BEFORE THE MERIT EMPLOYEE RELATIONS BOARD

OF THE STATE OF DELAWARE

COPY

LUCY A. LUTA, Employee/Grievant, v. DEPARTMENT OF HEALTH AND SOCIAL SERVICES, Employer/Respondent.	))))))))))	**DOCKET No. 06-09-368** **ORDER OF DISMISSAL**

For nearly two years, the Board has granted continuances of a hearing in this appeal at the request of Dr. Lucy A. Luta. By letter dated September 8, 2008, the Board's Administrative Assistant advised Dr. Luta that the Chair had denied her latest request for a continuance of the hearing scheduled for October 16, 2008. That letter further advised: "[Y]ou must notify the Board in writing no later than the close of business on October 9, 2008 whether or not you will be attending the hearing, . . . If the Board does not receive timely written confirmation from you then the Board will infer that you have abandoned your grievance, and the Board will cancel the hearing and dismiss your appeal."

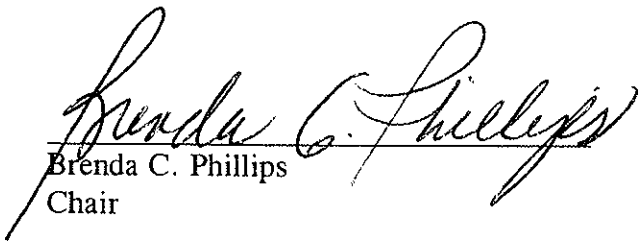
By letter dated received by the Board's Administrative Assistant on October 1, 2008, you stated that "I'm not in a position to have a MERB hearing on 10/16/08. Without a continuance, I will seek other avenues through which my case can be addressed."

In *Robinson v. Visiting Nurse Association*, Civ.A.No. 99A-10-003, 2000 WL 140785 (Del. Super., Jan. 28, 2000) (Quillen, J.), the Unemployment Insurance Appeals Board twice granted the claimant a continuance of her appeal hearing. The claimant failed to appear for the third

hearing, and the Board dismissed her appeal. The Superior Court held that "the Board acted within its authority in dismissing Claimant's appeal, especially considering the fact that [she] had been granted two continuances of her appeal at her request, and there was no allegation that she did not received notice of the appeal. On that ground alone, the decision of the Board is AFFIRMED." 2000 WL 140785, at p.2.

Based on the record, the Board believes that you have abandoned your appeal for failure to prosecute. Accordingly, the Board is canceling your October 16, 2008 hearing and dismissing your appeal.

SO ORDERED, this 16th day of October, 2008



Brenda C. Phillips
Chair

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 on any such appeal to the Superior Court is on the grievant. All appeals to the Superior Court must be filed within thirty (30) days of the employee's 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.

Mailing date: Nov. 14, 2008

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