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

Malinda J. Brooks	:	
	:	
v.	:	**A.A. No. 13 - 188**
	:	
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 in this case is REVERSED and the matter REMANDED for a decision on the merits.

Entered as an Order of this Court on this 26th day of February, 2014.

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**
SIXTH DIVISION

Malinda J. Brooks	:	
	:	
v.	:	**A.A. No. 13 - 188**
	:	
Department of Labor and Training,	:	
Board of Review	:	

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. Ms. Malinda J. Brooks comes before the Court seeking judicial review of a final decision rendered by the Board of Review of the Department of Labor and Training, which dismissed Ms. Brooks' appeal due to lateness. As a result of the Board's ruling, a decision of a Referee denying claimant employment security benefits was allowed to stand. 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. For the reasons stated below, I conclude that the Board of Review's decision on the issue of the dismissal for lateness should be set aside and the case remanded to the Board for a decision on the merits; I so recommend.

FACTS & TRAVEL OF THE CASE

The facts and travel of the case may be briefly stated: Ms. Malinda Brooks was employed by the Wendy's restaurant company for approximately 13 years, ending her career as a shift supervisor. She requested a leave but because she did not contact the company's insurance provider, as directed, she was deemed to have abandoned her position. She applied for and was denied benefits by a designee of the Director of the Department of Labor and Training, on the theory that she was disqualified pursuant to Gen. Laws 1956 § 28-44-17 because she had voluntarily quit her position without good cause.[1]

Ms. Brooks appealed and a hearing was scheduled before Referee Carl Capozza on August 6, 2013. In a decision dated August 7, 2013, the Referee affirmed the Director's decision, finding Ms. Brooks had quit by

[1] In the past, this Court has referred to such circumstances as a "de facto quit" or a "constructive quit."

failing to maintain contact with her employer.

Ms. Brooks filed an appeal to the Board of Review on September 11, 2013 — twenty days after the appeal period had expired (on August 22, 2013). As a result, the Chairman of the Board of Review sent Ms. Brooks a letter dated September 12, 2013 urging her to explain why her appeal was filed tardily. A response dated September 18, 2013 was transmitted to the Board by Ms. Brooks by facsimile. She stated — "I Malinda Brooks do hereby state the reason for my late appeal was due to the fact I received the notice of denial via US Postal on September 11, 2013. Upon my receipt I then faxed my notice of appeal on September 11, 2013 to 401-462-9401."

Notwithstanding this communication, on October 9, 2013, the members of the Board of Review unanimously dismissed her appeal for lateness. Decision of Board of Review, October 9, 2013, at 1. Ms. Brooks filed a pro-se appeal in the Sixth Division District Court on November 7, 2013.

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.' "[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

---

[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 Dept.of Employment Security, 104

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) 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.

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).

APPLICABLE LAW

The time limit for appeals from decisions of the Referee (referred is set by Gen. Laws 1956 § 28-44-46, which provides:

> After a hearing, an appeal tribunal shall promptly make findings and conclusions and on the basis of those findings and conclusions affirm, modify, or reverse the director's determination. Each party shall promptly be furnished a copy of the decision and supporting findings and conclusions. This decision shall be final unless further review is initiated pursuant to § 28-44-47 within fifteen (15) days after the decision has been mailed to each party's last known address or otherwise delivered to him or her; provided, that the period may be extended for good cause.

(Emphasis added). Note that while subsection 46 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, on appeal, the District Court) has permitted late appeals when good cause was shown.

ANALYSIS

The time limit for appeals from decisions of a Referee to the Board of Review is established in Gen. Laws 1956 § 28-44-46 to be 15 days. The decision of the Referee in this case may be found in the record. On page 2 of that decision is a section headlined "APPEAL RIGHTS" in which the

15-day appeal period is clearly explained. The section also informs the parties that an appeal may be effectuated by mail, by facsimile, or by e-mail. Id. Thus, without doubt, Claimant had notice of the appeal period.

Accordingly, the sole issue before the Court is whether the decision of the Board of Review that Claimant had not shown good cause for her late appeal was supported by substantial evidence of record or whether it was clearly erroneous or affected by other error of law.

As noted above, the members of the Board of Review unanimously dismissed Ms. Brooks' appeal, finding — in a conclusory manner — that Claimant "failed to justify" the lateness of his appeal. Decision of Board of Review, October 9, 2013, at 1. Since the Board did not state that the reason proffered by Ms. Brooks was inadequate, I must assume they simply did not believe her. But they did not say why. Certainly, this Court cannot speculate as to the Board's reasoning. As a result, I believe the Board's lack of specificity effectively denies Ms. Brooks the opportunity for meaningful judicial review of its decision.

Accordingly, I recommend that this Court set aside the dismissal of Ms. Brooks' appeal for lateness and instruct the Board of Review to render a decision on the merits. As always, the Board may grant the Claimant a

further hearing or proceed on the basis of the record developed by the Referee. See Gen. Laws 1956 § 28-44-47.

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.[5] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[6] However, the procedure followed by the Board must not have been unlawful. Gen. Laws 1956 § 42-35-15(g)(3). Accordingly, due to the lack of any specificity regarding the reason why her statement was not credited, I believe the Board's decision to dismiss Ms. Brooks' appeal for lateness was clearly erroneous; I therefore recommend it be reversed and the matter remanded for a decision on the substantive issue.

---

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

[6] Cahoone, supra n. 5, 104 R.I. at 506, 246 A.2d at 215 (1968). See also Gen. Laws § 42-35-15(g), supra at 4 and Guarino, supra at 4, n. 2.

CONCLUSION

Upon careful review of the record, I recommend that this Court find that the decision of the Board of Review was affected by error of law. Gen. Laws 1956 § 42-35-15(g)(3),(4). It was also clearly erroneous in light of the reliable, probative, and substantial facts of record. Gen. Laws 1956 § 42-35-15(g)(5).

Accordingly, I recommend that the decision of the Board be REVERSED and the matter REMANDED for a decision on the merits.

/s/
Joseph P. Ippolito
MAGISTRATE

FEBRUARY 26, 2014