

BEFORE THE MERIT EMPLOYEE RELATIONS BOARD  
OF THE STATE OF DELAWARE

**JAMES PICCONI,** )  
 )  
 Employee/Grievant, )  
 )  
 v. )  
 )  
 **DEPARTMENT OF HEALTH AND** )  
 **SOCIAL SERVICES,** )  
 )  
 Employer/Respondent. )

**DOCKET No. 11-06-516**

**PUBLIC 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 April 5, 2012 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, Victoria D. Cairns, Dr. Jacqueline Jenkins, 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 L. Murray-Sheppard  
Board Administrator

Roy S. Shiels, Esquire  
on behalf of Employee/Grievant  
James Picconi

Kevin R. Slattery  
Deputy Attorney General  
on behalf of the Department of  
Health and Social Services

**BRIEF SUMMARY OF THE EVIDENCE**

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

**FINDINGS OF FACT**

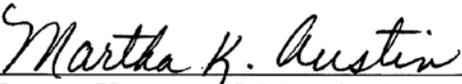
The Board incorporates by reference the Findings of Fact in the Board's Non-Public Decision and Order.

**CONCLUSIONS OF LAW**

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

**ORDER**

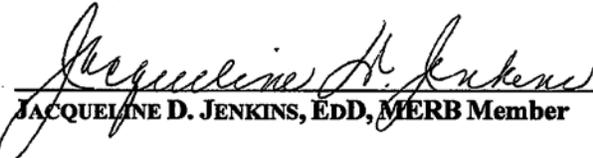
It is this **24th** day of April, 2012, by a vote of 5-0, the Decision and Order of the Board to deny Picconi's appeal.

  
\_\_\_\_\_  
MARTHA K. AUSTIN, MERB Chairwoman

  
\_\_\_\_\_  
VICTORIA D. CAIRNS, MERB Member

  
\_\_\_\_\_  
JOHN F. SCHMUTZ, MERB Member

  
\_\_\_\_\_  
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: **April 24,** 2012

Distribution:

Original: File

Copies: Grievant  
Agency's Representative  
Board Counsel  
HRM/OMB