

BEFORE THE MERIT EMPLOYEE RELATIONS BOARD

OF THE STATE OF DELAWARE

IN THE MATTER OF
JOYCE L. PARKER,

Appellant,

v.

DEPARTMENT OF SERVICES FOR
CHILDREN, YOUTH AND
THEIR FAMILIES,

Agency.

DOCKET NO. 98-06-161

DECISION ON MOTION
TO DISMISS

BEFORE Susan L. Parker, Esquire, Chairperson; Robert Burns, Vice-Chairperson; Dallas Green, John F. Schmutz, Esquire, and John W. Pitts, Members, constituting a quorum of the Merit Employee Relations Board pursuant to 29 *Del. C.* § 5908(a).

APPEARANCES:

For the appellant:

Caroline P. Ayres, Esquire
503 West Ninth Street
P. O. Box 85
Wilmington, DE 19899

For Agency:

James J. Maxwell, Esquire
Department of Justice
Carvel State Office Building
820 North French Street, 6th Floor
Wilmington, DE 19801

BACKGROUND

On June 29, 1998, Joyce L. Parker filed a letter with the Board seeking to appeal her termination from her position as a registered nurse supervisor at the Ferris school. Her termination of employment from this Merit State employee position was effective on July 31, 1996 and notice of such termination was, according to Ms. Parker, received by her on August 1, 1996. Ms. Parker

COPY

received a pre-termination hearing at which she was represented by counsel before receiving her letter of termination. Ms. Parker contends that she was given no further instruction or information regarding appeals from such termination. After her termination Ms. Parker retained her present legal counsel who also did not pursue an appeal of her termination to the Merit Employee Relations Board.

Ms. Parker became aware of the existence of the Merit Employee Relations Board in June of 1998 and of the ability of the Board to hear appeals from termination of employment actions by merit system employees by reason of having been issued a subpoena by the Board to appear and testify in another proceeding involving the termination of employment of another registered nurse. Ms. Parker, and her attorney, insist that no one from the State ever advised Ms. Parker that she could appeal her termination to the Board.

On October 2, 1998, the Department of Services for Children, Youth and Their Families filed a Motion to Dismiss the appeal as untimely filed. Ms. Parker filed a written response to said motion on October 8, 1998 and the Board heard oral argument on the motion on December 17, 1998. This is the decision of the Board which, for the reasons stated, dismisses the appeal for lack of jurisdiction.

DISCUSSION

The Merit Employee Relations Board can only hear and consider appeals which are timely filed under the Merit Rules. The Board's power and authority are derived exclusively from statute, and its jurisdiction extends only to those cases which are properly before it in compliance with the statutes and Merit Rules. *Maxwell v. Vetter*, Del. Supr., 311 A.2d 864 (1973). Under the Merit Rules, to be timely filed, an appeal from a 4th Step grievance decision must be filed with the Board within fifteen (15) working days of the receipt of the written statement of findings from the Personnel Director at Step 4 of the grievance procedure. Merit Rule No. 21.0120. Direct appeals to the Board

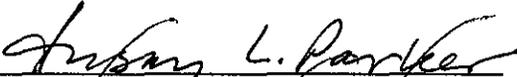
in matters involving termination of employment must be filed within thirty (30) days of the termination. 29 Del. C. § 5949.

Ms. Parker, in her filing with the Board, admits she received the written notification of termination of her employment on August 1, 1996. She therefore had thirty (30) days to file a direct appeal of that termination decision with the Merit Employee Relations Board. No such appeal was filed until Ms. Parker filed with the Board on June 29, 1998 which is well beyond the time limit for filing such an appeal. From the correspondence Ms. Parker has filed with her appeal it is apparent that she consulted with at least one and possibly two members of the Delaware Bar in sufficient time to perfect a timely appeal to the Merit Employee Relations Board should she have chosen to do so. Under the circumstances, and without any regard to the potential merits of her appeal, the Board, by State and by case law, has no jurisdiction to hear it. The Motion to Dismiss must be granted.

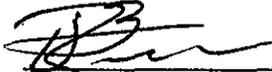
ORDER

The above-captioned appeal of Joyce L. Parker is not timely filed, and the Motion to Dismiss is therefore **GRANTED** and the appeal is dismissed.

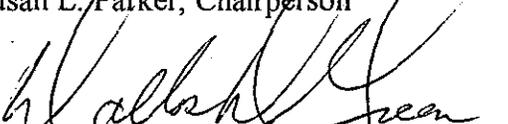
BY ORDER OF THE BOARD this 18th day of February, 1999.



Susan L. Parker, Chairperson



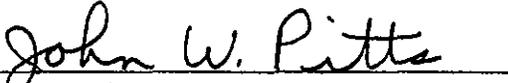
Robert Burns, Vice-Chairperson



Dallas Green, Member



John F. Schmutz, Esquire, Member



John W. Pitts, Member

APPEAL RIGHTS

29 Del. C. § 5949 provides that the grievant shall have a right of appeal to the Superior Court on the request of whether the appointing agency acted in accordance with the law. The burden of proof of any such appeal to the Superior Court is on the grievant. All appeals to the Superior Court are to 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 thirty (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: Feb. 25, 1999 *JP*

Distribution:

Original: File

Copies: Appellant 's Representative

Agency's Representative

Merit Employee Relations Board

Susan L. Parker, Esquire, Chairperson

Robert Burns, Vice Chairperson

Dallas Green, Member

John F. Schunutz, Esquire, Member

John W. Pitts, Member

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