

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

Agrapino Encarnacion :  
 :  
v. : A.A. No. 10 - 244  
 :  
Department of Labor & Training, :  
Board of Review :

**FINDINGS & RECOMMENDATIONS**

Ippolito, M. This matter is before the Court on the complaint of Agrapino Encarnacion seeking judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor & Training, which upheld a Referee’s dismissal of his appeal from the Department’s initial decision denying him unemployment benefits for lateness. 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 General Laws 1956 § 8-8-8.1. Because I conclude that the Board’s decision is supported by substantial evidence of record and is not otherwise affected by error of law, I must recommend that the decision of the Board of Review dismissing his appeal be affirmed.

**FACTS & TRAVEL OF THE CASE**

The facts and travel of the case may be briefly stated: Mr. Encarnacion worked for Laidlaw Transit until June of 2009; he applied for and began to receive unemployment benefits. However, on April 27, 2010 the Director issued a decision denying further

benefits to claimant under Gen. Laws 1956 § 28-44-20 [which bars benefits to unemployed workers who have refused offers of suitable work] because he refused an offer of work on July 9, 2009. See Director's Decision, April 27, 2010, at 1 — Exhibit D2. The Director's Decision included an offer of repayment. Id.

Claimant's appeal was received by the Board of Review (for assignment to a referee) on June 30, 2010. After conducting a hearing on November 30, 2010, Referee Carl Capozza issued a decision on November 5, 2010 in which he dismissed claimant's appeal because it had been filed long after the expiration of the 15-day appeal period provided for in Gen. Laws 1956 § 28-44-39(b). The referee made the following findings of fact:

A notice of Director's decision was mailed to the claimant's address of record on April 27, 2010. The claimant received the decision as of April 30, 2010. He read the notice and understood his appeal rights stated thereon. It was indicated that unless he filed an appeal within fifteen calendar days from the mailing date thereon, April 27, 2010, that the decision would become final. Claimant, however, did not file his claim of appeal until June 30, 2010 which date was forty-five days beyond the fifteen-day appeal period allowed by Law.

Referee's Decision, November 5, 2010, at 1. Based on these findings, the referee made the following conclusions:

...

The 15-day appeal period provided for under the provisions of Section 28-44-39 (b) can be extended if the individual who filed out of time had good cause for being late.

The credible testimony and facts in this case establish that the Director mailed the decision to the claimant's address of record on April 27, 2010 but that the claimant did not file an appeal within the time limits set forth under the Law. There was no evidence presented to indicate the claimant was prevented or deterred in any way by anyone from filing an appeal in a timely manner. The dates on the determination were very explicit. The evidence indicates that claimant filed his appeal by regular mail posted on June 30, 2010 which date was well beyond the appeal period allowed by Law. While the

Law allows the acceptance of a late appeal if good cause is shown, I find there has been no good cause shown in this case for claimant's failure to file a timely appeal. The delay was caused solely by matters under the complete control of the claimant. Under these circumstances I find that claimant's late appeal cannot be considered.

Referee's Decision, November 5, 2010, at 1-2. Accordingly, the claimant's appeal was dismissed.

Claimant sought review of this decision and on December 2, 2010 the Board of Review unanimously issued a brief decision affirming the referee's dismissal of claimant's appeal and adopting the Decision of the Referee as its own. Thereafter, on December 29, 2010, claimant Encarnacion filed a pro-se complaint for judicial review in the Sixth Division District Court.

### **STANDARD OF REVIEW**

The standard of review is provided by R.I. Gen. Laws § 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>1</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>2</sup> Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.<sup>3</sup>

The Supreme Court of Rhode Island recognized in Harraka v. Board of Review of the Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595, 597 (1964) that a liberal interpretation shall be utilized in construing and applying 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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1 Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing R.I. GEN. LAWS § 42-35-15(g)(5).

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

3 Cahoone v. Bd. of Review of Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968). Also D'Ambra v. Bd. of Review, Dept of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

## APPLICABLE LAW

The time limit for appeals from decisions of the Director is set by Gen. Laws 1956 subsection 28-44-39(b), which provides

(b) Unless the claimant or any other interested party who is entitled to notice requests a hearing within fifteen (15) days after the notice of determination has been mailed by the director to the last known address of the claimant and of any other interested party, the determination shall be final. For good cause shown the fifteen (15) day period may be extended. The director, on his or her own motion, may at any time within one year from the date of the determination set forth in subdivision (a)(1) of this section reconsider the determination, if he or she finds that an error has occurred in connection with it, or that the determination was made as a result of a mistake, or the nondisclosure or misrepresentation of a material fact. (Emphasis added)

Note that while subsection 39(b) 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, upon review, the District Court) has permitted late appeals if good cause was shown.

## ANALYSIS

The purpose of all tribunals — whether judicial or administrative — is to adjudicate cases on the merits. However, procedural parameters have to be established to avoid anarchy. The time limit for appeals from decisions of the Director to the Referee level is set in Gen. Laws 1956 § 28-44-39(b) to be 15 days. Accordingly, the issue in the case is whether the decision of the Referee (adopted by the Board of Review) that claimant had not shown good cause for his late appeal is supported by substantial evidence of record or whether it was clearly erroneous or affected by other error of law.

As found by the Referee, claimant Encarnacion acknowledged receipt of the

Director's decision and the appeal period stated thereon. Referee Hearing Transcript, at 19-20. Claimant claimed he filed the appeal the same day he received it — April 30, 2010. Referee Hearing Transcript, at 20-21. But the letter was postmarked on June 30, 2010, which he acknowledged. Referee Hearing Transcript, at 21. See Exhibit D3c. He had nothing else to say.<sup>4</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, including the question of which witnesses to believe.<sup>5</sup> Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.<sup>6</sup> The Court, when reviewing a Board decision, does not have the authority to expand the record by receiving new evidence or testimony.

The scope of judicial review by the District Court is also limited by General Laws section 28-44-54 which, in pertinent part, provides:

28-44-54. Scope of judicial review – Additional Evidence –  
Precedence of proceedings. – The jurisdiction of the reviewing

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4 In his appeal to the Board of Review Mr. Encarnacion stated that he filed an appeal on April 30, 2010 by letter and that he filed a second by facsimile on July 2, 2010. He made no mention of a second letter by mail; therefore, the envelope postmarked June 30, 2010 is inexplicable.

5 Cahoone v. Bd. of Review of the Dept. of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

6 Cahoone, *supra* n. 5, 104 R.I. at 506, 246 A.2d at 215 (1968). See also D'Ambra v. Bd. of Review, Dept. of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986). See also Gen. Laws § 42-35-15(g), *supra* pp. 3-4 and Guarino, *supra* p. 4, fn.1.

court shall be confined to questions of law, and in the absence of fraud, the findings of fact by the board of review, if supported by substantial evidence regardless of statutory or common law rules, shall be conclusive.

Accordingly, I must regretfully conclude that the Referee's decision (accepted and adopted by the Board) that claimant did not demonstrate good cause for his late appeal from the Decision of the Director is supported by substantial evidence of record and is not clearly erroneous.

### **CONCLUSION**

Upon careful review of the record, I recommend that this Court find that the decision of the Board of Review was not affected by error of law. General Laws 1956 § 42-35-15(g)(3),(4). Further, it is not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record or arbitrary or capricious. General Laws 1956 § 42-35-15(g)(5),(6).

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



Joseph P. Ippolito  
MAGISTRATE

JANUARY 19, 2011

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

DISTRICT COURT

Agripino Encarnacion

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v.

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A.A. No. 10 - 0244

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Dept. of Labor & Training,  
Board of Review

:

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**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 hereby AFFIRMED.

Entered as an Order of this Court at Providence on this 19<sup>th</sup> day of January, 2011.

By Order:

  
Melvin Enright  
Acting Chief Clerk  
Melvin J. Enright  
Acting Chief Clerk

Enter:

  
Jeanne E. LaFazia  
Chief Judge