BEFORE THE MERIT EMPLOYEE RELATIONS BOARD

OF THE STATE OF DELAWARE

IN THE MATTER OF **SANDRA L. McGEEHAN-DEKKER,** **Grievant,**	)	**DOCKET NO. 98-01-138**
v.	)	
DEPARTMENT OF HEALTH AND SOCIAL SERVICES, **Agency.**	)	**DECISION ON MOTION TO DISMISS**

BEFORE Susan L. Parker, Esquire, Chairperson; Robert Burns, Vice-Chairperson; Dallas Green, John F. Schmutz, Esquire, and John W. Pitts, Members, constituting a quorum of the Merit Employee Relations Board pursuant to 29 *Del. C.* § 5908(a).

BACKGROUND

In October of 1996, Sandra L. McGeehan-Dekker, who was a Merit employee with the Department of Health and Social Services ("DHSS"), was incarcerated in the Plummer Women's Correctional Center following her conviction for Driving Under the Influence. About this time, Ms. McGeehan-Dekker requested a one (1) year leave of absence without pay which was denied. On March 13, 1997, then Secretary Carmen R. Nazario terminated Ms. McGeehan-Dekker's employment with DHSS and reiterated the prior denial of her request for a leave of absence. Thereafter, Ms. McGeehan-Dekker filed a grievance regarding her termination and the denial of the request for a leave of absence. On October 30, 1997, the State Personnel Director's designee held a 4th Step

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grievance hearing and determined that Ms. McGeehan-Dekker should be reinstated in her position on December 1, 1997 but that she should not receive any back pay and benefits.

By letter dated December 30, 1997, Ms. McGeehan-Dekker filed an appeal after the 4th Step decision with the Merit Employee Relations Board on January 7, 1998. By motion dated April 17, 1998, DHSS has moved the Board to dismiss the grievance appeal on the basis that it is not timely filed. With the motion, DHSS filed the affidavit of the 4th Step hearing officer that his written decision was issued on November 21, 1997, and to the best of his knowledge, the decision was mailed to Ms. McGeehan-Dekker on November 25, 1997 at her last known address at the Plummer Center.

Ms. McGeehan-Dekker filed with the Board her written response to the Motion to Dismiss on June 19, 1998. In her response, Ms. McGeehan-Dekker repeated the statement that she had made in her December 30, 1997 letter to the Board that she obtained a photocopy of the 4th Step decision on December 2, 1997.

DISCUSSION

The Merit Employee Relations Board can only hear and consider appeals which are timely filed under the Merit Rules. The Board's power and authority are derived exclusively from statute, and its jurisdiction extends only to those cases which are properly before it in compliance with the statutes and Merit Rules. *Maxwell v. Vetter*, Del. Supr., 311 A.2d 864 (1973). Under the Merit Rules, to be timely filed, an appeal from a 4th Step grievance decision must be filed with the Board within fifteen (15) working days of the receipt of the written statement of findings from the Personnel Director at Step 4 of the grievance procedure. Merit Rule No. 21.0120.

During oral argument on the Motion to Dismiss, Ms. McGeehan-Dekker asserted that she had not received an official or formal copy of the 4th Step decision with a transmittal letter telling her of hr appeal rights and that she did not know how to go about appealing the Hearing Officer's decision concerning her claim for back pay and benefits. DHSS, in the affidavit of the 4th Step hearing officer attached to the Motion to Dismiss, indicates that the decision was mailed to her at her last known address in the Plummer Center on November 25, 1997. Ms. McGeehan-Dekker stated to the Board that she left her incarceration in the Plummer Center on December 15, 1997.

Ms. McGeehan-Dekker who had been a Merit System employee for six (6) years, acknowledges that she was in receipt of the written 4th Step decision on December 2, 1997 when her supervisor at work provided a copy to her..

Merit Rule No. 20.0340 provides for a written appeal to the Board within fifteen (15) working days of receipt of the Director's decision. For purposes of the disposition of this motion, the operative word is "receipt," since that is the event which triggers the time limit within which to file an appeal. Ms. McGeehan-Dekker was in receipt of the decision on December 2, 1997, and she therefore had 15 days to appeal that decision to the Merit Employee Relations Board. Ms. McGeehan-Dekker's appeal was presented to the Board on January 7, 1998 which is beyond the time limit for filing such an appeal, and therefore without regard to the potential merits of her appeal, the Board has no jurisdiction to hear it, and the Motion to Dismiss must be granted. *See* Merit Rule Nos. 20.0300, 20.0340, and 21.0120.

ORDER

The above-captioned grievance filed by Sandra L. McGeehan-Dekker is not timely filed, and the Motion to Dismiss filed by DHSS is **GRANTED**. The appeal is dismissed.

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v.	)	
DEPARTMENT OF HEALTH AND SOCIAL SERVICES, **Agency.**	)	**DECISION ON MOTION TO DISMISS**

BY ORDER OF THE BOARD this 22nd day of July, 1998.

Susan L. Parker, Esquire, Chairperson

Robert Burns, Vice-Chairperson

Dallas Green, Member

John F. Schmutz, Esquire, Member

John W. Pitts, 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.

29 *Del. C.* § 10142 provides:

(a) Any party against whom a case decision has been decided may appeal such decision to the Court.

(b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.

(c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.

(d) The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

Mailing Date: July 23, 1998

Distribution:
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Agency's Representative
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John W. Pitts, Member

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