

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

JULIA CAHILL,)
)
Employee/Grievant,)
)
v.)
)
CRIMINAL JUSTICE COUNCIL/)
STATISTICAL ANALYSIS CENTER,)
)
Employer/Respondent.)

DOCKET No. 13-04-588

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 October 17, 2013 in the Delaware Commission on Veterans' Affairs Hearing Room, Robbins Building, 802 Silver Lake Boulevard, Dover, DE 19904.

BEFORE Martha K. Austin, Chair, John F. Schmutz, Victoria D. Cairns, and Dr. Jacqueline Jenkins, Members, a quorum of the Board under 29 *Del. C.* § 5908(a).

APPEARANCES

Patricia Davis Oliva
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Peter K. Schaeffer, Jr., Esquire
on behalf of Julia Cahill

Kevin R. Slattery
Deputy Attorney General
on behalf of the Criminal Justice Council/
Statistical Analysis Center

BRIEF SUMMARY OF THE EVIDENCE

The Board admitted into evidence without objection four documents offered by the Criminal Justice Council/Statistical Analysis Center (the SAC) marked for identification as Exhibits A, B, C, and K. Over objection of the Employee/Grievant, the Board admitted into evidence Exhibit S. The SAC called one witness without objection, Thomas F. MacLeish, SAC Director.

The Board admitted into evidence without objection seven documents offered by the employee/grievant, Julia Cahill, marked for identification as Exhibits 1-7. Ms. Cahill testified on her own behalf.

The SAC listed three witnesses in its Rule 13A summaries: Thomas F. MacLeish, SAC Director, Peggy Bell, Executive Director of DELJIS; and Raymond Sammons, DELJIS investigator. The SAC proffered that Ms. Bell would testify “as to the circumstances surrounding the appellant’s suspension of her DELJIS access, and the various attempts to reinstate that access.” The Board excluded the testimony of Ms. Bell and Mr. Sammons as irrelevant and unnecessary. The only issue for the Board to decide is whether the SAC had just cause to terminate Ms. Cahill after the Board of Managers of the Delaware Criminal Justice Information System (DELJIS) revoked her access privileges. The Board only has jurisdiction over an alleged violation of the Merit Statutes and the Merit Rules by the employing agency, not over a due process claim against an agency like DELJIS. *See Grievant v. Justice of the Peace Courts*, MERB Docket No. 11-04-510 at p.7 (Oct. 18, 2011)

FINDINGS OF FACT

Prior to her termination on February 15, 2013, Ms. Cahill was employed by the SAC as a Research Specialist II, which required her to have access to the State Bureau of Identification network and the Delaware Criminal Justice Information System (DELJIS) from which she would download information on serious crimes in order to produce a report of crime in Delaware. Part of

her job responsibilities included updating a national database of crime and custody.

DELJIS is a computerized database containing criminal history record information from the date of arrest to the date of disposition for any person arrested in Delaware linked by a unique, fingerprint-based State Bureau of Identification number. The system includes records of violations of the Motor Vehicle Code like speeding tickets and their disposition. When a police officer issues a ticket, the motorist may have the choice to contest the ticket in court, or to plead guilty by paying the fine by check, credit card, or cash to a Voluntary Assessment Center.

DELJIS Directive No. 1 restricts the use and dissemination of criminal history information to authorized users for criminal justice purposes. At the time of her initial hire at the SAC in December of 2003, Ms. Cahill was informed that she would be handling highly confidential information and was required to sign and return the DELJIS form verifying her receipt and understanding of Directive No. 1, Restrictions regarding Dissemination and use of Criminal History Information. Ms. Cahill was advised at the time of her hire that violation of security can result in dismissal. In August of 2011, DELJIS compliance was reviewed with Ms. Cahill again, and she again signed a Directive No. 1 verification form on December 8, 2011.

In the Fall of 2012, the Director of the Statistical Analysis Center, Thomas F. McLeish, was notified by DELJIS that there appeared to be a DELJIS breach and that Ms. Cahill would be interviewed. Mr. McLeish informed Ms. Cahill that an interview with DELJIS would occur and informed her at that time that DELJIS access was something she needed to maintain in order to perform her job duties at the SAC.

Following the investigation, Ms. Cahill's DELJIS access was suspended on October 26, 2012. Ms. Cahill appealed the revocation of her access to the DELJIS Executive Committee, which conducted a hearing on her appeal in December of 2012. During the pendency of her

appeal, Mr. McLeish restructured Ms. Cahill's work so that she could work on restructuring the format of the information she had already prepared. She was also tasked with monitoring and compiling media reports of criminal activity which did not require her to have DELJIS access. These were not the duties of a full-time position.

By letter dated December 21, 2012, the DELJIS Executive Committee proposed to reinstate Ms. Cahill's access privileges conditioned on her agreement to 1) read and sign a new Directive No. 1 and Acceptable Use Policy; 2) attend a DELJIS training class within sixty days; 3) log all of her DELJIS access transactions for the first two years following her reinstated access and submit weekly log sheets to DELJIS; 4) submit "a letter of acknowledgement of the breach and that Julia Cahill understands any future violation could result in a permanent suspension from DELJIS without a right of appeal;" and 5) accept a five year probationary period beginning upon her reinstated access. Ms. Cahill did not wish to submit a letter of acknowledgement of breach to DELJIS as she believed this constituted confessing to a crime.

The Merit Employee Relations Board finds as a matter of fact that Ms. Cahill did not schedule a training class and did not submit an acknowledgement of her breach. The Board finds as a matter of fact that Ms. Cahill's DELJIS access remains suspended. The Board finds as a matter of fact that DELJIS access is an essential function of the position of Research Specialist II and that the SAC has no control over DELJIS granting or denying access to any SAC employee. On February 15, 2013, Ms. Cahill was terminated by the SAC because her DELJIS access had been withdrawn since October 26, 2012, she had indicated she would not comply with DELJIS's conditions for reinstatement of her access, and DELJIS access is required for the position with the SAC.

There are only five full-time analyst positions at the SAC and only one position that does

not require DELJIS access, the receptionist position. That position was not open at the time Ms. Cahill lost her DELJIS access in October 2012 and only opened up due to a retirement on July 31, 2013, after Ms. Cahill's termination from the SAC.

CONCLUSIONS OF LAW

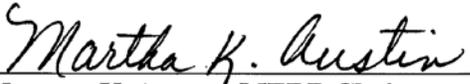
Merit Rule 12.1 provides:

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.

The Board concludes as a matter of law that the SAC had just cause to terminate Ms. Cahill because her access to DELJIS was an essential job function. While Ms. Cahill argued that she was not adequately noticed of the charged breach – the violation of DELJIS policy – and that it was improper for DELJIS to require her to submit an acknowledgement of such a breach when she believes this to equate to confession of criminal activity, Ms. Cahill cannot use her appeal to this Board over her termination to collaterally attack the DELJIS decision revoking her access privileges. This Board does not have jurisdiction to review the decision by DELJIS to revoke Ms. Cahill's access. This Board can only review the decision of the SAC to terminate Ms. Cahill for just cause. It may be that the decision by DELJIS to revoke Ms. Cahill's access privileges led, as a consequence, to her termination by the SAC, but only the SAC – not DELJIS – could terminate Ms. Cahill.

ORDER

It is this **5th** day of **December, 2013**, by a vote of 4-0, the Decision and Order of the Board to deny Ms. Cahill's appeal.



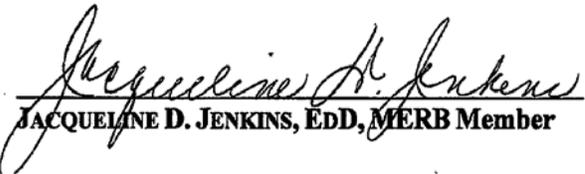
MARTHA K. AUSTIN, MERB Chairwoman



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: **December 5, 2013**

Distribution:

Original: File

Copies: Grievant

Agency's Representative

Board Counsel

MERB Website