

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

DISTRICT COURT

Marleine Andre

v.

Department of Labor & Training,
Board of Review

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A.A. No. 12 - 171

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 27th day of September, 2012.

By Order:

_____/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

Marleine Andre :
 :
v. : A.A. No. 12 - 171
 :
Department of Labor & Training, :
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Ms. Marleine Andre urges that the Board of Review of the Department of Labor and Training erred when it affirmed a referee's decision dismissing Ms. Andre'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. Andre, who was employed at the Pace Organization of Rhode Island, was terminated on March 22, 2012 and filed a claim for unemployment benefits on March 29, 2012. On April 27, 2012 the Director issued a decision denying benefits to Ms. Andre pursuant to Gen. Laws 1956 § 28-44-17, which bars benefits to those workers who separate from their employment without good cause. Claimant's appeal was received by the Board of Review (for assignment to a referee) on May 25, 2012. After conducting a hearing on June 27, 2012, Referee Gunter A. Vukic issued a decision that same day in which he 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 Vukic made the following

Findings of Fact:

Claimant telephoned in a claim for Employment Security benefits March 29, 2012. April 9, 2012, the claimant was adjudicated. April 27, 2012, the Department of Labor and Training mailed the subject decision to the claimant's address of record, a single-family residence in Providence Rhode Island. The claimant appeal is a hand written document bearing Friday, May 18, 2012 as the date of writing. Friday, May 25, 2012 at 6:21 PM, claimant appeal was faxed to the Department of Labor and Training and recorded as a late appeal.

Referee's Decision, June 29, 2012, 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 claimant does not recall the Department of Labor and Training representative explaining the right of appeal during her April 9, 2012 adjudication or when she received the April 27, 2012 subject decision. Her hand written appeal is dated Friday, May 18, 2012. The appeal was late at the time it was written.

Considering the claimant's lack of recall regarding her understanding of appeal rights there is no reasonable explanation provided why she waited one week before faxing her late appeal. Considering the latter, no good cause has been provided to support the late filing.

Referee's Decision, June 29, 2012, at 1-2. Accordingly, the claimant's appeal was dismissed.

Claimant sought review of this decision and on August 23, 2012 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 September 5, 2012, 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:

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,

* * * 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.

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

Dept of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

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 Andre testified concerning the reasons for her late appeal. Referee Hearing Transcript, at 8-17. At first, she testified that she received it late and then faxed it in the next day. Referee Hearing Transcript, at 9. She later testified that she received it one or two days before she wrote up her appeal — May 18, 2012. Referee Hearing Transcript, at 14. At no point during her testimony on the late-appeal issue did she explain why she waited one additional week after she received it — on May 18, 2012 — to fax it in — on May 25, 2012. Referee Hearing Transcript, at 8-17.

While certainly understandable from a human point of view, this kind of subjective failure to comply with the statutorily established time frames has never been deemed good cause for lateness. Even if one were to find that Ms. Andre received the decision late, such a finding could only justify extending her appeal period to the vicinity of May 18, 2012, providing her with an opportunity to respond. In no way could it justify an extension to May 25, 2012. As a result, the Board's finding (adopting the Referee's finding) that good cause was not shown for the lateness (in particular, the extent of the lateness) of claimant's appeal must be deemed supported by the record.

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 Gen. Laws 1956 § 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.

_____/s/_____
Joseph P. Ippolito
MAGISTRATE

SEPTEMBER 27, 2012

