

STATE OF RHODE ISLAND
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

Alexis Aponte

v.

Department of Labor and Training,
Board of Review

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:
:
:

6AA-2026-00052

O R D E R

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 and the memoranda of counsel, 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 applicable law.

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 **AFFIRMED.**

Entered as an Order of this Court at Providence on this 29th day of September, 2026.

By Order:

/s/
Jamie Hainsworth
Chief Clerk

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND
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Alexis Aponte	:	
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v.	:	6AA-2026-00052
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Department of Labor and Training,	:	
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FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Mr. Alexis Aponte (Claimant or Appellant) asks this Court to reinstate his appeal from a Decision rendered by Department of Labor and Training Board of Review (the Board) which affirmed an earlier decision rendered by a hearing officer employed by the Board, a *Referee*, dismissing his appeal from the Decision of the Director because it was filed *after* the expiration of the applicable appeal period. *See* G.L. 1956 § 28-44-39(b). Jurisdiction to hear and decide appeals from decisions made by the Board of Review 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 conclude that the decision of the Department of Labor and Training Board of Review dismissing Claimant's appeal for lateness should be AFFIRMED.

I

Facts of the Case

On May 5, 2025, Mr. Alexis Aponte was terminated from his prior position at Twin River Tiverton LLC for cause on May 5, 2025. *See* DLT FORM 480 [Employment

Data] (which may be found in the 75-page Electronic Record (*ER*) attached to this case, at 52).¹ He was discharged because of his poor record of attendance. *See* DLT FORM 480 [Employer Statement], *ER* at 53. He applied for employment security benefits on May 16, 2025, with an effective date of May 11, 2025. *See* DLT FORM 480 [Claim Data], *id.* at 52. However, on October 31, 2025, a designee of the Director of the Department of Labor and Training ruled that Mr. Aponte was ineligible to receive unemployment benefits because he was discharged for proved misconduct as provided in G.L. 1956 § 28-44-18. *Dec. of Director*, at 1; *ER* at 69-71. Believing himself to be aggrieved by this decision, Mr. Aponte filed an appeal; however, his appeal was not filed until December 1, 2025, well after the expiration of the fifteen-day appeal period. But, notwithstanding this lapse, a hearing into the matter was scheduled for December 31, 2025 before a Referee employed by the Board of Review.

Mr. Aponte participated in the telephonic hearing, as did a representative of the Department — Ms. Elizabeth Miller. *Referee Hr’g Tr.* at 1.² The Referee began the hearing by administering the testimonial oath to the witnesses. *Id.* at 5. She then reviewed the contents of the administrative file that had been transferred to the Board of Review by the Department of Labor and Training. *Id.* at 6-11.

At this juncture, the Referee began to focus on the issue of the late appeal. *Id.* at 13. Mr. Aponte testified that he received the decision that was mailed out on October 31st, but he was not sure when. *Id.* at 13-14. He said he “got one email and one letter sent to [him].” *Ref. Hr’g Tr.* at 14. According to Mr. Aponte, the decision he read said that he

¹ Henceforth, references to the record attached to this case shall be styled *ER*.

² The transcript of the hearing conducted by the Referee may be found beginning on page 12 of the electronic record. In this opinion shall cite solely to the transcript page.

was approved for benefits. *Id.* And so, the Referee inquired whether he had another issue with the Department. *Id.* at 14-15. Ms. Miller stated that he did have another dispute, which concerned his compliance with an audit request. *Id.* at 15.

With this circumstance duly noted and understood, the Referee asked Mr. Aponte if he received the decision in this case “around Halloween.” *Id.* at 17. Claimant said that he did; and he read and understood the appeal rights. *Id.* But he added that he “was just confused when he had someone email me, and he said approved, and the other one is saying, no.” *Id.* When asked why he appealed late, Mr. Aponte said that he did not have a telephone. *Id.* at 18. And when the Referee asked why he did not send in his appeal by mail, Claimant gave no direct answer. *Id.* at 19.

The Referee then focused the attention of those in attendance on the issue of discharge for misconduct. *Id.* at 20-29. After which, the hearing was closed. *Id.* at 32.

In her decision, which was issued on January 7, 2026, the Referee addressed only the late-appeal issue, which she found to be dispositive. She found the following facts on the late-appeal issue:

A notice of decision was mailed to the claimant's address of record on October 31, 2025. Contained in a paragraph in the decision entitled to “Right to Appeal,” it was explained that if the claimant disagreed with the decision, he had to file a written appeal within fifteen (15) calendar days, including weekends and holidays, of the mailing date indicated on the decision or it will be become final. The "Right to Appeal" paragraph provides instructions on how to file an appeal, either by mail or fax, or online, and the decision includes the mailing address, fax number, and the website of where to send an appeal.

The claimant received and read the decision. The testimony of the claimant is that he did not have a phone or computer to file his appeal. The claimant did not file an appeal either by mail or by fax. The claimant filed his appeal on December 1, 2025, beyond the 15-day appeal deadline set by statute.

Testimony of the claimant of why he appealed on December 1, 2025, is that it was not the first time he had to appeal.

The claimant had a separate decision of the Director denying benefits regarding complying with audit requirements. The claimant appealed that decision to the Referee on October 9, 2025, which was prior to the Director's decision dated October 31, 2025, denying benefits on his separation from his employer, Twin River Tiverton, LLC. The claimant did not reach out to the Department for any assistance or guidance regarding the Director's decision disqualifying benefits on his separation.

Dec. of Referee, January 7, 2026, at 1-2; *ER* at 47-48. Next, after quoting extensively from § 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 October 31, 2025. The facts and circumstances of this case establish that the Director did mail the decision to the claimant's address of record on October 31, 2025. The decision clearly indicated his appeal rights and the appeal time limit. The claimant received and read the decision. The claimant had appealed another decision of the Director just weeks prior to this decision and was aware of the appeal process. Although the testimony of the claimant is that he did not have a phone or computer to file an appeal, he did not mail or fax an appeal, both of which are listed as ways to appeal in the right to appeal paragraph. The claimant did not reach out to the Department for assistance, and filed his appeal on December 1, 2025, as he testified that it was not the first time he had to appeal. While the law allows the acceptance of a late appeal if good cause is shown, I find there has been no good cause shown in this case for the claimant's failure to file an appeal within the time limits specified by law. The delay 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.

Id. at 2; *ER* at 48. 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 late appeal. *Id.*

Mr. Aponte filed a timely appeal to the Board of Review. However, on February 27, 2026, the Board of Review summarily affirmed the Referee's decision, finding it 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*, at 1; *ER* at 8. Finally, on June 17, 2026, Claimant filed the instant complaint for judicial review of the Board's decision in the Sixth Division District.³

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.

³ The acceptance of my Findings and Recommendations on the question of Claimant's late appeal to Referee will obviate the need for this Court to decide whether Mr. Aponte's appeal to this Court, which was filed two and a half months *after* the expiration of the 30-day appeal period set by statute, should be permitted. *See* G.L. 1956 § 42-35-15(b).

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

In the instant case, the Board of Review affirmed the dismissal of Mr. Aponte's appeal, finding that Claimant had failed to justify its lateness. And so, this Court must determine whether that conclusion was supported by the competent evidence of record and the applicable law. In my estimation, there is no doubt that it was.

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.

Regarding the instant case, nothing in this record would seem to indicate that Mr. Aponte 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). Neither did he assert that he was prevented from doing so by any force beyond his control, such as illness.

Accepting Mr. Aponte's testimony, the Referee found that Claimant

testified that he failed to submit his appeal from the Decision of the Director within the time limit set by statute because he had neither a telephone nor a computer. But, as the Referee also noted, Mr. Aponte did not explain why he could not have filed an appeal by mail or by facsimile. Therefore, Mr. Aponte's failure to file a timely appeal must be viewed as being, ultimately, without a meaningful excuse.

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).

Accordingly, the Decision of the Board of Review finding that Mr. Aponte did not demonstrate good cause for his failure to file his appeal from the Decision of the Director in a timely manner must be viewed as being supported by competent evidence of record — or, more precisely, by his lack of an explanation as to why he could not have filed by mail or facsimile.

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 Aponte did not show good cause for filing a late appeal — 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
September 29, 2026

