BEFORE THE MERIT EMPLOYEE RELATIONS BOARD

OF THE STATE OF DELAWARE

IN THE MATTER OF DOCKET NO. 97-05-124	)	**FINDINGS, OPINION AND ORDER**

COPY

PUBLIC ORDER

BEFORE Katy K. Woo, Chairperson, Robert Burns, Vice-Chairperson, and Dallas Green, Member, constituting a quorum of the Merit Employee Relations Board ("Board") pursuant to 29 *Del. C.* § 5908(a).

APPEARANCES

For the Department: Loretta G. LeBar and A. Ann Woolfolk
Deputy Attorneys General
Department of Justice
820 North French Street
Wilmington, Delaware 19801

For the Grievant: Michael W. Modica, Esquire
606 Market Street
P. O. Box 1205
Wilmington, Delaware 19899

SUMMARY OF EVIDENCE AND FINDINGS OF FACTS

The Grievant chose to have the hearing of this matter treated as a non-public disciplinary proceeding under the provisions of 29 *Del. C.* Ch. 101, and the proceedings relating thereto were

conducted in an Executive Session properly entered into by vote of the Merit Employee Relations Board. Therefore, the summary of the evidence and the findings of facts of the Merit Employee Relations Board while available for appeal are not public records.

CONCLUSION AND ORDER

The Board concludes that under Merit Rule 15.1 the evidence presented does not support just cause for the termination of employment of the Grievant by the Secretary of the Department of Health and Social Services and supports a determination that the termination was not for just cause.

The grievance is upheld, and Grievant shall be made whole by being promptly restored to the position from which she was terminated with full back pay and all benefits to which she would have been entitled in the absence of such termination less any earnings from other employment or other benefits received from the State of Delaware from the time of her termination to the time of her reinstatement. Within sixty (60) days from the date of this Order, the parties shall agree upon the compensation and benefit package designed to make Grievant whole for the termination without just cause. Such determination shall not include counsel fees. Should the parties not be able to agree on the benefit package, then each party shall, within ninety (90) days of this Order file with the Board its last, best, and final proposal for making this Grievant whole, and the Board will select one or the other proposals which, in the determination of the Board, appropriately makes the Grievant whole in a reasonable and fair manner.

IT IS SO ORDERED:

Katy K. Woo, Chairperson

Robert Burns, Vice-Chairperson

Dallas Green, Member

APPEAL RIGHTS

If the Board upholds the decision of the appointing authority, the employee 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 Board or Superior Court is on the employee. If the Board finds against the appointing authority, 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 shall be by the filing of a notice of appeal with the Court within thirty (30) days of the employee being notified of the final action of the Board.

Mailing Date: 11/20/97

Distribution:
Original: File
Copies: Grievant's Representative
Agency's Representative
Merit Employee Relations Board
Katy K. Woo, Chairperson
Robert Burns, Vice Chairperson
Dallas Green, Member

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