

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

DIANE BOWEN,)	
)	
Employee/Grievant,)	
)	DOCKET No. 11-02-504
v.)	
)	PUBLIC DECISION
DEPARTMENT OF SERVICES FOR)	AND ORDER
CHILDREN, YOUTH, AND THEIR FAMILIES,)	
)	
Employer/Respondent.)	

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 January 19, 2012 at the Public Service Commission, Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

BEFORE Martha K. Austin, Chair, John F. Schmutz, Esq., Dr. Jacqueline Jenkins, and Victoria D. Cairns, 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 L. Murray-Sheppard
Board Administrator

William D. Fletcher, Jr., Esquire
Noel E. Primos, Esquire
on behalf of Employee/Grievant
Diane Bowen

Kevin R. Slattery
Deputy Attorney General
on behalf of the Department of
Services for Children, Youth and
Their Families

BRIEF SUMMARY OF THE EVIDENCE

The Board incorporates by reference the Brief Summary of the Evidence in the Board’s Non-Public Decision and Order.

FINDINGS OF FACT

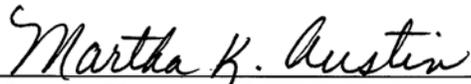
The Board incorporates by reference the Findings of Fact in the Board’s Non-Public Decision and Order.

CONCLUSIONS OF LAW

The Board incorporates by reference the Conclusions of Law in the Board’s Non-Public Decision and Order.

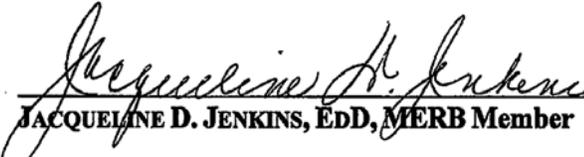
ORDER

It is this 27th day of January, 2012, by a unanimous vote of 4-0, the Decision and Order of the Board to deny Bowen’s appeal.


MARTHA K. AUSTIN, MERB Chairwoman


JOHN F. SCHMUTZ, MERB Member


VICTORIA D. CAIRNS, 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: **January 27, 2012**

Distribution:

Original: File

Copies: Grievant

Agency's Representative

Board Counsel

HRM/OMB