

STATE OF RHODE ISLAND
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

Department of Labor and Training	:	
	:	
v.	:	No. 6AA-2025-00089
	:	
Department of Labor and Training,	:	
Board of Review	:	
(Valerie Borrelli)	:	

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 and 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 and Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the decision of the Board of Review is AFFIRMED.

Entered as an Order of this Court at Providence on this 16th day of July, 2026.

By Order:

/s/
Jamie Hainsworth
Chief Clerk

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

Department of Labor & Training	:	
	:	
v.	:	A.A. No. 2025 - 089
	:	
Department of Labor and Training,	:	
Board of Review	:	
(Valerie Borrelli)	:	

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case the Department of Labor and Training urges that the Department's Board of Review erred when it dismissed its appeal (from an earlier decision of a Referee) because its representatives failed to appear at the telephonic hearing scheduled before the Board. This matter has been referred to me for the making of findings and recommendations pursuant to G.L. 1956 § 8-8-8.1. For the reasons that I shall now present, I recommend that the Decision issued by the Board of Review in this case be AFFIRMED.

I

Facts and Travel of the Case

The facts and travel of the instant case may be summarized thusly: Ms. Valerie J. Borrelli was employed by NRP Inc. for four years until May of 2025, when she was discharged. *See* DLT 480 Form, at 1 ("Employment Data" section). (Note: the DLT 480 Form may be found at pages 30-31 of the Electronic Record (*ER*) attached to this case). Subsequently, she filed a claim for benefits on June 9, 2025, which was made effective on June 8, 2025. *Id.* (Claim Data section).

However, on July 1, 2025, an adjudicator employed by the Department of Labor and Training (DLT) rendered a Decision which found that Claimant was ineligible for unemployment benefits because she had not made herself available for full-time work, due to limitations imposed upon her as a recipient of Social Security Disability benefits. *Dec. of the Director* (July 1, 2025), at 1; *ER* at 36. Consequently, she was declared disqualified from receiving unemployment benefits pursuant to G.L. 1956 § 28-44-12. *Id.*

Claimant filed a timely appeal from this decision and a telephonic hearing was scheduled for September 3, 2025. *Ref. Hr'g Tr.* at 1; *ER* at 16. At the hearing, Claimant was the sole witness. *Ref. Hr'g Tr.* at 1. After the witness was sworn, *ibid* at 4, the Referee identified the contents of the file that had been transmitted to the Board of Review by the Department, *id.* at 4-5.

Then, the Referee asked Claimant if she knew why she was denied benefits. *Id.* at 5. She said it was because she was unable to work full-time. *Id.* Specifically, under the Social Security Disability program, she was limited to working twenty-five (25) hours per week. *Id.* at 6. She added that she had found a job where she could work her limit starting on that day — that is, the day of the hearing. *Id.* With that, the hearing was ended. *Id.* at 7.

On September 4, 2025, the Referee issued his decision. *See Decision of Referee*, at 1-3; *ER* at 29-31. After setting forth the Travel of the Case, the Referee synopsized the evidence and testimony received at the hearing in the “Findings of Fact” portion of his Decision:

The claimant is collecting Social Security Disability Insurance (SSDI). She is allowed under that program to work up to twenty-five hours per week under that program

due to her physical limitations. The claimant was able and available for work and searching for work up to twenty-five hours per week, per her physical limitation.

Dec. of Referee, at 1; *ER* at 27. Having found the foregoing facts, the Referee, after paraphrasing the provisions of § 28-44-12, formulated the following brief conclusion:

The credible and unrefuted testimony of the claimant was that she was able and available to work up to twenty-five hours allowed by SSDI and her physical limitations. Therefore, Unemployment benefits are granted under Section 28-44-12 of the Rhode Island Employment Security Act.

Dec. of Referee, at 2; *ER* at 28. Therefore, the Decision of the Director was reversed. *Id.*

On September 15, 2025, by email, the Department filed a timely appeal to the Board of Review pursuant to G.L. 1956 § 28-44-46. *ER* at 26. The Board acknowledged receipt of the appeal on September 16, 2025, and provided the Department with a transcript of the hearing before the Referee on September 19, 2025. *ER* at 24-26. That acknowledgement also informed the Claimant (and the Employer) that the Board might hold a further hearing in the matter or might decide the case on the basis of the evidence submitted to the Referee. *ER* at 25. Then, on September 22, 2025, the Board formally acknowledged the Department's appeal and once again informed the parties that it might hold a further hearing into the matter or decide the case on the record assembled by the Referee. *See Notice of Appeal*, *ER* at 14-15.

On September 29, 2025, the Board issued a Notice of Board of Review Hearing. *ER* at 10-11. The hearing was set for Wednesday October 8, 2025, at 9:00 a.m. *Id.* at 10. It was sent to Ms. Borrelli, the Director, and the Employer. *Id.* Then, at the Board's invitation, Counsel for the Director filed his entry of Appearance. *Id.* at 7-9.

However, the Department's representatives and counsel did not appear on

October 8, 2025 at 9:00 a.m. Accordingly, six days later, on October 14, 2025, but the Board dismissed the Director's appeal for want of prosecution, stating:

This cause came before the Board of Review on the Director's appeal from a decision of the Referee. This appeal was set down to a definite date for a telephone hearing and notice of said hearing was sent to all interested parties. The Director did not telephone this office as directed. There being no apparent error in this case, this appeal is dismissed, and the Referee's decision shall be final at the expiration of the appeal period.

See Dec. of Bd. of Review (October 14, 2025), at 1; *ER* at 2. And so, the decision of the Referee was affirmed. *Id.* The Board transmitted its Decision to the Director that same day. *ER* at 4-5. Finally, on November 14, 2025, the Department filed an appeal in the Sixth Division District Court.¹

II

Standard of Review

The standard of review by which this court must consider appeals from the Board of Review is provided by G.L. 1956 § 42-35-15(g), a section of the state Administrative Procedures Act (APA), which provides:

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;

¹ If accepted, my recommendation will obviate the need to inquire why the Department's appeal was filed one day *after* the thirty-day appeal period set forth in G.L. 1956 § 42-35-15(b) had expired.

- (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.’” *Guarino v. Dep’t of Social Welfare*, 122 R.I. 583, 588, 410 A.2d 425 (1980) (quoting G.L. 1956 § 42-35-15(g)(5)). The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact. *Cahoone v. Bd. of Review of the Dep’t of Emp’t Sec.*, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968). Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result. *Cahoone*, 104 R.I. at 506, 246 A.2d at 215. *See also D’Ambra v. Bd. of Review, Dep’t of Emp’t Sec.*, 517 A.2d 1039, 1041 (R.I. 1986).

The Supreme Court of Rhode Island recognized, in *Harraka v. Bd. of Review of Dep’t of Emp’t Sec.*, 98 R.I. 197, 200, 200 A.2d 595, 597 (1964), that a liberal interpretation shall be utilized in construing 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 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.

III Analysis

Rhode Island's Employment Security Act has included, since its adoption, an administrative hearing process to adjudicate disputes regarding, *inter alia*, whether a Claimant should be disqualified from receiving unemployment benefits — with the opportunity of judicial review held in abeyance.² While customarily eschewing the kinds of formality associated with judicial trials, these administrative processes nevertheless require litigants to adhere to regular procedures. Among these is the expectation that interested parties will appear at hearings when given notice.

In this case, the Department chose not to participate in the hearing before the Referee; but, when the Referee ruled in favor of the Claimant, it chose to appeal. And when its representatives failed to appear, the Department's appeal was dismissed by the Board of Review. In essence, although the referee did not employ these terms, the Department was "defaulted" for "want of prosecution." But rather than move to set aside that default before the Board, it chose to file this appeal.

Before this Court, it does not endeavor to excuse its failure to participate, it simply challenges the Board's authority to dismiss appeals for want of prosecution. And so we must ask — Is the Board of Review authorized to dismiss unemployment appeals where the appealing party has, in the absence of excusable neglect, failed to appear at a scheduled hearing? The answer to this question is a definite yes. Default judgments are permitted under a provision of the APA, G.L. 1956 § 42-35-9(d), which states:

² See generally, the Rhode Island Administrative Procedures Act (APA), codified as Chapter 35 of Title 42 of the General Laws.

Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or *default*. (emphasis added).

Accordingly, there is no doubt that the Board is empowered to enter a default judgment against claimants who do not appear for their hearings. And so, for these reasons, the dismissal of Ms. Borrelli's appeal by the Board of Review ought to be affirmed.³

V

Conclusion

Upon careful review of the record, I recommend that this Court find that the decision of the Board of Review is neither clearly erroneous nor affected by error of law, procedural or substantive. G.L. 1956 § 42-35-15(g)(3)-(5). Moreover, it cannot be said to be arbitrary, capricious, or an abuse of discretion. G.L. 1956 § 42-35-15(g)(6). Accordingly, I recommend that the decision of the Board of Review be AFFIRMED.

/s/

Joseph P. Ippolito
MAGISTRATE

JULY 16, 2025

³ Based upon research conducted by this Court, it appears that few decisions have considered the propriety, *vel non*, of entering a default when an appellant in an unemployment appeal fails to participate in a scheduled administrative hearing. *See e.g., Speed v. Div. of Emp't Sec.*, 402 S.W.3d 153, 155 (Mo. App. W.D. 2013) (recognizing the Commission's authority to dismiss for failure to appear, but reversing because good cause for party's nonappearance was shown); *Radke v. Nelson Mill Co.*, 37 Mich. App. 104, 113-15, 194 N.W.2d 395, 400 (1972) (upholding lower court ruling that the Appeals Board's *failure* to enter a default against an Employer which failed to appear for hearing constituted error); and *Sustan Garments, Inc. v. Adm'r of Div. of Emp't Sec., Dep't of Labor*, 211 So.2d 714, 715 (La.App.2 Cir.1968) (affirming dismissal based upon the authority granted by La. Bd. of Review Rule 7).

