

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

PHILLIP WILLIAMS, JR.,)	
)	
Employee/Grievant,)	
)	
v.)	DOCKET No. 12-11-571
)	
DEPARTMENT OF SAFETY AND HOMELAND)	DECISION AND ORDER
SECURITY, DIVISION OF CAPITOL POLICE,)	
)	
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 July 24, 2013, at the Delaware Commission on Veterans Affairs Hearing Room, Robbins Building, Suite 100, 802 Silver Lake Boulevard, Dover, DE 19904.

BEFORE Martha K. Austin, Chair, John F. Schmutz, Victoria D. Cairns, Jacqueline Jenkins, and Paul R. Houck, a quorum of the Board pursuant to 29 *Del. C.* §5908(a).

APPEARANCES

W. Michael Tupman
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Kevin R. Slattery
Deputy Attorney General
on behalf of the Department of
Safety and Homeland Security

BACKGROUND

A hearing was convened by the Merit Employee Relations Board on Wednesday, July 24, 2013, to hear the appeal of Phillip Williams, Jr. ("Grievant") against the Department of Safety and Homeland Security, Division of Capitol Police ("Department"). The Grievant was employed by the Department as a Senior Security Officer. He alleges he was terminated without just cause in violation of Merit Rule 12.1, Employee Accountability:

- 12.1** Employees shall be held accountable for their conduct. Disciplinary measures up to and including dismissal shall be taken only for just cause. "Just cause" means that management has sufficient reasons for imposing accountability. Just cause requires: showing that the employee has committed the charged offense; offering specified due process rights specified in this chapter; and imposing a penalty appropriate to the circumstances.

Prior to the July 24, 2013 hearing before the Board, numerous correspondences were sent to the Grievant and the Department advising of the dates of hearing, when exhibits and witness statements were due, and other procedural matters.

The hearing in this matter was previously scheduled for April 24, 2013. It was continued on April 17, 2013 at the Department's request, without objection from the Grievant.

The parties were advised in a letter dated May 6, 2013, that the hearing had been rescheduled for July 24, 2013 and reminded that witness statements and exhibits (as required by MERB Rule 13) were to be submitted on or before July 15, 2013. The parties were advised in that letter that no continuance would be granted from the July 24 hearing date.

Exhibits and witness statements were submitted by the Department on July 15; no exhibits or witness statements were received from the Grievant.

A letter dated July 17, 2013, was sent to the Grievant by email and certified mail by the Board's Administrator which stated:

I am sending this letter by certified mail to insure that you are on notice that the MERB hearing on your appeal **WILL PROCEED AS SCHEDULED** on **Wednesday, July 24, 2013 at 9:00 a.m.**

During our telephone conversation last Friday, July 12, 2013, during which you confirmed your contact information, I reminded you that your exhibits and witness statements were due by close of business on Monday, July 15. Nothing was received from you; the State did timely file its exhibits and copies were provided to you by email.

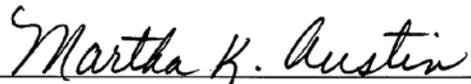
I also advised that you needed to contact Mr. Tupman's office to provide your availability for a prehearing conference. Despite numerous phone calls and email from both Mr. Tupman and me, you did not respond and both offered dates have now passed.

MERB procedures require a prehearing conference be held in every case to be heard on the merits. Please be advised that the Board will consider a motion to dismiss your appeal for failure to process because you have failed to respond, provide exhibits and witness statements, and to participate in the prehearing conference.

The Grievant was not present when the hearing was convened at 9:17 a.m. on July 24, 2013. The Grievant failed to appear to be heard and to present evidence in support of his appeal. Consequently, this appeal is dismissed.

DECISION AND ORDER

It is this **25th** day of **July**, 2013, by a unanimous vote of 5-0, the Decision and Order of the Board to dismiss the appeal because the Grievant has failed to appear to be heard and to present his evidence.



MARTHA K. AUSTIN, MERB Chairwoman



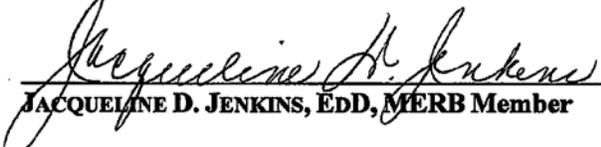
VICTORIA D. CAIRNS, MERB Member



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: **July 25**, 2013

Distribution:

Original: File

Copies: Grievant

Agency's Representative

Board Counsel