BEFORE THE MERIT EMPLOYEE RELATIONS BOARD

OF THE STATE OF DELAWARE

IN THE MATTER OF **G. RANDOLPH GOODLETT,** **Grievant,**	)	**DOCKET NO. 03-12-301**
v.	)	
DEPARTMENT OF ELECTIONS, **Agency.**	)	**DECISION ON MOTION TO DISMISS**

COPY

BACKGROUND

G. Randolph Goodlett filed a grievance with the Merit Employee Relations Board ("MERB" or "Board") on December 18, 2003 concerning the notice he received from the Commissioner of Elections on December 2, 2003 which denied his application to transfer into the vacant position of Senior Application Support Specialist for the Commissioner of Elections Office. On January 9, 2004, the Department of Elections filed with the Board a Motion to Dismiss Mr. Goodlett's grievance asserting that it is outside of the jurisdiction of the MERB because of Mr. Goodlett's failure to pursue his grievance through the required steps of the grievance process without any of those steps having been waived by the Agency, and because his filing was not made within the time limits allowed by Merit Rule 20.4 (14 Calendar days from the date of the grievance matter or the date [the grievant] could be expected to have knowledge of the grievance matter).

The Motion to Dismiss was scheduled for hearing before the Board on January 28, 2003. Because of inclement weather, the matter was continued to February 19, 2004 and argument on the Motion was heard at that time.

The Department of Elections was represented by Deputy Attorney General Ilona Kirshon, and Mr. Goodlett appeared. After being advised of his right to have an attorney present to represent him, Mr. Goodlett affirmed his determination to proceed *pro se*.

DISCUSSION

If an appeal is not filed with the MERB in a timely manner, it cannot be heard. *Cunningham v. State of Delaware*, Del. Super., C.A. No. 95-10-003 HDR, Ridgely, P.J. (March 27, 1996) (ORDER); affirmed without opinion, Del. Supr., 679 A.2d 469 (1996).

The exclusive remedy available to an employee in the Classified Service for the redress of an alleged wrong, arising under a misapplication of any provision of Chapter 59 of Title 20 of the Delaware Code [Merit System], the merit rules or the Director's regulations adopted thereunder, is to file a grievance in accordance with the procedure stated in the merit rules. *See,* 29 *Del. C.* §5943.

Mr. Goodlett, who is presently employed as a Senior Application Support Specialist in the Kent County Department of Elections in Dover, complains of the failure of the Department of Elections to select him for promotion into the position of Senior Application Support Specialist for the Commissioner of Elections. He asserts that the failure to transfer him into this position was in violation of Merit Rule No. 13.0300 which relates to demotions. Since Mr. Goodlett was not demoted but complains about not being promoted or transferred, it is apparent, and Mr. Goodlett has agreed, that citation to Merit Rule No. 13.0100 was intended, and he amended his grievance accordingly.

Mr. Goodlett admittedly filed his grievance directly with the Merit Employee Relations Board without going through the steps of the grievance process. During the argument on the Motion to

Dismiss Mr. Goodlett noted that he had previously filed a grievance concerning the same position and ultimately had appealed it to the Merit Employee Relations Board where, at his request, the appeal was dismissed.

There are only two situations where an employee in the classified service may file a direct grievance with the Board. The first is the situation where the employee has been dismissed, demoted or suspended as the result of disciplinary action *(See* Merit Rule No. 21.0111). The second situation is where the employee has reason to believe he or she has been discriminated against because of an interpretation or application of the Merit Rules by the Director of State Personnel or by any procedures or regulations established by the Director of State Personnel for the purpose of implementing the Merit Rules. *See* Merit Rule No. 21.0112.

Neither of these circumstances exists in the instant situation, and Mr. Goodlett is required by the Merit Rules to follow the steps of the grievance process set forth in Merit Rule 20. He can not pursue or maintain a direct appeal with the Board. Indeed, the official grievance form Mr. Goodlett used specifies that the grievance is to be filed with his supervisor within 14 calendar days.

In the present situation it is also apparent that Mr. Goodlett's grievance filing is governed by judicial decisions which provide that the failure of the employee to adhere to the time limits for filing a grievance deprives the Board of jurisdiction to hear the case. *See Cunningham v. State of Delaware,* Del., *Supra.*

In his filing, Mr. Goodlett asserts that he received notice of his non-selection for the position on December 2, 2003. Pursuant to Merit Rule No. 20.6, Mr. Goodlett had fourteen (14) calendar days within which to file his grievance with his immediate supervisor which he admittedly did not do.

Merit Rule No. 20.4 provides that the failure of the grievant to comply with time limits shall

void the grievance. Mr. Goodlett points out that the reason he did not meet the filing date for his grievance was because of stress and depression brought on by the selection of another individual for the position he wanted, and because of an emergency eviction proceeding he was involved with in his rental unit in the State of Florida. He asserts that as soon as he returned from Florida on the 16th of December he began to finalize his grievance which he filed on December 18th. There has been no extension or waiver by the Department of the established grievance time limit (which the parties may agree to under Merit Rule No. 20.4). Mr. Goodlett's grievance is not only improperly filed directly with the Board, but it was untimely. Therefore, under Merit Rule No. 20.4 Mr. Goodlett's grievance must be viewed as void and beyond the jurisdiction of the Board to hear and consider.

ORDER

By the unanimous vote of the undersigned, the grievance of G. Randolph Goodlett filed with the Merit Employee Relations Board on December 18, 2003 is dismissed and this Docket is closed.

IT IS SO ORDERED.

Brenda C. Phillips, Chairperson

Dallas Green, Board Member

John F. Schmutz, Board Member

John W. Pitts, Board 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 that any party against whom a case decision has been decided may appeal such decision to the Court. Any such appeal is to be filed within 30 days of the mailing date of the decision.

Mailing Date: March 26, 2004