STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(Filed: January 7, 2013)

MICHAEL BRESETTE	:	
	:	
v.	:	**C.A. No. KC 12-0390**
	:	
STATE OF RHODE ISLAND AND	:	
PROVIDENCE PLANTATIONS	:	
DEPARTMENT OF BUSINESS	:	
REGULATION	:	

DECISION

Nugent, J. This matter is before the Court for decision following an appeal from an administrative ruling. Plaintiff Michael Bresette seeks relief from a final order of the Rhode Island Department of Business Regulation that permanently revoked his insurance claim adjuster's license. For the reasons set forth in this Decision, the Court denies Plaintiff's claims. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

The named Defendant in this case, the Department of Business Regulation ("Department"), is the administrative agency charged with regulating the practice of insurance adjusters in the State of Rhode Island. Plaintiff Michael Bresette ("Bresette" or "Plaintiff") held a Rhode Island resident insurance adjuster's license from March 5, 2009 until January 9, 2012. In December 2011, the Department—acting upon numerous customer complaints and information that Bresette had been indicted on eight felony counts of larceny and insurance

fraud[1]—decided to initiate administrative action against Bresette. On December 29, 2011, the Department sent to Bresette—by both regular and certified mail—an Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer, giving notice that a hearing would be held on January 9, 2012 at 10:00 a.m. at the Department's offices, in accordance with § 42-35-9, requiring that a licensee receive "reasonable notice" of hearings.

Bresette did not appear at the January 9, 2012 hearing, where counsel for the Department appeared before a hearing officer and submitted evidence concerning the eight-count felony indictment and the consumer complaints that had been investigated prior to that date. Also presented at the hearing was the Postal Service track and confirm receipt, corresponding to the letter sent to Bresette by certified mail, showing that a notice had been delivered to Bresette's residence on January 7, 2012. On January 12, 2012, the hearing officer who presided over the hearing prepared a written document that included findings of fact and conclusions of law based on evidence presented at the hearing. This document recommended that Bresette be defaulted based on his failure to appear and defend the administrative action, and that his insurance adjuster's license be permanently revoked. On January 13, 2012, the Department's Director adopted the hearing officer's recommendations, and issued a written decision ("Decision") thereby permanently revoking Bresette's insurance adjuster's license.

On February 9, 2012, Bresette filed a motion to reconsider with the Department, along with an affidavit indicating that Bresette was out of the country from December 23 to December 31, 2011, and that he never received a copy of the hearing notice. On March 9, 2012, the Department issued an order ("Order") denying the motion to reconsider, based in part on

[1] In the criminal case, K2-2012-0262A, Bresette is charged with five (5) felony counts of insurance fraud and three (3) felony counts of obtaining money under false pretenses, all stemming from events occurring while in his capacity as an insurance adjuster.

Bresette's failure to file this motion within twenty (20) days after entry of the Department's final Decision.[2] The Order went on to state that even if the Motion to Reconsider had been timely filed, Bresette had not established good cause for the Hearing Officer to reconsider the matter. The Order concluded that the Department had effectuated service pursuant to its regulations and Bresette had not satisfied his burden of showing excusable neglect for failing to appear or otherwise respond.

On April 6, 2012, Bresette filed a Complaint in Superior Court appealing the Department's Decision, which permanently revoked Bresette's insurance adjuster's license. On May 11, 2012, Bresette filed a "Motion for Injunctive Relief and Reinstatement," which was heard before Justice Rubine on June 29, 2012. At this hearing, the Court determined that Bresette's Complaint would be treated as an administrative appeal, and the motion for injunctive relief would be considered a motion to assign the administrative appeal, along with a timeline for the filing of the parties' briefs.

II

Standard of Review

"The law in Rhode Island is well settled that an administrative agency will be accorded

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[2] Section 19 of the Department's Central Management Regulation 2, "Rules of Procedure for Administrative Hearings," states:

> "At any time after the issuance of a final order of the Director, any party may, for good cause shown, by motion petition the Director to reconsider the final order. The Petitioner shall file his/her motion within twenty (20) days of the issuance of the final order, and shall set forth the grounds upon which he/she relies. The Director may grant the motion for reconsideration within his/her discretion and shall order such relief as he/she deems appropriate under the circumstances. The Department shall not entertain a motion for reconsideration filed more than twenty (20) days after the entry of the final decision, unless the Hearing Officer finds good cause to entertain said motion." Id.

great deference in interpreting a statute whose administration and enforcement have been entrusted to the agency." Duffy v. Powell, 18 A.3d 487 (R.I. 2011) (quoting State v. Cluley, 808 A.2d 1098, 1103 (R.I. 2002)). This Court's review of an administrative board's determination is thus limited to "an examination of the certified record to determine if there is any legally competent evidence therein to support the agency's decision." Nickerson v. Reitsma, 853 A.2d 1202, 1205 (R.I. 2004) (quoting Barrington School Committee v. Rhode Island State Labor Relations Board, 608 A.2d 1126, 1138 (R.I. 1992)). "If competent evidence exists on the record as a whole, the court is required to uphold the agency's conclusions." Id. "Legally competent evidence is indicated by the presence of 'some' or 'any' evidence supporting the agency's findings." Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993) (quoting Sartor v. Coastal Resources Mgmt. Council, 542 A.2d 1077, 1082 (R.I. 1988)).

Furthermore, an agency utilizing a two-tier standard of review will be given great deference as to its findings of fact. Environmental Scientific Corp., 621 A.2d at 208. Therefore, "[t]he court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Sec. 42-35-15. However, this Court

> "may reverse, modify, or remand the agency's decision if the decision is violative of constitutional or statutory provisions, is in excess of the statutory authority of the agency, is made upon unlawful procedure, is affected by other errors of law, is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or is arbitrary or capricious and is therefore characterized by an abuse of discretion." Nickerson, 853 A.2d at 1205 (quoting Barrington School Committee, 608 A.2d at 1138 (citing § 42-35-15(g))).

III

Analysis

Pursuant to Rhode Island General Laws 1956 § 27-10-1 et seq., the Department of

Business Regulation has authority over insurance claims adjusters and the power to suspend or revoke an insurance claim adjuster's license "upon proof . . . that the interests of the insurer or the interests of the public are not properly served under the license, or for cause." Sec. 27-10-7. Chapter 14 under title 42 of the General Laws reinforces this authority by affirming that the Department may revoke or suspend a license, or impose other penalties, "[w]henever the director [of the Department of Business Regulation] shall have cause to believe that a violation of title 27 . . . or regulations promulgated thereunder has occurred by a licensee." Sec. 42-14-16. Both of these sections mandate that the process by which penalties are imposed, or a license is suspended or revoked, shall be "in accordance with the requirements of" the Administrative Procedures Act ("Act"), § 42-35-1 et seq. Sec. 27-10-7; Sec. 42-14-16. It is this Act which confers jurisdiction over administrative appeals to the Superior Court, and allows this Court to immediately review an agency ruling in any case where "review of the final agency order would not provide an adequate remedy." See New England Telephone v. Fascio, 105 R.I. 711, 254 A.2d 758 (1969) ("the administrative procedures act provides the exclusive method whereby agency decisions are to be reviewed by the [S]uperior [C]ourt"); Sec. 42-35-15.

In the instant case, Plaintiff seeks relief from the Decision issued by the Department, a designated administrative agency under § 42-35-1. The Decision, which permanently revoked Bresette's insurance adjuster's license, was based on the recommendations of the Department's Hearing Officer, following a hearing on the matter held on January 9, 2012. These recommendations were then approved by the Director of the Department, who issued the Decision on January 13, 2012. Plaintiff's filing of a motion to reconsider, followed by the Department's March 9, 2012 Order denying the same, constituted an exhaustion of all administrative remedies available to Plaintiff within the Department, and thus an appeal of the

Decision is now properly before this Court. See Renza v. Murray, 525 A.2d 53, 55 (R.I. 1987) (a person who has exhausted all available administrative remedies and who is aggrieved by a final decision in a contested case is entitled, by the specific provisions of § 42-35-15(a), to judicial review). Finding that review of the Department's final orders will provide an adequate remedy for Plaintiff's petition, this Court now turns to the merits of Plaintiff's claims.

On appeal, Plaintiff maintains that he never received notice of the administrative hearing and seeks relief from the Department's default Decision permanently revoking his insurance adjuster's license after Plaintiff failed to appear. Plaintiff claims that according to the Decision rendered by the Department, notice was "served upon" him on December 29, 2011; however, he was out of the country on a cruise from December 23 through December 31, 2011, and therefore could not have been served on that date. In addition to not being served in person, Plaintiff submits an affidavit stating that he never received notice of the hearing at his mailing address when he returned. Although Plaintiff's affidavit does not mention whether he received the notice sent by certified mail, Plaintiff argues in his brief that even if he had received notice sent by certified mail "purportedly left at his residence on January 7," such notice does not constitute "reasonable notice" for a hearing held January 9, 2012 as required under § 42-35-9. (Pl.'s Mem. 3).

The Department's rules of procedure for administrative hearings ("Rules"), which were promulgated in accordance with § 42-14-1 et seq., § 42-35-1 et seq., and § 42-92-1 et seq., provide the framework for the Department's hearings. These rules emphasize that they "shall be liberally constructed to further the fair, prompt and orderly administration and determination of adjudicatory proceedings in conformity with the Rhode Island Administrative Procedures Act." (Def.'s Ex. 1, at 2). Under Section 9 of these rules, entitled "Service," notice of a hearing may

be delivered by first class mail, certified mail, or hand delivery "to [the] place of business, home address or other address supplied by the party in the pleadings." (Def.'s Ex. 1, at 7). Alternatively, "[s]ervice upon persons who have not yet made an appearance shall be at the last address on file with the Department for any licensee." (Def.'s Ex. 1, at 7). These Rules also specify that "[s]ervice by mail is complete upon mailing." (Def.'s Ex. 1, at 7).

As to what comprises proper notice, Rule 5(C) of the Department's Rules states that "[n]otice shall comply with R.I. Gen. Laws § 42-35-9(b)." This section of the General Laws is prefaced by the principle that "[i]n any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice," Sec. 42-35-9(a), and provides a description of what constitutes proper notice:

> "(1) A statement of the time, place, and nature of the hearing;
> (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
> (3) A reference to the particular sections of the statutes and rules involved;
> (4) A short and plain statement of the matters inserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved and detailed statement shall be furnished." Sec. 42-35-9(b).

The statute further mandates that "[o]pportunity shall be afforded all parties to respond and present evidence and argument on all issues involved." Sec. 42-35-9(c). However, § 42-35-9 does not contain a time element, nor does it preclude a default judgment from being entered against a party who fails to appear at a scheduled hearing. Sec. 42-35-9(d).

Here, the record reflects that notice was sent to Plaintiff in accordance with § 42-15-9 and the Department's Rules. Notice of the hearing was mailed to Plaintiff's home address—the address provided by Plaintiff and on file with the Department—by both regular and certified mail, although service by only one of these modes was necessary. The statement contained in

the Decision claiming that Plaintiff was served notice of the hearing on December 29, 2011 is not in error, since the Rules clearly allow service to be considered effectuated upon the date of mailing. Also, this statement that Plaintiff was served on a particular date does not create a presumption that Plaintiff was served personally, contrary to Plaintiff's argument, since the Department's Rules provide for alternative methods of effectuating service. Furthermore, an inspection of the documents sent to Plaintiff shows that they contain all pertinent information as required by § 42-35-9(b) to sufficiently apprise Plaintiff of the details of the hearing.

Plaintiff, however, claims that he never received the notice of the hearing which was sent to his home address by regular mail, and further argues that contrary to the postal tracking receipt provided by the Department, he never received the notice sent by certified mail. These claims served as the basis of Bresette's motion for reconsideration to the Department, as well as his current appeal to this Court for relief from the Department's default Decision.

The Rhode Island Supreme Court has established a two-part test for setting aside a default judgment "on the basis of accident, mistake, unforeseen cause or excusable neglect." David-Hodosh Co., Inc. v. Santopadre, 112 R.I. 567, 313 A.2d 378, 379 (1974). The person seeking relief "must convince the trial justice of the adequacy of the reason given for his failure to respond to the court's process and he must state a defense which is prima facie meritorious." Id. Moreover, the moving party must make a "factual showing" in regard to this two-prong standard. Fields v. S&M Foods, Inc., 105 R.I. 161, 249 A.2d 892 (1969).

Here, in an affidavit dated February 8, 2012, Bresette states that he was out of the country and on a cruise from December 23 through December 31, 2011, and provides receipts for airfare and a cruise itinerary as proof. The affidavit, which was sent to the Department in support of the motion to reconsider, claims Bressette "did not find any correspondence from the Department of

Regulation in my paper mail" upon returning from his trip. (Pl.'s Aff. 3). Notwithstanding these assertions, however, Plaintiff does not provide a meritorious defense to the administrative action, only a proclamation of his intent to vigorously defend against it.

In Rhode Island, notice sent by regular mail to a person's address of record and usual place of abode creates a presumption of receipt. See, e.g., Harris v. Turchetta, 622 A.2d 487, 489 (R.I. 1993) (finding the "presumption that mail regularly sent from the office of the Secretary of State was received" at defendant's address on record); LaRocque v. Rhode Island Joint Reinsurance Ass'n, 536 A.2d 529, 532 (R.I. 1988) (construing the term "giving notice" under an insurance policy and holding that "receipt may be presumed by proof of an ordinary mailing"). As to certified mail, receipt of notice "constitute[s] actual delivery as a notice by [certified] mail is considered to have reached a recipient when it is delivered where he normally receives mail." Town of Newport v. State, 345 A.2d 402, 404 (N.H. 1975) ("[t]he function of a requirement that a notice be delivered by registered or certified mail is to assure delivery and to provide a means of resolving disputes between parties as to whether the notice is duly received.") (citing Fleisher Eng'r & Constr. Co. v. United States, 311 U.S. 15, 19, 61 S. Ct. 81, 85 L.Ed.12 (1940)). Such presumptions, however, are rebuttable and "the question of the credibility of the rebutting testimony is for the trier of fact to decide." Larocque, 536 A.2d at 532.

Here, the record indicates that the notice was mailed to the correct person, and there have been no claims by Plaintiff that the notice was not mailed to the proper address. Plaintiff has offered no explanation for his alleged failure to receive two separate forms of notice while receiving all other correspondence from the Department, including the Decision, Order and seven customer complaints which Bresette responded to in writing and are included in the record. Moreover, the mailed notices were never returned as undeliverable to the Department,

thus reinforcing the presumption that the notices reached their final destination. See Harris, 622 A.2d at 489. The cruise and airfare receipts submitted by Plaintiff also do not provide this Court with any factual support for the claim that the Department's notices were never delivered during the time he was away, nor anytime thereafter. As a result, this Court finds Plaintiff's unsupported claims unavailing and insufficient to overcome the presumption that these mailings were delivered to Plaintiff's address of record and usual place of abode. See Cournoyer v. Doorley, 697 A.2d 332 (R.I. 1997) (blanket allegations, without factual support, of failure to receive mailed documents are insufficient to grant relief from default judgment).

Nevertheless, Plaintiff challenges that even if he had received the notice of certified mail "purportedly left at his residence on January 7," such notice does not constitute "reasonable notice" for a hearing held January 9, "as required under G.L. § 42-35-9." (Pl.'s Mem. 3). Notably, § 42-35-9 and the section of the Department's Rules which are modeled upon the statute are devoid of any specific measure of time which constitutes "reasonable" thereunder.

Rhode Island case law is clear that "[a]t a minimum, due process requires that notice be 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Flynn v. Al-Amir, 811 A.2d 1146, 1151 (R.I. 2002) (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L.Ed. 865, 873 (1950)). "The requirement of notice in an administrative proceeding is not as strict or exacting as that in a judicial proceeding; the notice must be reasonable under the circumstances of the particular case." 2 Am. Jur. 2d Administrative Law § 289 (quoting Crowell v. Benson, 285 U.S. 22, 52 S. Ct. 285 (1932)). Accordingly, "the length of notice depends primarily on the circumstances of each case." 2 Am. Jur. 2d § 290 (citing Town of Burlington v. Dunn, 318 Mass. 216, 61 N.E.2d 243 (1945)).

However, a closer look at § 42-14-1, the statutory scheme which governs the Department's activities, states that

> "[w]henever any hearing is required or permitted to be held pursuant to law or regulation of the department of business regulation, and whenever no statutory provision exists providing that notice be given to interested parties prior to the hearing, no such hearing shall be held without notice in writing being given at least ten (10) days prior to such hearing." Sec. 42-14-2(b).

This section goes on to state that "[n]otice to the party that will be subject to the regulation . . . shall be sufficient if it be in writing and mailed, first class mail, to the party at his or her regular business address." Sec. 42-14-2(b). While § 42-35-9 and the Department's Rules require that notice must be given to a party subject to a hearing, this above-cited language in § 42-14-2 provides clear insight as to what the General Assembly intended to constitute a reasonable time frame for both sending and receiving notice in Department proceedings.

Here, the record reflects that the Department mailed, and thus served notice upon Bresette on December 29, 2011—twelve days in advance of the scheduled hearing date and more than the ten day notice provided for in § 42-14-2. Prior to this date, Bresette had already been indicted and formally charged with eight felony counts, all stemming from events occurring while in his capacity as an insurance adjuster, an occupation regulated by the Department. These eight felony counts, which also served as the basis for the Department bringing sanctions against Bresette, had already been brought to Bresette's attention by the Department well in advance of the January 9, 2012 show cause hearing. In fact, the record reflects that the Department, upon receiving each customer complaint which served as the basis of the respective felony charge, forwarded the complaint to Bresette and demanded a written response explaining the occurrence. These detailed explanations to the Department—individually written by Bresette within days of receiving each complaint—date back to 2010 and are contained in the record.

Thus, based on the facts of this case—including the severity of the criminal charges, Bresette's prior knowledge of the allegations, and the Department's authority to take immediate action to guard against any further harm to the public—this Court finds that the notice provided to Bresette of the show cause hearing was reasonable. See Flynn, 811 A.2d at 1151 (notice should be reasonably calculated under the circumstances to apprise parties of the pendency of the action and afford an opportunity to present objections). However, even if this Court were to conclude that notice of a hearing received two days in advance would be unreasonable in this case, such a finding would fail to have a practical effect on the existing controversy. This Court has determined that both of the separate, sufficient forms of notice sent by the Department on December 29, 2011 should have been timely received and is therefore not persuaded by Bresette's assertion that such notice—which he claims to never have received—was unreasonable. See City of Cranston v. Rhode Island Laborers' Dist. Council Local 1033, 960 A.2d 529, 533 (R.I. 2008) (as a general rule Rhode Island courts will only consider cases involving issues in dispute and "shall not address moot, abstract, academic, or hypothetical questions.").

Also unavailing is Plaintiff's request that the Court vacate the Department's Decision and remand the case to the Department for a hearing on the merits. At the show cause hearing held on January 9, 2012, the hearing officer heard testimony and considered evidence concerning the five felony counts of insurance fraud and three felony counts of obtaining money under false pretenses that Plaintiff was indicted upon and later charged with by the Rhode Island State Police. Also considered by the hearing officer were seven consumer complaints against Bresette from different individuals, with dates of loss ranging from January 2010 to January 2011, each alleging improprieties relative to his conduct as an insurance claims adjuster. Based on such

evidence submitted, the hearing officer further found that it would be in the public interest to immediately and permanently revoke Bresette's insurance adjuster's license.

These findings of fact and recommendations of the hearing officer were then reviewed and later adopted by the Department's Director, who issued the ultimate Decision to revoke Bresette's insurance adjuster's license. Based on the existence of such a two-tier standard of review, our Supreme Court has previously held that the "further away from the [findings of fact] that an administrative official is . . . the more deference should be owed to the fact finder." Environmental Scientific Corp., 621 A.2d at 208. Thus, this Court will give great deference to, and not disturb, the factual determinations made by the hearing officer unless they are "clearly wrong." Id.

Here, the Department is vested with the authority to revoke an insurance claim adjuster's license "upon proof . . . that the interests of the insurer or the interests of the public are not properly served under the license, or for cause." Sec. 27-10-7. In addition, the Department may revoke a license "[w]henever the director [of the Department of Business Regulation] shall have cause to believe that a violation of title 27 . . . or regulations promulgated thereunder has occurred by a licensee." Sec. 42-14-16. The regulations promulgated by the Department ("Regulation 43") further provide that the Department may "suspend, revoke or refuse to issue or renew an adjuster's license or may levy a civil penalty in accordance with R.I.G.L. § 42-14-16 for *any one or more*" of the listed causes. (Def.'s Ex. 2 § 11(A)) (emphasis added).

At the January 9, 2012 hearing, the hearing officer found that Plaintiff committed the following violations of Regulation 43, section 11: "(3) violating any insurance laws, or violating any regulation, subpoena, or order of the Department or of another state's insurance commissioner;" "(5) improperly withholding, misappropriating, or converting any monies or

properties received in the course of doing insurance business;" "(6) having been convicted of a felony;" "(7) having admitted or been found to have committed any insurance unfair trade practice or insurance fraud;" "(8) using fraudulent, coercive or dishonest practices; or demonstrating incompetence, untrustworthiness or financial irresponsibility in this state or elsewhere." (Pl.'s Ex. A, 2; Def.'s Ex. 1, 16). While the record reflects that at the time of the Decision, Plaintiff had not been convicted of the pending felony charges, the inclusion of clause (6) does not vitiate the Department's Decision because Bresette's license could be revoked for any single one of the above listed factors and was not based exclusively on this factor.

Moreover, neither the General Laws nor the Department's rules and regulations that govern insurance claim adjusters require that pending charges be adjudicated—or even that an insurance adjuster be charged with wrongdoing—before his or her license may be revoked, suspended, or other sanctions imposed. Sec. 42-14-16; Sec. 27-10-7; Def.'s Ex. 1, at 17 ("[t]he Department shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by R.I.G.L §§ 27-10-1 et seq., § 42-14-16 and/or this Regulation against any person who is under investigation for or charged with a violation."). Only reasonable cause is necessary before the Department is entitled to "take such action as it deems appropriate under applicable law and the rules and regulations adopted pursuant to."[3] (Def.'s Ex. 2 § 4(A)).

Thus, while the Decision was ultimately based on default due to Plaintiff's failure to appear at the hearing—at the recommendation of the Hearing Officer and later adopted and ordered by the Department's Director—a careful examination of the record shows that the findings of fact and conclusions of law within the Decision are supported by legally competent

[3] As defined under the Department's Rules, "'[r]easonable [c]ause' means there exists a set of facts of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs which would induce a reasonably intelligent and prudent person to believe that a violation(s) of law, rule, or regulation has occurred." (Def.'s Ex. 1, at 3).

evidence. Included in the record are copies of the criminal charges pending against Bresette, numerous customer complaints detailing improper practices by Bresette while acting as an insurance claim adjuster, Bresette's written explanation to each complaint sent to the Department, and the Postal Service tracking confirmation for the certified mail notice of the hearing sent to Bresette's home. Also included in the record is a copy of the Department's Order regarding Bresette's motion to reconsider, denied primarily based on the fact that it was received late, but also upon the fact that it only sought a new hearing and contained no meritorious defense to the Department's Decision.[4] As a result, this Court finds that the Department's Decision is supported by legally competent evidence and it will not disturb the agency's ruling. See Nickerson, 853 A.2d at 1205.

IV

Conclusion

Based on the foregoing analysis, this Court finds that the Department's Decision to permanently revoke Plaintiff's insurance claim adjuster's license was not made upon unlawful procedure, clearly erroneous, arbitrary or capricious, or affected by other error of law such that substantial rights of the Plaintiff have been prejudiced. Sec. 42-35-15(g). Accordingly, Plaintiff's appeal is denied.

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[4] Pursuant to the Department's Rules, "[t]he Department shall not entertain a motion for reconsideration filed more than twenty (20) days after entry of the final decision, unless the Hearing Officer finds good cause to entertain said motion." (Def.'s Ex. 1 at 13). Here, Plaintiff faxed his motion for reconsideration of the January 13, 2012 Decision to the Department on February 9, 2012, outside the twenty-day window. However, the March 9, 2012 Order denying Plaintiff's motion to reconsider stated that even if it had been timely filed, Plaintiff had not established good cause to reconsider the matter, since the motion only discussed Plaintiff's failure to receive the mailed notice of the hearing and his intention to defend against the allegations. (R. at 10).