

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

**IN THE MATTER OF
H. DIANA KOPICKO,**
Appellant,

v.

**STATE OF DELAWARE DEPARTMENT
OF SERVICES FOR CHILDREN,
YOUTH & THEIR FAMILIES**
Agency.

DOCKET NO. 02-03-256

DECISION AND ORDER

BEFORE Chairperson Brenda Phillips, and Board members John F. Schmutz, John W. Pitts, and Paul R. Houck, constituting a quorum of the Merit Employee Relations Board pursuant to 29 Del. C. §5908(a).

APPEARANCES

For the Appellant:

H. Diana Kopicko
Pro se

For the Agency:

Ilona M. Kirshon, Esquire
Deputy Attorney General
Carvel State Office Building
820 N. French Street
Wilmington, DE 19801

BACKGROUND

This matter comes before the Merit Employee Relations Board ("MERB" or "Board") as a direct appeal pursuant to Merit Rule 21.0112, albeit on a somewhat circuitous route.

As more particularly described in the decision of the Delaware Supreme Court [*H. Diana Kopicko v. State of Delaware, The Department of Services for Children, Youth, and their Families*, 2002 WL 229897 (Del. Supr.)], Ms. Kopicko was notified on December 31, 1997 that she would not be retained in her employment as a probationary Senior Family Service Specialist with the Division of Family Services in the Department of Services for Children, Youth, and their Families "DSCYF" or "Department". The letter from the Department Secretary which notified Ms. Kopicko of the ending of her employment also advised her that, because of her probationary status, she had no right

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to appeal such action within the Merit System. Thereafter, Ms. Kopicko filed a civil action alleging wrongful termination and, on September 29, 2000, the Delaware Superior Court granted a Motion for Summary Judgement against Ms. Kopicko. See *H. Diana Kopicko v. State of Delaware, The Department of Services for Children, Youth, and their Families*, 2000 WL 33108936 (Del. Super.). Ms. Kopicko appealed from the decision of the Superior Court and the Supreme Court determined, among other things, that the Secretary's letter notifying Ms. Kopicko of the conclusion of her employment inadequately notified Ms. Kopicko of her right to appeal. The Supreme Court concluded that Ms. Kopicko had been improperly denied her opportunity to seek redress on the basis of assertions of discrimination due to non-merit factors within the Merit System.

The Supreme Court stayed further judicial proceedings in Ms. Kopicko's appeal to allow her the opportunity to exhaust her administrative options within the Merit System. Ms. Kopicko was afforded thirty days from the date of the Order of the Supreme Court to take action under the Merit System. The Supreme Court Order is dated February 12, 2002 and Ms. Kopicko filed her appeal with the MERB on March 4, 2002.

Based upon the direction of the Delaware Supreme Court, Ms. Kopicko's MERB appeal was docketed and set for evidentiary hearing as a direct appeal which commenced before a quorum of the Board on June 26, 2002. The Board determined that the appeal was not a case where "disciplinary" action was taken against the Appellant and, according to Merit Rule No. 21.0230, the Appellant is the Moving Party. The evidentiary hearing did not finish on June 26th and was continued to and concluded on the next available hearing date which was August 21, 2002. This is the Decision and Order of the Board which, for the reasons stated below, denies Ms. Kopicko's appeal and upholds the action of the Appointing Authority.

APPLICABLE MERIT RULES AND STATUTES

DEL CODE ANN. TIT. 29, §5922 (1997) - PROBATION

- (a) The rules shall provide for a period of probation not to exceed 12 months before appointment or promotion is made complete and during which period a probationer may be discharged or reduced in class or rank. Probationary employees shall be entitled to receive

an appropriate performance report or reports during the probationary period, providing warning of any poor performance.

(b) The appointing authority shall notify the Director in writing within 10 days prior to the expiration of an employee's probationary period whether the services of a probationary employee have been satisfactory or unsatisfactory. If the probationary employee's services were unsatisfactory, the probationary employee shall be dropped from the payroll, except that in the case of promotion the probationer shall be reduced in class or rank with approval of the Director. Any such employee shall be replaced on the appropriate eligible list. If the probationary employee's services were satisfactory, or if the appointing authority shall fail to furnish the required notice to the Director prior to the expiration of the probationary period, the appointment shall be deemed permanent. The determination of the appointing authority shall be final and conclusive.

MERIT RULE 11.0100 - STATEMENT OF PROBATIONARY POLICY

All appointments shall be for an established probationary period during which the individual's fitness for appointment shall be evaluated. Appointing officers are responsible for insuring the effectiveness of this working test period and for insuring that probationary employees are given help in meeting the job requirements for appointment.

MERIT RULE 11.0400 - UNSATISFACTORY PROBATIONARY PERIOD

At any time during the initial probationary period, the appointing authority may dismiss the employee for reasons of unsatisfactory service or conduct. The appointing authority shall notify the employee in writing with reasons for the action.

MERIT RULE 16.3 - UNSATISFACTORY PERFORMANCE

When an employees' work performance is considered unsatisfactory, the performance must be documented in writing, and the specific weaknesses must be made known to the employee. The employee shall be given documented assistance to improve by the designated supervisor. An opportunity for re-evaluation will be provided within a period of 3 to 6 months.

MERIT RULE 19.0100 - NON-DISCRIMINATION POLICY

Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline or any other aspect of personnel administration because of political or religious opinions or affiliations or because of race, national origin, age, sex, physical or mental disability, or other non-merit factors will be prohibited.

MERIT RULE 21.0112 - APPEALS FROM DISCRIMINATION

An applicant or employee who has reason to believe that he/she has been discriminated against because of an interpretation or application of the Merit Rules by the Director or any procedures or regulations established by the Director for the purpose of implementing the Merit Rules may appeal directly to [MERB] within ten (10) working days of the date of the action being appealed. Such appeal must be based on discrimination due to religious or political opinions or affiliations, national origin, race, or other non-merit factors. Any employee who has reason to believe he/she has been discriminated against by action within an agency should initiate a grievance in accordance with the grievance procedure.

MERIT RULE 21.0230

The Chairman shall determine the 'moving party'. In appeals involving disciplinary action, the moving party shall be the appointing authority. In all other appeals the moving party shall be the appellant. The moving party shall open the hearing with a brief statement of what he intends to establish. The moving party shall follow his opening statement with the production

of evidence in support of its case. Following cross-examination, evidence shall be presented in support of the defending party's action. Subsequent to initial testimony and cross-examination by the appellant or appointing authority, any witnesses may be examined by any member of the Commission.

SUMMARY OF EVIDENCE

H. Diana Kopicko, MSW, testified on her own behalf, introduced a number of documents, and presented the testimony of Mary Lou Beatman, MSW. Ms. Beatman testified under affirmation that she has been a social worker since the 1950's and possesses a Masters Degree in Social Work.

She retired after approximately twenty years of experience, over one-half of which was in a supervisory capacity in Fairfax County, Virginia. In 1990, Ms. Beatman helped establish an Alternatives To Violence Program which is used in Delaware Correctional Facilities. Ms. Kopicko became a facilitator for this program approximately five years ago and in that capacity, has been evaluated and supervised by Ms. Beatman. She has developed a mentoring role with Ms. Kopicko.

According to Ms. Beatman, Ms. Kopicko's performance as a facilitator has been good and she has been a team player. She is empathetic with prisoners, understands conflict resolution and communicates well. Ms. Kopicko's evaluations as a facilitator have been good and she has met with Ms. Beatman on ways to improve her performance. Ms. Kopicko has, according to Ms. Beatman, been receptive to improvement suggestions. On cross-examination, Ms. Beatman testified that she has observed Ms. Kopicko's performance as a facilitator in group settings in prisons and, while there is some focus on individual behavior during such sessions, there are no individual interviews and the work does not involve risk assessments nor evaluations of child abuse or neglect. Ms. Beatman opined that a social worker wears many different hats depending on training and the job in which they are working. A case worker is involved in a one-to-one investigative process.

Ms. Kopicko testified on her own behalf under affirmation and explained to the Board that the focus of her presentation would involve a comparison of what is and what ought to be. She asserted that the Delaware Supreme Court stated that she had a right to appeal and that she expected to show that the system where she had worked needed to be righted.

Ms. Kopicko was employed on July 16, 1997 as a probationary Senior Family Service Specialist in the Department of Services for Children, Youth, and their Families also known as the "Kids" Department. When she was employed she was a member of the National Association of Social Workers and the National Association of Alcohol and Drug Counselors.

Ms. Kopicko explained that working with children to alleviate the pain of abuse, neglect, and dependency continues to be an important part of her work against violence. She opined that a social worker should act in accordance with the highest standards of professional integrity and impartiality, and should be alert and resist influences and pressures that interfere with the exercise of professional discretion and judgment required for the performance of professional functions.

As her first exhibit Ms. Kopicko introduced a letter she had written in June of 1997 while working as a casual/seasonal worker for that Department. She offered the letter as an example of the nature and quality of the work she performed as a casual/seasonal employee (Appellant's Exhibit No. 1). Ms. Kopicko related that approximately two months after being hired she interviewed for a supervisory position but told the interviewers that Ricky Thomas was better qualified and that he had computer experience which she lacked. Ricky Thomas was hired for the supervisory position and ultimately became her Supervisor. Ms. Kopicko acknowledged that Mr. Thomas had spoken with her during her training about being a team player. She recounted her view of the training program and observed that it was a most un-focused thing where the trainer had other things to do so the trainees were given material to read. She testified that during lunch some members of the training class watched tapes of a program called the "X Files" and other programs which she found distasteful. Her observation was one of "garbage in, garbage out" and she asserted that she was careful what she took in. Ms. Kopicko further observed that the mentality of some of her fellow trainees was juvenile and including jokes about a man having sex with a chicken and jokes about "gay" individuals. She testified that she told her Supervisor of these incidents.

As Appellant's Exhibit No. 2, Ms. Kopicko introduced a copy of page one of an Employee Performance Plan for the period July 16, 1997 to October 16, 1997. The Plan states "Please see

attached job dimensions" in the section which is to list the performance standards that will be used for evaluation purposes. Ms. Kopicko testified that she did not receive a copy of the job dimensions. The Plan page which Ms. Kopicko introduced was signed by her and by her evaluator Ricky D. Thomas on September 10, 1997 and signed by her Reviewer, Carla Benson-Green, on September 12, 1997.

As her third exhibit, Ms. Kopicko introduced a copy of her "needs improvement" performance review for the period July 16, 1997 to October 20, 1997. Ms. Kopicko noted that it provides that she appears to be working as more of a team player since the last meeting on September 25, 1997 and that the report was not "Unsatisfactory". She also noted her written disagreement with the evaluation which recites that she feels that she does more than meet the expectations of the role of Senior Family Service Specialist as described in the principle accountabilities of the class title #79702. Ms. Kopicko further noted in her exceptions that she believed the evaluation was based on only partial knowledge and noted that she had wanted to share her perceptions from the first week of training but did not feel comfortable or safe in doing so.

Ms. Kopicko stated that she had not received individual supervision to address the alleged deficiencies and further stated that she had to request meetings with her Supervisor to discuss her cases. Ms. Kopicko introduced Appellant's Exhibit No. 4 which she described as an e-mail to her Supervisor dated November 13, 1997 regarding supervisory conferences. In this e-mail, Ms. Kopicko lists several brief meetings she has had with her Supervisor and requests a time for an intense supervisory meeting to discuss the "dynamics" of cases. The e-mail also records Ms. Kopicko's observation that her Supervisor appeared cold and abrupt with her and expresses concern about her position.

As Appellant's Exhibit No. 5, Ms. Kopicko introduced a copy of an e-mail dated December 3, 1997 addressed to her Supervisor which recounted that on November 24, 1997 the Supervisor had mentioned that Ms. Kopicko needed to "finalize" everything to get it off of her work list. In Appellant's Exhibit No. 5, Ms. Kopicko recites that although many "event types" were completed

and ready for approval she kept them on her active work list until she completed the Risk Assessments so she could correct any errors. The e-mail goes on to record "Today you informed that I could Finalize and still go in to correct the errors (typos etc.). It may have appeared that some of the work was late when in reliaity (sic) I just did not know all the dynamics of Finalizing."

Ms. Kopicko produced as Appellant's Exhibit No. 6, a copy of a memorandum addressed to her from her Supervisor, Ricky Thomas, Family Service Supervisor, sent through Ione H. Truesdale, Regional Administrator and Carla Benson-Green, Assistant Regional Administrator dated November 21, 1997. This memo by Mr. Thomas advised Ms. Kopicko that he was recommending her employment as a Senior Family Service Specialist be terminated due to inability to satisfactorily perform the critical functions of the job constituting an unsatisfactory probationary period. The communication also notes that there has not been a noted improvement in overall performance since the October 20th evaluation and cites, as an example, probationary counterparts have successfully met deadlines and closed 4 to 6 cases to Ms. Kopicko's zero closures in the month of October. The communication also refers to a demonstrated inability to follow directions; a resistance to supervision; an inability to accurately assess safety and risk; and an inability to meet established deadlines.

Ms. Kopicko introduced as Appellant's Exhibit No. 7, a document which she testified was a copy of an e-mail which she sent to Priscilla Brown on December 5, 1997 to "verify" the contents of an interview with Ms. Brown on December 4, 1997. In the e-mail, Ms. Kopicko sets forth her responses to the three categories of deficiencies noted by Mr. Thomas: 1. "...inability to follow directions and a resistance to supervision." 2. "...an inability to accurately assess safety and risk" and, 3. "...demonstrated an ability (sic) to meet deadlines".

With respect to category 1., Ms. Kopicko recorded that she had observed to Ms. Brown that "I followed all directions given to me by my Supervisor. I even followed his directions when I felt they were in direct opposition to departmental policy and when it was clearly not in the best interest of the child(ren)." Ms. Kopicko also wrote in her Appellant's Exhibit No. 7: "On numerous occasions Mr. Thomas directed me to remove, add, and change essential Risk Assessment

information along with other documents (progress notes). I believe that the information that he directed me to alter or delete has resulted in children being at risk.” She also noted that she followed her Supervisor’s directions even though she professionally and ethically disagreed with the changes he directed her to make and that she felt that if she did not make these changes she would be terminated. She also recorded that both Carla Benson-Green and Ione Truesdale supported her Supervisor’s decision to make the changes to her cases.

Concerning the allegation of an inability to accurately assess safety and risk, Ms. Kopicko stated in her Appellant’s Exhibit No. 7 that she firmly believed that she understood how to assess risk and recounted that “It is beyond my understanding how Mr. Thomas (DSCYF social worker for over eleven years and a probationary Family Service Specialist Supervisor) would not concur with my evaluations of the risk of abuse and/or neglect that I found during my investigations.”

Concerning the assertion of her inability to meet deadlines, Ms. Kopicko noted her new knowledge about “finalizing” to remove work from her work list. She also recorded her recollection of the meeting concerning discussions about her activities outside of work and recounted that she had told Ms. Brown “I love it here and I am committed to the work we do.” In Appellant’s Exhibit No. 7, Ms. Kopicko also recorded that her formal training had not yet been completed and asserted that she had also during the meeting mentioned that she had not been afforded time or guidance to address the concerns of her Supervisor.

Ms. Kopicko introduced a copy of a three page letter dated December 4, 1997 which she testified she transmitted by fax to Thomas Eichler, the Cabinet Secretary of DSCYF, with a total of fifteen pages including various appendices which she did not produce as a part of her MERB exhibit (Appellant’s Exhibit No. 8). In this correspondence Ms. Kopicko recounts many of the same points she had placed in her e-mail to Priscilla Brown (Appellant’s Exhibit No. 7) and claims that she has met all deadlines with the exception of two initial investigation interviews and two risk assessments.

She then recites aspects of various cases and puts forth her explanations for the delays which included waiting for guidance and assistance from her Supervisor Ricky Thomas. Ms. Kopicko

recited that her formal training had not been completed and asserted that she had not been afforded time or guidance to address the concerns of Mr. Thomas. She also recounted that she remained open and willing to learn or relearn anything necessary so that she might continue her employment with the agency. (Appellant's Exhibit No. 8).

Ms. Kopicko introduced as Appellant's Exhibit No. 9, a two page single spaced e-mail which she testified she sent on December 29, 1997 to the Department Secretary, Thomas Eichler. In this memo she expressed her shock at his decision terminating her employment and expressed her disappointment that the Secretary would not meet personally with her to discuss the allegations and the documentation which, according to the e-mail, she had sent to him previously. In addition to her other assertions in the e-mail, Ms. Kopicko claimed that the information she had previously provided should be sufficient proof that she has followed the instructions and directions of her Supervisor; that she could assess abuse/neglect, and that she had met deadlines. In her Exhibit No. 9, Ms. Kopicko also questioned whether the Merit Rules had been followed regarding her probationary period. Specifically she noted Merit Rule 11.0100 on Probationary Policy and Merit Rule 16.3 concerning the requirement that there be documented assistance to improve given by the supervisor to the employee. Ms. Kopicko's e-mail restates her position that her termination was not for the reasons stated by Mr. Thomas and alludes to "...a deeper underlying source for contention blocking all professionalism and prohibiting focus on the task at hand...". Also in her Exhibit No. 9, Ms. Kopicko refers to the physical work environment and asserts that she had many concerns but did not share them until her evaluation for fear of losing her position. (Appellant's Exhibit No. 9). This e-mail also asserts that her concerns were addressed with all three of the Supervisors above her specifically, Ricky Thomas, Carla Benson-Green and Ione Truesdale. It also notes that she would consider behaviors and actions that are an acceptable norm within the unit even though she found them distasteful and often disrespectful to clients (especially those in crisis) if it would secure her job. Ms. Kopicko observed in her e-mail that she had re-thought this statement and later told Carla Benson-Green that she could not do that to fit in even though her career depended on it. In her Exhibit No.

9, Ms. Kopicko also recounted that she had diligently followed the chain of command within DSCYF and would proceed to "...protect my professional integrity and position as a Senior Family Service Specialist, children at risk, families, and the public we serve."

The Board was presented with a copy of what Ms. Kopicko represented as "Danger Loaded Elements" and which she stated are used in the "Child at Risk" field system ACTION for Child Protection (Appellant's Exhibit No. 10). She also presented the "Case Abridge" page from the FACTS user's manual (Appellant's Exhibit No. 11) with her hand written notation "I learned about this in December 97".

In her e-mail to Ms. Truesdale (Appellant's Exhibit No. 12), Ms. Kopicko recounts her version of a meeting held on November 7, 1997 to address her questions concerning her documentation or logging of case conferences with her Supervisor. Ms. Kopicko recites that "I felt that logging these conferences were (sic) important because they are part of the process involving decision-making in the determination of the cases. This also holds the people involved to 'responsibility and accountability' for the decisions made." Ms. Kopicko then reports in her e-mail: "You informed me that it would be better to log the notes elsewhere because the records could be subpoenaed or seen by the clients." In the margin, Ms. Kopicko wrote as an insertion "the public". She noted that Ms. Truesdale had voiced concern that it would appear that there was "dissemination" between the worker and the supervisor. Ms. Kopicko, in her e-mail, recited that Ms. Truesdale had mentioned to her that her Supervisors had met with Ms. Truesdale with their concerns about Ms. Kopicko as a worker. Ms. Kopicko wrote that she was a good worker and had performed beyond meeting the professional requirements of her job title. She went on to note that the roles of a social worker are that of mediator, empathetic listener, broker, counselor, advocate and teacher, and closed with the statement that her only requests are: fair and equal treatment, principles over personalities, and professionalism. (Appellant's Exhibit No. 12)

As her next Exhibit, Ms. Kopicko introduced a three page single spaced copy of an e-mail message which she testified was directed to her Supervisors Ricky Thomas and Carla Benson-Green,

and which proclaims that it is for a dual purpose: first, to verify she is willing and open to accept supervision and, second, to confirm changes made on certain cases "...due to the reality that the work bears my name." Appellant's Exhibit No. 13 details different changes Ms. Kopicko asserted she made to various risk assessments based upon multiple case conferences with Ricky Thomas. (Appellant's Exhibit No. 13)

Exhibit No. 14 consists, according to Ms. Kopicko, of copies of portions of selected risk assessments she had drafted together with hand written changes and corrections noted by her Supervisor, Ricky Thomas. After concerns were raised with the Board about client confidentiality, Ms. Kopicko agreed to redact the names of the clients discussed in her Exhibit No. 14 and to resubmit the exhibit at the next hearing session to protect the privacy of the named individuals. This exhibit was introduced on August 21, 2002 in a redacted format which had been redacted by the attorney for the Agency and which was acceptable to Ms. Kopicko.

For her 15th exhibit, Ms. Kopicko introduced a one page document which she identified as an e-mail she had sent to Ricky Thomas dated November 17, 1997 thanking him for their meeting that morning, noting that it was refreshing and motivating for her and thanking him for his guidance. She notes that the meeting was greatly appreciated as, according to Ms. Kopicko, it was much overdue. Ms. Kopicko also notes in her e-mail that she has completed a specific Risk Assessment and finalized it for review and further notes that she is open for additional suggestions. (Appellant's Exhibit No. 15)

Ms. Kopicko testified that after her termination she was informed that the only basis she could use to appeal her termination was that she was a woman and that her concerns with integrity and children at risk were not sufficient grounds. She asserted that she believed that she had performed with efficiency and integrity and that the real reason for her termination was because she was a subordinate who questioned her Supervisors' changes to her risk assessments. She described herself as a threat to the status quo which she described as being blatant disregard of children. As examples of such disregard, Ms. Kopicko recalled hearing a co-worker tell her Supervisor that it was okay to

hit a child as long as you did not leave bruises. She also recounted having overheard co-workers referring to individuals as "white trash" and their children as "white trash kids". She also recounted overhearing co-workers talking about an abused woman and stating that "She likes to get beat".

Ms. Kopicko testified concerning a case where she performed a risk assessment and asserted that she later found that information presented in her assessment had been changed. She alleged that the change was made so that the case could be abridged and administratively closed. According to Ms. Kopicko, in this case, which was eventually administratively closed, a police officer brought a nine-year old child to the Kent County DFS office and reported that the school had called the police because the child was out of control. A school counselor had taken the child home. The door was open but there was no one home and school personnel were unable to locate the mother of the child who had, according to Ms. Kopicko, refused to provide the school with an emergency telephone number. Ms. Kopicko stated that it became apparent to her that the Assistant Regional Supervisor, Carla Benson-Green, knew the mother and the child. Ms. Kopicko testified that she interviewed the child to do a risk assessment. She also stated that she was asked to keep the child with her and during the time she spent with the child "When he wasn't playing that he was my guy, he was crying tremendously out of fear for his mother." According to Ms. Kopicko: "I had a lot of concerns about this kid". Ms. Kopicko testified that when Carla Benson-Green saw the boy she began talking to him because she knew his mother. Ms. Kopicko recalled that Ms. Benson-Green stayed for the interview and told the mother that she personally would go to the school the next day to tell the school that she believed that it was inappropriate for a nine year old to receive an out-of-school suspension. Ms. Kopicko stated that after the interview she told Ms. Benson-Green that she would have a copy of everything for her the next morning. When Ms. Benson-Green read what Ms. Kopicko had written stating that Ms. Benson-Green had been present during the interview and that both the mother and the child were comfortable in her presence, Ms. Benson-Green, according to Ms. Kopicko, became very upset and stated that she knows a lot of people. Ms. Kopicko related to the Board that she had informed Ms. Benson-Green of her concerns about this child who, according to Ms. Kopicko, was

left at home a lot and whose sister was using drugs in and out of the house. She also stated that the mother had told her in the presence of Carla Benson-Green that the child had a problem holding his bowels. According to Ms. Kopicko, this information, coupled with the fact that "I was his woman" showed he was a little bit mature and the idea of sexual abuse popped up in her mind to investigate because they could not find anything explaining why the child could not hold his bowels. Several days later, according to Ms. Kopicko, she attempted to put additional information from her continuing investigation into the computer on this case but was unable to locate the case on her work list. Ms. Kopicko stated that she immediately informed her Supervisor, Ricky Thomas, and asked him for assistance in locating the case on her computer. According to Ms. Kopicko, after weeks of each day asking Ricky Thomas to assist her in locating the case on the computer, he told her that it had been administratively closed and, Ms. Kopicko asserted, he refused to tell her why.

Ms. Kopicko told the Board she felt she needed to document calls to and from the counselor because the counselor in this case had a real concern for the child. Ms. Kopicko testified that she requested that Mr. Thomas provide her with a copy of the hotline report and of her investigation. She asserted that after getting nowhere with her requests, she sent an e-mail to Ricky Thomas on December 8th requesting the notes in writing. Mr. Thomas thereafter gave her a copy of the report and, according to Ms. Kopicko, in the hotline report under "events noted" there were no events even though she had completed a full initial interview. Ms. Kopicko stated that because this case was abridged or administratively closed she could not get into the file on the computer. Ms. Kopicko further stated that the information in the hot line report had been changed. Originally the police were identified as the reporter and the police brought the child into the office. Ms. Kopicko asserted that someone had fraudulently changed the report to list the landlord as the reporter. According to Ms. Kopicko, this alteration of the report was significant because a police officer is an appropriate reporter and a case cannot be administratively closed without a complete investigation and a risk assessment when it is a police officer, school official, doctor, or therapist who reports. Therefore, according to Ms. Kopicko, it was necessary for Ricky Thomas or Carla Benson-Green or someone

else to alter the report so that it could be administratively closed. Because the case was administratively closed, Ms. Kopicko was not, according to her testimony, able to investigate further into the frequency and the duration the child was being left alone, or to explore her concern about why the child had uncontrollable bowel movements, nor to pursue her concern about the child's emotional state and profound fears.

Ms. Kopicko stated there were many, many such cases but she was going to discuss the facts of only three (Ms. Kopicko later observed there were actually 4 cases involved in her Exhibit No. 14 where she contends that she was told to alter things in a manner which put children at risk).

Ms. Kopicko testified that another case is still heavy on her heart. She received a case of a nine-year-old boy with a lump. The school counselor said that the father had hit the child while drinking and she had serious concerns because she believed the child's disclosures about this and past allegations of abuse. According to Ms. Kopicko, through her investigation she found that the father had been drunk and had hit the child with a five foot long and five inch round metal pipe which the child had made into a toy. Ms. Kopicko testified that the father admitted drinking all day and he did not remember how much he had consumed. He became angry with the child and hit him with the pipe leaving an inch and a half long, and an inch high fresh bruise and lump. She stated that the child had disclosed that he had been hit on the arm while protecting his face and head. According to Ms. Kopicko, her Supervisor Ricky Thomas had her continually change information in her investigation to minimize or eliminate the serious risk factors in this case. She stated that he also had her change her findings of "maltreatment" founded to "maltreatment unfounded and no treatment". Ms. Kopicko stated that since the father admitted to hitting the son with a large pipe in a drunken rage and the child did have a lump, she did not agree with her Supervisor's determinations. She stated that she was very concerned for this child and for his two siblings and so she sent an e-mail to Assistant Regional Manager Carla Benson-Green documenting all of the changes as well as the case conferences which she had been told to remove. She testified that Ricky Thomas told her to take out the notes of case conference references because he did not think they were important and noted that she did not need

to put that kind of stuff in the report. Ms. Kopicko insisted that she was required to remove information from her reports and to manipulate words in ways she believed were improper.

In another case, Ms. Kopicko recounted, there was blood in a baby's diaper according to the reporter and she was directed by Ricky Thomas to change what she had written to provide that the baby had a rash and it appeared that he may have been bleeding.

Ms. Kopicko told the Board that, in her view, she posed a threat to the status quo at the Agency. She recounted overhearing a co-worker telling Ricky Thomas that she [the co-worker] did not want to put a blemish on a father's record since she thought he was a nice man. This statement was made, according to Ms. Kopicko, even though the father had admitted hitting the child in the face. Ms. Kopicko testified that the child had a bruise on his face and the school had called it in. Also, according to Ms. Kopicko, she heard this co-worker inform Mr. Thomas that she had told the father that it was alright to hit the kid just do not leave marks. Ms. Kopicko stated that this was the team she was expected to be "fitting in with" where the case was treated as unfounded even though a teacher had called it in. In another instance, Ms. Kopicko related that a male worker told the team leader that he admired a man who was being investigated for child abuse because of how many women he had in prison. According to Ms. Kopicko she heard the individual say "That's my boy. You should see how many women he had in prison." Ms. Kopicko stated that she had been at work for two weeks and a boy penetrated his little brother and, according to Ms. Kopicko, for three days the whole office was going on about "What's he, a homo?" and "What's he, a fag?" Ms. Kopicko told the Board that she let this fellow know that homosexual rape is rape of the same sex and it did not mean that the boy was a homosexual, rather he was a child acting out aggression.

Ms. Kopicko asserted that she believed it was important to document everything; that memory sometimes fails, and so she wrote everything and usually quoted people. She also observed that, according to newspaper reports, only 35% of abuse cases were being completed on time and she wondered why other employees were not terminated for failing to close cases in a timely manner.

Ms. Kopicko claimed that her views of the behavior of her co-workers was not just "venting" but rather was evidence of apathy concerning children which, in her view, appeared to be supported by DFS administration officials because they had knowledge of it.

Ms. Kopicko also contended that Appellant's Exhibit No. 16, [a copy of Merit Rule 16.3 concerning unsatisfactory performance] was not followed in her case. She noted that her evaluation was "needs improvement" not "unsatisfactory". She denied meeting weekly with her Supervisor and claimed she was given no reprimand in writing, and that no defects were noted. She testified that she went through State Personnel and attempted to follow the chain of command. The Agency stipulated that Ms. Kopicko took steps after her termination to pursue her reinstatement including complaining to the Delaware Department of Labor and the Equal Employment Opportunity Commission ("EEOC") and pursuing civil litigation.

On cross-examination, Ms. Kopicko testified that she is not licensed as a social worker in the State of Delaware. She was hired as a Senior Family Services Worker in July of 1997. She could not recall how many cases she was responsible for in October or November 1997. She testified that she had completed her findings on some cases but her cases stayed on the books because she was constantly told to change her findings. She took the position that the more she put into her findings the more her Supervisor constantly wanted to alter things. Ms. Kopicko admitted that she had been taken off of the rotation of case assignments but she denied that it was because she had such a backlog that she needed the time to catch up. She also testified that it was not a problem that she did not get to meet with Mr. Thomas because she was comfortable with her assessments and evaluations. Ms. Kopicko acknowledged that she had met on several occasions with her Supervisor but insisted that not all meetings qualified as a supervisory conference. She believed that changes she was asked to make were inappropriate and against the regulations at the Department and put children at risk. According to Ms. Kopicko, she was called a Whistle Blower and did not work for thirty-five months.

Roxanne Ford, being sworn testified as the first witness for the Department¹ and recounted that she is a trainer with the Division of Family Services. She has been a trainer since October 1995 and prior to that worked five years as a treatment worker, and for the five years prior had worked as an adoption worker. She holds both a Bachelor's Degree and a Master's Degree in Social Work.

Ms. Ford testified that Ms. Kopicko was hired as a probationer in July of 1997. She observed that all new staff members, even those with Master's Degrees, attend a mandatory training course for six weeks of classroom instruction where various topics are covered in child abuse worker training.

Among other things, the trainees are taught how to perform interviews where abuse and neglect is suspected. The trainees are given an outline showing the areas where they need to collect data and told that they need to substantiate their findings. According to Ms. Ford, trainees and their supervisors need to work together on substantiation determinations. Ms. Ford testified about the Family and Children Tracking System ("FACTS") training provided, which includes instruction in how to "finalize" a case. There were, according to Ms. Ford, only two blocks of training that Ms. Kopicko did not complete. One block concerned child development, and the other dealt with cultural diversity.

Ms. Ford testified that her concerns with H. Diana Kopicko began on July 16, 1997 when Ms. Kopicko introduced herself as having a Master's Degree and wondered why she did not just get an "A" for the training course. She stated that she would give the instructor an "A" and training would be over. According to Ms. Ford, it appeared to her that Diana Kopicko did not see any benefit in the training and she was disruptive in the training sessions including one verbal altercation with another trainee over a raisin which had fallen to the floor. In this incident, Ms. Kopicko picked up the raisin and placed it on the papers of another trainee who was offended that she was admonishing him. The situation escalated and became disruptive. According to Ms. Ford she spoke to Ricky Thomas about

¹The Board permitted Ms. Ford to testify out of sequence prior to the conclusion of Ms. Kopicko's presentation because Ms. Kopicko's final witness was unable to appear as scheduled and it became apparent to the Board that another hearing session would be required. Ms. Kopicko was afforded the opportunity to present the remainder of her evidence at the next hearing session prior to the presentation of evidence by the Agency.

the incident and he came to the training location and spoke to both Ms. Kopicko and the other trainee. Ms. Ford related another incident where Ms. Kopicko was not watching a training video and was requested to put her other material away and pay attention to the training.

Ms. Ford also candidly observed that Ms. Kopicko tends to be obtuse and trying to get her to be more specific did not work. This situation, according to Ms. Ford, continued throughout Ms. Kopicko's training. Ms. Ford recalled another incident where she was showing a video on children with attention deficits and Ms. Kopicko made very strong and opinionated statements concerning parents who use medication for such children. Ms. Ford testified that she had suggested to Ms. Kopicko that she needed to become more neutral about that situation.

Ms. Ford identified State's Exhibit No. 1 as an e-mail she sent to Ricky Thomas on August 6, 1997 specifically recounting her concerns regarding Diana Kopicko's progress in training. In this e-mail, Ms. Ford notes that Ms. Kopicko continues to appear bored and inattentive during training. Ms. Ford wrote that from time to time Ms. Kopicko does nod her head, but it is as if she is telling me [Ford] that I am getting it right. Ms. Ford also noted that Ms. Kopicko rarely asks any questions, which went along with her general attitude toward training - that being that she already knows everything, and more, that she needs to know to do this job. Ms. Ford also wrote in her e-mail about Ms. Kopicko: "I am quite concerned that in fact she doesn't know what it will take to do this job. Her continued need to appear as the wisest of them all only serves to isolate her from the rest of her fellow trainees."

Also in this e-mail recounting her concerns with Ms. Kopicko's attitude and performance, Ms. Ford addressed a situation where Ms. Kopicko and the other trainees were watching a video when Ms. Kopicko had made several statements that, according to Ms. Ford, would have been generally offensive to any parent of an ADHD child. Regarding this, Ms. Ford, in her e-mail recorded that:

...when I told her privately that her statements could have been easily perceived as offensive to parents she said she was a very sensitive person. She added that those who had a problem with what she said needed to check themselves - that she wasn't at fault. She doesn't seem to understand that what she says is not always generally accepted information. She seems to think that she is here to give us the benefit of her wisdom because none of us know any better. She gets very upset if she perceives that she is being challenged and will interrupt to

admonish the challenger – even if he/she is minimally challenging to her. (State’s Exhibit No. 1)

In this e-mail to Ricky Thomas, Ms. Ford also recorded the following request and observations:

I would very much appreciate it if you would speak with her on Friday — I know that you have a lot to do with everything going on! I am requesting this now as I am concerned about her. There were several times later this afternoon when group members asked her quite loudly to be quiet so that they could attend to the trainig (sic). She appeared to be tuning out the rest of us and starting her own little tea party with Buster as an uncertain guest. I was watching her from time to time as I was concerned she was getting emotional – I am wondering if she is on any medication that would explain her exaggerated facial gestures – they can be quite distracting and odd. I don’t want her to feel separated from the rest of the group, but she is the only one behaving this way. Generally speaking, the remainder of the trainees are very active participants in the process with questions and feelings about issues being offered. She makes statements that aren’t easily interpreted. I often have to ask her what she means. She tends to be obtuse – I guess that’s the best way to describe it.

I did speak to her today during the video as she was reading the policy manual instead of viewing the video. She told me later that she felt she was being singled out and that she had heard I thought she was a know it all – interesting. She told me that two other people were reading instead of viewing – she was clearly the only person I saw doing anything but watching the video. I don’t know whether martyrdom is part of her make-up or not.

Ms. Ford identified State’s Exhibit No. 2, as a three page report which she prepared on November 10, 1997 for Ione Truesdale, the Regional Administrator for Kent County². This report regarding Ms. Kopicko’s behavior during her training period, recounts several of the incidents noted above in State’s Exhibit No. 1. In addition it recounts her experiences with Ms. Kopicko’s “journaling” of conversations which had been observed by her co-workers; her behavior in a training session when she began angrily talking about the “homophobics” in the office. It also records that Ms. Kopicko sought to make that training very adversarial noting that Kopicko’s name calling was not well received by her fellow new workers. Ms. Ford added some additional information about the incident involving the ADD/ADHD by noting that Ms. Kopicko began putting down parents of children with this diagnosis – blaming them. She continued:

²Later, at the August 21, 2001 hearing, Ms. Kopicko raised an objection to the Board’s consideration of Ms. Ford’s memorandum to Ms. Truesdale on the basis that she [Ms. Kopicko] had not received a copy of the memo. The Board treated her request as a motion to strike State’s Exhibit No. 2 and denied it.

Several people in the room are parenting children with this diagnosis, including myself, and we attempted to bring her a bit more to the center on the topic to no avail. THESE parents were making their kids DRUG ADDICTS, etc. No apologies for insulting/hurting others in the room — she made none. (Appellant's Exhibit No. 2)

Ms. Ford also observed in State's Exhibit No. 2 that "Throughout the new worker training, I have generally found Ms. Kopicko insensitive to others' feelings and resistant to training."

On cross-examination by Ms. Kopicko, Ms. Ford did not recall specific instances recounted by Ms. Kopicko involving Kopicko's being critical of the language used by the trainer during the ADD/ADHD session and she did not recall hearing a joke involving the statement "I'm Bruce, come fly me". Ms. Ford testified that if she had heard such inappropriate jokes during training she would not have tolerated it.

Ricky Dale Thomas, being sworn, testified that he is presently a Family Crisis Therapy Supervisor and was the immediate Supervisor for H. Diana Kopicko during her probationary period as a Family Services Specialist. He testified that when she came to work she had a Master's Degree in Social Work; some experience as a volunteer with the rape crisis unit; and two months experience as a casual/seasonal worker in another investigative unit. Mr. Thomas testified that he had spoken several times with Ms. Ford concerning whether Ms. Kopicko was learning the material in the training and about how she was getting along with the other trainees. He identified State's Exhibit No. 3 as a copy of an e-mail he sent to Ms. Kopicko dated August 14, 1997 following up on a conference between them on August 8th.³ State's Exhibit No. 3 recounts that Mr. Thomas had met with Ms. Kopicko to discuss concerns about her performance which were both addressed to him and observed. Among the items noted was the concern expressed by her training supervisor about a lack of attentiveness in training and the observation that Ms. Kopicko may not be able to work as a team player because of her approach in the group process which gave the trainer the impression that Ms. Kopicko was alienating herself from the other trainees by presenting herself as knowing more than

³Ms. Kopicko objected to the receipt of State's Exhibit No. 3 stating that she had never received this e-mail communication from Mr. Thomas who testified that he sent it to her and that she had received it. Ms. Kopicko did not deny the conference on August 8, 1997 to which the e-mail is a stated follow up and the Board, after consideration, allowed the introduction of State's Exhibit No. 3 over Ms. Kopicko's objection.

they do and not giving the feeling that she can also learn from them. Mr. Thomas recounted in his e-mail that he had observed that Ms. Kopicko appeared to isolate herself from others and recorded her statement to him that sometimes she may "detach". The e-mail records that they discussed communicating in a way that will build teams and also records Ms. Kopicko's reaction that she did not get involved in a lot of small talk and especially if she felt the conversation was offensive. There was also expressed a feeling of being singled out by the training supervisor for reading while a video was being played and notes Ms. Kopicko's insistence that others in the group were also reading. The e-mail further recorded Ms. Kopicko's assertion that she was a team player and that she was looking forward to working with the unit. It also recorded Mr. Thomas' perception that there was a problem because there were a lot of people in the office who seemed not to want to work with her. It recorded his concern that he wanted her to work with the team and be "superviseable". It also stated: "I want to be clear that the final decisions on cases are with the Supervisors". (State's Exhibit No. 3)

Mr. Thomas identified State's Exhibit No. 4 as being a copy of the Performance Plan for Ms. Kopicko which had as an attachment the two page description of "Senior Family Services Specialist" as the class title for Class Code 79702.⁴

Mr. Thomas described State's Exhibit No. 5 as being a part of the material given to all trainees as part of the instruction in preparing Risk Assessments. The material was given in an attempt to standardize the preparation of Risk Assessments for the sake of consistency. Mr. Thomas testified that Ms. Kopicko did not consistently use the terms found in the training instructions (State's Exhibit No. 5) when preparing her Risk Assessments on the cases to which she was assigned. Mr.

⁴The Board noted Ms. Kopicko's objection asserting that she had not received pages 2 and 3 of this exhibit [the attached job dimensions] when she signed page 1 on September 10, 1997. Mr. Thomas testified that the class description [Senior Family Services Specialist - Class Code 79702] was attached to the performance plan which he also signed on September 10th and which his Supervisor, Carla Benson-Green signed on September 12th. Ms. Kopicko exhibited some familiarity with the allegedly attached material in her response to the performance Review (State's Ex. No. 11) where she wrote: "I disagree with this evaluation. I feel that I do more than meet the expectations of the role of Senior Family Service Specialist as described in the principle accountabilities of the class title #79702" (State's Exhibit No. 11).

Thomas recounted that his concern with the Risk Assessments done by Ms. Kopicko related to making sure that her entries were factual. Mr. Thomas testified that the use of terms in the Risk Assessment needed to be based on facts supporting the assessment and that Ms. Kopicko's assessments were lacking in factual documentation. He stated that it was common practice for supervisors to review the preparation of Risk Assessments. He also noted that her reaction to his suggestions for change was not positive and that she was not receptive to his supervision. Mr. Thomas recounted one case where Ms. Kopicko concluded that the father had an alcohol problem. Mr. Thomas wanted the underlying facts such as what did he drink and how much did he drink. He stated that he could access Ms. Kopicko's cases on the computer system to review and see the quality of her work but that he could not change things on her work list which were available to him in a read only format so she printed the material and submitted it in printed form for him to review. According to Mr. Thomas, he never closed any of Ms. Kopicko's cases. He did, however, reject the case where the police had brought a child to DFS who had been expelled from school. No one was at home at the child's residence. According to Mr. Thomas, there was no allegation of maltreatment. It was a situation where no one was available at the child's home. He explained that he rejected the matter as a case because there was no allegation of maltreatment and explained it to Ms. Kopicko but could not recall her reaction.

Mr. Thomas testified that he met regularly with Ms. Kopicko and was concerned about her performance during her probation period which was for six months at that time. He stated that, in addition to meeting with her he also sent e-mails to Ms. Kopicko addressing specific concerns and identified State's Exhibit No. 6 as an e-mail he sent her on September 18, 1997 after a unit meeting on the prior day. The e-mail recounted that "Diana seemed to upset the whole unit after arriving at the meeting." It noted that she was talking about how others were not pulling their own weight and everyone wondered why she was taking such an adversarial position. Mr. Thomas recorded that he had to tell Ms. Kopicko that she had her work list and that he had his because she seemed to want to keep track of who got how many cases. He also noted that he had explained to her that assigning

cases was his job as Supervisor. The e-mail stated that some of her hostility seemed to be directed at William Flax. It was explained to her that William Flax had been given permission to attend a workshop at the University of Delaware. Mr. Thomas recorded in State's Exhibit No. 6 that Ms. Kopicko came into his office and told him that she should be the well-equipped worker because she was the most qualified because she had a M.S.W. and she felt that William [Flax] was getting favoritism. Mr. Thomas recorded that Ms. Kopicko repeatedly told him that since she was hired William Flax had turned everyone against her but, according to Mr. Thomas, he had not found that to be the case by his observation and that of other staff. He also noted that the unit seemed to be functioning very well except for Diana who was alienating herself from the unit.

State's Exhibit No. 6 also memorializes Mr. Thomas' observation that Ms. Kopicko had stated that "We were all Social Workers" implying that she did not think they should have hired a Special Investigator. Mr. Thomas recorded that he had suggested that she go with the Special Investigator [Buster] on a field visit and Ms. Kopicko said that if he carried a gun she would not go with him. After the meeting Buster, according to Mr. Thomas' e-mail (State's Exhibit No. 6), indicated that he did not want to go out in the field with Ms. Kopicko and planned to talk with her about her being so adversarial towards the unit. It was also noted that the rest of the unit felt that she was putting them down and that she felt that she was the only competent Social Worker. Mr. Thomas also recorded that Ms. Kopicko had given him a social work supervisor book to read and a social work journal with a yellow note attached where she wrote, 'Ricky, would you be interested in this' with an arrow point to the book 'Skills for Effective Human Service Management'. (State's Exhibit No. 6)

Mr. Thomas stated that he had formatted some e-mail to Ms. Kopicko in a report-type format because of his experience with investigations. He also stated that he took her suggestion of reading material as an affront to his supervisor/manager skills.

State's Exhibit No. 7, was identified by Mr. Thomas as an e-mail he prepared and sent to Ms. Kopicko dated October 9, 1997⁵. Mr. Thomas testified that by this e-mail he was documenting his concerns and letting Ms. Kopicko know that there was a lot of negative feelings about her criticism of the Special Investigator. The e-mail recorded that Mr. Thomas had discussed with Ms. Kopicko her practice of note taking and how that made others feel, noting that she seems to feel a need to have the documentation to protect herself from being fired. Mr. Thomas recorded in State's Exhibit No. 7 that after this conference he noticed remarkable improvement in the way Ms. Kopicko was relating with other people and that he had not seen any further conflicts between her and the other workers. He also noted that she now has a case load and is rather busy. "She seems dedicated in her work and willing to learn, asks questions, takes direction, and shows appreciation for guidance." He recorded that although she may not be that well-liked by the unit he felt that they have also accepted her and were more mature in their dealings with her. Mr. Thomas also recorded that she was integrating with the unit on a professional level. (States's Exhibit No. 7)

Mr. Thomas explained to the Board that he had difficulty with the reports written by Ms. Kopicko particularly in the area of her documentation. He identified State's Exhibit No. 8 as an e-mail he prepared dated October 20, 1997 addressed to Ms. Kopicko recording performance concerns with her.⁶ In this two page e-mail, Mr. Thomas recorded concerns that Ms. Kopicko's assessments were not accurate or comprehensive, and that she was over rating incidents giving specific examples. He testified that she was not accurately rating risk because of the lack in gathering factual information. He testified that he met with Diana Kopicko on an ongoing basis and noted corrections for her both in writing and verbally. He stated that Ms. Kopicko was given the same case load as others but that her total case load had grown larger because she was not closing cases. He noted that

⁵Ms. Kopicko asserted she did not remember getting this e-mail. The Board admitted State's Exhibit No. 7.

⁶Ms. Kopicko objected to this exhibit claiming that she never received this e-mail. The Board received the exhibit over her objection.

all of the workers in the unit were new with one exception and they all had gone through the same training with Ms. Ford.

Mr. Thomas testified that State's Exhibit No. 9 was an e-mail he sent to Ms. Kopicko regarding the timeliness of reports and to help her to be more compliant to policy as well as to reinforce that if she had problems, to meet with him to conference and discuss any problems.⁷ Mr. Thomas observed that if cases take too long to investigate it presents a safety risk to children. He observed that cases have to be moved in a timely manner but at the same time the Risk Assessments must be thorough and they must be accurate.

Witness Thomas identified State's Exhibit No. 10 as an e-mail he had sent to Ms. Kopicko dated November 7, 1997 with copies to Ione Truesdale and Carla Benson-Green⁸. He stated that he had copied the e-mail to his Supervisors because of the safety concerns. He recounted a meeting with Ms. Kopicko about a specific case where he believed she had not put the information in the case record to document support of an unfounded determination. According to Mr. Thomas, an allegation of the home being cockroach infested was not addressed until he addressed it at a joint home visit which he and Ms. Kopicko had conducted. Mr. Thomas noted that such allegations are to be addressed to provide documentation to help with the determination of whether the case is founded or unfounded. In this e-mail, Mr. Thomas recorded that Mr. W (the husband) came into the office extremely upset and hostile. Mr. W was yelling, and slammed his hand down on the table. Mr. Thomas calmed him down and discussed his concerns with the cockroach situation. According to Mr. Thomas, (States' Exhibit No. 10) Mr. W gave him thorough information regarding the allegations which Mr. Thomas documented in the progress notes. Mr. Thomas noted that the case could now be closed as unfounded based on information provided by Mr. W which included an inspection report dated October 20, 1997 showing that the house had passed inspection. Mr. Thomas recorded in his

⁷Ms. Kopicko objected to State's Exhibit No. 9 stating that she had not gotten this e-mail. The Board receive the exhibit over her objection.

⁸Ms. Kopicko accepted this e-mail exhibit without objection.

e-mail that he was concerned that the handling of the case had presented safety risks. He observed that directions given by him had not been completed and Mr. W was very upset over the delay. Mr. Thomas also recorded that he met with Ms. Kopicko on November 7th and asked her if she told the family that she and Mr. Thomas had disagreed about the disposition of the case. Ms. Kopicko responded that he could find out by reviewing the progress notes. When pushed for a "yes" or "no" answer, Ms. Kopicko appeared to avoid the question and asked what difference it would make. Also, according to Mr. Thomas' e-mail, he had answered that he explained that Mr. W was a Vietnam Veteran on medication who may be suffering from post traumatic stress disorder and explained that safety was an issue, and Mr. W could have hurt someone. Ms. Kopicko's response was that he did not hurt anyone. Mr. Thomas recorded that Mr. W was very explosive when he came to the office and that Mrs. W told him in the conference room that her husband had a relapse because of the handling of this case and his medications had been increased. According to Mr. Thomas, while in his office Mr. W kept talking about jumping out of helicopters with his M-16 rifle and having military training and, while his anger was defused, it was still a volatile situation. Mr. Thomas recorded that Ms. Kopicko had eventually said that she told the family that she had recorded the case as unfounded but that her Supervisor wanted her to change it because of the presence of cockroaches. The e-mail noted that she had told them that she was in the process of making changes on the computer to get the case closed. When Mr. and Mrs. W came to the office they were very concerned that the case had not been resolved. Mr. W was threatening to talk to people who could get Mr. Thomas fired. Mr. Thomas also recorded that he felt as if Ms. Kopicko had the family on her side against him. He noted that they are both part of the same team and do not need to show division with clients. The e-mail also noted that although Supervisors make the final decision based on information provided to them by the workers the case decision is presented as a joint decision to the clients. Mr. Thomas continued in his e-mail to note that information about Mr. W's functioning should have been included in the Risk Assessment under parent force. He wrote that Ms. Kopicko had indicated that she knew about Mr. W being on medication, etc., but that he did not want to discuss it with her. Mr. Thomas

recorded in his e-mail that information that is unknown is rated higher in the Risk Assessment. He also noted that it did not appear to him that Ms. Kopicko grasped the seriousness of the situation and he noted that she made patronizing statements to him that he was the Supervisor and she would do whatever he said. Mr. Thomas also recorded that Ms. Kopicko had made these statements in the past and continued to demonstrate resistance to supervision. (State's Exhibit No. 10)

Mr. Thomas discussed certain hand written suggestions for change he had made to certain case entries prepared by Ms. Kopicko as reflected on Appellant's Exhibit No. 14. He noted that this exhibit consisted of parts of Risk Assessments and Case Progress notes and was not complete. He observed that his purpose in making the suggested changes was to educate Ms. Kopicko as to his expectations of how Risk Assessments should be done. Mr. Thomas observed that he did not want employees to have case conference notes for every time there was a meeting on a case with a Supervisor because it took time away from other important work like interviewing collateral sources. He noted that the Risk Assessment form is completed to determine the risk to the child and to determine if the family needs support services. According to Mr. Thomas, it is his responsibility to do a complete review and prepare a form with the final decision as a Supervisor. These forms are reviewed by the worker, the Supervisor, and occasionally by other Supervisors as a quality control measure. Also, clients can request a copy.

Referring to Appellant's Exhibit No. 14, Mr. Thomas noted that among the corrections he had noted was the requirement for documentation. One example was to have children examined for verification. Mr. Thomas testified that he also reviewed and suggested corrections to other worker's reports and put comments on them as a form of quality control.

Mr. Thomas identified State's Exhibit No. 11 as a copy of the Performance Review for Diana Kopicko which they signed on October 20, 1997 and Carla Benson-Green signed as reviewer on October 25, 1997. It notes no areas where her performance is distinguished or exceeds expectations, and it details specific performance deficiencies and unsatisfactory work, including concerns about her functioning as a team player and her alienation from others in the unit. It also noted concerns with

her case completions and her opposition to training and supervision. Also noted was her condescending attitude and isolation from the group.

Ms. Kopicko was afforded and took the opportunity to express in State's Exhibit No. 11 her disagreement with her evaluation. She stated that she felt that she did more than meet the expectations of the role of Senior Family Service Specialist as described in the principle accountabilities of the class title #79702. She noted that she felt that, as a professional, she was a productive part of the investigation team and that the evaluation presented a perception based on partial knowledge. Ms. Kopicko observed in her comments in State's Exhibit No. 11, "I wanted to share my perceptions from the first week of training but did not feel comfortable or safe. I have areas of concerns that are multi in nature. I would like to express my perceptions and feelings but I fear there would be a negative consequence affecting my employment here because I am on probation until January."

Mr. Thomas noted on the performance plan (State's Exhibit No. 11) that "Since there is a need for improvement, Ms. Kopicko and I will continue to have weekly case conferences and will continue to meet to address any areas of concern." He testified that he also had ongoing discussions with his Supervisors about Ms. Kopicko's performance. According to Mr. Thomas, Ms. Kopicko's performance did not improve.

Mr. Thomas identified State's Exhibit No. 12 as an e-mail he sent his Supervisors dated November 13, 1997 detailing his documentation regarding Ms. Kopicko's performance since her date of hire. In this five page single spaced correspondence Mr. Thomas records incidents and observations concerning Ms. Kopicko beginning on July 16, 1997 when she was hired as a permanent employee and goes through November 7, 1997.

Mr. Thomas testified that he corresponded with Ms. Kopicko on November 21, 1997 by memorandum advising her that he was recommending that her employment as a Senior Family Service Specialist be terminated due to her inability to satisfactorily perform the critical functions of the job constituting an unsatisfactory probationary period. (Appellant's Exhibit No. 6) Mr. Thomas told the

Board he had mixed feelings in making his recommendation noting that it was better if Ms. Kopicko could be retained because there were five months invested in her training but they were coming to the end of the probationary period, and needed to make the right decision. He testified that none of the other probationary employees at that time were let go.

On cross-examination, Mr. Thomas related that he had a Master's Degree in counseling from Liberty University which he acknowledged was a bible based course of study. He noted that it was not a theology type degree and it was a fully accredited university. Mr. Thomas did not recall Ms. Kopicko ever coming to him with a concern about homophobia in the investigating units. Mr. Thomas stated that he did not agree with the notion that a woman who was beaten was asking for it. He observed that he would not support such a position and did not believe anyone would want to be abused. He did not recall discussing the possibility of working with Ms. Kopicko toward his Master's Degree in Social Work but he did recall telling her that he wished to pursue such a degree, and noted that he is now enrolled in the Master in Social Services Program at Delaware Technical College. Mr. Thomas observed that while Ms. Kopicko had more training in social work, he had eleven years actual experience as a Family Service Specialist and was knowledgeable about systems. Mr. Thomas also testified that he felt that Ms. Kopicko was not competent for the job and that she did not assess risk accurately.

Mr. Thomas did not recall specifics of the case involving the child who was brought in by the police because he had been suspended from school and no one was available at his home. He stated that he did not accept this as a case because he determined there was no basis for proceeding with an investigation based on the absence of any allegations of abuse or neglect. According to Mr. Thomas, the fact that no one was home did not amount to an allegation of neglect that he believed justified opening an investigation. He observed that the change in the identity of the reporter from the police to the landlord was simply a mistake and it was the police who brought in the child.

Also on cross-examination, Mr. Thomas briefly discussed the case which Ms. Kopicko wanted to close and which he initially concluded was founded because he had personally observed

cockroaches in the home. Mr. Thomas noted that the father had admitted to him that the home was infested and so he wanted the case continued until the father came in and explained his attempts to deal with the infestation and brought documentation that the house had been treated. At that point Mr. Thomas closed the case. He and Ms. Kopicko agreed that the handling of this incident had unnecessarily added to the stress of the family. Mr. Thomas noted that he was required to sign off on every case in his unit and, until he signed off on a case, it was not final. He further observed that while he and the case worker worked together, the final decision was his.

Mr. Thomas also testified that in other cases, it was not clear that Ms. Kopicko had factually found the information she had included in her progress reports and, in one instance, a client had given him information which was inconsistent with what she had said before according to Ms. Kopicko. Mr. Thomas testified that in the case where the child was struck by the father, he wanted Ms. Kopicko to get additional information about the type and amount of alcohol consumed and whether the child was struck accidentally or intentionally. He testified that Ms. Kopicko had not properly done the documentation and he advised her to have the child examined concerning a scar on his back. He stated that a Risk Assessment is only as good as the facts collected and he did not recall seeing in Ms. Kopicko's notes that the father admitted he was an alcoholic. He also testified that her entry concerning the father's problem with alcohol was not verified in her interview notes and it appeared from nowhere so he was saying it was not verified. According to Mr. Thomas, the interview notes did not back up the statement and he could not find where it came from.

In discussing his disagreement with Ms. Kopicko over whether the child was at risk, Mr. Thomas testified that if all the information Ms. Kopicko was relaying was documented he would agree with her conclusion that the child was at risk. He indicated that the information should have been documented in her progress notes and in collateral interviews but that it was not. He testified that her reports needed to be clearer and more accurate, and observed that he needed to be able to look at the whole picture to make a determination. He reported that there were cases where he and Ms. Kopicko just did not agree. In one case she wrote that a child had red stains in a diaper where

it had been bleeding. Mr. Thomas stated that he told Ms. Kopicko to record just what the reporter reported. His instruction was based on his conversations with Ms. Kopicko and upon her statements to him of what had been reported. He noted that he and Ms. Kopicko had a conference about this situation and he had instructed her to write it down just as she had told him it had been reported.

Ms. Kopicko questioned Mr. Thomas concerning co-worker conflict and questioned whether he would have treated a male the way he treated her during the incident during training involving a raisin and Mr. Flax. Mr. Thomas noted that she had a conflict with Mr. Flax and on another occasion questioned why Mr. Flax had been allowed to attend training when he was assigned to be on coverage with her. She also complained that she was being given more cases but, according to Mr. Thomas, that was not the case. He stated that there was alienation between other workers and Ms. Kopicko which had been reported to him privately and which he had observed, and which he tried to correct.

On redirect, Mr. Thomas noted that case workers are required to prepare progress notes to document facts, and that Ms. Kopicko's facts did not always support her Risk Assessments. He also stated that to become a case worker one needs a Bachelor's Degree in certain disciplines such as counseling, psychology or criminal justice, and that a Master's Degree in Social Work is not required. Mr. Thomas stated that he had been working there for eleven years and was familiar with how to do reports. He reiterated that they are mandated to investigate all reports and the allegations need to be well documented.

According to Mr. Thomas, the basis for not keeping Ms. Kopicko in the position was her inability to follow directions, the level of accuracy of her Risk Assessments, and her inability to meet deadlines on cases. He noted that he did not delete any of her files and worked with her constantly both orally and in writing to attempt to improve her performance.

Carla Benson-Green, in her sworn testimony to the Board noted that she was the Assistant Regional Administrator for Kent County and Mr. Thomas' Supervisor during 1997. She was the Chairperson for the interview panel which hired H. Diana Kopicko into the position of Senior Family Services Specialist. Ms. Benson-Green testified further that Ms. Kopicko met the minimum

qualifications to be hired into the position. According to Ms. Benson-Green, Ms. Kopicko was given a performance plan which she signed and which had the job description attached. There were problems with Ms. Kopicko during the training period and these situations were discussed with Ms. Benson-Green. She testified that she directed her subordinate, Ricky Thomas, to deal directly with Ms. Kopicko and report back to her during their weekly meetings. Ms. Benson-Green stated that Mr. Thomas reported to her that he was having problems with Ms. Kopicko following his instructions and problems with her documentation. According to Ms. Benson-Green, Mr. Thomas had conferences with Diana Kopicko and explained to her what was needed to support her findings. Following the three month review of Ms. Kopicko' performance, she came to see Ms. Benson-Green for a conference. It was determined that Ms. Kopicko had a backlog of cases and was having problems compared with the other workers in getting cases processed, therefore she was taken off rotation which meant that she was not assigned additional cases. According to Ms. Benson-Green, this was intended to be a temporary situation.

Ms. Benson-Green also testified that Mr. Thomas had sent e-mails concerning Ms. Kopicko and it was apparent that she was having difficulty in assessing risks and that Mr. Thomas was having a difficult time supervising her. These problems were also discussed with Ione Truesdale, the Regional Administrator. Ms. Benson-Green stated that she agreed with Mr. Thomas that Ms. Kopicko had an unsatisfactory probation period. (See Appellant's Exhibit No. 6). According to Ms. Benson-Green, Mr. Thomas handled his supervisory responsibilities well and was on top of the performance issues with Ms. Kopicko, and tried to help her improve her performance.

On cross examination, Ms. Benson-Green noted that the principle accountabilities for the Senior Family Services Specialist had been rewritten after 1997. At that time there was a more generic approach to the classification and there was nothing specific for the investigative aspects that some workers performed. Ms. Benson- Green did not recall sitting in on an interview Ms. Kopicko conducted of a child whose mother Ms. Benson-Green knew, and vaguely recalled Ms. Kopicko stating that she would provide Ms. Benson-Green with information about the case the next day. Ms.

Benson- Green also could not recall stating that she was going to speak to the school officials about out of school suspensions for a child of that age. Ms. Benson-Green noted that would have been outside of her area. She also denied discussing with Ricky Thomas the abridging of that case. Ms. Benson-Green noted that the decision whether or not to further investigate a case is the Supervisor's decision. Ms. Benson-Green did not know whether there should have been further investigation because the child could not hold his bowels. She observed that she did not know what information Ms. Kopicko had shared with her Supervisor concerning this case and did not recall reviewing Ms. Kopicko's progress notes for this particular case, but she was aware that Ms. Kopicko believed that this case should have gone to investigation. Ms. Benson-Green recalled that Ms. Kopicko had gotten additional information about this case from school officials which should have been shared with her Supervisor. (Ms. Kopicko indicated that she could not put additional information in because the case was no longer accessible to her on the computer). Ms. Benson-Green acknowledged that with additional information it would have been possible that the case warranted further investigation. She acknowledged that Ms. Kopicko had spoken with her about the behavior of others in the unit which Ms. Kopicko viewed as unprofessional. Ms. Benson-Green also recalled telling Ms. Kopicko that if she was going to document her conversations she should do so accurately.

Ms. Benson-Green testified that only the "IT" persons (Information Technology) had the ability to delete files from the computer system. Mr. Thomas did not have this ability and could not change files which were not on his work list without having the individual's password. She did not know if Mr. Thomas had Ms. Kopicko's password.

Norwood Coleman, Sr., being sworn testified that he is a Human Resources Specialist III and the affirmative action officer. He has been at the Department since 1987. He identified State's Exhibit No. 14 as a copy of a Charge of Discrimination filed with the State Department of Labor by Ms. Kopicko against the Division of Services for Children, Youth, and Their Families alleging discrimination based upon her sex. The Board determined to take no further testimony concerning

either EEOC or Delaware DOL complaints which may have been filed by Ms. Kopicko after her employment was terminated.

After the conclusion of the State's evidence, the Board permitted Ms. Kopicko to introduce two letters of recommendations she had received subsequent to her termination from two individuals with whom she had worked at the Division of Family Services. One 1999 letter of recommendation noted that "Ms. Kopicko demonstrated notable client and child interviewing skills and excellent child risks assessment proficiency" (Appellant's Exhibit No. 20).

FINDINGS AND DISCUSSION

This appeal requires the Board to determine whether or not Ms. Kopicko, a probationary employee, was not retained in her position on the basis of improper discrimination against her based upon non-merit factors. Under the Administrative Procedures Act (29 Del. C. §10125(c)) and relevant case law (see *Hopson v. McGinnes*, 391 A.2d 187 (Del. 1978)), Ms. Kopicko, as the Appellant has the burden of convincing the Board by a preponderance of the evidence to sustain her claim and to rule in her favor.

The Board finds that the evidence presented does not support the view that Ms. Kopicko was terminated for impermissible non-merit factors. Rather, the evidence presented convincingly establishes that there were valid merit-based reasons which formed the basis for her non-retention as a Senior Family Service Specialist.

In her appeal, Ms. Kopicko asserts that she was terminated for non-merit factors specifically, that she was perceived as a threat to the status quo in the unit and because she was critical of her Supervisor(s) and the changes they instructed her to make to various reports she was required to prepare. Ms. Kopicko continues to believe that she is well qualified to perform as a Senior Family Services Specialist and that she is perhaps better qualified for this responsibility than some or all of those who were employed as her Supervisors.

Roxanne S. Ford, who was responsible for part of the formal training of Ms. Kopicko and other probationary employees, presented very professional and credible testimony about the concerns generated by Ms. Kopicko's behavior and demeanor during her new-worker training. Ms. Ford's analysis is compelling and insightful (See State's Exhibits No. 1 and No. 2).

Ricky D. Thomas, Ms. Kopicko's immediate Supervisor, also presented cogent credible testimony concerning his experiences with H. Diana Kopicko and documented his concerns with her ability to perform as expected in the position of Senior Family Service Specialist. In his five page single spaced submission to his Supervisors on November 13, 1997, Mr. Thomas outlined problems and concerns engendered by Ms. Kopicko's adversarial behavior, her disruptive demeanor and attitude, and also her inadequate investigative performance. Mr. Thomas' reservations about Ms. Kopicko's attitude and behavior with her unit are captured in his report to his superiors in State's Exhibit No. 11 where, among other things, he noted:

On September 17, 1997 we had a unit meeting breakfast. Ms. Kopicko arrived later and the unit was relaxing and enjoying the time together. After she arrived and began criticizing others, the mood soon shifted to one of stress and tension. Ms. Kopicko talked about how other people are not pulling their own weight and covering like they needed to. She was very adversarial towards the rest of the unit. Everyone in the unit told her that if she needed help all that she had to do was ask. Ms. Kopicko seemed upset with Mr. Flax because I had given him permission to attend a workshop in the afternoon last Friday. She has told me that she was the most qualified in the unit and should get the well-equipped worker. She also complained to me about how I assign cases and seems to indicate that she feels that I am not following rotation. After the unit meeting I was approached by Mr. Richardson, retired state police officer and special investigator. He was concerned about Ms. Kopicko's adversarial role at the meeting and expressed that at the next meeting if she continues this behavior he will walk out. He said that he did not want me to be offended and to know that it was not me. Everyone in the unit was visibly upset by Ms. Kopicko's behavior. After one or two days, another worker, Ms. Whitt, let Ms. Kopicko know that she came across as pious to everyone. Both Ms. Kopicko and Ms. Whitt verified this incident. (See document dated September 18th) (State's Exhibit No. 11, page 2)

Mr. Thomas' recorded observations concerning Ms. Kopicko's completion of Risk Assessments is also enlightening and exemplifies his view of some of the shortcomings in her work product. It is very apparent that Ms. Kopicko did not produce a level of documentation which Mr. Thomas believed was necessary for him to exercise his ultimate responsibility to determine whether a case was founded or unfounded. (See State's Exhibit No. 11). Ms. Kopicko, on the other hand, could not understand how someone with Mr. Thomas' eleven years of experience could fail to agree

with her determinations. (See, Appellant's Exhibit No. 7). This divergence in views, coupled with Ms. Kopicko's attitude about being the only case worker with a Master's in Social Work Degree (MSW), colored and contributed to her difficulties with her immediate Supervisor and co-workers.

In State's Exhibit No. 11 (Mr. Thomas' report to his Supervisors concerning Ms. Kopicko), he, among other things, recorded some of the basis for his concerns about the quality of Ms. Kopicko's determinations relating his perception of her lack of accuracy, the incompleteness of her investigations before making a judgement, and also her inability to meet deadlines in the following terms:

I have weekly case reviews with all of my workers. I also have weekly unit meetings and monthly breakfasts. All but Ms. Kopicko are processing their cases and meeting their deadlines. They are also gathering the risk information necessary for the completion of the risk assessment. I am concerned that her constant note-taking has kept Ms. Kopicko from meeting her deadlines for assessments. This note-taking issue was discussed with her on September 25, 1997, but she continues to do as she pleases. I have gone over how to do the risk assessment with her numerous times and have discussed this with Ms. Ford. Ms. Ford indicated that they went over how to do risk assessments extensively in training. In many of her progress notes on her cases Ms. Kopicko appears to quote the person but does not seem to have any insight, or understand why something was said. She appears to take information out of context. Ms. Kopicko has done this with me on several occasions. One example was on a hotline report. Ms. Kopicko wrote the baby was bleeding. I explained to her how important it is to write the complaint accurately. She indicated that the reporter was indicating that the baby had a bad diaper rash and the rash may have been bleeding. She said that that is not what he said. She was very resistant to changing this hotline to reflect more accuracy. I explained that she was making it urgent by writing that he was bleeding but not explaining where from, how, etc. I have had problems with her giving accurate accounts of allegations. She does not appear to be learning from me nor the rest of the workers who were supposed to be her mentors. (State's Exhibit No. 11, Page 3).

The evidence supports, and the Board finds that Ms. Kopicko unfortunately came into her probationary training with a "know-it-all" attitude. Not only did she not pay attention or participate in a positive manner during her training but was, in fact, a negative influence and from the beginning of her training demonstrated a judgmental and somewhat insensitive and condescending attitude toward both her co-trainees and the instructor.

It is obvious that Ms. Kopicko is a person of very strongly-held beliefs who demonstrated, during training and afterward during her probationary period, a propensity to be judgmental and to be quick to draw conclusions without, in the view of her Supervisors, full consideration of the facts

and circumstances. This behavior is consistent with her demonstrated attitude that because of her Master's Degree she was fully qualified for the job without the necessity for any training or practical experience in the day-to-day requirements of the position. Her behavior during her formal training period was credibly and convincingly characterized as lacking in regular and sensitive participation. Ms. Ford, who was responsible for new worker training, presented articulate and convincing testimony concerning Ms. Kopicko's behavior during the training period. Also, Ms. Ford's early observations of Ms. Kopicko were professional and insightful. She noted:

"Diana continues to appear bored and inattentive during training. From time to time she does nod her head but it is as if she is telling me I am getting it right. She rarely asks any questions, which goes along with her general attitude toward training – that being that she already knows everything and more that she needs to know to do this job. I am quite concerned that in fact she does not know what it will take to do this job. Her continued need to appear as the wisest of them all only serves to isolate her from the rest of her fellow trainees." (State's Exhibit No. 1).

The evidence presented in this hearing fully supports the conclusion that the workers and supervisors responsible for performing and reviewing Risk Assessments for children and families have a very difficult job. It is a responsibility that requires that great care be exercised because of the serious consequences of an improper or erroneous determination. It should be noted that there are risks associated with unnecessary delays in processing cases as well as with processing them with inaccurate or incomplete information and documentation. It is also apparent that Supervisor Thomas, with his eleven years of on-the-job investigative experience tended to focus on the presence of adequate documentation including information from collateral sources as the basis on which he made his determinations as a Supervisor that a case was either founded or unfounded. Ms. Kopicko, on the other hand, was less skilled in documentation, less experienced in investigation, and was willing to make her judgments based on her instincts, her suspicions, and on her formal education and limited experience. Ms. Kopicko's education credentials were superior to the other workers in the unit and even to those of her Supervisors but the evidence establishes that her investigative skills and her ability to utilize the established criteria for making risk assessments was not at the expected level. The fact that she did not make progress in this area during either her training or probation period was

caused in part because of the "know-it-all" attitude with which she commenced her employment. Ms. Kopicko is justifiably proud of her Master's Degree in Social Work, but the evidence is compelling that her degree and limited professional experience at the time of her hiring did not equip her to meet the responsibilities of, and expectations for, the position into which she was hired on a probationary basis. She became apprehensive and fell behind in processing her cases. She had difficulty in obtaining and documenting full and accurate information from sources, and her notes did not inspire confidence in her Supervisor to the point where he was willing to make founded or unfounded determinations based on her investigatory activities or reports. It is evident that Ms. Kopicko soon became defensive and began "journaling", or trying to make a record to cover and explain what her Supervisors perceived as shortcomings which resulted in her getting further and further behind in completing appropriate documentation in her assigned cases.

Ms. Kopicko appears to the Board as a caring individual who believes strongly in the mission of protecting children who are potentially at risk. She is a caring person and for this she is to be commended. Unfortunately, the position into which she was hired required her to carefully document her risk assessments with focus, and sufficiently to enable her Supervisor to make final determination on a case with confidence that the facts had been correctly gathered and assessed. From the testimony of Mr. Thomas, it is evident that Ms. Kopicko was prepared to make assessments with perhaps a lesser level of justification or documentation, and that she simply could not, and still can not, fathom how anyone could not see it as she did. The reality is that in some cases her instincts may have been good when her documentation was inadequate. This can and perhaps may have resulted in cases being determined to be unfounded when a different result would have been reached with correct and accurate documentation. The opposite is, of course, also true as the incident with the cockroaches demonstrates.

The Board finds that Ms. Kopicko was resistant to training and supervision. She fell behind in her case processing and was an irritant within the unit because of her attitude and behavior. Her protestations that she was never shown the areas where she had to improve and was not given

sufficient instruction or supervision in the proper performance of her job are not convincing. Her hearing exhibits, as well as those of the State, are full of notes of conferences between Ms. Kopicko and her Supervisor about her job performance. She admittedly had difficulty with the computer system and admittedly did not grasp the methods for finalizing cases until almost the end of her employment in December of 1997 (Appellant's Exhibit No. 5). The evidence is convincing that Ms. Kopicko was given a level of counseling, training, and supervision sufficient to meet the expectations embodied in Merit Rule No.11,0400 and Merit Rule 16.3.

Ms. Kopicko was also given the appropriate performance reports and adequately warned during her probationary period concerning the areas where improvement was expected if she was to retain the position at the end of the probationary period. Her extensive e-mail correspondence with her Supervisors, up to and including the Secretary of the Department, evidence that she saw it coming and defended by attacking the case decisions of her immediate Supervisors.

Ms. Kopicko's assertions that she did not fit in well with others in the unit because of their unprofessional behavior is likewise unavailing. A more efficacious response to perceived unprofessional behavior by a co-worker is to report it to Supervisors and insist that appropriate corrective action be taken rather than to take it upon one's self to become confrontational and assume a supervisory attitude or demeanor.

The Board finds that Ms. Kopicko, throughout her probationary period, evidenced a continuing resistance to training and supervision and did not follow instructions reasonably designed to increase the accuracy and completeness of her documentation. These factors adversely affected the quality of her Risk Assessments which were performed in a manner unsatisfactory to the reasonable expectations of her Supervisors. These factors also contributed to her inability to keep up with her caseload to the point where she had to be removed from case rotation. The Board finds that these are all merit as opposed to non-merit factors and they formed a reasonable basis for the determination that the performance during the probationary period had been unsatisfactory.

CONCLUSION

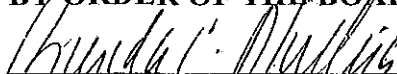
Ms. Kopicko has failed to meet her burden to establish by a preponderance of the evidence that there was a violation of the Merit Rules by discrimination against her based upon the application of non-merit factors which resulted in her termination of employment within the probationary period. The action of the appointing authority in terminating Ms. Kopicko's probationary employment is upheld and her appeal denied.

ORDER

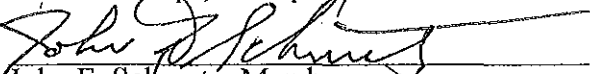
The Board, by unanimous decision of the undersigned members, for the reasons stated above, denies the appeal of H. Diana Kopicko and upholds the action of the appointing authority in terminating her employment prior to the conclusion of her probationary period.⁹

IT IS SO ORDERED.


BY ORDER OF THE BOARD this 26th day of September, 2002.



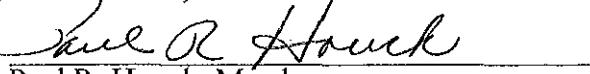
Brenda Phillips, Chairperson



John F. Schmutz, Member



John W. Pitts, Member



Paul R. Houck, Member

APPEAL RIGHTS

If you wish to appeal this decision please be aware that there are strict time limits for such appeals.

⁹The Board notes that after the hearing on this matter concluded, Ms. Kopicko has sent additional correspondence to the Board advising of her intent to appeal the Board's decision and attempting to present further arguments and information. The Board has read her August 26th and September 3rd correspondence addressed to "Dear MERB Representative" and has determined that nothing presented therein provides a basis for reopening or further hearings concerning this appeal.

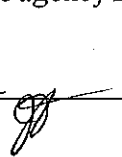
29 Del. C. § 10142 provides:

(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. (Emphasis added.)

(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: 9/27/02 

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Agency's Representative

Board Counsel