BEFORE THE MERIT EMPLOYEE RELATIONS BOARD

OF THE STATE OF DELAWARE

TERESA L. CAMPBELL, Employee/Grievant, v. FAMILY COURT OF THE STATE OF DELAWARE, Employer/Respondent.	))))))))))	**DOCKET No. 06-10-369** **DECISION AND ORDER**

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board ("the Board") at 10:00 a.m. on April 16, 2009 at the Margaret M. O'Neill Building, 410 Federal Street, Suite 213, Dover, DE 19901.

BEFORE John F. Schmutz, Acting Chair, Martha K. Austin, Joseph D. Dillon, and Paul R. Houck, Members, a quorum of the Board under 29 *Del. C.* §5908(a).

APPEARANCES

W. Michael Tupman
Deputy Attorney General
Legal Counsel to the Board

Deborah Murray-Sheppard
Administrative Assistant to the Board

Teresa L. Campbell
Grievant/Employee *pro se*

Kevin R. Slattery, Esquire
Deputy Attorney General
on behalf of the Family Court
of the State of Delaware

In a Decision and Order dated November 6, 2008, the Board awarded the grievant/employee, Teresa L. Campbell ("Campbell"), back pay and benefits and directed the parties to calculate the amount as follows: "the amount of wages and benefits the Court would have paid Campbell as an Administrative Specialist II from August 31, 2006 (the date the Court suspended her without pay) until October 22, 2008 (the date of the conclusion of the Board hearing); **LESS** any wages or benefits from employment she received during that time (for example, unemployment compensation and short-term disability)."

The Board retained jurisdiction over this case in the event the parties were unable to agree on the amount of back pay and benefits. They were not able to agree on benefits, and the Board held a further hearing on that issue on April 16, 2009. [1]

At that hearing, the Family Court of the State of Delaware ("the Court") presented the Board with a spread sheet "Teresa Campbell Award of Back Pay for the period August 31, 2006 - October 25, 2008." The spread sheet compares the wages Campbell would have earned at the Court with her actual wages, and her employee contributions for medical and dental insurance under her benefit plans with the Court and the law firm where she now works. According to the Court, the wage figures for Campbell's Court salary include pension contributions (otherwise the salary would be discounted 3% to reflect her required contribution).

Campbell did not dispute the Court's figures in the spreadsheet. The Board holds that the amount calculated by the Court ($21,799.02) is the appropriate amount of the award of back pay

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[1] Campbell had asked the previous hearings be closed to the public, so the Board issued both public and non-public decision on November 6, 2008. Campbell did not ask the Board to close the April 16, 2009 hearing on back pay and benefits.

and lost medical and dental benefits.

In her pre-hearing submission, Campbell raised four other issues.

1. **Accumulated Annual Leave**

While working for the Court, Campbell accrued fifteen days of annual leave, compared to 9.6 days at the law firm where she now works. The Board holds that the difference (5.4 days) multiplied two years (10.8 days) multiplied by her Court hourly wage ($16.059) is the appropriate amount to award for lost vacation benefits ($1,300.83). The Board does not believe that it is appropriate to discount that amount – as the Court offered – by the average amount of leave taken by Campbell in 2002-2005. The Board does not believe that past use of vacation time is a valid predictor of future time.

2. **Unreimbursed Medical Expenses**

Campbell confirmed that during the time that she did not have medical insurance (November 1 – December 31, 2006), she did not incur any unreimbursed medical expenses. She also confirmed that the difference between any co-pays since January 1, 2007 under her current health care plan and her Court health care plan is negligible. The Board does not believe that any award for unreimbursed medical expenses is necessary to make Campbell whole.

3. **Pension**

Campbell claimed that after her termination she was in dire financial straits and had to cash out her Court pension (approximately $7,000 gross), but she netted only around $3,600 because of an early withdrawal penalty. Campbell did not provide the Board with any documentary evidence of an early withdrawal penalty, and it appears to the Board that the deduction was for taxes. Campbell would have had to pay taxes on her pension in any event: whether she cashed

out shortly after her termination, or two years later if she left the Court voluntarily, or if she worked at the Court until retirement and started receiving monthly pension payments, which would be taxed (albeit not in a lump sum). The Board believes that the appropriate award of Campbell's lost pension benefits is subsumed in the award of back pay.

4. Life Insurance

Campbell claimed that under her Court life insurance plan she had $40,000 coverage, but she now cannot get coverage for more than $10,000 because of prior medical history. The Board believes that this claim is for consequential damages, which Campbell could not quantify and the Board does not have the authority to award.

DECISION AND ORDER

It is this 22nd day of April, 2009, the unanimous (4-0) decision of the Board to award Campbell $21,799.02 in back pay and lost medical and dental benefits, and $1,300.83 in lost accumulated annual leave.

John F. Schmutz
Acting Chair

Martha K. Austin
Member

Paul R. Houck
Member

John D. Dillon
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 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.
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> (b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.
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> (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.
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> (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: May 1, 2009

Distribution:
Original: File
Copies: Grievant
Agency's Representative
Board Counsel

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