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

Stephanie L. Morris	:	
	:	
v.	:	**A.A. No. 22-198**
	:	
Department of Labor and Training,	:	
Board of Review	:	

JUDGMENT

This cause came before Trezvant, J. on Administrative Appeal, and upon review of the record and memoranda of counsel, and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Board is reversed.

Dated at Providence, Rhode Island, this 22nd day of October, 2024.

Enter: By Order:

_____/s/_____ _____/s/_____

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

Stephanie L. Morris

v.

Department of Labor and Training,
Board of Review **A.A. No. 6AA-2022-00198**

DECISION

Trezvant, J. Stephanie L. Morris ("Appellant" or "Morris") has filed this complaint seeking reversal of a decision of the Department of Labor and Training, Board of Review ("the Board" or "BOR"). The Court has jurisdiction pursuant to § 28-44-52.

I. PROCEDURAL HISTORY AND FACTS

Appellant Morris was employed as a physical therapy assistant in Rhode Island. (Referee Decision 1). Appellant's employment was terminated by her employer for violation of her employer's mandatory COVID-19 vaccination policy, implemented pursuant to the Rhode Island Department of Health's regulation Section 216-RICR-20-15-8.

Appellant's employment with her former employer ended on October 29, 2021. *Id.* She subsequently filed a claim for Unemployment Insurance benefits, effective October 31, 2021. (Board of Review Records 73.) On December 3, 2021, the Department of Labor and Training sent Appellant a letter notifying her that her claim was denied because she was discharged for disqualifying reasons as her "actions were not in [her] employer's best interests" (Department of Labor & Training Decision 1.) The letter notes that she was discharged from her position due to her violation of the company's policy on COVID-19 vaccinations. *Id.* Appellant, through counsel, appealed this determination on December 6, 2021. (Appellant's Notice of Appeal of Director's Decision.) The Board of Review conducted a hearing on Appellant's appeal on March 9, 2022 (Decision of Referee at 1.) The Board of Review determined that the employer's vaccination policy was reasonable, that Appellant was aware of the policy and the consequences of noncompliance, and that her actions were intentional and substantially disregarded the employer's interests. *Id.* at 2. As such, the Board of Review affirmed the Department's denial of benefits. *Id.* at 3. This decision stated that Appellant had fifteen days from March 11, 2022 to file an appeal in writing. *Id.*

On March 22, 2022, Appellant's counsel emailed the Department with the subject line "Referee Decision Appeal – 20215424." (Board of Rev. Records at 43.) The email contained no message, except for an attachment titled "Fee Request

DET Ref – SLO 03.22.2022.pdf." *Id.* This attachment was a document titled "Request for Counsel Fee Pursuant to § 28-44-57(b). *Id.* at 39. The document, signed by counsel for Appellant, requested attorney fees from the Department because he had represented Appellant "in an appeal before a Board of Review Referee." *Id.* Upon receipt, the Board recognized the document as a request for counsel fees for an appeal before the Referee that was incorrectly sent to the Board and that it was forwarded to the Department's Legal Division. *Id.* at 41. The Board's correspondence directly replied to Appellant's email, included the attachment, and stated, "Good morning, I have forwarded this to Marangely Ortiz in the legal department." *Id.* The Board received no further communication from the Appellant until July 2022.

On July 25, 2022, Appellant's attorney emailed the Board of Review regarding the status of Appellant's appeal purportedly filed on March 22, 2022. *Id.* at 32. Appellant attached a document referenced as a March 22, 2022 appeal. *Id.* Though the document, entitled Appeal of Referee Decision, is certified as sent on March 22, 2022, the BOR had received no such document. The BOR first received the document entitled Appeal of Referee Decision on July 25, 2022. On July 26, 2022, the BOR requested a copy of the March 22, 2022 email. *Id.* at 48. Initially, Counsel sent the email appeal of the Director's Decision to the BOR with the attachment entitled "Appeal Notice CAU – 11.01.2021.doc." *Id.* at 36. The BOR

then clarified that Counsel had sent the Notice of Appeal of the Director's Decision, but that the BOR was requesting a copy of the appeal of the Referee Decision to the BOR. *Id.* at 37.

On July 27, 2022 the BOR sent Appellant a second request that Appellant show that the transmitted document, dated March 22, 2022, was in fact sent as certified. *Id.* at 51-52. The request stated that if no such proof was provided, the BOR would consider the appeal filed on July 25, 2022. *Id.* The BOR requested that the Appellant provide reasons for the late appeal in order for the BOR to determine whether she established good cause for the late filing. *Id.* Appellant did not provide proof that she sent the appeal on March 22, 2022. Nor did she respond to the request for reasons for the lateness of the appeal. Instead, Claimant re-attached the original email with the attachment entitled "Fee Request DET Ref- SLO 3.22.2022.pdf" and stated, "if it is insufficient, you may process as a late appeal, and he will print and provide the email sent at hearing." *Id.* at 51. Because the appeal date was four months passed the appeal deadline of March 26, 2022, and no reason was provided for the delay to support a finding of good cause, the Board of Review denied and dismissed the appeal on September 2, 2022. *Id.* at 2.

The within appeal comes before this Court in accordance with R.I.G.L. § 28-44-52. The Appellant, having exhausted all administrative remedies available within the Appellee agency, asks this Court to review and reverse the BOR

decision. (Appellant's Mem. 1). Both Appellant and the Board have submitted memorandum of law, which have been duly considered by this Court. *See generally* Docket.

II. APPLICABLE LAW

This case involves the application and interpretation of the Rhode Island Employment Security Act, § 28-44-47. Section 28-44-47 provides:

> "Any party in interest, including the director, shall be allowed an appeal to the board of review from the decision of an appeal tribunal. The board of review on its own motion may initiate a review of a decision or determination of an appeal tribunal within fifteen (15) days after the date of the decision. The board of review may affirm, modify, or reverse the findings or conclusions of the appeal tribunal solely on the basis of evidence previously submitted or upon the basis of any additional evidence that it may direct to be taken."

Section 28-44-26 provides that:

> "After a hearing, an appeal tribunal shall promptly make findings and conclusions and on the basis of those findings and conclusions affirm, modify, or reverse the director's determination. Each party shall promptly be furnished a copy of the decision and supporting findings and conclusions. This decision shall be final unless further review is initiated pursuant to § 28-44-47 within fifteen (15) days after the decision has been mailed to each party's last known address or otherwise delivered to him or her; provided, that the period may be extended for good cause."

460-RICR-00-00-1.17 provides that "an interested party aggrieved by a decision of a Referee may appeal said decision by filing a notice of appeal in writing with the Board of Review within fifteen (15) calendar days of the Referee's decision."

III. STANDARD OF REVIEW

When reviewing the decision of an administrative agency, the Court "sits as an appellate court with a limited scope of review." *Mine Safety Appliances Co. v. Berry*, 620 A.2d 1255, 1259 (R.I. 1993). In doing so, the Court's review is governed by the Rhode Island Administrative Procedures Act ("APA"), § 42-35-1.1, et seq. In relevant part, Section 42-35-15(g) of the APA provides:

> "The court shall not substitute its judgement for that of the agency as to 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 lawful 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."

R.I.G.L. § 42-35-15(g).

If "competent evidence exists in the record, the Court is required to uphold the agency's conclusions." *R.I. Public Telecommunications Authority v. R.I. State Labor Relations Board*, 650 A.2d 479, 484 (R.I. 1994); *see also Auto Body Association of R.I. v. State of R.I. Department of Business Regulation*, 996 A.2d 91, 95 (R.I. 2010). When reviewing a decision under the APA, the Court may not

substitute its judgment for that of the agency on questions of fact. *See Johnston Ambulatory Surgical Association v. Nolan*, 755 A.2d 799, 805 (R.I. 2000). The Court defers to the administrative agency's factual determinations, provided that they are supported by legally competent evidence. *See Arnold v. R.I. Department of Labor and Training Board of Review*, 822 A.2d 164, 167 (R.I. 2003). The Court cannot "weigh the evidence [or] pass upon the credibility of witnesses [or] substitute its findings of fact for those made at the administrative level." *E. Grossman & Sons, Inc. v. Rocha*, 373 A.2d 496, 50 (1977).

Accordingly, the Court will "reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record." *Baker v. Department of Employment Training Board of Review*, 637 A.2d 360, 363 (R.I. 1994) (quoting *Milardo v. Coastal Resource Management Council*, 434 A.2d 266, 272 (R.I. 1981)). The findings of the administrative agency should be upheld even if a reasonable mind could reach a contrary result. *See D'Ambra v. Board of Review, Department of Employment Security*, 517 A.2d 1039, 1041 (R.I. 1986).

The Court reviews determinations of law made by an administrative agency *de novo*. *See Arnold*, 822 A.2d at 167 (citing *Johnston Ambulatory Surgical Associates*, 755 A.2d at 805). Additionally, the Court is limited to the certified record in its determination as to whether legally competent evidence exists to

support the administrative agency's decision. *Barrington School Committee v. R.I. State Labor Relations Board*, 608 A.2d 1126, 1138 (R.I. 1992). Legally competent or substantial evidence is defined as "relevant evidence that a reasonable mind might accept as adequate to support a conclusion and means [an] amount more than a scintilla but less than a preponderance." *Caswell v. George Sherman Sand & Gravel Co., Inc.*, 424 A.2d 646, 647 (R.I. 1981).

In determining whether legally competent evidence exists within the administrative record, the Court does so in "light of the expressed legislative policy that [the Employment Security Act] shall be construed liberally in aid of [its] declared purpose which . . . is to lighten the burden which now falls on the unemployed worker and his family." *Harraka v. Board of Review of Department of Employment Security*, 200 A.2d 595, 597 (R.I. 1969) (quoting R.I. Gen. Laws § 28-42-73).

IV. ISSUE

The issue before the Court is whether the decision of the Board of Review was supported by the reliable, probative, and substantial evidence in the record or whether it was clearly erroneous, arbitrary or capricious, or affected by another error of law. Specifically, the Court must address whether Appellant's attorney's March 22, 2022 email with the subject line "Referee Decision Appeal-2021424" and attachment titled "Fee Request DET Ref – SLO 3.22.2022.pdf" constituted a

timely appeal pursuant to G.L. § 28-44-46. If it did not, the Court must determine whether the Board of Review relied on legally competent evidence in determining that Appellant failed to establish good cause for the four-month delay.

V. DISCUSSION

In support of this appeal, Appellant argues that the Board of Review's decision to deny her appeal as untimely constitutes an error of law because § 28-44-47 and 460-RICR-00-00-1.17 merely require party in interest file a written appeal within fifteen days of the Referee Decision. *See* Appellant Memorandum at 2. Appellant maintains that, pursuant to § 28-42-73, Title 28 Chapters 42 through 44 are to be construed liberally so as to "lighten the burden that now falls on the unemployed worker and his or her family," and that there are no requirements that an appeal must take beyond the requirement that it is in writing, submitted within 15 days of the Referee Decision, and puts the Board of Review on notice that she is appealing the decision. *Id.* (quoting G.L. 1956 § 28-42-72). In summary, Appellant argues that, because she is an interested party, a writing was sent via email within fifteen days of the Referee Decision, and the subject line of the email was "Referee Decision Appeal – 202I5424," she has satisfied all the required elements of a proper appeal, and, as such, the Board of Review's decision constitutes a reversible error of law.

In response, the Board of Review argues that the March 22, 2022 email did not constitute a proper appeal because, despite the email's subject line, the attachment was a document requesting attorney's fees. *See* Appellee's Memorandum at 4-5. The Board of Review contends that it immediately notified Appellant's counsel that he submitted the fee request to the wrong division and that the Board's response put Appellant on notice that an appeal had not been filed. *Id.* As such, the Board argues that Appellant had four days remaining to file a timely appeal rather than the emailed fee request and failed to do so. *Id.* at 6. Further, the Board argues that no good cause was given to justify the late appeal and, therefore, the Board rightfully denied it. Lastly, the Board argues that a mistake is not sufficient to justify a late appeal and that this Court has no basis to set aside the Board's decision. *Id.* at 6-8.

As stated, the sole issue before this Court is whether the Board's denial of the appeal as untimely constituted a reversible error of law.

It is undisputed that Appellant's attorney submitted an email to the Board on March 22, 2022 with the subject line "Referee Decision Appeal-202I5424." This email contained an attachment which requested attorney's fees. The Board contends that this email does not constitute a proper appeal pursuant to § 28-44-47 based exclusively on the content of the email's attachment. The Board does not

make any argument as to why the email itself does not constitute a sufficient appeal.

"[T]his court, in construing the act, must seek to give as broad an effect to its humanitarian purpose as it reasonably may in the circumstances." *Harraka v. Board of Review of Department of Employment Security*, 200 A.2d 595, 597 (R.I. 1964).

Section 28-44-47 makes clear that "any party in interest . . . shall be allowed an appeal to the board of review from the decision of an appeal tribunal." 460-RICR-00-00-1.17 further makes it clear that, to appeal the decision of a Referee, "an interested party" must simply file "a notice of appeal in writing with the Board of Review within fifteen (15) calendar days of the Referee's decision." This Court agrees with Appellant that, construing the statute and regulation liberally as required by the legislature and supported by our Supreme Court, there is no required form for an appeal beyond the requirement that it be in writing and put the Board on notice that there is an appeal. Reviewing the record before this Court, it is clear that Appellant's attorney sent a written communication via email to the Board of Review within fifteen days of the Referee's decision, and that this written communication stated "Referee Decision Appeal – 202I5424" in the subject line.

While Appellant's counsel may have made an error in attaching a fee request rather than a memorandum supporting an appeal, the statute and relevant

administrative code does not explicitly require any attachment at all. Rather, as stated, it merely requires that an interested party submit a written notice of appeal to the Board of Review within fifteen days of the Referee Decision. As such, construing the statute liberally to give the statute as broad a humanitarian impact as possible, even if Appellant's email contained no attachment at all, the March 22, 2022 email is sufficient to constitute a written notice of appeal pursuant to § 28-44-47.[1] Accordingly, the Board of Review's denial of Appellant's appeal was affected by an error of law and must be reversed.

VI. CONCLUSION

After this Court's thorough review of the entire administrative record on appeal, this Court finds the BOR's decision that Appellant's appeal as untimely was in violation of statutory provisions. § 42-35-15(g). Therefore, the decision of the Board of Review was affected by an error of law and, accordingly, the decision made by the Board of Review in this matter is **REVERSED**.

[1] Because Claimant timely filed her appeal as a matter of law, the Court need not reach the question of whether sufficient record evidence exists to support the Board's finding that no good cause was shown for the purported delay.