

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

GWENDOLYN SCOTT-JONES, )  
)  
Employee/Grievant, )  
)  
v. )  
)  
DEPARTMENT OF HEALTH AND )  
AND SOCIAL SERVICES, )  
)  
Employer/Respondent. )

**DOCKET No. 11-11-529**

**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 August 2, 2012 at the Public Service Commission, Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

**BEFORE** Martha K. Austin, Chair, Dr. Jacqueline Jenkins, and John F. Schmutz, 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

B. Brian Brittingham, Esquire  
on behalf of Employee/Grievant  
Gwendolyn Scott-Jones

Laura L. Gerard  
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 the Evidence in the Board's Non-Public Decision and Order.

**FINDINGS OF FACT**

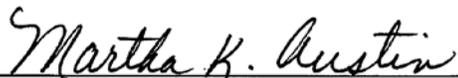
The Board incorporates by reference the Findings of Fact in the Board's Non-Public Decision and Order.

**CONCLUSIONS OF LAW**

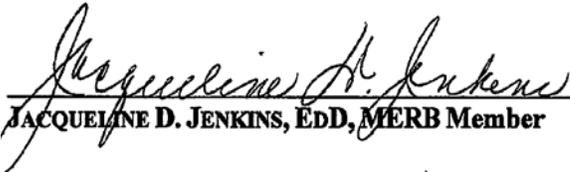
The Board incorporates by reference the Conclusions of Law in the Board's Non-Public Decision and Order.

**DECISION AND ORDER**

It is this **13th** day of August, 2012, by a unanimous vote of 3-0, the Decision and Order of the Board is to grant Scott-Jones' appeal in part. DHSS is ordered to reduce her three-day suspension to a written reprimand; to pay Scott-Jones three days of back pay within thirty (30) days of the date of this Order; and remove any evidence of the three-day suspension from her personnel file within thirty (30) days of the date of this Order.

  
MARTHA K. AUSTIN, MERB Chairwoman

  
JOHN F. SCHMUTZ, 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: **August 13**, 2012

Distribution:

Original: File

Copies: Grievant

Agency's Representative

Board Counsel