

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

PUBLIC DOCUMENT

IN THE MATTER OF:

Appellant,

v.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES,
Employer/Agency.**

DOCKET NO. 00-11-226'

DECISION AND ORDER

Before Brenda Phillips, Chairperson, Dallas Green and John F. Schmutz, Esquire,
members constituting a quorum of the Merit Employee Relations Board (the "Board") as required
by 29 *Del. C.* §5908(a).¹

APPEARANCES:

For the Department:
Phoebe Young
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801

For the Appellant:
Appellant, Pro se

NATURE OF THE PROCEEDINGS

This matter is before the Merit Employee Relations Board ("the Board") as a direct
grievance appeal pursuant to Merit Rule 21.0111. The appeal was filed on November 16, 2000
by a state employee (hereinafter "Appellant") after the imposition of a 15 day suspension for an
incident which occurred on June 29, 2000.

The Appellant elected to have the hearing proceed as a confidential hearing closed to the

¹ Commissioner Pitts was absent from the hearing for medical reasons and Commissioner Houck was out of state for business reasons.

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public under the provisions of 29 *Del. C.* §10004(b)(8) and 29 *Del. C.* §5948. The Board unanimously voted to enter into executive session to hear and determine this grievance appeal. The Department of Health and Social Services proceeded as the moving party. (See Merit Rule 21.0230). The hearing before the Board was conducted on April 25, 2001.

This is the public order of the Board based upon the evidence presented and after full consideration of the submissions of the parties. This document will not summarize the evidence presented nor will it identify the Appellant. A Non-Public version of the Board's Decision and Order which identifies the Appellant and summarizes the evidence presented will be issued to the Appellant and to counsel for the Agency.

RELEVANT MERIT RULE

MERIT RULE NO. 15.1

Employees shall be held accountable for their conduct. Measures up to and including dismissal shall be taken only for just cause. 'Just cause' means that the management has sufficient reasons for imposing accountability. Just cause requires:

- showing that the employee has committed the charged offense;
- offering specified due process rights specified in this chapter; and
- imposing a penalty appropriate to the circumstances.

DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS

In considering this grievance appeal, the Board notes that by statute and case law, the burden is on the employee to convince the Board to rule in his or her favor and that the action of the appointing authority is Prima facie correct. See, *Hopson v. McGinnes*, Del. Supr., 391 A2d 187, 188 (1978). According to the evidence, the appointing authority imposed a 15 day suspension on the Appellant for exceeding the posted speed limit in a state vehicle during the transportation of an inebriated individual to the Ellendale Detox Center. The Appellant has admitted this misconduct. The appointing authority also imposed the 15 day suspension for the Appellant's violation of the policy which the Appellant acknowledged regarding clients who did

not want to be transported The Applicant established that this policy was not in writing but he did not establish or even claim that he was unaware of it. The Appellant was also disciplined for his improper statement to the client as established and described by the staff of the Ellendale Detox Center.

There are clearly two versions of the events of June 29, 2000 regarding the transportation of D.W. to Ellendale. In many respects the versions recounted by the Appellant and his supervisor are consistent. Significant areas of inconsistency include whether or not the Appellant was driving at 90 miles per hour or only 70 miles per hour and whether or not he refused the directions given to him by his supervisor to get into the back with the client or to slow down or to pull over and call the police or let the client out of the car. Under the circumstances of this case, it is not necessary for the Board to resolve these conflict to resolve this grievance appeal.

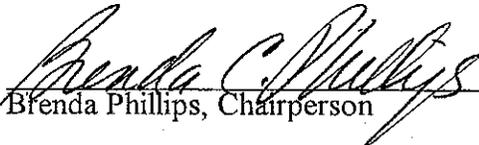
As noted above, the burden of persuasion is upon the employee. Based upon the evidence presented, there is clearly not a preponderance of evidence to convince the Board to overturn the action of the appointing authority either as to the commission by the Appellant of the behavior for which discipline was imposed or as to the nature and amount of the discipline which was selected.

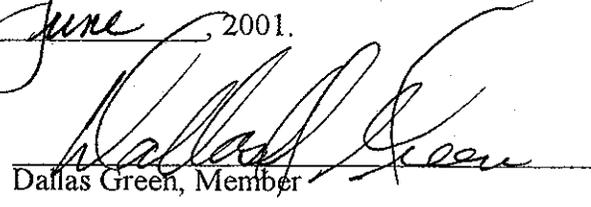
The Appellant was disciplined for actions which he has admitted and for an inappropriate statement to a client which has been convincingly established by the evidence presented. Finally, there is no issue concerning the procedural rights which the Appellant is entitled under Merit Rule 15. Therefore, the imposition of the 15 day suspension under these circumstances has not been shown by a preponderance of the evidence to be improper or inappropriate under Merit Rule Chapter 15 and will not be reversed by the Board.

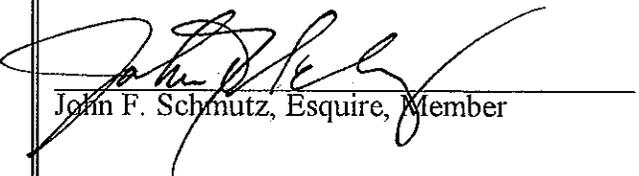
ORDER

For the foregoing reasons, by the unanimous vote of the undersigned, the action of the appointing authority is upheld and the appeal is **DENIED**.

IT IS SO ORDERED this 7th day of June, 2001.


Brenda Phillips, Chairperson


Dallas Green, Member


John F. Schmutz, Esquire, 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 thirty (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.

Mailing Date: 6/13/01 

Distribution:
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Phoebe Young, DAG
Michael Tischer DAG