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

Joann Sweetwine-Akion	:	
	:	
v.	:	**A.A. No. 11 - 067**
	:	
Dept. of Labor & Training,	:	
Board of Review	:	

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, 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 law applicable thereto.

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 instant appeal is hereby DISMISSED for lateness.

Entered as an Order of this Court on this 29th day of September, 2011.

By Order:

/s/
Melvin Enright
Acting Chief Clerk

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

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F I N D I N G S & R E C O M M E N D A T I O N S

Ippolito, M. This matter is before the Court on the complaint of Joann Sweetwine-Akion seeking judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor & Training, which held that Ms. Sweetwine-Akion was not entitled to receive employment security benefits. This matter has been referred to me for the making of findings and recommendations pursuant to General Laws 1956 § 8-8-8.1. Unfortunately, this Court will not be able to address the merits of this instant appeal: because claimant perfected her appeal after the applicable appeal period had expired, I must recommend her appeal be dismissed.

FACTS & TRAVEL OF THE CASE

The facts and travel of the case may be briefly stated: Joann Sweetwine-Akion was employed by the Rhode Island Department of Education until August 4, 2010. She filed a claim for unemployment benefits but on September 14, 2010 the Director determined she had been terminated for misconduct within the meaning of Gen. Laws 1956 § 28-44-18 and was disqualified from receiving benefits. The claimant filed an appeal. Referee Nancy L. Howarth held a hearing on the matter on January 31, 2011 at which time claimant appeared and testified, as did an employer representative. On February 16, 2011 Referee Howarth issued a decision finding claimant ineligible to receive benefits because she was terminated for misconduct — to wit, repeated instances of absenteeism and tardiness. Decision of Referee, February 16, 2011, at 1. The Director's decision was thereby affirmed.

From this decision claimant filed an appeal and on May 13, 2011, a majority of the Board of Review issued a decision in which it held that misconduct had been shown; accordingly, claimant was deemed disqualified and the decision of the referee was affirmed. Thereafter, on June 16, 2011, the claimant transmitted a statement of appeal — to the District Court.

STANDARD OF REVIEW

The standard of review by which this court must consider appeals from the Board of Review is provided by Gen. Laws 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.' "[1] The Court will not substitute its judgment for that of the

1 Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing R.I. GEN. LAWS § 42-35-15(g)(5).

Board as to the weight of the evidence on questions of fact.[2] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[3]

The Supreme Court of Rhode Island recognized in Harraka v. Board of Review of Department of Employment Security, 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.

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2 Cahoone v. Board of Review of the Dept.of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

3 Cahoone v. Board of Review of Department of Employment Security, 104 R.I. 503, 246 A.2d 213, 215 (1968). See also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

ANALYSIS

As stated above in the travel of the case, the Board of Review rendered its decision on May 13, 2011; but claimant's appeal was not perfected (by submitting the appeal fee along with his complaint) for 34 days — on June 16, 2011 — after the thirty day appeal period had expired. See Gen. Laws 1956 § 42-35-15(b). While Ms. Sweetwine-Akion does not explain her tardiness in her pro-se complaint, even if she had, her efforts would have been to no avail; quite simply, the District Court is not authorized to extend the appeal period, which has been held to be jurisdictional. See Considine v. Rhode Island Department of Transportation, 564 A.2d 1343, 1344 (R.I. 1989)("… the District Court does not possess any statutory authority to entertain appeals that are filed out of time." 564 A.2d at 1344.). See also Dub v. Department of Employment Security Board of Review, A.A. No. 90-383 (Dist.Ct. 1/23/92) (SaoBento, J.)(" * * * [complainant's] failure to comply with the procedural requirements of § 42-35-15(b) also *invalidates* his claim for relief." Slip op. at pp. 7-8. Emphasis added). Thus, Ms. Sweetwine-Akion's appeal must be dismissed.

CONCLUSION

Upon careful review of the record in this matter, I recommend that the instant complaint for judicial review be DISMISSED because it was filed beyond the prescribed appeal period.

/s/
Joseph P. Ippolito
MAGISTRATE

SEPTEMBER 29, 2011