BEFORE THE MERIT EMPLOYEE RELATIONS BOARD

IN RE: ELAINE M. FANNING **OPINION AND ORDER**
DOCKET NUMBER 95-03-03

Before Woo, Chairperson; Burns, Bowers, Fullman and Green; Members, constituting the Board en banc pursuant to 29 Del. C. Section 5908(a)

And now this 8th day of June, 1995, the above referenced matter being brought before the Merit Employee Relations Board (hereinafter Board) on May 17, 1995, and the Board having considered the motion to dismiss filed by Deputy Attorney General Lynn Wilson on behalf of the Department of Health and Social Services, and the comments made in response by the grievant, Elaine M. Fanning, The Board makes the following findings of fact and conclusions of law; to wit:

1. Elaine M. Fanning was a probationary employee of the Department of Health and Social Services when she was dismissed during her probationary period due to unsatisfactory work performance by letter from Secretary Carmen R. Nazario dated November 10, 1994.

2. 29 Del. C. Section 5922(b) provides that "[i]f the probationary employee's services were unsatisfactory, he shall be dropped from the payroll...The decision of the appointing authority shall be final and conclusive."

3. The Board is without jurisdiction to hear the appeal filed by Elaine M. Fanning with regard to her dismissal from state service pursuant to Merit Rule 21.0111, and the Motion To Dismiss filed by the state is Granted as to the request for a hearing concerning her termination from state service.

4. In Ms. Fanning's request for a hearing, she also stated a claim under Merit Rule 19.0000 Non-Discrimination Policy and Rule 21.0112 Appeal from Discrimination. That rule allows any applicant or employee to appeal directly to the Board on a claim of discrimination due to religious or political opinions or affiliations, national origin, race, or other non-merit factors. [1]Ms. Fanning however, failed to comply with rule 21.0130 with regard to the necessary requirements when filing an appeal. Her notice of appeal failed to contain a statement indicating:

a) The nature of the act complained of; and
c) The argument which appellant (grievant) wishes to

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[1] Merit Rule 21.0112 requires the grievant to file said appeal within 10 working days of the action being appealed. Ms. Fanning included a copy of the termination letter envelope postmarked Nov. 21, 1994 with her appeal letter and stated in her letter that she received the letter on December 2, 1994. These dates were not contested by the agency. The Board finds that the grievance was timely filed.

present to the Board and

d) Any legal authority the appellant intends to rely upon.

The grievant did cite (b) The alleged violation of the Merit Rules complained of; and part of (c), the relief sought in her appeal dated December 2, 1994.

5. The grievant, Elaine M. Fanning is given until June 17, 1995 to amend her notice of appeal to include a statement containing the above listed requirements. Ms. Fanning is directed to send a copy of the amended notice to Ms. Lynn Wilson, care of the Department of Justice, 45 The Green, The Sykes Building, Dover, DE 19901 and the original to the Merit Employee Relations Board, C/O John F. Brady, 820 N. French Street, 8th Floor, Wilmington, DE 19801.

6. A hearing will be scheduled within 60 days after the receipt of the amended notice of appeal.

IT IS SO ORDERED

Katy K. Woo, Chairperson

Robert Burns, Vice-chair

Walter Bowers, Member

Dallas Green, Member

Gary Fullman, Member

DATE MAILED 6/9/95