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

Tanya L. Gabriel	:	
	:	
v.	:	**A.A. No. 12 - 221**
	:	
Department of Labor and 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 decision of the Board of Review is hereby AFFIRMED.

Entered as an Order of this Court at Providence on this 19th day of December, 2012.

By Order:

/s/
Stephen C. Waluk
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. In this case Ms. Tanya Gabriel urges that the Board of Review of the Department of Labor and Training erred when it affirmed a referee's decision dismissing Ms. Gabriel's appeal from the Department of Labor and Training's decision denying her unemployment benefits because it was filed late. Jurisdiction to hear and decide appeals from decisions made by the Board of Review is vested in the District Court by Gen. Laws 1956 § 28-44-52. This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. Because I conclude

that the Board's decision is supported by substantial evidence of record and is not otherwise affected by error of law, I must recommend that the decision of the Board of Review affirming the dismissal of her appeal be affirmed.

FACTS & TRAVEL OF THE CASE

The facts and travel of the case may be briefly stated: Ms. Gabriel, who was employed by Interface II, last worked on June 15, 2012; she filed a claim for unemployment benefits but on July 24, 2012 the Director issued a decision denying benefits to Ms. Gabriel pursuant to Gen. Laws 1956 § 28-44-17, which bars benefits to workers who quit positions voluntarily unless they do so for a reason that has been recognized as "good cause." Claimant's appeal was received by the Board of Review (for assignment to a referee) on August 10, 2012. After conducting a hearing on August 30, 2012, Referee Stanley Tkaczyk issued a decision on September 7, 2012 in which he dismissed claimant's appeal because it had been filed after the expiration of the 15-day appeal period found in Gen. Laws 1956 § 28-44-39(b). On the late-appeal issue Referee Tkaczyk made the following Findings of Fact:

> On July 24, 2012, the Director issued the decision to the claimant's address of record. The claimant did receive that decision in a timely fashion but did not open her mail immediately. She subsequently composed a letter of appeal dated August 8, 2012 but that letter was not faxed until August 10, 2012. The claimant delayed in submitting the letter because she could not get to a fax machine on that specific day. The

> fifteenth day of the appeal time period expired on August 8, 2012.

Referee's Decision, September 7, 2012, at 1. Based on these findings, the Referee made the following conclusions:

> The issue in this case is whether or not the claimant filed an appeal out of time with good cause within the meaning of Section 28-44-39(b) of the Rhode Island Employment Security Act.
>
> [Quotation of section 28-44-39(b) omitted]
>
> The burden of proof in establishing good cause for filing an appeal out of time rests solely upon the claimant. The evidence presented establishes that the decision was issued to the claimant's address of record on July 24, 2012 and that the claimant did receive that decision in a timely fashion. It was the claimant that subsequently did not take note of the appeal time limit or take immediate action on exercising her appeal rights. She composed a letter dated August 8, 2012 but delayed in submitting that letter until August 10, 2012. There has been no good cause evidence presented for the subsequent delay as the events were strictly attributable to factors under control of the claimant. In the absence of any other evidence to establish good cause, I must find that the claimant has not established good cause for filing her appeal out of time and any subsequent issues may not be addressed.

Referee's Decision, September 7, 2012, at 1-2. Accordingly, the claimant's appeal was dismissed. Referee's Decision, September 7, 2012, at 2.

Claimant sought review of this decision and on October 3, 2012 the Board of Review unanimously issued a brief decision affirming the Referee's dismissal of claimant's appeal and adopting the Decision of the Referee as its

own. Thereafter, on October 31, 2012, claimant filed a pro-se complaint for judicial review in the Sixth Division District Court.

STANDARD OF REVIEW

The standard of review is provided by R.I. Gen. Laws § 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

[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).

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 the Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595, 597 (1964) that a liberal interpretation shall be utilized in construing and applying 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, 506, 246 A.2d 213, 215 (1968).

[3] Cahoone v. Bd. of Review of Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968). Also D'Ambra v. Bd. of Review, Dept of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

APPLICABLE LAW

The time limit for appeals from decisions of the Director is set by subsection (b) of Gen. Laws 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. (Emphasis added)

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 indicate that late appeals can be accepted, even for good cause. However, in many cases the Board of Review (or, upon review, the District Court) has permitted late appeals if good cause was shown.

ANALYSIS

The purpose of all tribunals — whether judicial or administrative — is to adjudicate cases on the merits. However, procedural parameters have to be established to avoid anarchy. The time limit for appeals from decisions of the Director to the Referee level is set in Gen. Laws 1956 § 28-44-39(b) to be 15

days. Accordingly, the issue in the case is whether the decision of the Referee (adopted by the Board of Review) that claimant had not shown good cause for her late appeal is supported by substantial evidence of record or whether it was clearly erroneous or affected by other error of law.

At the hearing before the Referee, claimant Gabriel testified concerning the reasons why her appeal was late. Referee Hearing Transcript, at 5-7. She admitted she received the Director's decision but delayed in opening it. Id. This reason, which I would concede has the ring of truth, is nonetheless a subjective one, reflecting a personal error. This type of reason has never been accepted as good cause because doing so would render the time limit meaningless and unenforceable. E.g. Davis v. Department of Employment and Training Board of Review, A.A. No. 95-40, (Dist.Ct. 4/26/95)(DeRobbio, C.J.)(Dismissal of appeal affirmed where claimant thought appeal could be filed anytime). Therefore, the Referee's decision to find that this subjective failing on the part of the claimant did not constitute good cause for lateness was entirely reasonable and not clearly erroneous. See also Tuoni v. Department of Labor and Training Board of Review, A.A. No. 11-190, Slip op at 7, (Dist.Ct. 2/28/2012) (Dismissal of appeal affirmed where claimant failed to open his mail in a timely manner upon his return from a trip to Europe).

Pursuant to Gen. Laws 1956 § 42-35-15(g), the decision of the Board must be upheld unless it was, *inter alia*, contrary to law, clearly erroneous in light of the substantial evidence of record, or arbitrary or capricious. When applying this standard, the Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact, including the question of which witnesses to believe. Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result. The Court, when reviewing a Board decision, does not have the authority to expand the record by receiving new evidence or testimony.

The scope of judicial review by the District Court is also limited by Gen. Laws section 28-44-54 which, in pertinent part, provides:

> **28-44-54. Scope of judicial review – Additional Evidence – Precedence of proceedings. –** The jurisdiction of the reviewing court shall be confined to questions of law, and in the absence of fraud, the findings of fact by the board of review, if supported by substantial evidence regardless of statutory or common law rules, shall be conclusive.

Accordingly, I must conclude that the Referee's decision (accepted and adopted by the Board) that claimant did not demonstrate good cause for the lateness of her appeal from the Decision of the Director is supported by substantial evidence of record and is not clearly erroneous.

CONCLUSION

Upon careful review of the record, I recommend that this Court find that the decision of the Board of Review was not affected by error of law. Gen. Laws 1956 § 42-35-15(g)(3),(4). Further, it is not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record or arbitrary or capricious. Gen. Laws 1956 § 42-35-15(g)(5),(6).

Accordingly, I recommend that the decision of the Board be AFFIRMED.

/s/
Joseph P. Ippolito
MAGISTRATE

DECEMBER 19, 2012