

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

**DISTRICT COURT  
SIXTH DIVISION**

**Nathan S. Rene**

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:  
:

v.

**A.A. No. 14 - 056**

**Department of Labor and 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 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 decision of the Board of Review is REVERSED AND REMANDED.

Entered as an Order of this Court at Providence on this 11<sup>th</sup> day of March, 2015.

By Order:

\_\_\_\_\_/s/\_\_\_\_\_  
Stephen C. Waluk  
Chief Clerk

Enter:

\_\_\_\_\_/s/\_\_\_\_\_  
Jeanne E. LaFazia  
Chief Judge

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PROVIDENCE, Sc.**

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**Nathan S. Rene** :  
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v. : **A.A. No. 14 - 056**  
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**Department of Labor and Training,** :  
**Board of Review** :

**FINDINGS & RECOMMENDATIONS**

**Ippolito, M.** Mr. Nathan S. Rene comes to this Court seeking judicial review of a final decision rendered by the Board of Review of the Department of Labor and Training, which dismissed Mr. Rene’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 of Review's decision on the issue of the dismissal for lateness should be set aside and the case remanded to the Board for a more definite decision on the late-appeal issue; I so recommend.

**I**  
**FACTS AND TRAVEL**

In light of our focus on the late-appeal issue, the facts and travel of the case may be briefly stated: Mr. Nathan S. Rene was employed for eleven months by Data Storage Corporation, which is in the business of storing and replicating computer data for its clientele. Working the overnight shift, Mr. Rene's job was to monitor activity in the client's accounts for errors. He was terminated on December 6, 2013 and he applied for unemployment benefits the same day. His claim was allowed by a designee of the Director of the Department of Labor and Training, for two reasons — first, the employer was excluded from contesting Mr. Rene's claim for benefits because it did not respond to a Notice of Claim form that was sent to it, regarding Mr. Rene's claim, within seven working days, as required by Gen. Laws 1956 § 28-44-38(c); secondly, the Director found that the Department

had no evidence upon which to base a finding that Claimant had been terminated for disqualifying misconduct, pursuant to Gen. Laws 1956 § 28-44-18.

Mr. Rene appealed and a hearing was scheduled before Referee Nancy L. Howarth on February 10, 2014. In a decision dated February 14, 2014, the Referee reversed the Director's decision, finding that Data Storage proved that Mr. Rene was terminated for misconduct — specifically, failing to comply with the employer's protocol regarding notifying his supervisors about errors in its accounts.<sup>1</sup> As a result, the Referee found him to be disqualified from receiving unemployment benefits pursuant to Gen. Laws 1956 § 28-44-18.<sup>2</sup>

Believing himself aggrieved by this decision, Claimant Rene filed an appeal to the Board of Review.<sup>3</sup> It was, however, filed on March 10, 2014 — nine days after the appeal period had expired (on March 1, 2014). As a result, the Chairman of the Board of Review (Mr. Fierro) sent Mr. Rene a letter dated March 13, 2014 urging him to explain why his appeal was filed

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<sup>1</sup> Decision of Referee, February 14, 2014, at 1-2.

<sup>2</sup> Decision of Referee, February 14, 2014, at 3.

<sup>3</sup> See e-mail sent to Board of Review on March 10, 2014 by his counsel, Mr. Joseph Beagan, within the administrative file certified to the Court.

tardily.<sup>4</sup>

Mr. Rene's counsel, Joseph M. Beagan and Michael J. Beagan, responded to this inquiry by letter (sent by facsimile) on March 18, 2014. In a nutshell, Mr. Rene asserted that he had been misled by the fact that, after Referee Howarth's decision was published, he had received another week's benefits; he concluded, erroneously, that the Referee's decision had somehow been reversed.<sup>5</sup> On the next Sunday, when he learned his benefits had been denied, Claimant sought advice from within his family and from counsel.<sup>6</sup> Citing the statement of our Supreme Court in Harraka v. Board of Review of the Department of Employment Security, 98 R.I. 197, 200 (1964) that the Employment Security Act should be construed liberally, in light of its humanitarian purpose, Counsel asked the Board to grant Mr. Rene the right to file a late appeal.<sup>7</sup>

Notwithstanding this communication, on April 4, 2014, the members

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<sup>4</sup> See Letter from Chairman Fierro to Mr. Rene (copy to counsel) dated March 13, at 1.

<sup>5</sup> See Letter sent to Board of Review on March 18, 2014 by his counsel, Mr. Michael Beagan, in the administrative file certified to this Court, at 1.

<sup>6</sup> Id.

<sup>7</sup> Id., at 1-2. Counsel also reminded the Board that the courtesy of a late response had been granted to the employer pursuant to Gen. Laws 1956 § 28-44-38(c). Id., at 1.

of the Board of Review unanimously dismissed Mr. Rene's appeal for lateness.<sup>8</sup> The Board said simply —

The claimant has failed to justify the late filing of the appeal in the instant case and the appeal is denied and dismissed.<sup>9</sup>

Mr. Rene filed the instant complaint for judicial review of the decision of the Board of Review in the Sixth Division District Court on April 17, 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;

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<sup>8</sup> Decision of Board of Review, April 4, 2014, at 1.

<sup>9</sup> Id.

- (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.’ ”<sup>10</sup> The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.<sup>11</sup> Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result<sup>12</sup>

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:

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<sup>10</sup> 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).

<sup>11</sup> Cahoone v. Board of Review of the Dept.of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

<sup>12</sup> 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).

\* \* \* 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.

### **III APPLICABLE LAW**

The time limit for appeals from decisions of the Referee (referred to 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.

#### IV ANALYSIS

As quoted above in Part III of this opinion, the appeal period for appeals from decisions of a Referee to the Board of Review is established in Gen. Laws 1956 § 28-44-46 to be fifteen days, though the period may be extended for good cause. In the instant case, the Board declined to extend that period, finding only that the Claimant had “failed to justify” his late appeal. And so, this Court must determine whether that conclusion was sufficient to support the Board’s dismissal of Mr. Rene’s appeal. But to complete this seemingly simple task we shall have to answer a number of subordinate questions.

First, was the appeal late? There is no genuine issue on this question. Claimant’s appeal was filed a number of days after the expiration of the appeals period.

Secondly, was Claimant given notice of the appeal time-period? Yes,

he was. On page 3 of the Referee's February 14, 2014 decision is a section headlined "APPEAL RIGHTS" in which the 15-day appeal period is clearly delineated. 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.

Thirdly, did the Appellant demonstrate that his appeal was tardy for good cause? Undoubtedly, this is where the Appellant and the Board join issue. The Board found that Claimant did not "justify" his late appeal. Well, he did attempt to justify it. Counsel's March 18, 2014 letter was an effort to do so. We may conclude that the Board found this attempt lacking; but its rationale has been denied us.

As noted above, the members of the Board of Review unanimously dismissed Mr. Rene's appeal, finding — in a conclusory manner — that Claimant "failed to justify" the lateness of his appeal.<sup>13</sup> Since the Board did not state the reason for its finding, we do not know whether the Board of Review found Mr. Rene's excuse to be inadequate per se, or whether the excuse proffered by Mr. Rene was found to be incredible. Certainly, this Court cannot speculate as to the Board's reasoning. As a result, I believe the

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<sup>13</sup> Decision of Board of Review, April 4, 2014, at 1.

Board's lack of specificity effectively denies Mr. Rene the opportunity for meaningful judicial review of its decision.<sup>14</sup>

Accordingly, I recommend that this Court set aside the dismissal of Mr. Rene's appeal for lateness and instruct the Board of Review to render a decision on the merits. In the interest of assisting this Court's review function, the Board should address — (1) the late appeal issue: here the Board must make factual findings and legal conclusions (since this issue arose after the Referee ruled); next, the Board should consider (2) the issue of the employer's late-response to the Department of Labor and Training (because, if the employer failed to justify its late response, the employer loses standing to contest the claim),<sup>15</sup> and (3) the misconduct issue. On the first issue the Board must make findings, since the late appeal occurred after the Referee's ruling. Regarding the latter two issues the Board may — as always — grant the Claimant a further hearing or proceed on the basis of

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<sup>14</sup> Decision of Board of Review, April 4, 2014, at 1.

<sup>15</sup> The Board should consider whether the record truly supports a finding that the employer had notified DLT that it was ending its relationship with its human resources partner — Insperity — in a timely manner. Cf. Referee Hearing Transcript, at 10-14 and the documentary record, including Employer's Exhibit No. 1.

the record developed by the Referee.<sup>16</sup>

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.<sup>17</sup> Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.<sup>18</sup> However, the procedure followed by the Board must not have been unlawful. Gen. Laws 1956 § 42-35-15(g)(3). Accordingly, due to the lack of any specificity regarding the reason why Claimant's request for a late appeal was not honored, I believe the Board's decision must be viewed as inadequate; I therefore recommend it be reversed and the matter remanded for the issuance of a further decision.

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<sup>16</sup> See Gen. Laws 1956 § 28-44-47.

<sup>17</sup> Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

<sup>18</sup> Cahoone, supra n. 17, 104 R.I. at 506, 246 A.2d at 215 (1968). See also Gen. Laws § 42-35-15(g), supra at 5-6 and Guarino, supra at 6, n. 10.

**V**  
**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 the matter REMANDED for a further decision in accordance with this opinion.

\_\_\_\_\_/s/  
Joseph P. Ippolito  
MAGISTRATE

MARCH 11, 2015