

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

Sergio A. Montufar :
v. : A.A. No. 13 - 013
Dept. of Labor & Training, :
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. This matter is before the Court on the complaint of Sergio A. Montufar seeking judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor and Training, which affirmed the dismissal of Mr. Montufar's appeal for want of prosecution because he failed to appear at a hearing which had been scheduled before a Referee. 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.

FACTS & TRAVEL OF THE CASE

The facts and travel of the case may be briefly stated: after being laid off from the employ of the Herff-Jones Company, Mr. Montufar applied for and began to receive unemployment benefits; but, on September 5, 2012, a designee of the Director of the Department of Labor and Training issued a decision finding his disqualified from receiving further benefits pursuant to Gen. Laws 1956 § 28-44-12 because he was unavailable for work during his lay-off — in that he was out of the country. See Decision of Director, September 5, 2012, at 1 contained in the record as Exhibit 2. The Director also ordered repayment of \$981.00. Id.

Mr. Montufar appealed from these orders and a hearing was scheduled before Referee Carol A. Gibson on November 13, 2012; however, Mr. Montufar failed to appear at the hearing. Accordingly, she dismissed the Claimant's appeal for want of prosecution. Claimant filed an appeal but on January 4, 2013, the Board of Review unanimously affirmed the dismissal in summary fashion.

Thereafter, on January 23, 2013, the claimant filed a pro-se complaint for judicial review in the Sixth Division District Court. This matter was referred to me for the making of Findings and Recommendations pursuant to section 8-8-8.1 of the General Laws.

ISSUE

The issue before the Court is whether the decision of the Board of Review affirming the dismissal of Claimant's appeal made upon improper procedure or otherwise affected by error of law?

ANALYSIS

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.¹ Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.² Finally, 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 and applying the Employment Security Act.

In this case we cannot address the merits of Mr. Montufar's appeal, since it was dismissed on procedural grounds — i.e., because he failed to appear for a hearing on November 13, 2012. Indeed, according to correspondence between

¹ Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

² Cahoone, supra n. 1, 246 A.2d at p. 215 (1968). See also D'Ambra v. Bd. of Review, Dept. of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

Mr. Montufar and an employee of the Board, the claimant had also failed to appear at an earlier scheduled hearing, on October 11, 2012. This is confirmed by the presence in the record of a decision issued by Referee William Enos dismissing claimant's appeal on October 11, 2012; this decision was apparently set aside by the Board with Mr. Montufar being granted a second opportunity for a hearing — i.e., before Referee Gibson.. In any event, Mr. Montufar did not explain the reasons for his failure to appear on November 13, 2012 in his appeal documents or elsewhere.

The Board of Review, like any adjudicatory body, has every right to regulate its proceedings and to take appropriate action when parties fail to appear. A dismissal for failure to prosecute is categorically a reasonable response to a litigant's failure to appear at a duly scheduled hearing. Accordingly, I cannot find that the Referee's dismissal of his appeal constituted an improper exercise of discretion or an improper procedure.

Accordingly, I recommend that the Decision issued by the Board of Review in this case be affirmed. Under these circumstances there is no basis for this Court to substitute its judgment for that of the Board of Review. See Gen. Laws § 42-35-15(g), and Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980).

