



In July 2000, the Grievant became aware that the VCCB questioned her conference attendance because she had failed to obtain the prior approval of the Acting Executive Director in accordance with the April directive. By memorandum dated July 7, 2000, Grievant advised the VCCB that she would take two (2) days as vacation although she had been working at the conference representing the agency.

In a memo dated August 3, 2000, Grievant complained to the VCCB Human Resources office after receiving her timesheets showing that she had been charged the two (2) vacation days for the time spent attending the conference.

Grievant subsequently made an oral request for reinstatement of the vacation days which was denied by Human Resources on August 23, 2000. Human Resources directed Grievant to file a written request for reinstatement with the Board, which she did on August 25, 2000, detailing her complaint and the relief sought in accordance with Merit Rule 20.6.

In a Step 2 decision dated September 8, 2000, the Chairperson of the VCCB denied Grievant's request for reinstatement of the two (2) vacation days in dispute.

On September 27, 2000, Grievant filed another grievance concerning her vacation days with her immediate supervisor which was denied by the new Executive Secretary on timeliness grounds.

By letter dated October 31, 2000, Grievant appealed the September 27, 2000, denial of her grievance by the Executive Secretary to the State Personnel Office ("SPO"). A Step 3 hearing was held before SPO on December 28, 2000, at which time Grievant argued that the delay in filing her appeal from the September 8th denial was due to a problem getting a response to an e-mail she sent on September 11, 2000, to SPO requesting a grievance form. It was later determined that the lack of response by SPO to the e-mail resulted from a technical problem with

the e-mail link on the web site. Grievant did not follow up on the e-mail to obtain a form by calling SPO until September 27, 2000.

Grievant appeals to the MERB from the Step 3 grievance decision dismissing her appeal as untimely.

### DISCUSSION

The MERB 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). In processing a grievance through the steps of the Merit Rule grievance process it is contemplated that each step of the process will be completed in order to enable movement to the next step. Since the grievance time limits may be waived by agreement of the parties under Merit Rule 20.4, MERB treats all filed appeals as being properly filed subject to a motion to dismiss to dismiss for lack of jurisdiction. The responsibility for moving the grievance forward through the steps of the grievance process, to the State Personnel office, and thereafter to the MERB is on the grievant.

Under the first step of the Merit Rules, to be timely filed, a written grievance detailing the complaint and relief sought must be filed with the employee's immediate supervisor within 14 days of the date of the grievance matter or the date the grievant could reasonably be expected to have knowledge of the grievance matter. Merit Rule No. 20.6.

Based on the argument of the parties and the materials submitted to the Board, the Board finds that Grievant had knowledge of the grievance matter which is the subject of her complaint when she submitted her memorandum on July 7, 2000, offering under protest to use two (2) vacation days for the days she spent attending the conference. As a result, under Merit Rule No.

20.6 she was required to file a grievance with her immediate supervisor within fourteen (14) days of that date, that is, on or before July 22, 2000. Although Grievant sent a memo on August 3, 2000, it was not until August 25, 2000, that Grievant filed with the VCCB a written grievance detailing her complaint and the relief sought. Neither of the August memos was timely under Merit Rule 20.6.

Even were the Board to find that VCCB waived the lateness of the grievance by responding to the August 25<sup>th</sup> written grievance by issuing its September 8<sup>th</sup> Step 2 decision thereon, Grievant failed to perfect her appeal from that decision to the SPO on or before September 22, 2000. Grievant did not appeal the Step 2 denial to SPO until October 31, 2000, beyond the time required under Merit Rule 20.8.

Finally, Grievant's September 27, 2000, grievance on the same matter filed with the new Executive Secretary of the VCCB is also time barred as grievant based on the Board's finding that she had knowledge of the grievance matter as of July 7, 2000.

Grievant missed at least one, if not two, time deadlines required to move her grievance through the steps required by the Merit Rules. Having failed to perfect her appeal in accordance with the time limits required by the Merit Rules, and there having been no waiver of those time limits by the VCCB, the Board has no jurisdiction to hear the appeal and the Motion to Dismiss must be granted. See Thompkins v. DOC, MERB Docket No. 00-01-198 (July 20, 2000).

ORDER

The above-captioned grievance filed by Cathren A. Hagan is not timely filed, and the Motion to Dismiss filed by VCCB is **GRANTED**. By a unanimous vote, the appeal is dismissed.

BY ORDER OF THE BOARD this 15<sup>th</sup> day of November, 2001.

absent

Brenda Phillips, Chairperson

Halla Green

Dallas Green, Board Member

John F. Schmutz

John F. Schmutz, Board Member

John W. Pitts

John W. Pitts, Board Member

Paul A. Houck

Paul Houck, Board 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 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 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:

November 19, 2001

*js*

Distribution:

Original: File

Copies: Grievant

Agency Counsel

Board Members

Board Counsel