

STATE OF RHODE ISLAND
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

Tamara Souliere :
 :
v. : A.A. No. 2023 – 072
 :
Department of Labor and Training, :
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case we consider whether this Court should dismiss Ms. Tamara Souliere’s complaint for judicial review of a decision of the Department of Labor and Training’s Board of Review (which denied her claim for unemployment benefits), because it was filed after the expiration of the thirty-day appeal period set forth in G.L. 1956 42-35-15(b). Jurisdiction to hear and decide appeals from decisions made by the Board is vested in the District Court by G.L. 1956 § 28-44-52. This matter has been referred to me for the making of findings and recommendations pursuant to G.L. 1956 § 8-8-8.1. For the reasons which I shall now explain, I conclude that the instant appeal must be DISMISSED for lateness.

I

Facts and Travel of the Case

We shall begin by briefly rehearsing the history of this controversy.

A

The Claim and the Director's Decision

Ms. Tamara Souliere filed a claim for unemployment benefits effective April 23, 2023. However, on June 14, 2023, a designee of the Director of the Department of Labor and Training ruled that she was ineligible to receive benefits because she quit in the absence of good cause, since there was no evidence showing that her job had become unsuitable. *Dec. of Dir.* at 1 (citing G.L. 1956 § 28-44-17).¹

B

The Proceedings Before the Referee

This ruling was appealed by Ms. Souliere to the Department's Board of Review. Accordingly, the Board assigned one of its hearing officers (known as *Referees*) to conduct a hearing into the matter on June 28, 2023. *See Ref. Hr'g Transcript*, at 1; *ER* at 15. On that occasion, Ms. Souliere, who was the sole participant, gave testimony.

The next day, June 29, 2023, the Referee issued his decision. *See*

¹ The Decision of the Director may be viewed on pages 34 and 35 of the electronic record attached to this case. During the remainder of this opinion, citations to this electronic file will be designated as *ER*. That file may be found in the electronic docket for this case under the heading: "10/23/2023 Records Received."

Dec. of Ref. passim (ER at 25-27). He ruled: (1) that Employer was without standing to oppose the claim because it failed to respond to the Department request for information, as provided in G.L. 1956 § 28-44-38(c); and (2) that Claimant Souliere was not eligible to receive benefits because she quit without good cause within the meaning of § 28-44-17. *Dec. of Ref. at 2 (ER at 26)*.

C

The Proceedings Before the Board of Review

From this decision, Ms. Souliere filed an appeal. However, the Board of Review did not conduct a new hearing; instead, the Board decided the case on the basis of the record developed by the Referee, as it has the authority to do under G.L. 1956 § 28-44-47. Employing this procedure, the Chairman, acting on behalf of the Board,² affirmed the Referee's decision on August 16, 2023, finding it to be a proper adjudication of the facts of the case and the law applicable thereto; the Referee's decision was then adopted as the decisions of the Board. *See Dec. of Bd. of Review, at 1 (ER, at 7)*.

² The Chairman is authorized to act alone in the absence of one or more of his or her colleagues. *See* G.L. 1956 § 42-16.1-9.

D

Proceedings Before this Court

From this decision of the Board of Review, Ms. Souliere filed an appeal in the Sixth Division Court on October 23, 2023. *See* Electronic Docket entry — “10/23/2023 Administrative Appeal Filed.” And so, when this case was first reviewed, it became apparent that her appeal had not been perfected within the 30-day appeal period set forth in § 42-35-15(b). Accordingly, on June 13, 2024, an order was entered directing Ms. Souliere to show cause, on or before July 19, 2024, why her appeal should not be dismissed for lateness. *See* Electronic Docket entry — “06/13/2024 Order Entered.”

Ms. Souliere has failed to respond to this Court’s Order.

II

Applicable Law

The time-period during which appeals from decisions of the Board of Review must be filed is set forth in Rhode Island’s Administrative Procedures Act (APA):

(b) Proceedings for review are instituted by filing a complaint in the superior court of Providence County or in the superior court in the county in which the cause of action arose, or where expressly provided by the general laws in the sixth division of the district court or family court of Providence County, within thirty (30) days after mailing notice of the final decision of the agency

G.L. 1956 42-35-15(b). Now, this provision, like all “[s]tatutes prescribing the time and the procedure to be followed by a litigant attempting to secure appellate review [is] to be strictly construed.” See *Rivera v. Emp’s Ret. Sys. of Rhode Island*, 70 A.3d 905, 912 (R.I. 2013) (quoting *Sousa v. Town of Coventry*, 774 A.2d 812, 814 (R.I. 2001)). In light of this doctrine, it is perhaps not surprising that, for many years, it was thought that the thirty-day period in this section was absolute and not susceptible to any exceptions. See *Considine v. Rhode Island Dep’t of Transp.*, 564 A.2d 1343, 1344 (R.I.1989).

However, in *Rivera, ante*, a case which involved a facially late appeal by a police officer from an adverse decision by the Retirement Board regarding a claim she had filed for a disability pension, the Rhode Island Supreme Court held that the 30-day limitation on judicial appeals under the APA was subject to at least one exception — the doctrine of equitable tolling, which it found applicable because an employee of the Retirement Board gave misleading information to Ms. Rivera concerning the start-date of the appeal period. *Rivera*, 70 A.3d at 911-14.

III

Analysis — Late Appeal

There is not much that can be said about the instant appeal. Given the opportunity to explain her tardiness, she failed to do so. Accordingly, this

Court is required to find that good cause has not been shown.

IV

Conclusion

Upon careful review of the entire record, I recommend that this Court find that Claimant Souliere's complaint for judicial review of the decision of the Board of Review was not perfected within the 30-day appeal period set forth in § 42-35-15(b) and, for which, good cause has not been shown.

Accordingly, I recommend that Claimant Souliere's complaint for judicial review be DISMISSED.

/s/

Joseph P. Ippolito
MAGISTRATE

September 16, 2024

