

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD  
OF THE STATE OF DELAWARE**

**IN THE MATTER OF  
PERRY SMYTH**

Grievant,

v.

**STATE OF DELAWARE, Department of  
Transportation**

Agency

**DOCKET NO. 96-02-84**

**FINDING OF FACT**

**CONCLUSION OF LAW**

**OPINION AND ORDER**

**COPY**

BEFORE Woo, Chairperson, Burns, Vice Chairperson, Fullman and Green, Members of the Merit Employee Relations Board, constituting a lawful quorum of the Board pursuant to 29 Del. C., Section 5908(a).

AND NOW, on this date, the 5th of September, 1996, the above-referenced matter being before the Board on March 28, 1996, the Board makes the following Finding of Fact and Conclusions of Law; to wit:

**FINDING OF FACT AND CONCLUSION OF LAW**

1. This is an appeal of the refusal of the Department of Labor to proceed upon grievant's complaint against the Department of Transportation under both the Equal Employment Opportunity Commission and Delaware State Law.
  
2. The Board's jurisdiction is established by 29 Del. C., Chapter 59 Merit System of Personnel Administration.
  
3. The grievant is not employed by the Department of Labor, and has not applied for any positions within the Department of Labor and, therefore, grievant can not invoke Merit Rule 19.0100, Non-Discrimination Policy to gain a hearing before the Board, as this Board is without jurisdiction to hear such claim.

4. The Board has no jurisdiction to hear and adjudicate the grievance; this matter is therefore dismissed.

**THE LAW**

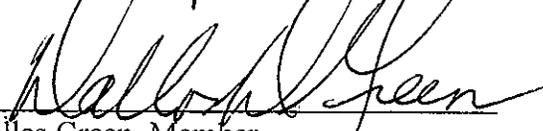
**29 Del. C. §5931. Grievances.**

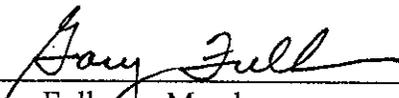
"The rules shall provide for the establishment of a plan for resolving employee grievances and complaints. The final two (2) steps of any such plan shall provide for hearings before the Director or the Director's designee and before the Board, respectively, unless a particular grievance is specifically 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.

**IT IS SO ORDERED**

  
\_\_\_\_\_  
Katy K. Woo, Chairperson

  
\_\_\_\_\_  
Robert Burns, Vice Chairperson

  
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Dallas Green, Member

  
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Gary Fullman, Member

APPEAL RIGHTS

29 Del. C. §5949 provides that the grievant shall have a right of appeal to the Superior Court on the question of whether the appointing agency acted in accordance with law. The burden of proof of any such appeal to the Superior Court is on the grievant. 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:

*October 7, 1996* *jo*

JFB:jlt

Distribution:

Original: File

Copies: Grievant

Grievant's Representative

Agency

Agency's Representative

Merit Employee Relations Board

Katy K. Woo, Chairperson

Robert Burns, Vice Chairperson

Walter Bowers, Member

Gary Fullman, Member

Dallas Green, Member

State Personnel Office (2 copies)