July 30, 2014 at 9:15 a.m. The case was called at 9:25 a.m. Claimant did not appear at said hearing. There being no apparent error in this case, the appeal in the above-entitled cause is dismissed for want of prosecution and the Director's decision is hereby sustained in said cause.⁵

Now, Mr. Chattman had sent an e-mail to the Referee, Mr. Enos⁶ (at a general Board of Review e-mail address) the evening before, at 6:30 p.m., in which Mr. Chattman stated that he had only received the notice of the hearing on Saturday, the 26th of July; he added, without explanation, that — "... I am simply unable to attend the hearing."⁷ He then went on to explain in great

⁴ Id.

⁵ See Decisions of Referee, July 30, 2014, (Nos. 20142604 and 20142605), at 1.

⁶ See E-Mail dated Tuesday, July 29, 2014 at 6:30 p.m. from Mr. Colby Chattman.

⁷ Id.

detail his substantive position on the case.⁸

On August 14, 2014, at 7:23 p.m. Mr. Chattman sent the Board another, briefer, e-mail, in which he took an appeal from the previous decision and assured the Board he would attend the next hearing.⁹ Apparently as a result, the Board of Review set the matter down for another hearing, on September 10, 2014. But when Claimant again failed to appear, Mr. Enos issued another decision, in which he wrote —

This cause came before a Referee of the Board of Review on claimant's appeal from a decision of the Director. This appeal was set down to a definite date for a hearing and notice of said hearing was sent to all interested parties. Claimant did not appear at said hearing. There being no apparent error in this case, the appeal in the above-entitled cause is dismissed for want of prosecution and the Director's decision is hereby sustained in said cause.¹⁰

Mr. Chattman's appeal was dismissed for the second time.

Not running short on temerity, on September 26, 2014, Claimant sent the Board another e-mail, which I shall recite verbatim —

I am writing to appeal a decision set forth in a previous hearing.

⁸ Id.

⁹ See E-Mail dated Thursday, August 14, 2014 at 7:23 p.m. from Mr. Colby Chattman. In this e-mail Mr. Chattman again stated that he could not attend the earlier hearing, but did not say why. Id.

¹⁰ See Decisions of Referee, July 30, 2014, (Nos. 20142604 and 20142605), at 1.

I was not able to attend the original hearing, nor did I attend the previously scheduled hearing due to unforeseen circumstances. Please accept this final appeal.¹¹

The Chairman of the Board of Review, Mr. Chris Fierro, responded to this e-mail on October 1, 2014 and, citing Rule 17 of the Board's Rules of Procedure, directed Mr. Chattman to provide the Board with the reasons why he failed to appear at both of the hearings the Board had scheduled.¹² My review of the record does not reveal an answer to this inquiry was received by the Board.

On October 21, 2015, the Chief Referee of the Board of Review, Mr. Raymond J. Maccarone, Jr., notified Mr. Chattman that the Board received his appeal and that further action would be taken by the Board as soon as it was administratively feasible.¹³

Finally, on November 7, 2014, the Board of Review's Decision was issued. In it, the Board affirmed the September 11, 2014 (second) decision of the Referee and adopted it as its own; the Board also made the following,

¹¹ See E-Mail dated Friday, September 26, 2014, at 7:06 p.m. from Mr. Colby Chattman. While the e-mail speaks for itself, one must observe that, for the second time, Claimant did not explain why he did not attend the hearing.

¹² See Letter from Chairman Chris Fierro to Mr. Colby Chattman dated October 1, 2014.

¹³ See Letter from Chief Referee Raymond J. Maccarone, Jr. to Mr. Colby Chattman dated October 21, 2014.

additional, findings of fact —

On July 17, 2014, a Notice of Hearing was mailed to all interested parties scheduling a hearing on the claimant's appeal for Wednesday, July 30, 2014 at 9:15 a.m. The claimant failed to appear for the hearing. On July 30, 2014 a Decision of the Referee was mailed dismissing the claimant's appeal for want of prosecution and sustaining the Director's decision.

On August 14, 2014, the claimant sent an e-mail to the Board of Review indicating she wished to appeal as she was unable to attend the previously scheduled hearing. On August 22, 2014, a Notice of Referee was mailed to all interested parties scheduling a hearing for Wednesday, September 10, 2014 at 9:15 a.m. The claimant again failed to appear. On September 11, 2014, a Decision of the Referee was mailed again indicating the claimant's appeal was dismissed for want of prosecution and that the Director's decision was sustained.

On September 26, 2014, the claimant sent an e-mail indicating she wished to appeal the Referee's decision as she was not able to attend the original hearing nor did she attend the previously scheduled hearing for unforeseen circumstances.

On October 1, 2014, a letter was sent to the claimant indicating the Board had issued two Referee decisions as the claimant had failed to show up for either of her scheduled Referee hearings. The claimant was asked to respond in writing with the reasons why she did not appear for either of her scheduled Referee hearings. The claimant never responded to this letter and has provided no valid reason for her failure.

Based on the above, the claimant has failed to show good cause for her failure to appear for two scheduled Referee hearings. Therefore, her request for an appeal is hereby denied.¹⁴

¹⁴ See Decisions of Board of Review, November 7, 2014, (Nos. 20142604 and 20142605), at 1.

Mr. Chattman filed an appeal in the Sixth Division District Court on December 8, 2014.

II 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.’”¹⁵ The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.¹⁶ Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result¹⁷

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 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

¹⁵ Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5).

¹⁶ Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

¹⁷ 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).

effect of expressed restrictions on eligibility under the guise of construing such provisions of the act.

III ANALYSIS

A Discussion

The sole issue presented in this case is whether the Board's affirmance of the Referee's dismissal of the appeal was factually and legally justified. In my estimation there is no doubt that it was.

Rhode Island's Employment Security Act has included, since its adoption, an administrative hearing process to adjudicate disputes regarding, *inter alia*, whether a Claimant should be disqualified from receiving unemployment benefits — with the opportunity of judicial review held in abeyance.¹⁸ But these administrative processes, while customarily eschewing the kinds of formality associated with judicial trials, must still maintain some regularity, some order. It is to be expected that interested parties, such as claimants and employers, will appear at hearings when noticed. And, there must be consequences if they do not; otherwise, anarchy will inevitably ensue.

¹⁸ See generally the Rhode Island Administrative Procedures Act, codified as Chapter 35 of Title 42 of the General Laws.

But, is the Board of Review authorized to dismiss unemployment appeals where the Claimant has failed to appear at a scheduled hearing? The answer to the question is a clear yes. Indeed, default is permitted under a provision of the Administrative Procedures Act, Gen. Laws 1956 § 42-35-9(d), which provides —

Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

And so, there is no doubt that the Board can default Appellants who did not appear for his hearings. But was the default entered here appropriate — justified by the record?

But the Claimant never responded to the Board's inquiry as to the reasons for his failure to appear. As a result, we need not consider whether (1) the Claimant's excuse was sufficient, if believed, to constitute good cause, and (2) was it creditable? Thus, the Board of Review's unanimous ruling finding Claimant Chattman failed to show good cause for his failure to appear at either of the two appeal hearings scheduled by the Board must be affirmed.¹⁹

¹⁹ Decision of Board of Review, November 7, 2014, at 2. Although we do not reach this issue, Claimant's failure to appear at his hearings means that he failed to meet his burden of proving, pursuant to Gen. Laws 1956 § 28-44-17, that he left his prior employment without good cause.

B
Rationale

Pursuant to Gen. Laws 1956 § 42-35-15(g), the decision of the Board of Review 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 of Review as to the weight of the evidence on questions of fact.²⁰ Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.²¹ In addition, the procedure followed by the Board of Review must not have been unlawful. Gen. Laws 1956 § 42-35-15(g)(3).

The Board of Review, like its Referees, or any adjudicatory body, has every right to regulate its proceedings and to take appropriate action when parties fail to comply with its established procedures. A dismissal for failure to prosecute is categorically a reasonable response to a litigant's failure to appear at a duly scheduled hearing, unless a sufficient excuse (one constituting good

²⁰ Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

²¹ Cahoone, supra n. 19, 104 R.I. at 506, 246 A.2d at 215 (1968). See also Gen. Laws § 42-35-15(g), supra at 7 and Guarino, supra at 8, n. 15.

cause) has been presented. And, for the reasons I enumerated in Section III-A, supra, I find Claimant's lack of an excuse to be insufficient. Accordingly, I cannot find that the Referee's dismissal of his appeal constituted an improper exercise of discretion or that it was done through an improper procedure.

IV
CONCLUSION

Upon careful review of the record, I recommend that this Court find that the decision of the Board of Review was not clearly erroneous and was not affected by error of law. Gen. Laws 1956 § 42-35-15(g)(3),(4).

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

_____/s/_____
Joseph P. Ippolito
MAGISTRATE

MARCH 19, 2015

