

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

T. HENLEY GRAVES
RESIDENT JUDGE

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**Re: *The Family Court of the State of Delaware v. Scaturro, et al.*;
 C.A. No. S10A-06-004**

On Appeal from the Merit Employee Relations Board: **AFFIRMED**

 Date Submitted: November 22, 2010

 Date Decided: February 28, 2011

Dear Counsel:

 Pending before the Court is The Family Court of the State of Delaware's appeal of a decision from the Merit Employee Relations Board ("MERB"). For the reasons set forth herein, the MERB decision is **AFFIRMED**.

Factual and Procedural Background

 Cindy Scaturro (Scaturro), then employed as a Judicial Case Processing Supervisor for Family Court of the State of Delaware ("Family Court"), applied for a promotional position as Judicial Operations Manager ("JOM") for Family Court. Scaturro was not chosen for the position but another Family Court employee, Ron Mattox (Mattox), was the successful candidate. Mattox's application was initially rejected with the notation "NQ" or "not qualified." Mattox successfully appealed that determination to the Director of the Office of the Management and Budget ("Director")

pursuant to Merit Rule (“M.R.”) 6.5.¹ As noted, Mattox went on to be awarded the promotion. Thereafter, Scaturro filed a grievance pursuant to M.R. 18.5 alleging, among other things, that Mattox did not meet the minimum qualifications for the position.²

The grievance went through the three step process of hearings established by M.R.18. Pursuant to M.R. 18.9, Scaturro filed a written appeal with the MERB for a final disposition. The MERB held an evidentiary hearing on May 20, 2010, and issued a written Decision and Order on May 26, 2010. That decision upheld Scaturro’s grievance and held Mattox did not qualify for the promotional position of JOM because he lacked the job requirement of legal case flow management experience. Family Court filed a timely appeal on June 23, 2010. Pending the outcome of this appeal, Family Court sought a stay of the MERB decision. That stay was granted. The issues on appeal have been fully briefed by the parties and are now ripe for review.

Discussion

Standard of Review

This Court reviews decisions of the MERB “to determine whether [it] acted within its statutory authority, whether it properly interpreted and applied the applicable law, whether it conducted a fair hearing and whether its decision is based on sufficient substantial evidence and is

¹ There was some discussion at the MERB hearing concerning whether Mattox had filed his appeal pursuant to M.R. 6.5 or M.R. 7.7. In any event, it was determined the proper rule under which the appeal should have been taken was M.R. 6.5 and it has been assumed by both parties hereto that the appeal was properly taken.

² Scaturro’s grievance is not in the record. However, it appears she alleged three grounds in support thereof: (1) retaliation for her having filed a previous grievance; (2) discrimination based on her creed; and (3) Mattox lacked the minimum qualifications for the JOP position, specifically, that Mattox lacked legal case flow management experience.

not arbitrary.”³ Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”⁴ The Court reviews error of law and questions of statutory interpretation *de novo*.⁵

Merits

1. The MERB had jurisdiction to hear Scaturro’s grievance.

Family Court challenges the MERB’s jurisdiction to hear Scaturro’s grievance on two grounds. First, Family Court argues the MERB failed to resolve a conflict between M.R. 6.5 and M.R. 18.5; specifically, Family Court alleges the fact that Mattox acquired a “final” decision from the Director (finding he had met the job requirements for the JOM position) under M.R. 6.5 means the MERB lacked jurisdiction to hear Scaturro’s challenge to that determination under M.R. 18.5. The MERB concluded that the Director’s decision rendered pursuant to M.R. 6.5 was only final as to the party involved (in this case, Mattox) and not the persons who had no notice of Mattox’s challenge to his initial rejection.⁶ An administrative agency’s interpretation of its own rules are presumptively correct and will not be reversed unless clearly wrong.⁷ The Court finds the MERB’s logic not only persuasive but compelling.

The rules in question give people in different positions standing, at different times, to

³ *Hopson v. McGinnes*, 391 A.2d 187, 189 (Del. 1978) (citation omitted).

⁴ *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009) (internal quotation marks and citation omitted).

⁵ *Avallone v. Department of Health & Soc. Servs.*, 2011 WL 250994, at *3 (Del.).

⁶ The Court notes that these persons may not even be aware of the party’s application in the first place at this stage of the proceedings.

⁷ *Division of Soc. Servs. v. Burns*, 438 A.2d 1227, 1229 (Del. 1981).

challenge an applicant's qualifications. Merit Rule 6.5 provides:

Notification of Rejection. Whenever an application is rejected, notice of such rejection with statement of reason shall be promptly provided to the applicant. Rejected applicants may appeal to the Director within ten (10) days of the rejection notice. The decision of the Director shall be final.

After an application is accepted, it is then screened and ranked pursuant to M.R. 7.0. The job posting is then filled from this pool of applicants. M.R. 6.5 clearly permits the applicant, and only the applicant, to challenge the *initial* rejection of his application. In other words, a successful challenge brought under M.R. 6.5 gets the applicant into the pool of potential candidates for the posted job opening.

Merit Rule 18.0 outlines the procedure for filing a grievance. 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 [the rule prohibiting discrimination] or any of the procedural requirements in the Merit Rules; or (3) there has been a gross abuse of discretion in the promotion.

This rule is designed to allow others to challenge the promoted person's qualifications and/or to challenge the procedure used in awarding the promotion. As noted by the MERB, a person who brings such a grievance would have no reason to know whether the person promoted had initially been rejected from the pool of applicants.

Family Court's argument would lead to an illogical result: only an applicant who had initially been deemed unqualified and successfully challenged that determination under M.R. 6.5 could be *immune* from a later challenge by another party under M.R. 18.5. On the other hand, an applicant who was considered qualified at the outset *would* be subject to challenge by a person denied the promotion under M.R. 18.5.

The Court is mindful of the Delaware Supreme Court's embrace of the "golden rule of

statutory construction,” which provides that “unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result.”⁸ The MERB’s interpretation of the interaction between M.R. 6.5 and M.R. 18.5 is not only not “clearly wrong,” it makes perfect sense.

Family Court also argues that M.R. 18.5 conflicts with the Delaware Code and, therefore, the MERB (and, by extension, this Court) did not have jurisdiction to consider the grievance. Merit Rule 18.5, as previously noted, allows a person to challenge a promotion granted to someone else.

Section 5943 of Title 29, which governs the merit system, provides:

(a) The exclusive remedy available to a classified employee for the redress of an alleged wrong, arising under a misapplication of any provision of this chapter, 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. *Standing of a classified employee to maintain a grievance shall be limited to an alleged wrong that affects his or her status in his or her present position.*⁹

Family Court argues the awarding of a promotion to Mattox may not serve as the basis for Scaturro’s grievance because the awarding of a promotion to Mattox did not affect Scaturro’s status in her present position.

Family Court’s argument is without merit. In the first instance, the argument was not raised below in the MERB proceedings. With the exception of situations where matters of public policy are implicated, this Court will decline to review any issue not raised and fairly presented below.¹⁰ Family Court asserts that it did, however “inartfully,” raise the issue below. However, a review of

⁸ *State v. Worsham*, 638 A.2d 1104, 1107 (Del. 1994) (citation and internal quotation marks omitted).

⁹ 29 *Del. C.* § 5943(a) (emphasis added).

¹⁰ *Howard v. Voshell*, 621 A.2d 804, 806 (Del. Super. 1992).

the record reflects that while counsel did raise the issue of a potential conflict between M.R. 18.5 and M.R. 6.5 (as discussed, *supra*), counsel did not argue that M.R. 18.5 is likely void due to the standing requirement set forth in § 5943(a). Nevertheless, even assuming the issue was properly raised below or is otherwise properly before the Court, Family Court’s argument goes against the principles of statutory construction. A fundamental rule of statutory construction is that all statutes must be “read as a whole.”¹¹ The context of Chapter 29 supports the conclusion that grievances for promotion denials may be properly pursued. Section 5918 provides: “The rules shall provide for promotions, giving consideration to the applicant’s qualifications, performance record, seniority, conduct and, where practicable, to the results of competitive examinations.”¹²

Section 5931 directs the Director to establish rules that:

provide for the establishment of a plan for resolving employee grievances and complaints. ... The Director and the Board, at their respective steps in the grievance procedure, shall have the authority to grant back pay, restore any position, benefits or rights denied, *place employees in a position they were wrongfully denied*, or otherwise make employees whole, under a misapplication of any provision of this chapter or the Merit Rules.¹³

Finally, 29 *Del. C.* § 5936 gives the Director the responsibility of supplying such rules and administrative regulations that are proper and necessary for the enforcement of the provisions of Chapter 29. In light of the foregoing, it is reasonable to conclude that one’s “status” in her “present position” should be interpreted to be the “empty” status of the position should the grievant receive

¹¹ *Williams v. State*, 818 A.2d 906, 912 (Del. 2003) (superceded by statute with respect to an issue irrelevant hereto).

¹² 29 *Del. C.* § 5918.

¹³ 29 *Del. C.* § 5931 (emphasis added).

the challenged promotion.¹⁴ The MERB had jurisdiction to hear and consider Scaturro's grievance.

2. In interpreting the “legal case flow management” job requirement to include a “beginning to end” concept, the MERB did not commit an error of law.

The MERB made the following conclusions of law after enumerating its findings of fact:

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.

...

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

¹⁴ The Court observes reconciling the statute and the M.R. in this manner would still exclude as grievants those who had no stake in the outcome of the promotion decision.

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. Penny 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 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.

The job posting for the position of JOM listed five requirements, areas in which the applicant “must have education, training and/or experience demonstrating competence.” One of those five requirements enumerated was “Experience in legal case flow management which includes managing cases as they move through the legal process.”

Family Court argues the MERB’s application of a “beginning to end” concept to the job qualification of “legal case flow management” constituted an error of law. In support of its position, Family Court argues that the job posting, itself, did not include a “beginning to end” requirement,

either explicitly or implicitly. Family Court also alleges that the MERB improperly modified the minimum qualifications for the position because the Office of Management and Budget (“OMB”) establishes the job requirements for any particular position.

The Court concludes the MERB found that the “beginning to end” concept was implicitly included in the posted job requirements for the JOM. Not only does the Court find this concept inherent in the language “which includes managing cases as they move through the legal process” but the witnesses at the MERB hearing, including Family Court’s witnesses, who opined as to the meaning of the phrase “legal case flow management” testified that the concept embodied the following of a case from an initial petition to a final disposition.¹⁵ Accordingly, Family Court’s argument that the MERB somehow usurped OMB’s ability to establish job requirements is without merit. The MERB merely interpreted the job requirement and did so in a manner 100% consistent

¹⁵ Jill Malloy, former JOM and witness for Scaturro testified, “The case flow management would be that you can take a case from basically coming in off the street, [and] following it until the conclusion no matter what the case was.” MERB Trans. p. 45-6 (hereafter, T-___). Jan Bunting, former JOM and witness for Scaturro testified, “Being able to take [a] case at any time, follow it completely through the system to be able to track it, add witnesses, add extra information.... Be able to determine exactly where it is in the system and what I needed to do to make sure and to ensure that it went through and was able to be handled and completed and sent either to the commissioner level or judicial level to be ruled on.” T-75. Jennifer Biddle, an employee in the human resources department of OMB and witness for Family Court testified Mattox’s statements in his application made clear he had legal case flow management experience: “[H]e was responsible for case flow management from start to finish. As a resource protection manager, he’s responsible for ensuring agencies follow the laws for case flow management for classified materials, managed cases of loss prevention officers starting with apprehension of the suspect until final disposition of the court hearing.... And basically, it’s in the job requirement, too. It says, includes managing cases throughout – through the process. And [Mattox] described that in his narrative.” T-106-07. Mona Steele, Director of Operations for Family Court and witness for Family Court, testified as to Mattox’s experience in legal case flow management from following cases through final disposition. Kenneth Millman, Family Court Judge and witness for Family Court, testified, “My definition [of legal case flow management] would be from the time an individual files a petition in this court” until final disposition.

with the testimony presented to it. Because the MERB serves as the final administrative authority for correcting and compensating wrongs suffered by State employees in connection with their employment with the State,¹⁶ it is fully within the purview of the MERB to interpret job requirements in a reasonable manner. In sum, the MERB did not err as a matter of law in applying a “beginning to end” concept to the description of “legal case flow management which includes managing cases as they move through the legal process.”

3. The MERB’s findings are supported by substantial evidence in the record.

Family Court next argues the MERB’s findings that Mattox’s military experience, loss prevention experience, and Family Court experience did not qualify as legal case flow management experience were not supported by substantial evidence. This argument, too, is without merit. Again, it is instructive to revisit the Court’s narrow standard of review. Great deference is given to a fact finder, in this case the MERB. The fact finder is, of course, in the best position to hear the evidence and to make credibility determinations. Here, the MERB heard from several witnesses with regard to Mattox’s employment at Family Court. Evidence presented below included testimony that Mattox in his role as a Judicial Assistant at Family Court, pulled files for the judges, prepared the courtroom, secured the courtroom, and preserved trial evidence in the event of an appeal. The Board did not overlook this testimony, as Family Court alleges, but merely concluded the performance of these duties did not give rise to legal case flow management. The Court finds the record replete with evidence supporting the MERB’s finding that Mattox’s Family Court responsibilities did not involve the management or control of cases.

The MERB did not overlook Mattox’s experience as a loss prevention officer at J.C. Penny’s

¹⁶ *Worsham*, 638 A.2d at 1107.

when concluding Mattox did not have legal case flow management experience. Mattox was the only witness to testify to his work experience outside of his employment with Family Court. The testimony below supported the MERB's conclusion that Mattox was an investigative officer with J.C. Penny's. He was responsible for the apprehension of a suspect, the collection of evidence, turning the suspect over to local officials, and awaiting word as to whether he will be called as a witness at any resultant legal proceeding. While no doubt Mattox performs an important function in his role as a loss prevention officer, the evidence below supports the MERB's finding that his experience there does not rise to the level of case flow management experience.

Likewise, the testimony below supports the MERB's conclusion that Mattox's position in the military involved much the same activity as his role as a loss prevention officer. Mattox himself testified that he believed all police men were qualified with legal case flow management experience. In light of the evidence presented, the MERB chose to reject such a notion of legal case flow management. That decision was supported by the evidence presented below.

Conclusion

For the reasons articulated above, the MERB's decision finding Mattox did not satisfy the job requirement for the JOM position of legal case flow management experience is AFFIRMED.

Very truly yours,

/s/ T. Henley Graves

oc: Prothonotary
cc: Merit Employee Relations Board