

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

Carmen Frias :
v. : A.A. No. 11 - 025
Department of Labor & Training, :
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Ms. Carmen Frias urges that the Board of Review of the Department of Labor and Training erred when it affirmed a referee’s decision dismissing Ms. Frias’s appeal from the Department’s decision denying her unemployment benefits because it was filed late. 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 affirming the dismissal of her appeal be affirmed.

FACTS & TRAVEL OF THE CASE

The facts and travel of the case may be briefly stated: Ms. Frias, who was employed at George Patton Associates, was terminated on March 4, 2010 and filed a claim for unemployment benefits four days later. On July 26, 2010 the Director issued a decision denying benefits to Ms. Frias pursuant to Gen. Laws 1956 § 28-44-18, which bars benefits to those workers who have been discharged for proved misconduct. Claimant's appeal was received by the Board of Review (for assignment to a referee) on August 23, 2010. After conducting a hearing on December 20, 2010, Referee Nancy Howarth issued a decision on January 6, 2011 in which she dismissed claimant's appeal because it had been filed after the expiration of the 15-day appeal period found in Gen. Laws 1956 § 28-44-39(b). On the late-appeal issue Referee Howarth made the following Findings of Fact:

A notice of claimant decision was mailed to the claimant on July 26, 2010. The claimant acknowledged that she received the decision in timely manner. She testified that although she had filed her appeal within the fifteen day appeal period required by law, the Department contacted her to inform her that her appeal period was about to expire. Therefore, the claimant filed a second appeal on August 23, 2009.

Referee's Decision, January 6, 2011, at 1. Based on these findings, the referee made the following conclusions:

The issue in this case is whether or not the claimant filed an appeal out of time with good cause within the meaning of Section 28-44-39(b) of the Rhode Island Employment Security Act.
[Quotation of section 28-44-39(b) omitted]

Based on the evidence and testimony presented at the hearing I find that the claimant has provided no credible explanation for filing a late appeal. Accordingly, the claimant is not allowed to file an appeal out of time under the above section of the Act.

Referee's Decision, January 6, 2011, at 1-2. Accordingly, the claimant's appeal was dismissed.

Claimant sought review of this decision and on February 17, 2011 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 March 15, 2011, claimant 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.’ ”¹ The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.² Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.³

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

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).

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.

APPLICABLE LAW

The time limit for appeals from decisions of the Director is set by subsection (b) of Gen. Laws 1956 § 28-44-39, 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 her late appeal is supported by substantial evidence of record or whether it was clearly erroneous or affected by other error of law.

At the hearing before the referee, claimant Frias testified concerning the reasons for her late appeal. Referee Hearing Transcript, at 18-25. At first she testified that she had filed timely but the letter was lost and that the Department called to say they had not received her appeal. Referee Hearing Transcript, at 22. Then she said she appealed via the internet and that she went to the Department to inquire about the status of her appeal. Referee Hearing Transcript, at 22-23. Clearly, the Referee's decision to reject both these contradictory stories was reasonable.

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

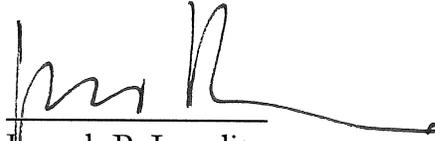
28-44-54. Scope of judicial review – Additional Evidence – Precedence of proceedings. – The jurisdiction of the reviewing court shall be confined to questions of law, and in the absence of fraud, the findings of fact by the board of review, if supported by substantial evidence regardless of statutory or common law rules, shall be conclusive.

Accordingly, I must conclude that the Referee's decision (accepted and adopted by the Board) that claimant did not demonstrate good cause for her 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

APRIL 4, 2011