

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

CINDY L. SCATURRO,)
)
 Employee/Grievant,)
)
 v.)
)
 FAMILY COURT OF THE)
 STATE OF DELAWARE,)
)
 Employer/Respondent.)

DOCKET No. 09-11-459

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 9:00 a.m. on May 20, 2010 at the Public Service Commission, Silver Lake Plaza, Canon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

BEFORE Martha K. Austin, Chair, Paul R. Houck, and Jacqueline Jenkins, Members, a quorum of the Board under *29 Del. C. §5908(a)*.

APPEARANCES

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

Roy S. Shiels, Esquire
on behalf of Cindy L. Scaturro

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

BRIEF SUMMARY OF THE EVIDENCE

The Board admitted into evidence five exhibits offered by the employee/grievant, Cindy L. Scaturro (Scaturro), marked for identification as Exhibits 1-5. The Board admitted into evidence without objection fifteen exhibits offered by the Family Court of the State of Delaware (Family Court) marked for identification as Exhibits A-O.

Scaturro testified on her own behalf and called two witnesses: Jill Malloy, and Jan Bunting. The Family Court called five witnesses: Jennifer Biddle; Mona Steele; Deldra Gregory-Colvin; Ronald W. Mattox; and The Honorable Kenneth M. Millman.

FINDINGS OF FACT

On May 15, 2009, the Office of Management and Budget (OMB) posted an open competitive position for Judicial Operations Manager at the Family Court in Sussex County. The job posting listed five job requirements, the first being “Experience in legal case flow management which includes managing cases as they move through the legal process.”

Ronald W. Mattox (Mattox), who was then the Security Supervisor at the Family Court in Sussex County, applied for the position as did Scaturro. In a supplemental questionnaire to his job application, Mattox wrote that he believed he had experience in legal case flow management based on his employment as a Resource Protection Officer with the U.S. Air Force (1995-1999) in charge of base security; his part-time job (ten hours a week) as a Loss Prevention Officer at J.C. Penney since 1999; and two years as a Judicial Assistant with the Family Court (2001-2003).

Deldra Gregory-Colvin, a Family Court Human Resources Specialist, reviewed Mattox’ job application. On May 27, 2009, she entered an Applicant Disposition Report with the notation “NQ”

(not qualified). She wrote on the report: “security experience not case management.”

By e-mail dated June 1, 2009, Mattox appealed to OMB. Jennifer Biddle, an OMB Human Resource Specialist V, testified that an analyst reviewed Mattox’ job application and OMB determined that Mattox met the job qualification for legal case flow management based on his experience as a Resource Protection Manager with the Air Force and a Loss Prevention Officer with J.C. Penney. Biddle also testified that OMB factored in his experience as a Judicial Assistant in determining he met that job qualification.

By e-mail dated June 11, 2009, the OMB Human Resource Management Director advised Mattox: “I am happy to inform you that I am able to uphold your appeal. Your employment application, resume and supplemental questionnaire provided sufficient information to credit you with meeting the job requirements.”¹

Mona Steele, the Director of Operations at the Family Court in Sussex County, testified that she and two other panelists interviewed five candidates for the position of Judicial Operations Manager, including Scaturro and Mattox. On June 24, 2009, the Family Court Administrator, Guy H. Sapp, approved the interview panel’s recommendation to hire Mattox for the position.

¹ The Family Court did not challenge the Board’s jurisdiction to hear this appeal. At the hearing, however, the Family Court’s counsel suggested that the Board could not second-guess the Director’s determination that Mattox was qualified for the position of Judicial Operations Manager because under Merit Rule 6.5 “The decision of the Director shall be final.” The Board does not interpret its own Rules that way because it would lead to unreasonable results: If the Family Court had initially qualified Mattox, Scaturro could grieve under Merit Rule 18.5 that he did not meet the job requirements, but if the Court did not initially qualify him and OMB overruled, Scaturro could not grieve.

Jennifer Biddle testified that OMB based its determination that Mattox met job requirements based solely on his job application, resume, and supplemental questionnaire. It then became the Family Court’s responsibility to determine through the interview process whether his Air Force and security guard experience qualified as case flow management experience. The Board notes that only one of the interview questions directly related to case flow management experience.

CONCLUSIONS OF LAW

Merit Rule 18.5 provides:

Grievances about promotions are permitted only where it is asserted that (1) the person who has been promoted does not meet the job requirements; (2) there has been a violation of Merit Rule 2.1 or any of the procedural requirements of the Merit Rules; or (3) there has been a gross abuse of discretion in the promotion.

Scaturro claims that Mattox did not meet one of the five job requirements for Judicial Operations Manager: legal case flow management experience.

The job posting for Judicial Operations Manager did not define legal case flow management. The Board does not agree with Scaturro that the job requires Family Court or even judicial case flow management experience. The job qualification calls for “legal” case flow management experience. That might include, for example, work as a paralegal in the litigation department of a large law firm managing the flow of clients’ court cases.

Based on the evidence in the record, the Board does not believe that Mattox’ two years experience as a Family Court Judicial Assistant qualified as legal case flow management experience. Judge Millman testified that the role of a Judicial Assistant is to prepare for and attend court hearings: pulling the case files for the judicial officer’s review; bringing the parties and witnesses in and out of the courtroom; operating the recording equipment; marking evidence for identification and admission; swearing in witnesses; and maintaining the tape recording of the hearing and evidence for possible appeal.

The Board does not believe that the duties and responsibilities of a Judicial Assistant – albeit important for the administration of justice – amount to case flow management. The Board credits the testimony of two former Family Court Judicial Operations Managers (Jill Malloy and Jan Bunting) that case flow management involves managing cases from start to finish, from the time a party files a petition to final disposition. This includes oversight for docketing the case, issuing summonses for the parties to appear in court or a *capias* if a party does not appear, scheduling paternity tests, and enforcement of child support orders, all the while making sure there is an even distribution of cases among the judicial officers and staff and no case backlog.

This “from the beginning to the end” concept of case flow management is underscored by the essential functions of the position of Judicial Operations manager which include:

- Assesses case filings to determine placement in case track/ program or recommends referral to alternative case tracks
- Monitors and coordinates case activity through multiple legal events and processes. Tracks case events/status, anticipates case flow problems/causes for delay and initiates appropriate action to expedite cases effectively and efficiently including contacting participants to resolve issues that inhibit case flow
- Researches case files and records to insure accuracy of case data, prepare and issue court documents and resolve discrepancies and issues related to case flow

These are quite different than the functions of a Judicial Assistant.

In the words of Judge Millman, “a lot of hands touch the petition as it works its way through the process.” A Judicial Assistant’s hands may touch the petition when it is before a judicial officer for a hearing, but that is not the same as managing a petition’s case flow from the date it is filed until the date of final disposition which may be years later.

The Board does not believe that experience as a Loss Prevention Officer with J.C. Penney qualified as legal case flow management experience. According to Mattox, a Loss Prevention

Officer monitors in-store video surveillance for suspicious activity and may detain suspected shoplifters to obtain evidence before turning them over to the police. As a victim, the store may have a continued interest in the successful prosecution of a criminal case and to obtain restitution. But the flow of the criminal case is managed by the courts and the prosecutors, not the Loss Prevention Officer.

The Board does not believe that experience as a Resource Protection Manager with the Air Force qualified as legal case flow management experience. According to Mattox, his functions in that job were similar to his functions as a Loss Prevention Officer: to investigate possible crimes, obtain and secure evidence, and write up reports for the prosecution. The flow of the criminal case is managed by the courts and the prosecution, not the Resource Protection Manager.

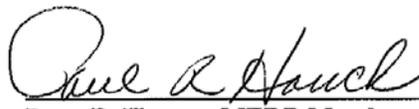
The Board concludes as a matter of law that the evidence in the record proves that Mattox did not meet the job requirement of legal case flow management experience.

ORDER

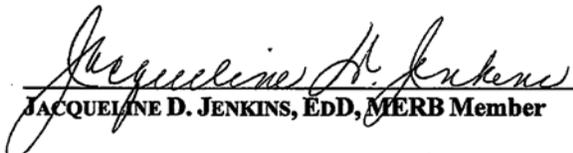
It is this 26th day of May, 2010, by a unanimous vote of 3-0, the Decision and Order of the Board to sustain Scaturro's appeal.



Martha K. Austin, MERB Chair



PAUL R. HOUCK, MERB Member



JACQUELINE D. JENKINS, EDD, MERB 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 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: May 26, 2010

Distribution:

Original: File

Copies: Grievant

Agency's Representative

Board Counsel