

Michael J. Cambio :
v. : A.A. No. 2025 - 097
Department of Labor and Training, :
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. On May 13, 2022, a designee of the Department of Labor and Training issued two administrative decisions finding that Mr. Michael Cambio (Claimant or Appellant) had failed to accurately report his (part-time) earnings during the weeks in which he had received unemployment benefits, as required by G.L. 1956 § 28-44-7; accordingly, he received excess unemployment benefits.¹ Accordingly, he was ordered to repay the excess benefits received pursuant to G.L. 1956 § 28-42-68.

However, Claimant did not file an appeal from this decision within the fifteen-day period set by G.L. 1956 § 28-44-39. Indeed, he did not file an appeal until August 27, 2025, thirty-nine months *after* the applicable appeal-period had expired.

¹ The first decision, numbered 2211841 by the Department, concerned underreporting in the weeks ending July 10, 2021, July 17, 2021, July 24, 2021, and August 14, 2021. It may be found by selecting, in the electronic record attached to this case, the docket entry “01/15/2026 Records Received” and then choosing the document titled “01/15/2026 Public PDF MICHAEL CAMBIO-REDACTED-2815-6AA-2025-00097.pdf.” The Director’s Decision may be found on pages 22-24. Note: this document shall henceforth be cited as (*ER I*).

The second opinion, numbered 2212879 by the Department, concerned underreporting for the week ending September 9, 2021. It may be found by choosing the document entitled “01/15/2026 Public PDF MICHAEL CAMBIO-REDACTED-2815-6AA-2025-00097.pdf.” The Director’s Decision may be found on pages 22-24. Note: this document shall henceforth be cited as (*ER II*).

Consequently, a hearing officer employed by the Board of Review,² after conducting a hearing into the matter, dismissed both appeals for lateness in decisions dated September 26, 2025. *See Dec. of Referee* (20252815OP), at 2; *ER I* at 11 and *Dec. of Referee* (20252816OP), at 2; *ER II* at 11.³ Mr. Cambio appealed to the Board of Review, which, on November 18, 2025, affirmed that dismissal. *See Dec. of Board of Review*, (20252815OP), at 1; *ER I* at 2 and *Dec. of Bd. of Review* (20252816OP), at 1; *ER II* at 2.

In the instant case, filed on December 17, 2025, Claimant seeks judicial review of the Board's decision. *See Appeal Form* (this document may be viewed by selecting, in the electronic record attached to this case, "12/17/2025 Administrative Appeal Filed." Jurisdiction to hear and decide appeals from decisions made by the Board of Review in unemployment matters is vested in the District Court by G.L. 1956 § 28-44-52. 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 stated below, I have concluded that the decision of the Department of Labor and Training Board of Review dismissing Claimant's appeal for lateness should be AFFIRMED. I so recommend.

I

Facts of the Case

As stated *supra*, the Referee assigned to Mr. Cambio's case conducted a telephonic hearing into the matter. At the hearing, held on September 26, 2025, Mr. Cambio appeared and testified. *Referee Hr'g Tr.* at 1.⁴

² Hearing officers employed by the Board of Review are known as "referees."

³ Before the Board, number 2211841 became 20252815OP; number 2212879 became 20252816OP.

⁴ The transcript of the hearing conducted by the Referee may be found by selecting, in the electronic record attached to this case, the docket entry "01/15/2026 Records Received" and then choosing the document titled "01/15/2026 Public PDF MICHAEL CAMBIO-REFEREE TRANS-

The Referee began the proceedings by enumerating the issues to be addressed: *first*, whether Mr. Cambio received excess unemployment benefits during certain weeks because he failed to accurately report his earnings during those weeks as required by § 28-44-7; *second*, whether the order of repayment was valid under § 28-42-68; and *third*, whether Mr. Cambio’s appeal ought to be barred for lateness pursuant to § 28-44-39(b). *Ref. Hr’g Tr.* at 3-4. The Referee then provided Mr. Cambio with an overview of the procedure that he would be following. *Id.* at 4-5.⁵ Then, after formally beginning the hearing, the Referee administered the testimonial oath to the witness. *Id.* at 6. Following which, she identified the documents in the record submitted to the Board of Review by the Department. *Id.* at 7-11.

The Referee then began to question Mr. Cambio regarding the lateness of his appeal from the Decision of the Director. *Id.* at 11 *et seq.* When the Referee asked Claimant Cambio whether he received the Director’s decision in 2022, he conceded, after some uncertainty, that he did get them. *Id.* at 13. And, when the Referee inquired why he had failed to appeal within the allotted time frame, Claimant stated that that he “definitely forgot.” *Id.* at 13. The Referee then moved on to other issues.⁶

In her decision, which was issued on August 21, 2025, the Referee addressed only the late-appeal issue, which she found to be dispositive. She found the following facts on that issue:

REDACTED-2815-6AA-2025-00097.pdf.” Note: this document shall henceforth be cited as *Ref. Hr’g Tr.*

⁵ The Referee also explained why two decisions were issued. It is because each related to benefits received in a separate *benefit year*. *Ref. Hr’g Tr.* at 5.

⁶ We shall not relate the testimony given regarding the other issues enumerated *supra*. Since the Referee, in her Decision, discussed only the late appeal issue, this Court must do likewise. Accordingly, there is no need to recite the testimony given on the other issues here.

The notice of decision was mailed to the claimant's address of record on May 13, 2022. The claimant stated that he was in receipt of the notice. He also stated that he read his decision and his right of appeal. Contained in the "Right to Appeal" paragraph, it was explained that unless he appealed the decision within fifteen calendar days from the date of the decision, it would become final. The claimant stated that he received the decision letter in the mail, but he started a new job and just got busy which is why he failed to file within the time frame specified. There were also issues with the mail. He was getting overpayment notices regularly, but they stopped. He began receiving them again and therefore submitted his appeal. He submitted the appeal on August 12, 2025, beyond the 15-day appeal period allowed by law.

Dec. of Referee (20252815OP), Sept. 26, 2025, at 1; *ER I* at 10 and *Dec. of Referee (20252816OP)*, Sept. 26, 2025, at 1; *ER II* at 10. Next, after quoting extensively from G.L. 1956 § 28-44-39(b) of the Employment Security Act, which provides that the fifteen-day appeal period can be extended for good cause, the Referee formed the following "Conclusions":

The facts and circumstances of this case establish that the Director did mail the decision to the claimant's address of record on May 13, 2022. The claimant opened the decision and read the "right to appeal" section. The claimant did not make contact, and he did not file his appeal within the time limits set forth under the law. There is no evidence to indicate the claimant was otherwise prevented or deterred in any way from filing his appeal in a timely manner from when he received it. While the law allows for the acceptance of a late appeal if good cause is shown, I find that there has been no good cause shown in this case. His delay in filing was caused solely by matters under the complete control of the claimant. Under these circumstances, the claimant's late appeal cannot be allowed or considered.

Dec. of Referee (20252815OP), Sept. 26, 2025, at 2; *ER I* at 11 and *Dec. of Referee (20252816OP)*, Sept. 26, 2025, at 2; *ER II* at 11. In sum, she found that good cause had not been shown. Finally, in the "Decision" section of her opinion, the Referee dismissed

the Claimant's appeal. *Id.*

Mr. Cambio filed a timely appeal to the Board of Review. However, on November 18, 2025, the Board of Review summarily affirmed the Referee's decisions, finding them to be a proper adjudication of the facts and the law applicable thereto; accordingly, it was adopted as the decision of the Board. *Dec. of Bd. of Review (20252815OP)*, Nov. 18, 2025, at 1; *ER I at 2 and Dec. of Bd. of Review (20252816OP)*, Sept. 26, 2025, at 1; *ER II at 2*. Finally, on December 17, 2025, Mr. Cambio filed the instant complaint for judicial review of the Board's decision in the Sixth Division District Court.

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, 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.’” *Guarino v. Dep’t of Soc. Welfare*, 122 R.I. 583, 584 (1980) (citing 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 (1968). Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result. *Id.* The Supreme Court of Rhode Island declared 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.

III

Applicable Law

The time limit for appeals from decisions of the Director is set by subsection (b) of G.L. 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.

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 permit the Court to act upon late appeals, even for good cause. However, in many cases the Board of Review (or, upon review, the District Court) has permitted late appeals to proceed if good cause has been shown.

IV 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 for judicial review held in abeyance. But, this administrative process, while customarily eschewing the kinds of formality associated with judicial proceedings, does nevertheless require litigants to adhere to regular, established procedures. Among these is the expectation that, upon receiving a decision, parties who believe themselves to be aggrieved will file their appeals in a timely manner; and, the Act expressly provides that non-compliance will result in the Director's decision becoming final.

In the instant case, Mr. Cambio stated, quite simply, that he forgot to file his appeal. Such an error is understandable. We all make mistakes, particularly when we are acting outside our field of expertise. But, it is completely subjective in nature. If this Court were to require the Board to recognize such an error as being sufficient to justify a late appeal, the statutory appeal period would be effectively nullified. This would be, in my view, ruinous to the Board's ability to rapidly and efficiently service the many claimants and employers who bring their appeals before it. For that reason, subjective justifications of this sort have seldom been found

sufficient to trigger the excusable neglect standard. *E.g. F. Cordero v. Dep't of Labor & Training Bd. of Review*, A.A. No. 2018-160, at 10-11 (Dist.Ct. 04/29/2019).

In the instant case, the Board of Review affirmed the dismissal of Mr. Cambio's appeal, finding that Claimant had failed to justify its lateness. And there is no question that that the Referee's findings were supported by competent evidence. And so, for the reasons just explained, the Referee (and the Board) had no *lawful* basis upon which to find good cause for his *very* late appeal. Accordingly, this Court finds that the decision of the Board of Review is supported by competent evidence of record.

The Referee also found that nothing in this record would seem to indicate that Mr. Cambio was in any way *dissuaded* from filing a timely appeal by any representative of the government — and he has not alleged that he was. Thus, there is no basis upon which to invoke the doctrine of equitable tolling. *Cf. Rivera v. Employees' Retirement System of Rhode Island*, 70 A.3d 905, 911-14 (R.I.2013).

V

Conclusion

Pursuant to § 42-35-15(g), a decision of the Board of Review must be upheld unless it was, *inter alia*, contrary to law, clearly erroneous in light of the reliable, probative, and substantial evidence of record, or arbitrary or capricious. In this case, I must recommend that this Court hold that the Board of Review's conclusion — *i.e.*, that Claimant Cambio did not show good cause for filing an appeal that was late (or as late as it was), — is supported by the reliable, probative, and substantial evidence of record. *See* § 42-35-15(g)(5). In addition, the Board's decision is neither affected by error of law nor made upon unlawful procedure. *See* § 42-35-15(g)(1),(3),(4). Finally, the Board's decision was not made in excess of its statutory authority nor

characterized by an abuse of its discretion. *See* § 42-35-15(g)(1),(2),(6). Accordingly, I recommend that the decision rendered by the Board of Review in this case be **AFFIRMED**.

_____/s/_____
Joseph P. Ippolito
Magistrate
February 27, 2026

