BEFORE THE MERIT EMPLOYEE RELATIONS BOARD

IN THE MATTER OF PAULA JACKSON, Grievant, v. STATE OF DELAWARE DEPARTMENT OF CORRECTION Agency	**DOCKET NO. 95-03-16** **OPINION AND ORDER**

BEFORE Bowers, Fullman and Green constituting a lawful quorum of the Board pursuant to 29 Del Code, Section 5908(a).

And now this 14th day of December, 1995, the above-referenced matter being before the Board on October 5, 1995, the Board makes the following Findings of Fact and Conclusions of Law; to wit:

SUMMARY OF EVIDENCE

1. Paula Jackson was sworn and testified that she had been a three (3) year seasonal employee of the Department of Corrections prior to becoming full-time on October 1, 1994 and that she was suspended on November 14, 1994 and her termination date was in the letter of January 31, 1995. Ms. Jackson testified as to the events of November 1, 1994. She said she had been attending the GAP Program as part of the Department of Corrections and that she was suppose to ride that day with Sandra Watson to the program which was located in New Castle County. Ms. Jackson testified that she had heard of the STEP Program and did not want to lose her job so she called her office at the Sussex Correctional Institute. She left messages for Karen Myers and Carol Lutness; also, she talked to Allison Ingram and Ginny Tice came over after talking to her on the phone. Ms. Jackson said she told Ginny Tice she was looking for help and told Ginny Tice that she had been drinking. She never mentioned anything about cocaine because she stated that she didn't even know if it was cocaine. Later that same day, November 1, 1994, Ms. Jackson testified that she went to SCI and talked with Allison Ingram who told her she didn't see where this problem affected her job. Ms. Jackson testified that she wanted more

information about the STEP Program and that she was told that Debbie McCarthy is the STEP representative when Karen Myers was not there. She said she spoke to Debbie McCarthy and she told Debbie McCarthy that she used a white powder that made her "high" and that she thought it was cocaine. Debbie McCarthy told her that it's not affecting her job. Debbie McCarthy told her they were going to extend her probationary period and Ms. Jackson testified that she was worried about the co-pay. Ms. Jackson further testified that the got in the electronic mail a message from Debbie McCarthy saying "I know you feel betrayed but I E-mailed our conversation of yesterday to Joe Pasanti of the Department of Corrections." On November 14, 1994 Ms. Jackson testified that Larry Grantham told her that she was relieved of her duties based on her conversation with Debbie McCarthy and an investigation is going to take place and that she then went home. Two weeks later, she made a follow-up phone call to Vincent Bianco who told her the investigation was continuing. Ms. Jackson further testified, she received a letter dated January 31, 1995 about termination. Ms. Jackson testified further that she was told an investigation was going to take place, that a Mr. George was going to investigate. She contacted him later and he told her it was no longer in his hands. She was contacted and gave her version of the events to the Department. Ms. Jackson stated she wanted to enter the STEP Program, she did not want to lose her job and was not going to admit to cocaine use to someone other than a STEP representative.

2. On cross-examination, Ms. Jackson testified that she was scheduled to be at the GAP Program at the Women's Correctional Institute on 11/1/94 and that she did not recall contacting Ms. Myers regarding a ride on that date. She did testify that she called WCI and asked to speak to Karen Myers but Karen Myers was not there yet. She left a message for Sandy Watson and spoke to her. She knew Karen Myers was a STEP representative but did not recall getting any information about the STEP Program as part of her orientation. Her seasonal position ended July 31, 1994 and she started as a Social Services Representative I on August 1, 1994. Ms. Jackson testified to her understanding of the STEP Program that you are to go to a STEP representative and discuss the problem and that the STEP representative will direct you for help based on the available programs, and that all information given to a STEP representative is confidential. Ms. Jackson testified that she never entered the STEP Program previously. Ms. Jackson further testified that she knew Ginny Tice was not a step representative and told her that she was a recovering alcoholic and her then husband was also, nothing about cocaine use.

Ms. Jackson testified that she thought Ms. Debbie McCarthy was a STEP representative based on the conversation with Ginny Tice. She called Allison Ingram and then asked for Debbie McCarthy as the STEP representative.

3. On examination by the Board, Ms. Jackson testified that she was a seasonal employee of the Department of Corrections starting in October 1991 and that Allison Ingram was her temporary supervisor and that Debbie McCarthy told her about the CO-STEP Program and that the therapy was good; that you participate in the program. Ms. Jackson further testified that Debbie McCarthy told her that the probationary period was being extended and that Larry Grantham told her that she was being relieved of duty on 11/14/94 due to the conversation and that there was no prior notice.

4. On redirect examination Ms. Jackson testified that she was a Social Service Specialist I with administrative duties and no counseling duties; that her previous seasonal duties with the Department of Corrections included intake, community service and coordinating payment of fines for courts. She worked for several different supervisors within Department of Corrections and she had no problem with the work. Ms. Jackson further testified that Ginny Tice told her that Debbie McCarthy was a STEP representative and that she was familiar with Debbie McCarthy because she was her prior supervisor. Ms. Jackson testified further that November 1, 1995 would mark one (1) year sobriety that she has been involved in programs with AA and NA and that she has interaction with clients at the Department of Corrections.

5. On cross-examination, Ms. Jackson testified that some clients are not on probation; they are simply there to pay off court-ordered fines while there are interactions with inmates and probationary persons as a result of her job. Ms. Jackson testified further that she did the STEP program with Carol Lutness. Her first meeting was in November, 1994 and she continued on through until the end of her employment with the State.

6. Sandra Watson was sworn and testified that she is a Senior Probation Parole Officer in the Georgetown Probationary Office and she supervisors probationers. Ms. Watson testified she is not in the chain of command for Ms. Jackson but her office was across the hall. Ms. Watson testified as to the basis for the STEP program; that the Department of Corrections has contacts

in each County and that in November, 1994 the Sussex County contact was Karen Myers. Ms. Watson stated she had never been a STEP representative and never told Ms. Jackson she was a STEP representative. Ms. Watson testified that on October 31, 1994 Ms. Jackson rode along with her to the 3-day program that a total of five (5) people from Sussex County were attending. This program was at the Women's Correctional Institute outside Wilmington, Delaware. Ms. Watson testified that on November 1, 1994 Ms. Myers told her that Ms. Jackson was not going that day. Ms. Watson testified that when she arrived at WCI she received a message timed at 9:47 A.M. from Ms. Jackson. She called Ms. Jackson back. Ms. Jackson was very upset; stated she needed to resign and she was referred to Karen Myers and referred to counseling. Ms. Watson testified she told Ms. Jackson to call Allison Ingram to tell her where she was. Ms. Watson testified that she never told Ms. Jackson that Debbie McCarthy and Allison Ingram were STEP representatives.

7. On cross-examination, Ms. Watson stated that she prepared a memorandum outlining this incident to Debbie McCarthy on November 14, 1994 upon Ms. McCarthy's request to her for a memorandum in connection with the incident and that the phone number where she contacted Ms. Jackson was in Lewes, Delaware. Ms. Watson further testified there was no Department policy that she was aware of on how to get into the STEP program when a STEP representative was unavailable but there was always an additional point of contact, Cathy Mikalaski, at Staff Training Academy for Department of Corrections in Smyrna, Delaware. Ms. Watson stated she would have asked her supervisor how to get into STEP if the STEP representative was not available.

8. On redirect, Ms. Watson testified that she asked Ms. Jackson if she wanted to talk with STEP representative Karen Myers on the phone but Ms. Jackson refused. Ms. Watson testified she was not aware of the STEP Hotline phone number.

9. Upon examination by the Board, Ms. Watson testified she never told Ms. Myers about the request from Paula Jackson; that Ms. Watson talked with Allison Ingram and Allison Ingram told Ms. Watson that Paula Jackson did call her and that on Thursday there was a discussion about the incident. Ms. Watson testified that she'd worked with Paula Jackson for three (3) years and, to the best of her knowledge, was a good employee. Ms. Watson concluded her

testimony stating that, on the date of the incident in question, November 1, 1994, Ms. Jackson sounded "stressed out" and sounded like she's been crying. Ms. Watson further testified that she was aware of Ms. Jackson's domestic situation and she'd helped her move first from her home to a shelter, then from the shelter to an apartment and that the domestic situation was known by a few people in the office.

10. Ginny Tice was sworn and testified that she's a Senior Probation Parole Officer with the Department of Corrections, assigned to the Probation Parole Office in Georgetown, Delaware; that she is housed in the same office and different unit and she occupied the office across the hall from Paula Jackson. Ms. Tice testified that she was friendly with Ms. Jackson through office contacts and that she had helped Ms. Jackson move and that she would characterize herself as a "friendly co-worker." Ms. Tice stated she was not a STEP representative; she never told anyone she was a STEP representative and that Karen Myers is the STEP representative. Ms. Tice further testified that she never told Ms. Jackson that Debbie McCarthy was STEP representative. With regard to the incident in question on November 1, 1994, Ms. Tice testified that she talked on the phone on the phone at 11:00 A.M. and then went to Paula Jackson's house, taking an early lunch hour. Ms. Tice testified that Ms. Jackson told her she was going to get fired but she made no reference to STEP; that she said she had a relapse in her recovery; that she had started drinking and using cocaine; that drinking had led to cocaine use and it had been going on for several months. There were no other references made to the use of cocaine. Ms. Tice testified that she discussed the STEP Program but, with Karen in training, she recommended that Ms. Jackson talk to her old supervisor, Debbie McCarthy. Debbie would have the information as to whom she should contact. Ms. Tice said that Ms. Jackson told her she had a relapse before and Debbie McCarthy had helped her before. Ms. Tice testified she told her that Karen Myers was the STEP representative but was not available because she was at a training class but that Debbie McCarthy, as her ex-supervisor, would know what to do.

11. On cross-examination, Ms. Tice testified that she helped Ms. Jackson move; did not know about the alcohol program and that Allison Ingram, her supervisor, didn't know where Paula was. Ms. Tice testified she went to the house and talked to Paula and Ms. Tice brought up STEP in discussion with Paula. Ms. Tice testified that she knew Karen Myers was not available so she told Paula Jackson the next possible person who knows about STEP is Debbie

McCarthy, the next STEP representative that she could contact. She could not tell about Ms. Jackson's performance as an employee because she was not in her chain of command but that, on the day in question, Ms. Jackson was visibly upset.

12. On examination by the Board, Ms. Tice testified that she saw no difference in the four months being referenced and did not know about Paula's alcohol or drug problems. Ms. Tice testified that when an employee starts with the Department of Corrections they are given information then about the STEP Program and that any changes in the STEP Program are routed through the units via the supervisors. Ms. Tice testified that Paula Jackson indicated Carol Lutress was a counselor that she'd spoken to before. Ms. Tice said she knew Paula Jackson for four (4) months and liked her because she made work entertaining and was fun and easy to get along with noticed no obvious problems.

13. On redirect, Ms. Tice testified that the use of drugs was illegal but did not know the Department of Corrections policy on that topic.

14. Allison Ingram was sworn and testified that she's a Sr. Probation Parole Officer and has been since January, 1984. She was the Acting Supervisor in the Supervisor's absence and that as the Acting Supervisor from August until November, 1994, in the absence of the regular supervisor that she handled time-off requests and oversaw the clerical staff. Ms. Ingram testified that Ms. Jackson was a Social Service Specialist in the Work Progress Office of Probation and Parole and these clients work off their fines and costs; that the Social Service Specialist helps the intake process, signing up work sets, updating files, follow-up. Ms. Ingram said she is somewhat familiar with STEP but she's never told anybody that she was a STEP representative. The main person is Karen Myers and that was told to her at a staff meeting at Orientation. She does not recall if Ms. Jackson was at those meetings but she believed that Ms. Jackson was familiar with the drug policy at DOC; that no illegal substances are allowed on their premises. Ms. Ingram stated that she did not know exactly what the drug policy stated. Ms. Ingram testified that on November 1, 1994, Paula Jackson called her for the phone number of a counselor and that she may have to resign from her job. Ms. Jackson did not ask about STEP but talked about sick leave, and about leave for the day. Ms. Ingram testified that the call-in policy for the clerical staff is that they call between 8:00 and 8:15 A.M. if they are going

to call in that day and that Ms. Jackson did not call until 10:00 A.M. Ms. Ingram stated that Ginny Tice called later that morning from Paula Jackson's residence and set up a meeting to discuss issues and Ms. Jackson came in with her two (2) children. Because of the nature of the meeting, it was moved to the supervisor's office. Ms. Jackson did not reference the STEP Program at the beginning of the meeting. Ms. Jackson did, however, discuss the problem of the alcohol relapse and that she'd gone to "detox" and that she'd spent all of her rent money ($300) on alcohol for everybody that was there at the bar. Ms. Ingram testified that Ms. Jackson became very upset and was afraid she would lose her children. Ms. Ingram responded by discussing the STEP Program and stated that she told her that Karen Myers was the representative and that she never told Ms. Jackson that Debbie McCarthy was a STEP representative. Ms. Ingram understood that Ms. Jackson was going to go and talk with a counselor and she wanted to talk with Debbie McCarthy as well. There was a later meeting on Thursday of that week, which was the first day back to work for Ms. Jackson. Ms. Jackson did bring doctor's notes with her. At that meeting, to discuss the problem with absences, was Ms. Jackson, Ms. McCarthy and Ms. Ingram. Ms. Ingram testified that Ms. Jackson told her she was not interested in the STEP Program on 11/3/94. Ms. Ingram stated that Ms. Jackson never told her about admission of cocaine but Debbie McCarthy later told her that she, Ms. Ingram, did not participate in decisions to suspend with intent to dismiss. Ms. Ingram testified that she later audited the files that she shared with Ms. Jackson. Of the two hundred twenty-five (225) files audited, some errors came to light in that there were some discrepancies between computer entries and work files. Ms. Ingram stated that there had been a problem previously with attendance as Ms. Jackson had taken sick time that she had not earned but that she had made up that same time in the same week and this during her first week of full-time employment.

15. On cross-examination, Ms. Ingram testified that she'd been in Georgetown office since December, 1988 and had been the acting supervisor for the months October and November, 1994. She testified that a seasonal employee is limited as to the number of days they can work in a calendar year. Ms. Ingram testified that Ms. Watson never advised her of the condition of Ms. Jackson when she talked to her that day, and that Paula Jackson was upset and was aware that Karen Myers was at that GAP Program at WCI and that Cathy Mikalaski works in the Smyrna facility. Ms. Ingram stated that, to her knowledge, no other Department of Corrections STEP representative was working in Sussex County that day and that the Department of

Corrections Code of Conduct which all employees abide by; that she had a copy, although she had not read it recently; she had reviewed it in December 1994 in regard to this matter and that a copy is kept in her office. Ms. Ingram stated that Ms. Jackson was very upset at 1:00 P.M. when she was in her office on November 1, 1994 and that she was crying about the rent money. Ms. Ingram stated that Ms. Jackson told her she did not want to call Karen Myers by phone; that she would not expect this problem to be resolved by phone and Ms. Ingram stated that the STEP representatives were not immediately available; that there is a phone number to call although she did not immediately know it. In reviewing the STEP booklet there was no phone number in the booklet but Ms. Ingram testified that the phone number is given at orientation. Ms. Ingram testified that the purpose of the meeting with Ms. McCarthy and Ms. Jackson was that Ms. Ingram and Ms. McCarthy would talk to Ms. Jackson to see if she needed assistance and would offer literature if Ms. Jackson chose to contact the program. And this was also again conveyed as part of the meeting on November 3rd. Ms. Ingram testified that Ms. Jackson appeared to need assistance but declined the STEP Program at that time because she'd already contacted Outreach Counseling Services. Ms. Ingram's impression on November 1, 1994 was that the Outreach was preferred over the STEP Program. When Ms. Ingram asked Ms. Jackson on November 3, 1994 about entering the STEP Program, Ms. Jackson told her no, she did not want to enter the STEP Program. On Friday evening, November 4, 1994, Ms. Ingram testified that Ms. McCarthy contacted her to fill her in as Ms. Jackson's Acting Supervisor. Ms. Jackson had admitted to using cocaine to Ms. McCarthy. Ms. McCarthy called Mr. Grantham. Mr. Grantham contacted Mr. Pasanti. Ms. Ingram testified that the following week Ms. McCarthy told her that the director, Mr. Pasanti, wanted to review the files and that Mr. Pasanti wanted to suspend with the intention to terminate. Following that incident, Ms. Ingram then reviewed the files a few weeks after the suspension and did a complete audit on all the files.

16. Upon examination by the Board, Sandy Watson initially told Ms. Ingram that she had talked to Ms. Jackson that day. There were two hundred twenty-five (225) files that were the subject of the audit and Ms. Ingram testified that there some errors on some of the entries. On a whole they were not excessive but each individual error was a material error that could have been a problem if a work site error had been made.

17. With regard to the November 3, 1994 meeting of Ms. Ingram, Ms. McCarthy and Ms. Jackson, Ms. Ingram testified that that meeting was initiated by Ms. McCarthy. Ms. Ingram testified that she was not aware that Ms. McCarthy was in the AA Program and didn't see a problem but wasn't looking for one.

18. On redirect, Ms. Ingram stated that Ms. Jackson did not want to talk to Ms. Myers over the phone that day.

19. On recross-examination, Ms. Ingram stated that she guessed Karen Myers was there on November 3, 1994 but she wasn't sure. Ms. Ingram was not asked to do an audit but did so of her own volition. Ms. Ingram stated was asked to do a written report by Ms. McCarthy. Ms. Ingram stated that she was present at a meeting with Joe Pasanti, Noreen Rinard, Alan Machtinger, Larry Grantham and Debbie McCarthy about termination; that she never did an evaluation of Ms. Jackson and that the audit was not discussed at the meeting.

20. On follow-up by the Board, Ms. Ingram testified it was mentioned on November 3, 1994 that the probationary period may be extended due to the absentee problem.

21. Debbie McCarthy was sworn and testified as follows: Ms. McCarthy testified that she was familiar with the Code of Conduct but because it was a behavior contract she was not familiar with how it was involved with off-duty contact because it had been awhile since she had read it. With regard to the drug policy Ms. McCarthy testified that she did not know the specific drug policy but she knew illegal substances were not permitted on the premises and that the clients are convicted persons who are in the custody or care of the Department of Corrections. Ms. McCarthy testified that she was familiar with the STEP Program, that she had never told Ms. Jackson that she was a STEP representative and that she advised Ms. Jackson who the STEP representative was several times during the 11/1/94 and 11/3/94 meetings. Ms. McCarthy testified that she was in Smyrna on 11/1/94 when she received information that there was a problem and a meeting had been set up for 11/3/94. One purpose of that meeting as to do the employee performance appraisal (EPPA) as it was the second time she had missed work during the probationary period and that she wanted to extend the probationary period. She stated that Allison Ingram was the acting supervisor and that, to the best of her recollection, Ms. Jackson

did not ask about STEP programs or STEP representatives. With regard to the 11/3/94 meeting Ms. McCarthy testified that she brought up STEP as a reference to alcohol problems and that she was sure she told Ms. Jackson who the STEP representatives were. Ms. Jackson told her she had already made an appointment with Ms. Carol Lutress and that STEP wasn't what she really needed. Ms. McCarthy testified that Alice Ingram left the meeting at 3:00 P.M. and Ms. McCarthy stated that told Ms. Jackson to not tell her anything that she was not comfortable in sharing. Ms. McCarthy testified that Ms. Jackson then proceeded to admit that she had used cocaine the night before; that she'd called her AA sponsors and tried to get back into a program. Ms. McCarthy said that she referred it to Larry Grantham, supervisor, because it dealt with the use of illegal drugs. Ms. McCarthy said that Joe Pasanti directed that everything was to be investigated and directed Ms. McCarthy to learn everything from Ginny Tice and that a decision to terminate was made on January 31, 1995; that it was a unanimous vote and the two factors discussed were drug use and missing time from work.

22. On cross-examination, Ms. McCarthy testified that a person can get into the STEP Program without the supervisor's knowledge; that Paula Jackson had the meeting on 11/3/94 and entered in the STEP Program and left work on 11/14/94. Ms. McCarthy testified that other employees have used the STEP Program during their probationary period. Ms. McCarthy further testified that she used the seasonal work absence experience as part of her EPPA concerns to extend the probationary period and was not concerned about the Family Leave Medical Act as sick leave for children when determining that the probationary period should be extended. Ms. McCarthy said she knew Ms. Jackson hadn't any sponsor and was contacting a counselor and that, personally, she did not see why you could not discuss something on the phone but it wouldn't surprise her that Ms. Jackson would rather talk physically to someone in person.

23. Ms. McCarthy testified that she understood Ms. Jackson went into the STEP Program for financial reasons to cover the co-pay and that Ms. McCarthy has a supervisor who had always been helpful in helping employees get the necessary assistance but that the only way to get in there was through a STEP representative. Ms. McCarthy stated that she was Ms. Jackson's supervisor while Ms. Jackson was a seasonal employee; that Ms. Jackson was conducting interviews and was doing an adequate job but had some concerns relative to attendance.

24. At the 11/3/94 meeting, Ms. McCarthy testified that Ms. Jackson discussed with her the appointment of Carol Lutress to the outreach counseling, a private agency and the discussion was that the insurance would pay part and STEP would pay the co-payment.

25. On re-direct, Ms. McCarthy testified that Ms. Jackson indicated to her that she had used the STEP services before and does not remember if Ms. Myers was in the office on 11/3/94.

26. Rosie Anderson was sworn and testified that she is a co-worker as a Probation Parole Officer II at Georgetown Probation Parole Office and that Ms. Jackson called her at home on November 4, 1994 or Saturday, November 5, 1994 and told her that she had confided in Ms. McCarthy and told her some things in confidentiality; that Ms. McCarthy had betrayed her trust and Ms. Anderson testified that Ms. Jackson told her she had contacted Ms. McCarthy as a friend.

27. On cross-examination, Ms. Anderson testified that she knew Ms. Jackson had drinking problems and that Ms. Jackson told her she went to Ms. McCarthy as a friend, told her some things as a friend and that Debbie McCarthy had betrayed her trust. Ms. Anderson testified that she reports to Eric Adams and that she had no discussion about the STEP Program but that she just socialized with Ms. Jackson. Ms. Anderson testified that she was not friends with her co-workers, just friendly.

28. On rebuttal, Ms. Paula Jackson testified that she received STEP benefits from November 1994 through January, 1995 until the time of her termination; that the co-pay went to the counselor, Debbie McCarthy went to Karen Tice and Karen Tice came to Ms. Jackson and Karen Tice handled the paperwork for the STEP Program. Ms. Jackson testified that, to her recollection, regarding the 11/3/95 meeting with Allison Ingram and Debbie McCarthy that the topic of STEP did come up and co-pay came up and that Ms. Jackson never declined the STEP Program assistance. Ms. Jackson further testified that there was no mention of absences or work problems and that she was told that whatever is going on in your personal life is not affecting your job. Ms. Jackson testified further that she did not tell Allison Ingram because Allison Ingram was not a STEP representative but that her conversation with Ginny Tice led her to believe that Debbie McCarthy was a STEP representative and it was safe talking to her.

THE LAW

29 Del. C. § 5931. Grievances.

"The rules shall provide for the establishment of a plan for resolving employee grievances and complaints. The final two (2) steps of any such plan shall provide for hearings before the Director or the Director's designee and before the Board, respectively, unless a particular grievance is specifically excluded or limited by the Merit Rules. The director and the Board, at their respective steps in the grievance procedure, shall have the authority to grant back pay, restore any position, benefits or rights denied, place employees in a position they were wrongfully denied, or otherwise make employees whole, under a misapplication of any provision of this chapter or the Merit Rules. The rules shall require that the Board take final action on a grievance within ninety (90) calendar days of submission to the Board. Upon approval of all parties, the ninety (90) days may be extended an additional thirty (30) calendar days. (29 Del. C. 1953, § 5931; 55 Del Laws, c. 443, §6, 69 Del. Laws, c. 436, §7.)" Effect of amendments -- 69 Del. Laws, c. 436, effective July 14, 1994, rewrote this section.

Merit Rule 19.0100 Non-Discrimination Policy

Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline or any other aspect of personnel administration because of political or religious opinions or affiliations or because of race, national origin, age, sex, physical or mental disability, or other non-merit factors will be prohibited.

FINDINGS OF FACT

1. Paula Jackson was employed by the Department of Corrections as a seasonal employee for three (3) years from 1991 to 1994 before becoming a full-time employee at the Department of Corrections on August 1, 1994.

2. Ms. Jackson told Ms. McCarthy of her involvement with cocaine due to Ms. Jackson's belief that Ms. McCarthy was a STEP representative who could get her proper help.

3. Ms. Jackson did not tell Ms. Ingram or Ms. Tice about cocaine use because they were not STEP representatives.

4. The STEP Program is designed to assist state employees with problems in order to keep them working and help to resolve their problems. The goal of the program is to allow

state employees to resolve substance abuse problems and to become productive employees.

5. There was no evidence that Ms. Jackson's job performance was sub-par as of the date of the incident.

6. The absences cited as a reason to extend probation do not seem to be justified.

7. The STEP Program allows employees to go to a supervisor or a STEP representative to get further information and enrollment into the program.

8. In this case, with the new supervisor away at training, Ms. Jackson conferred with the acting supervisor and the past immediate supervisor and, as a result, the employee entered the STEP Program and received the benefits of the program.

9. There were no valid supportable reasons to terminate this employee, absent the admission of possible drug conduct made in confidence to the supervisor.

CONCLUSION OF LAW

There are no valid supportable reasons to terminate this employee. The State did not meet the burden of proof of unsatisfactory service or conduct. The employee must be reinstated by the Department of Corrections upon a finding that the State violated Merit Rule 19.0100 by discrimination against Ms. Jackson by using information gained in order to enter the State Troubled Employee Program (STEP).

ORDER

The grievance of Paula Jackson is upheld. The grievant is reinstated as an employee of the Department of Corrections. The grievant is to receive back wages and benefits from November 14, 1994, the date of termination, reduced by any earnings received or public assistance or other assistance to net to the date of reinstatement.

IT IS SO ORDERED

Walter Bowers

Gary Fullman

Dallas Green

APPEAL RIGHTS

29 Del. C. § 5949 provides that the appointing authority shall have a right of appeal to the Superior Court on the question of whether the appointing authority acted in accordance with law. The burden of proof of any such appeal to the Superior Court is on the appointing authority. All appeals to the Superior Court are to be filed within thirty (30) days of the employee being notified of the final action of the Board.

Mailing Date: December 18, 1995

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