

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

D. GARY WISSLER,)
)
 Employee/Grievant,)
)
 v.)
)
 DEPARTMENT OF STATE/)
 DELAWARE VETERANS HOME,)
)
 Employer/Respondent.)

DOCKET No. 10-03-470

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 September 2, 2010 at the Public Service Commission, Silver Lake Plaza, Canon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

BEFORE Martha K. Austin, Chair, John F. Schmutz, Paul R. Houck, Victoria Cairns, 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

D. Gary Wissler
Employee/Grievant *pro se*

Andrew G. Kerber
Deputy Attorney General
on behalf of the Department of
State/Delaware Veterans Home

BRIEF SUMMARY OF THE EVIDENCE

The employee/grievant, D. Gary Wissler (Wissler), offered into evidence fourteen exhibits without objection. The Board admitted them into evidence marked for identification as Exhibits A-N.

The Department of State/Delaware Veterans Home (DVH) offered into evidence five exhibits without objection. The Board admitted them into evidence marked for identification as Exhibits 1-5.

Wissler testified on his own behalf and called one witness: Lois Quinlan, DVH Deputy Director. DVH called one witness: Martina Johnson, Human Resource Manager, Department of State.

FINDINGS OF FACT

DVH hired Wissler in April 2007 as a Supply, Storage and Distribution Supervisor (paygrade 7). At the time of hire, DVH advised Wissler that he would also be supervising two employees in the laundry room in addition to one employee in the supply room. In order to meet the job specifications for Supply Storage and Distribution Supervisor, Wissler had to supervise at least two full-time employees.

DVH contracts with an outside vendor for linen services. The laundry room provides cleaning/repair services for residents' clothes. As the number of residents has increased, and more have opted for the clothing service, the number of employees in the laundry room Wissler supervised increased from two to six full- or part-time employees. Other than the number of employees supervised, Wissler's supervisory duties have not changed since DVH hired him.

CONCLUSIONS OF LAW

Merit Rule 3.2 provides:

Employees may be required to perform any of the duties described in the class specification, any other duties of a similar kind and difficulty, and any duties of similar or lower classes. Employees may be required to serve in a higher position; however, if such service continues beyond 30 calendar days, the Rules for promotion or temporary promotion shall apply. and they shall be compensated appropriately from the first day of service in the higher position.

Wissler claims that he has been working in a higher position of Supply, Storage and Distribution Coordinator, or Laundry Manager (both paygrade 11).

The job specifications for Supply, Storage and Distribution Coordinator list eight requirements. Wissler meets several of those requirements (*e.g.*, oversees warehouse facilities, vehicle fleet, staff, and overall inventory control, materials handling, and distribution service; develops, maintains and implements a detailed inventory control system; and supervises lower level employees involved in supply, storage, and distribution activities). However, Wissler does not meet three of the requirements. According to Lois Quinlan, Wissler does not: (1) develop strategic plan and participate in product and/or services research and evaluation studies; (2) develop and execute logistical plans and procedures for acquisition, transport, routing, security and/or quality control of products and services; and (3) Wissler does not justify, develop and/or oversee budget.

A Laundry Manager “is the manager level responsible for managing a large institutional laundry operation.” According to Martina Johnson, the laundry room at the Veterans Home is not a large institutional laundry operation. The Veterans Home contracts out linen services, and only

provides cleaning/repair services for clothing for approximately 120 residents.

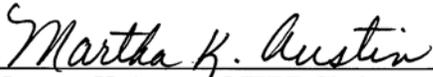
The job specifications for Laundry Manager list six requirements. Wissler meets four of those requirements, but he acknowledged at the hearing that he does not meet two of those requirements: (1) he does not report to the Hospital Administrator (he reports to the Deputy Administrator, Lois Quinlan); and (2) he does not plan and schedule work directly and through a lower level supervisor.

The Board concludes as a matter of law that Wissler does not perform at the level of a Laundry Manager. A Laundry Manager must manage “a large institutional laundry operation.” The laundry facility at the Veterans Home is not a large institutional laundry operation. A Laundry Manager must report “to a Hospital Administrator.” Wissler does not report to the Veterans Home Administrator. A Laundry Manager must plan and schedule work “directly and through a lower level supervisor.” Wissler does not supervise a lower level supervisor.

The Board concludes as a matter of law that Wissler does not perform at the level of a Supply, Storage and Distribution Coordinator. He does not have the strategic plan and budget responsibilities required for that position.

ORDER

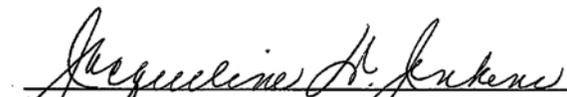
It is this 23rd day of September, 2010, by a vote of 4-0, the Decision and Order of the Board to deny Mr. Wissler’s appeal.



MARTHA K. AUSTIN, MERB Chairwoman



PAUL R. HOUCK, MERB Member


JACQUELINE D. JENKINS, EDD, MERB Member


JOHN F. SCHMUTZ, MERB Member


VICTORIA D. CAIRNS, MERB Member
I abstain.

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: September 23, 2010

Distribution:

Original: File

Copies: Grievant

Agency's Representative

Board Counsel

OMB/HRM