

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

**DISTRICT COURT  
SIXTH DIVISION**

**Aaron Pryor** :  
 :  
**v.** : **A.A. No. 2015 - 106**  
 :  
**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 and 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 25<sup>th</sup> day of January, 2016.

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  
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Aaron Pryor

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A.A. No. 2015 - 106

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Department of Labor and Training,

:

Board of Review

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### FINDINGS & RECOMMENDATIONS

**Ippolito, M.** In this case Mr. Aaron J. Pryor urges that the Board of Review of the Department of Labor and Training erred when it affirmed a Referee's decision dismissing his appeal (from a decision of the Department denying him unemployment benefits) because he failed to appear at the hearing at the scheduled date and time. 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

### THE FACTS AND TRAVEL OF THE CASE

The facts and travel of the case may be stated as follows: after leaving the employ of the Lowe's Home Center, Mr. Pryor applied for and began to receive unemployment benefits. But, in June of 2015, designees of the Director of the Department of Labor and Training issued two decisions, each of which had the effect of diminishing or eliminating Mr. Pryor's access to unemployment benefits.

In the first, issued on June 2, 2015, Mr. Pryor was determined to have underreported his part-time earnings for the week ending April 18, 2015; as a result, the amount he earned was not deducted from the amount of benefits he received — as is required by Gen. Laws 1956 § 28-44-7 and Gen. Laws 1956 § 28-42-3(25). See Decision of Director, No. 1517938, June 2, 2015, at 1, contained in the record as Department's Exhibit No. 2. The Director ordered him to repay the excess benefits he received in the amount of \$133.00. Id.

The second decision was issued on June 25, 2015. In it, the Department held that Mr. Pryor had quit his previous position at Lowe's Home Centers without good cause, and was therefore disqualified from receiving further unemployment benefits pursuant to Gen. Laws 1956 § 28-44-17. See Corrected Decision of Director, No. 1519116, June 25, 2015, at 1, contained in the record

as Department's Exhibit No. 3.<sup>1</sup> The Director also ordered repayment of \$1,148.00. Id.

Mr. Pryor appealed from these orders and a hearing was scheduled on July 27, 2015. See Notice of Referee Hearing, July 9, 2015. However, Mr. Pryor failed to appear at the hearing. Accordingly, the Referee, Mr. William Enos, 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. The hearing was scheduled for July 27, 2015 at 8:45 a.m. The case was called at 8:55 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.

See Decisions of Referee, July 27, 2015, at 1.<sup>2</sup> And so, the Referee dismissed the

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<sup>1</sup> This corrected decision differed from the original decision, issued one day before, in that it reduced the amount of repayment that was ordered, to reflect the fact that a partial repayment had already been ordered on June 2, 2015 in decision No. 1517938.

It should be noted that the administrative record forwarded to this Court by the Board of Review has been bifurcated — there is a 28-page record for No. 1517938 (which became No. 20152413 at the Referee/Board of Review level) and a 50-page record for No. 1519116 (which was numbered 20152414 at the Referee/Board of Review level).

<sup>2</sup> Following the Department's lead, Referee Enos issued not one but two decisions containing the language quoted in the text. See Decision of Referee, No. 1517938/20152413, July 27, 2015, at 1, and Decision of Referee, No. 1519116/20152414, July 27, 2015, at 1.

Claimant's appeal for want of prosecution. Id.

But despite his failure to appear, Claimant made a request to reschedule the hearing that was received by the Board of Review on August 5, 2015. See Exhibit R-3. And so, a second hearing was scheduled for August 26, 2015. See Notice of Referee Hearing, August 6, 2015; see Exhibit R-4. However, Mr. Pryor again failed to appear. Accordingly, the Referee, Ms. Carol Gibson, in similar language to that employed by Referee Enos, dismissed the Claimant's appeal for want of prosecution. See Decisions of Referee, August 26, 2015, at 1.<sup>3</sup> Claimant made a further request to reschedule the hearing but on August 31, 2015, the Chief Referee, Mr. Raymond Maccarone notified Mr. Pryor that the matter was now before the Board of Review; he also directed Mr. Pryor to explain why he did not appear for his hearings. See Letter from Mr. Raymond Maccarone to Mr. Aaron Pryor, August 31, 2015. And Mr. Pryor did respond, indicating that he could not get the day off from work. See Letter from Mr. Pryor to Whom It May Concern, September 8, 2015.

Finally, on September 18, 2015, the Board of Review's Decisions were issued. In them, the Board unanimously affirmed the August 26, 2015 decision

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<sup>3</sup> Referee Gibson also issued two decisions: See Decision of Referee, No. 1517938/20152413, August 26, 2015, at 1, and Decision of Referee, No. 1519116/20152414, August 26, 2015, at 1.

of Referee Gibson and adopted it as its own; however, the Board supplemented the decision of the Referee with its own, additional, findings of fact —

The claimant filed an appeal of a Director's decision denying benefits. On July 9, 2015, a Notice of Referee Hearing was mailed to the claimant scheduling a hearing for July 27, 2015. The claimant failed to appear for his hearing. On July 27, 2015, a Decision of Referee was mailed dismissing the claimant's appeal for want of prosecution. On August 5, 2015, the Board of Review received an appeal from the claimant indicating he was unable to appear for his hearing as he had started a new job. The claimant requested to reschedule his appointment.

On August 7, 2015, the Board of Review mailed a Notice of Referee hearing to the claimant scheduling him for a hearing on August 26, 2015 at 8:45 a.m. The claimant did not appear at the scheduled time and the case was dismissed. The claimant arrived at 9:00 a.m., after the employer had been dismissed. The Claimant indicated he was lost. He did not contact the Board of Review to indicate he would be late. On August 26, 2015, a Decision of Referee dismissing the claimant's appeal for want of prosecution was mailed to all interested parties. On August 27, 2015, the claimant faxed an appeal. He indicated that he was working and needed three weeks to take time out of work.

On August 31, 2015, the Board of Review mailed a letter to the claimant indicating he failed to appear for two scheduled Referee hearings and that the original decision of the Director denying benefits was upheld. The claimant was asked to respond in writing by mail, fax or e-mail within seven days with the reasons why he did not appear for the scheduled Referee hearings and why the Board should now consider his appeal. On September 10, 2015, the claimant sent a fax in response to the August 31, 2015 letter. The claimant indicated that he was just getting the letter in the mail before the hearing and that the directions to the building were unclear.

The Notice of Referee Hearing for the July 27, 2015 hearing was mailed on July 9, 2015, 18 days prior to the hearing, and the Notice

of Hearing for the August 26, 2015 hearing was mailed to the claimant on August 7, 2015, 19 days prior to the hearing. Therefore, the claimant's assertion that he was only given a week's notice is not credible. Also, the claimant did appear for the August 26, 2015, but he arrived late, 15 minutes after the scheduled time of the hearing and after the employer had already been dismissed. The claimant did not call the Board of Review prior to the case being dismissed to advise that he was lost and would be late.

Therefore, the claimant has failed to establish good cause for his failure to appear for his Referee hearings and the claimant's request for an appeal is denied. The Referee decision of August 26, 2015 dismissing the claimant's appeal for want of prosecution and affirming the Director's denial of benefits is affirmed.<sup>4</sup>

Mr. Pryor filed an appeal in the District Court on November 10, 2015.<sup>5</sup>

## 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

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<sup>4</sup> The Board of Review also issued two decisions containing the language quoted in the text. See Decision of Board of Review, No. 1517938/20152413, September 18, 2015, at 1-2, and Decision of Referee, No. 1519116/20152414, September 18, 2015, at 1-2.

<sup>5</sup> Obviously, this appeal was filed more than twenty days after the expiration of the 30-day appeal period. In light of my recommendation for the disposition of the instant case, I need not, and shall not, address this issue.

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.’”<sup>6</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>7</sup> Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result<sup>8</sup>

The Supreme Court of Rhode Island declared in Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595,

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<sup>6</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>7</sup> Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

<sup>8</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).

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.

**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.<sup>9</sup> 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.

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 their hearings. But was the default entered here legally justified?

Clearly, the Board found the excuses Mr. Pryor proffered (for his failure to appear at the two hearings it scheduled before its Referees) to be unconvincing. Specifically, it deemed his plea that he needed three weeks' notice to be untrue since was able to appear at the second hearing, albeit tardily. And

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<sup>9</sup> See generally, the Rhode Island Administrative Procedures Act, codified as Chapter 35 of Title 42 of the General Laws.

the Board deemed his complaint of insufficient notice to be disingenuous, since, as it recited, Mr. Pryor had been given longer notice than he asserted. The Board also rejected his criticism of the directions on the hearing notice — i.e., as being confusing — noting that he did not call for directions or to say he would be late. In my view, these were valid points, which provided a rational basis for its decision.

## **B**

### **Resolution**

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.<sup>10</sup> Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.<sup>11</sup> In addition, the procedure followed by the Board of Review must not have been

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<sup>10</sup> Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

<sup>11</sup> Cahoone, ante n.10, 104 R.I. at 506, 246 A.2d at 215 (1968). See also Gen. Laws § 42-35-15(g), ante at 6-7 and Guarino, ante at 7, n.6.

unlawful. Gen. Laws 1956 § 42-35-15(g)(3).

And, for the reasons I enumerated in Section III-A, ante, I cannot find that the Board's affirmance of the Referee's dismissal of his appeal was clearly erroneous, constituted an improper exercise of discretion, or that it was done through an improper procedure. Under these circumstances there is no basis for this Court to substitute its judgment for that of the Board of Review.

#### 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.

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/s/  
Joseph P. Ippolito  
MAGISTRATE

JANUARY 25, 2016

