

**STATE OF RHODE ISLAND
PROVIDENCE, Sc.**

**DISTRICT COURT
SIXTH DIVISION**

Isabel Taveras :
 :
v. : **A.A. No. 2023 - 075**
 :
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 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 September, 2023.

By Order:

_____/s/_____

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

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FINDINGS AND RECOMMENDATIONS

Ippolito, M. In this case, Ms. Isabel Taveras urges that the Board of Review of the Department of Labor and Training erred when it issued a decision adverse to her ability to receive unemployment benefits. Jurisdiction for appeals from the Department of Labor and Training Board of Review is vested in the District Court pursuant to 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. After a review of the entire record, I find that the decision rendered by the Board of Review in Ms. Taveras’s case is neither clearly erroneous nor affected by error of law. I shall therefore recommend that the decision of the Board of Review

rendered with regard to Ms. Taveras's claim for unemployment benefits be AFFIRMED.

I

Facts and Travel of the Case

A

The Initial Claim and the Request to Backdate

Ms. Taveras last worked on February 2, 2023. She contacted the Department's Call Center on April 19, 2023 to request unemployment benefits and her claim was made effective on April 16, 2023. Subsequently, she requested that her claim be made effective, or "backdated," to February 5, 2023. On July 18, 2023, Ms. Taveras was contacted by an adjudicator employed by the Department of Labor and Training. *See* DLT 480 Form, at 1 (Claimant Statement section); *ER* at 30.

The adjudicator summarized Claimant's request as follows:

I am requesting benefits effective 041623. My last physical day of work was 020223 and I left the job. I did not know I could file for Unemployment Insurance benefits right away, and when I learned of my ability to do so I did, but several weeks had elapsed. I am requesting benefits for the weeks following my last day of work which I did not claim because I did not know I could.

Id. However, on August 4, 2023, the adjudicator, acting as a designee of the Director of the Department of Labor and Training, declined to grant this request, finding that Ms. Taveras's claim could not be backdated

because she had not shown good cause for her failure to file her claim earlier. *See Dec. of Director*, at 1 (citing a statute, G.L. 1956 § 28-44-12, and a regulation, Title 260, Chapter 40, Subchapter 5, Part 1.18(C), which is codified as 260-RICR-40-05-1.18).

B

Proceedings Before the Board of Review and its Referee

1

The Hearing

Ms. Taveras filed an appeal to the Department's Board of Review, which assigned the matter to one of its hearing officers, Referee J. Frederic, who conducted a telephonic hearing on the backdating issue on September 7, 2023. Ms. Taveras was the sole witness at the hearing — neither the Department nor her prior employer were represented.

After the opening formalities were observed, including the administration of the testimonial oath to Claimant, the Referee proceeded to enumerate the exhibits which had been received from the Department. *Referee Hr'g Tr.* at 7-10. The Referee then listed the prior occasions when Ms. Taveras had filed a claim for unemployment benefits. *Ref. Hr'g Tr.* at 11-12. The Referee then posed his first question to Ms. Taveras.

When asked when her last day of physical work was, Claimant responded January 26, 2023. *Id.* at 13. Next, she identified her prior employer as PriceRite, for whom she had worked on a part-time basis for

two months. *Id.* She also agreed that she first made contact with the Department to request unemployment benefits on April 19, 2023. *Id.*

The Referee then asked Ms. Taveras why she failed to apply for benefits during the week following February 5th. *Id.* at 14. She answered that she did not know she was eligible. *Id.* And when asked, Claimant added that she did not reach out to the Department for clarification. *Id.* She thought that she had not worked the requisite number of days to be eligible. *Id.* at 14-15.

Ms. Taveras also testified that she was looking for work during the period from February 5, 2023, to April 16, 2023. *Id.* at 15. When asked if there was anything else she wanted to add, Ms. Taveras stated that the regulation was broad and violative of due process. *Id.* at 15-16. She also referenced “the circumstances under how I was placed in the hospital” and related events, which are not explained elsewhere in this record. *Id.* at 16. The law, she said, was “either arbitrary or discriminatory.” *Id.* Claimant opined that, when one is hired by an employer, one should get a notice when you are eligible for benefits. *Id.* at 16.

2

The Decision

On July 26, 2018, Referee Vukic ruled that Claimant Taveras was ineligible to have her claim backdated. The Referee began by making

the following findings of fact:

The claimant filed her claim for Employment Security benefits on April 19, 2023, and the claim was made effective April 16, 2023. When filing, she indicated she last worked on or about January 26, 2023. The claimant requested that her claim be backdated to be effective February 5, 2023. The claimant was employed part-time with PriceRite grocery store while attending school. She left this position and did not believe she would qualify for benefits. She did not contact the Department to gain information on their eligibility requirements. Additionally, she did not seek information on the Departments website. The claimant filed for benefits in the past and based on her previous knowledge, believed she would not be entitled to employment security benefits. The claimant did not attempt to contact the Department to file her claim prior to April 19, 2023. The claimant stated she was able, available, and actively seeking full-time employment for the weeks at issue.

Dec. of Referee, at 1; *ER* at 27. With these findings in hand, and after quoting § 28-44-12 and 260-RICR-40-05-1.18, the Referee formulated the following conclusions:

In this case, the claimant has not established good cause for her failure to file her claim timely, as required. The claimant has not presented any evidence to show that she attempted to file the claim online or by phone prior to April 19, 2023, or that she was in anyway prevented from filing a timely claim. Therefore, it is determined her request for the backdating of her claim to be effective to February 5, 2023, must be denied, as previously determined by the Director.

Dec. of Referee, at 2; *ER* at 28. Accordingly, the Referee's decision

declining to authorize the backdating of Ms. Taveras’s claim was affirmed.
Id. at 3.

3

The Rulings of the Board of Review

Ms. Taveras filed a timely appeal of the Referee’s decision with the Board of Review, which did not conduct a further hearing — but considered the matter on the basis of the record previously developed. In a decision dated October 23, 2023, the Board of Review declared that the decisions of the Referee constituted an appropriate adjudication of the facts and applicable law and adopted the Referee’s decisions as its own. *Decision of Bd. of Review*, at 1; *ER* at 2.

C

District Court Appeal

Finally, on November 22, 2023, Ms. Taveras filed a Petition for Judicial Review in the Sixth Division District Court.

II

Standard of Review

The standard of review which this Court must employ is provided by G.L. 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.’” *Guarino v. Dep’t of Soc. Welfare*, 122 R.I. 583, 584, 410 A.2d 425 (1980) *citing* G.L. 1956 § 42-35-15(g)(5). The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact. *Cahoone v. Bd. of Review of the Dep’t of Emp’t Sec.*, 104 R.I. 503, 246 A.2d 213 (1968). Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result. *Cahoone, ante*, 104 R.I. 503, 246 A.2d at 215. *Also, D’Ambra v. Bd. of Review, Dep’t of Emp’t Sec.*, 517 A.2d 1039, 1041 (R.I. 1986).

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.

III

Applicable Law

In my view, this case turns on the following provision of the Rhode Island Code of Regulations:

40-05-1.18. Filing of Claims for Unemployment Insurance Benefits. — ...

C. The effective date of a new valid claim or additional claim shall be established as the Sunday of the week in which the individual contacts the Department and files a claim in accordance with procedures described by the Director. *Any individual who fails without good cause to contact the Call Center in accordance with*

these provisions shall not be eligible to receive benefits for the week(s) in which such failure occurs.

260-RICR-40-05-1.18C (Emphasis added). The meaning of this regulation is clear. Usually, the effective date of a claim is the Sunday of the week in which the claim is filed — but a claimant cannot receive benefits in any week for which he or she has not filed a claim, unless good cause is shown.

IV Analysis

Rhode Island's Employment Security Act has included, since its adoption, an administrative hearing process to adjudicate disputes regarding, *inter alia*, whether a Claimant should be disqualified from receiving unemployment benefits — with the opportunity of judicial review held in abeyance.¹ But these administrative processes, while customarily eschewing the kinds of formality associated with judicial trials, do nevertheless require litigants to adhere to regular procedures. Among these is the expectation that a person interested in receiving monetary benefits of some sort will file a claim in a timely manner.

In the instant case, we must consider whether the Board of Review erred when it found that Ms. Taveras failed to prove that she neglected to file her claim when she first became unemployed in February

¹ See generally, the Rhode Island Administrative Procedures Act (APA), codified as Chapter 35 of Title 42 of the General Laws.

for good cause. Of course, this is not a matter of disputed credibility. Ms. Taveras's testimony was, to my reading, completely credited by the Referee (and the Board when it adopted her decision as its own). In essence, the Board found that Claimant's subjective misconceptions about her eligibility did not constitute "good cause" within the meaning of 260-RICR-40-05-1.18C. In my estimation, the Board did not err in its analysis.

Subjective misunderstandings of the law, like that entertained by Ms. Taveras, have never been deemed sufficient to justify backdating. If such a reason were to be acknowledged as sufficient, the statutory and regulatory time limits would be rendered meaningless. *E.g. Joia v. Dep't of Labor and Training, Bd. of Review*, A.A. No. 2015-108, slip op. at 10-11 (Dist.Ct. 2/29/2016) and *Maroto v. Dep't of Labor and Training, Bd. of Review*, A.A. No. 2010-142 (BU 2010 0947/BU 2010 0948), slip op. at 8 (Dist. Ct. 09/13/2010).

Moreover, nothing in this record would seem to indicate that Ms. Taveras was in any way *dissuaded* from filing a timely appeal by any representative of the Department. *Cf. DePetrillo v. Dep't of Emp't Security, Bd. of Review*, 623 A.2d 31, 34-35 (R.I. 1993) (finding that Appellant's failure to file his claim for benefits promptly was not deterred or barred by any action by a representative of the Department or the Office of the

Attorney General).² Neither did she assert that she was prevented from doing so by any force beyond her control, such as illness.

Accordingly, this Court concludes that the Board of Review did not err in rejecting Ms. Taveras's request to backdate her claim.

V

Conclusion

Upon careful review of the evidence, I recommend that this Court find that the decision of the Board of Review denying Claimant Taveras's request for backdating was neither clearly erroneous nor affected by error of law, as provided in G.L. 1956 § 42-35-15(g)(4), (5).

Accordingly, I recommend that the decisions rendered by the Board of Review in Ms. Taveras' case be AFFIRMED.

/s/

Joseph P. Ippolito
MAGISTRATE

SEPTEMBER 24, 2024

² In this regard the Court's discussion in *DePetrillo* seem to have anticipated its holding in *Rivera v. Employees' Ret. Sys. of Rhode Island*, 70 A.3d 905, 913-14 (R.I. 2013) (equitable tolling of APA's statute of limitations, in G.L. 1956 § 42-35-15(b), found to be justified where the Agency provided erroneous information as to the commencement of the appeal period).

