

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

DISTRICT COURT

Ruddy Morales

v.

Dept. of Labor & Training,  
Board of Review

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A.A. No. 11 - 0017

**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 instant complaint is DISMISSED for lateness.

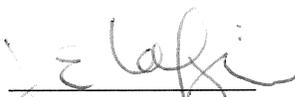
Entered as an Order of this Court at Providence on this 17<sup>th</sup> day of MARCH, 2011.

By Order:



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

Enter:



Jeanne E. LaFazia  
Chief Judge

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

Ruddy Morales :  
 :  
v. : A.A. No. 11 - 017  
 :  
Department of Labor and Training, :  
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. This matter is before the Court on the complaint of Ruddy Morales seeking judicial review of two final decisions rendered by the respondent Board of Review of the Department of Labor & Training, which held that Mr. Morales was not entitled to receive Temporary Disability Insurance (TDI) benefits. This matter has been referred to me for the making of findings and recommendations pursuant to General Laws 1956 § 8-8-8.1. Unfortunately, this Court will not be able to address the merits of this instant appeal: because claimant brought this appeal long after the applicable appeal period had expired, I must recommend his appeal be dismissed.

FACTS & TRAVEL OF THE CASE

The facts and travel of the case — as found in the record transmitted to this Court — are extremely limited. It appears that Mr. Morales was receiving workers' compensation benefits for several years and then sought to receive TDI benefits. His claims were denied by the Director of the Department of Labor and Training in

decisions dated May 13, 2009 and February 17, 2010. The claimant filed an appeal. Referee Carl Capozza held a hearing on the matter on April 15, 2010. On April 19, 2010 Referee Capozza issued two decisions summarily affirming the Director's decisions in this matter. See Decisions of Referee (20100918 & 20100919), April 19, 2010, at 1.

From these decisions claimant filed an appeal and on May 20, 2010, the Board of Review unanimously issued two decisions in which it held that the decisions of the referee were proper adjudications of the facts and the law applicable thereto. Thereafter, on or about February 22, 2011, Mr. Morales filed the instant appeal in the Sixth Division District Court.

### **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.’ ”<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>

### ANALYSIS

As stated above in the travel of the case, the Board of Review rendered its decisions on May 20, 2010, but claimant’s appeal was not submitted for over nine (9) months — on February 22, 2011 — long after the thirty day appeal period had expired. See Gen. Laws 1956 § 42-35-15(b). While Mr. Morales did not explain his tardiness in his complaint, any explanations, however meritorious, would have been of

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<sup>1</sup> 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).

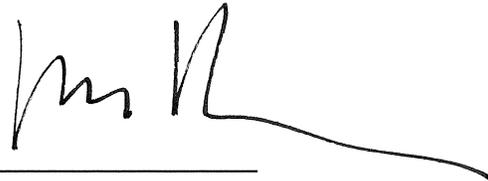
<sup>2</sup> Cahoone v. Board of Review of the Dept. of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

<sup>3</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).

no avail; quite simply, the District Court is not authorized to extend the appeal period, which has been held to be jurisdictional. See Considine v. Rhode Island Department of Transportation, 564 A.2d 1343, 1344 (R.I. 1989)(“... the District Court does not possess any statutory authority to entertain appeals that are filed out of time.” 564 A.2d at 1344.). See also Dub v. Dept. of Employment Security Board of Review, A.A. No. 90-383 (Dist.Ct. 1/23/92) (SaoBento, J.)(“ \* \* \* [complainant’s] failure to comply with the procedural requirements of § 42-35-15(b) also *invalidates* his claim for relief.” Slip op. at pp. 7-8. *Emphasis added*). Thus, Mr. Morales’s appeal must be dismissed.

### **CONCLUSION**

Upon careful review of the record in this matter, I recommend that the instant complaint for judicial review be DISMISSED because it was filed beyond the prescribed appeal period.



Joseph P. Ippolito  
MAGISTRATE

MARCH 17, 2011