

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

Joaquin Santos :
 :
v. : **A.A. No. 15 - 083**
 :
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, 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 and 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 29th day of February, 2016.

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 Mr. Joaquin Santos 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. Joaquin Santos was working for Technic, Inc. until he quit. He applied for unemployment benefits but, on May 5, 2015, 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 Technic's employ without good cause as defined in Gen. Laws 1956 § 28-44-17.¹

Mr. Santos filed an appeal (on May 11, 2015) and a hearing was set before Referee Carl Capozza on May 28, 2015; however, Mr. Santos failed to appear at the hearing. Accordingly, the same day, the Referee 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. 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.²

¹ See Decision of Director, May 5, 2015, at 1.

² See Decision of Referee, May 28, 2015, at 1.

Mr. Santos filed an appeal to the Board of Review (of the Referee's decision dismissing his appeal) by e-mail on June 29, 2015, after the expiration of the 15-day appeal period.

The Chairman of the Board of Review, Mr. Chris Fierro, responded to this e-mail on July 10, 2015 and, citing Gen. laws 1956 § 28-44-46, directed Mr. Santos to provide the Board with the reasons why he failed to appeal in a timely manner; he was given one week to do so.³

Mr. Santos did respond by e-mail to explain the reason why his appeal was late —

This is to inform you that I Joaquin Santos I did not appeal 15 days before I was waiting and thinking that you were going to send me another letter or appointment to appeal that why I was late for the appeal on June 29, 2015. Please help me out and concenter me for unemployment benefits. I'm late on my rent and lots of bills thank you for your support I apologize for any inconvenience caused. Thank very much have nice day !!!!!!!⁴

Then, on July 20, 2015, the Chief Referee of the Board of Review, Mr. Raymond J. Maccarone, Jr., notified Mr. Santos that the Board received his

³ See Letter from Chairman Chris Fierro to Mr. Joaquin Santos dated July 10, 2015.

⁴ See Copy of e-mail from Mr. Joaquin Santos dated July 17, 2015.

appeal and that further action would be taken by the Board as soon as it was administratively feasible.⁵

Finally, on August 13, 2015, the Board of Review's Decision was issued. In its decision, the Board dismissed Claimant's appeal for lateness. Most of the Board's decision was taken up with setting forth the travel of the case, as we have done here. But I shall set forth the conclusion of that decision, wherein the Board discussed the Claimant's justification for his late appeal, as set forth in his July 17, 2015 e-mail:

... On July 17, 2015, the claimant sent an e-mail indicating that he did not appeal timely as he was waiting thinking the Board was going to send him another letter or appointment to appeal. The decision of Referee mailed to the claimant on May 28, 2015 clearly indicated "Appeal Rights" at the bottom of the decision: "This decision will become final unless within fifteen (15) calendar days of the mailing date hereof, you file an appeal in writing to the Board of Review...."

The claimant has failed to justify the late filing of the appeal in the instant case and the appeal is denied and dismissed.⁶

Mr. Santos filed an appeal in the Sixth Division District Court on September 14, 2015.

⁵ See Letter from Chief Referee Raymond J. Maccarone, Jr. to Mr. Joaquin Santos dated July 20, 2015.

⁶ See Decisions of Board of Review, August 13, 2015, at 1.

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.’”⁷ The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.⁸ Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result⁹

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

⁷ Guarino v. Department of Social Welfare, 122 R.I. 583, 588, 410 A.2d 425 (1980) quoting Gen. Laws 1956 § 42-35-15(g)(5).

⁸ Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

⁹ Cahoone, ante, 104 R.I. at 506, 246 A.2d at 215. See also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

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
A
Discussion

The sole issue presented in this case is whether the Board of Review's dismissal of Claimant's appeal (for lateness) from the Referee's dismissal of the appeal from the decision of the Director (for want of prosecution) was factually and legally justified. In my estimation there is no doubt that it was.

Claimant's explanation for his failure to appeal in a timely manner — that he thought the Board would send him a further communication — is belied by the plain language of the Referee's decision, in which Mr. Santos was informed that an appeal had to be filed within fifteen days. On this basis alone the Board has sufficient reason to reject his explanation. Thus, the Board of Review's unanimous ruling finding Mr. Santos failed to show good cause for his failure to file his appeal in a timely manner is not clearly erroneous.

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.¹⁰ Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.¹¹

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).

¹⁰ Cahoone, ante at 6, n. 8, 104 R.I. at 506, 246 A.2d at 215.

¹¹ Cahoone, ante at 6, n. 8, 104 R.I. at 506, 246 A.2d at 215. See also Gen. Laws § 42-35-15(g), ante, at 5 and Guarino, ante, at 5, n. 7.

