

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PROVIDENCE, Sc.

DISTRICT COURT  
SIXTH DIVISION

**Emanuel Joia**

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v.

**A.A. No. 2015 - 108**

**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 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 AFFIRMED.

Entered as an Order of this Court at Providence on this 29<sup>th</sup> day of February, 2016.

By Order:

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

Enter:

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

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS  
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Department of Labor and Training, :

Board of Review :

**FINDINGS & RECOMMENDATIONS**

**Ippolito, M.** In the instant complaint Mr. Emanuel Joia urges that the Board of Review of the Department of Labor and Training erred when it held that the Department acted correctly when it denied his request to backdate his claim for unemployment benefits.

Jurisdiction for appeals from the decision of the Department of Employment and Training Board of Review is vested in the District Court by General Laws 1956 § 28-44-52. This matter has been referred to me for the making for Findings and Recommendations pursuant to Gen. Laws 1956 § 8-8-

8.1. Employing the standard of review applicable to administrative appeals, and after review of the certified record, I find that the decision of the Board of Review is supported by the reliable, probative, and substantial evidence of record and was not affected by error of law; I therefore recommend that the Decision of the Board of Review be AFFIRMED.

## I

### FACTS AND TRAVEL OF THE CASE

The facts and travel of the case are these: Mr. Emanuel Joia last worked on December 29, 2014.<sup>1</sup> However, Claimant Joia did not immediately contact the Department of Labor and Training to determine his eligibility; to the contrary, because he believed that he would be eligible for worker's compensation benefits, he did not file his claim for unemployment benefits until July 3, 2015.<sup>2</sup>

As it was required to do, the Department reviewed his claim, which apparently was worth little, because he had not worked in the previous six months.<sup>3</sup> And so, the Department considered whether it could backdate his

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<sup>1</sup> Decision of Referee, September 21, 2015, at 1.

<sup>2</sup> Id.

<sup>3</sup> The monetary eligibility of claimants is determined by their earnings in their "base period," which is primarily (though not exclusively) defined as the first four of the five most recent calendar quarters. See Gen. Laws 1956 § 28-42-3(3).

claim to January (of 2015).

However, on July 21, 2015, citing Rule 17(E) of the Rules of the Rhode Island Department of Labor and Training for the Unemployment Insurance and the Temporary Disability Insurance Programs as authority, the Director determined that the Department could not backdate Mr. Joia's claim.<sup>4</sup>

Claimant Joia filed an appeal of the Director's decision and a hearing was held before Referee Carl Capozza on September 16, 2015. Claimant was the sole witness. On September 21, 2015, the Referee held that Mr. Joia was not entitled to have his claim backdated. Regarding this latter issue, the Referee found the following facts:

The claimant last worked on December 29, 2014. On July 3, 2015 the claimant filed his claim for benefits which claim was made effective June 28, 2015. The claimant delayed the filing of his claim as he believed that he would-be entitled to Workers' Compensation benefits as a result of an alleged prior injury. The claimant made no attempt to Contact the Department of Labor and Training to determine his rights concerning whether or not he should delay or file his unemployment claim within seven days of his last day of work or thereafter. The claimant presents no evidence that he had filed a Workers' Compensation or that such an action was pending.<sup>5</sup>

Based on these Findings, and after quoting extensively from § 28-44-12, the

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<sup>4</sup> See Director's Decision, July 21, 2015, at 1, within the record as Agency's Exhibit No. 2.

<sup>5</sup> Decision of Referee, September 21, 2015, at 1.

Referee pronounced the following Conclusions:

\* \* \*

Based on the credible testimony and evidence of record, I find that the claimant has failed to establish good cause for his failure to contact the Call Center within seven days of his last day of work to file his claim for benefits. There is no evidence indicated that the claimant was prevented from inquiring of the Department of Labor and Training concerning his rights when he believed he was entitled to a Workers' Compensation claim and took no action to do so until July 3, 2015 when he proceeded with his claim for benefits. 'Under these circumstances, I find that the claimant has failed to establish good cause for failure to contact the Call Center in a timely manner in order to file his claim and, therefore, his request for the backdating of his claim to be made effective January 25, 2015 must be denied.<sup>6</sup>

And so, Referee Capozza affirmed the Director's decision denying Mr. Joia's request to backdate his claim.<sup>7</sup>

Claimant filed an appeal to the Board of Review and on October 16, 2015, the members of the Board of Review issued a unanimous decision finding that the decision of the Referee was a proper adjudication of the facts and the applicable law.<sup>8</sup> The decision rendered by the Referee was thereby affirmed.<sup>9</sup>

Finally, on November 13, 2015, Claimant Joia filed a complaint for judicial review of the Board of Review's decision in the Sixth Division District

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<sup>6</sup> Decision of Referee, September 21, 2015, at 2.

<sup>7</sup> Id.

<sup>8</sup> Decision of Board of Review, October 16, 2016, at 1.

<sup>9</sup> Id.

Court.

## II APPLICABLE LAW

This case centers on the application of the following provision of the Rhode Island Employment Security Act, which enumerates several grounds upon which a claimant may be deemed ineligible to receive unemployment benefits. Gen. Laws 1956 § 28-44-12(a), provides:

**28-44-12. Availability and registration for work.** -- (a) An individual shall not be eligible for benefits for any week of his or her partial or total unemployment unless during that week he or she is physically able to work and available for work. To prove availability for work, every individual partially or totally unemployed shall register for work and shall:

(1) File a claim for benefits within any time limits, with any frequency, and in any manner, in person or in writing, as the director may prescribe;

(2) Respond whenever duly called for work through the employment office; and

(3) Make an active, independent search for suitable work.

(b) \* \* \*

(Emphasis added).

As one may readily observe, § 12(a) requires separated workers to file their claims within time limits set by the Department.

Now, this provision is fleshed out in the Rules of the Rhode Island Department of Labor and Training for the Unemployment Insurance and the Temporary Disability Insurance Programs Rules, particularly Rule 17(E):

E. Whenever an otherwise eligible individual who has already served a waiting period for the benefit year during which he/she claims benefits shall contact the department's Call Center to refile or reopen a claim for benefits during a week of total or partial unemployment, the effective date of said claim shall be established as the Sunday of the week in which the individual contacts and refiles or reopens his/her claim in accordance with procedures prescribed by the Director. Any individual who fails without good cause to contact the Call Center in accordance with these provisions shall not be eligible to receive benefits for the week(s) in which such failure occurs.

Thus, under Rule 17(E), claimants who do not file for benefits in a timely manner may have their claims "backdated" if that failure was predicated upon "good cause."

And what is "backdating"? It is a device by which a claim is considered as if it had been filed on an earlier date. While backdating is authorized statutorily in a particular scenario (not pertinent here),<sup>10</sup> we shall assume *arguendo* that Rule 17's proclamation of such authority is lawful.<sup>11</sup>

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<sup>10</sup> In Gen. Laws 1956 § 28-42-3(3), in which the term "base period" is defined, backdating is allowed for persons who have received workers' compensation but, when able to return to work, found their jobs unavailable. Id.

<sup>11</sup> Our Supreme Court followed this procedure in DePetrillo v. Department of Employment Security, Board of Review, 623 A.2d 31, 34 (R.I. 1993), in which it noted that the Department (then the "Department of Employment Security") "apparently" views the rule "as providing an avenue for the backdating of a claim if a claimant can show good cause why the claimant failed to file a claim in a timely manner." DePetrillo, 623 A.2d at 34. Agreeing that the Claimant had not shown good faith, the Court never reached the issue of the whether the Department's interpretation was correct. I shall follow the same course here.

### III STANDARD OF REVIEW

The standard 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.’ ”<sup>12</sup> The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of

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<sup>12</sup> Guarino v. Department of Social Welfare, 122 R.I. 583, 588, 410 A.2d 425, 428 (1980) quoting Gen. Laws 1956 § 42-35-15(g)(5).

fact.<sup>13</sup> Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.<sup>14</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:

\* \* \* 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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<sup>13</sup> Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

<sup>14</sup> Cahoone, 104 R.I. at 506, 246 A.2d at 215. Also, D’Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

**IV**  
**ANALYSIS – BACKDATING OF THE CLAIM**

The issue in this case is straightforward — did the Board of Review err by declining Mr. Joia’s request to backdate his claim? To answer this question we shall first review the testimony that was given by Mr. Joia at the hearing conducted by Referee Capozza in this matter; thereafter, we shall apply the facts in the instant record to the applicable law.

**A**  
**The Hearing Conducted by the Referee**

At the hearing conducted in this case, Referee Capozza inquired of Mr. Joia regarding why he had not filed for unemployment benefits when he was first separated from his job.<sup>15</sup> The Claimant answered by describing the circumstances of his separation from UPS: he said that, about a month prior to his termination, he had injured his shoulder on the job and was put on light duty.<sup>16</sup> But then, on December 29, 2014, he was called to the manager’s office and told that he was being let go because he was not able to do his (full) job sorting packages.<sup>17</sup>

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<sup>15</sup> Referee Hearing Transcript, at 5.

<sup>16</sup> Referee Hearing Transcript, at 5.

<sup>17</sup> Referee Hearing Transcript, at 5-6. He explained that full duty meant he had to handle packages up to 70 pounds. Referee Hearing Transcript, at 6.

Mr. Joia explained that he had filed a workers' compensation case in early December of 2014.<sup>18</sup> And he said he did not file for unemployment benefits because he was told he had been fired because he could only perform light-duty tasks.<sup>19</sup> And when the Referee asked him why he did not, at the least, call the Department to see if he needed to file, Mr. Joia said that he did not believe he had to — since he had filed for workers' compensation.<sup>20</sup> Mr. Joia also said that he simply did not believe that he was eligible for unemployment.<sup>21</sup> Mr. Joia indicated that he began working fulltime again in July of 2015.<sup>22</sup>

## **B**

### **Discussion**

The Board of Review found (adopting the Referee's decision as its own) that Mr. Joia did not show that he had good cause for failing to file his claim for unemployment benefits in a timely manner. The Referee noted that there was no allegation that anyone at the Department had dissuaded or deterred Mr. Joia from filing a timely claim for unemployment benefits. To the contrary, Claimant

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<sup>18</sup> Referee Hearing Transcript, at 7.

<sup>19</sup> Referee Hearing Transcript, at 7.

<sup>20</sup> Referee Hearing Transcript, at 10, 13. When pressed, Claimant admitted that he never formally filed for workers' compensation. Referee Hearing Transcript, at 11. This may be attributable to the fact that Mr. Joia's doctor was not confirming his injury. Referee Hearing Transcript, at 9.

<sup>21</sup> Referee Hearing Transcript, at 14.

<sup>22</sup> Referee Hearing Transcript, at 13.

Joia conceded that he had never even called the Department. Moreover, Claimant stated that he did not file a claim because he believed that he was entitled to workers' compensation benefits.

In the absence of any proof of deterrence on the part of the Department (or any governmental official), I cannot find that the Board of Review's decision denying Mr. Joia's request to backdate his claim is clearly erroneous.<sup>23</sup> Subjective misunderstandings of the law, like that entertained by Mr. Joia, have never been deemed sufficient to justify backdating.<sup>24</sup> Indeed, if such a reason were to be acknowledged as sufficient, the statutory and regulatory time limits would be rendered meaningless. Therefore, I conclude that and the Board of Review did not err in declining to order Mr. Joia's claim to be backdated.

## V

### CONCLUSION

Pursuant to the applicable standard of review described ante at 6-7, 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. This Court is not permitted to substitute its judgment for that of the

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<sup>23</sup> See DePetrillo v. Department of Employment Security Board of Review, 623 A.2d 31, 34-35 (R.I.1993).

<sup>24</sup> See DePetrillo, id. See also Sara Maroto v. Department of Labor and Training, Board of Review, A.A. No. 2010-142, slip op. at 8 (Dist.Ct. 09/13/2010).

Board as to the weight of the evidence; accordingly, the findings of the agency must be upheld even though a reasonable fact-finder might have reached a contrary result.

Upon careful review of the evidence in the certified record, I find that the decision of the Board of Review is not affected by error of law. Gen. Laws 1956 § 42-35-15(g)(3),(4). Further, it is also not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; nor is it arbitrary or capricious. Gen. Laws 1956 § 42-35-15(g)(5),(6). Accordingly, I recommend that the decision of the Board of Review be AFFIRMED.

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

February 29, 2016

