

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

Ramon Trinidad-Martinez :
 :
v. : **A.A. No. 12 – 161**
 :
Department of Labor and Training, :
Board of Review :

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 & 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 instant complaint for judicial review is DISMISSED for LATENESS.

Entered as an Order of this Court at Providence on this 21st day of September, 2012.

By Order:

_____/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. DISTRICT COURT
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Ramon A. Trinidad-Martinez :
v. : A.A. No. 12 – 161
Department of Labor and Training, :
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. This matter is before the Court on the complaint of Mr. Ramon A Trinidad seeking judicial review of a final decision rendered by the respondent Board of Review of the Department of Labor and Training, which held that Mr. Trinidad-Martinez was not entitled to receive employment security benefits. This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. Unfortunately, this Court will not be able to address the merits of this instant appeal: because claimant brought this appeal

after the applicable appeal period had expired, I must recommend his appeal be dismissed.

FACTS & TRAVEL OF THE CASE

The facts in this case may be stated briefly: Mr. Trinidad-Martinez was employed by Hope Global until he quit on March 1, 2012 in order to move to Pennsylvania. He applied for unemployment benefits but on March 21, the Director determined Claimant was ineligible for benefits because he had left the job without good cause within the meaning of section 28-44-17 of the General Laws. Claimant appealed from this decision. Accordingly, on April 25, 2012, Referee John Costigan held a hearing on the matter, in which the claimant participated telephonically. In his April 26, 2012 decision, the Referee found the following facts:

2. Findings of Fact:

The claimant's last day of employment was March 1, 2012. He quit his job to relocate to Pennsylvania. He stated that due to his wife's health, they decided to move to be closer to their daughters. The claimant said that he and his wife went to Pennsylvania, found a residence; he then returned to his job in Rhode Island and gave his employer a two week notice that he would be terminating his employment.

Referee's Decision, April 26, 2012, at 1. Then, he enunciated the following conclusions:

* * *

In order to show good cause for leaving a job the claimant must establish and prove that his job was unsuitable or that he had no reasonable alternatives. Based on the testimony presented, I find that neither of these situations existed. No evidence was presented indicating a requirement for the move due to medical issues and no effort was made by the claimant to secure employment prior to making the move. As a result, the claimant's leaving the job to relocate is without good cause under the provisions of the above referenced act and benefits must be denied in the matter. Referee's Decision, October 4, 2011, at 1-2.

Referee's Decision, April 26, 2012, at 1. Accordingly, Referee Costigan issued a decision finding claimant disqualified from receiving benefits.

Claimant filed an appeal and the matter was heard by the Board of Review. On July 12, 2012, a majority of the Board of Review issued a decision which affirmed the decision of the Referee on the issue of eligibility.

Thereafter, on August 23, 2012, the Mr. Trinidad-Martinez filed a complaint for judicial review in the Sixth Division 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 Board as to the weight of the evidence on questions of fact.² Stated differently, the findings 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).

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

agency will be upheld even though a reasonable mind might have reached a contrary result³

ANALYSIS

As stated above in the travel of the case, the Board of Review rendered its decision on July 12, 2012, but Claimant's appeal was not submitted until August 23, 2012 — 42 days later — after the thirty day appeal period had expired. See Gen. Laws 1956 § 42-35-15(b). While Mr. Trinidad-Martinez did not explain his tardiness in his complaint, any explanation, however meritorious, would have been of 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. Dept. 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, Mr. Trinidad-

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).

Martinez's appeal must be dismissed.

CONCLUSION

Upon careful review of the record in this matter, I must 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 21, 2012