STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Matthew D. Arsenault	**:**	
	:	
v.	**:**	**A.A. No. 13 - 100**
	:	
Department 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 decision of the Board of Review is AFFIRMED.

Entered as an Order of this Court at Providence on this 24th day of July, 2013.

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 Mr. Matthew Arsenault urges that the Board of Review of the Department of Labor and Training erred when it affirmed a referee's decision dismissing his appeal because it was filed after the expiration of the statutorily established appeal period. This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. For the reasons that follow, I recommend that the decision issued by the Board of Review in this case be affirmed.

I. FACTS AND TRAVEL OF THE CASE

The travel of the instant case may be briefly stated: Mr. Arsenault was employed by Uncle Sam's Glass and Door until October 1, 2012, his last day work. He applied for and received temporary disability insurance (TDI) benefits. On October 31, 2012, after his TDI benefits ran out, he applied for unemployment benefits. In two decisions dated November 30, 2012, a designee of the Director of the Department of Labor and Training found him to be disqualified from receiving further benefits. In the first, he was declared disqualified from the receipt of benefits because he left the employ of Uncle Sam's Glass without good cause as defined in Gen. Laws 1956 § 28-44-17. See Decision of Director, November 30, 2012, (No. 1248086), at 1. In the second, he was declared disqualified from the receipt of benefits because he was unavailable for work (due to his illness) as provided in Gen. Laws 1956 § 28-44-12. See Decision of Director, November 30, 2012, (No. 1251569), at 1.

Mr. Arsenault appealed from these decisions and a joint hearing was conducted by Referee Gunter A. Vukic on April 1, 2013. However, at the hearing the Referee not only addressed the two disqualification issues, but also considered why the Claimant's appeal had been filed some three months after the expiration of the statutorily set appeal period.

Indeed, in the two decisions he issued the next day, Referee Vukic directed his

attention exclusively to the late-appeal issue.[1] Employing a single rationale, he dismissed both appeals for lateness. Mr. Arseneault filed further appeals to the Board of Review — in a timely manner. As it has the authority to do under Gen. Laws 1956 § 28-44-47, the Board considered the case on the basis of the record before the Referee. Then, on May 10, 2013, the Board of Review affirmed the decisions of Referee Vukic, finding them to be proper adjudications of the facts and the applicable law. Decisions of Board of Review, May 10, 2013, at 1.

Mr. Arseneault filed a timely consolidated appeal from these decisions in the Sixth Division District Court on June 10, 2013.

II. 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

[1] The Leaving-for-good-cause issue, No. 1248086 at the Department level, was assigned Appeal No. 20131050 before the Referee. The Availability issue, No. 1251569, was assigned Appeal No. 20131051 by the Referee.

> 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.' "[2] The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.[3] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[4]

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)

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[2] Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5).

[3] Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

[4] 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).

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.

III. 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.

IV. 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 this case is whether the decision of the Referee (adopted by the Board of Review) that Claimant Arsenault had not shown good cause for his late appeal is supported by substantial evidence of record or whether it was clearly erroneous or affected by other error of law.

A. The Testimony Received On the Issue of the Late Appeal.

At the hearing before the Referee, Claimant Arsenault testified concerning the reasons why his appeal was late. Referee Hearing Transcript, at 10–17. He admitted that when he spoke to the Department's interviewer by telephone he was told he

would be receiving written decisions as to his eligibility. Id., at 10. He further conceded he was told he would have the right to appeal, but denied he was told the length of the appeal period. Id.

Mr. Arsenault indicated that he received two envelopes from the Department of Labor and Training a few days later. Id., at 12. He testified that he browsed the decisions but did not read them, claiming that he had been told what the decision would be over-the-phone. Id., at 12-13. He conceded that his failure to read the decisions immediately was a mistake. Id., at 13.

Mr. Arsenault told Referee Vukic that he finally read the decisions in December, but he was unable to explain in meaningful terms why he then waited until March to file his appeal. Id., at 14–15.

B. Resolution of the Late Appeal Issue.

Mr. Arsenault states he received the Director's decisions but failed to read them. Id. This explanation, which is so patently inadequate that it rings of the truth, is a subjective one, reflecting a personal failure. 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 finding that this omission on the part of the Claimant did not constitute good cause for the filing of a late appeal was entirely reasonable and not clearly erroneous.

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 of Review 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 Mr. Arsenault did not demonstrate good cause for the lateness of his

appeal from the Decision of the Director is supported by the reliable, probative, and substantial evidence of record and is not clearly erroneous.

V. CONCLUSION

Upon careful review of the record, I recommend that this Court find that the decision of the Board of Review was not clearly erroneous and was not affected by error of law. Gen. Laws 1956 § 42-35-15(g)(3),(4).

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

/s/
Joseph P. Ippolito
MAGISTRATE

JULY 24, 2013