

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

NWAYNNA CLARK,)	
Employee/Grievant,)	
)	DOCKET No. 15-06-628
v.)	ORDER OF DISMISSAL
DEPARTMENT OF HEALTH AND SOCIAL)	
SERVICES, DIVISION OF PUBLIC HEALTH,)	
Employer/Respondent.)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the Board) at 9:00 a.m. on Thursday, August 20, 2015, at the Public Service Commission, Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

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

APPEARANCES

Rae Mims
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator
MERB

Kevin Slattery
Deputy Attorney General
on behalf of the Department of Health
and Social Services

BACKGROUND

A hearing was convened by the Merit Employee Relations Board (MERB) on Thursday, August 20, 2015, to consider the merit grievance of Nawayna Clark (Grievant) against the Department of Health and Social Services, Division of Public Health.

The Grievant filed a dual appeal with the State Office of Human Resources Management (HRM) and the Merit Employee Relations Board (MERB) on June 1, 2015, asserting she had been demoted without just cause. By letter dated June 2, 2015, asserting she had been demoted without just cause. By letter dated June 2, 2105, the Grievant was advised by MERB that her appeal would be heard first by HRM, and that if she was not satisfied with the outcome at that level, she could choose to continue to pursue the appeal to hearing before MERB.

The HRM Hearing Officer issued his decision on July 10, 2015, denying the grievance. Upon receipt of a copy of the decision on July 13, 2015, the MERB administrator forwarded it to the Grievant and requested she advise MERB by July 29, 2015, as to whether she wished to continue her appeal. The letter was sent by certified mail and receipt was acknowledged on July 16, 2015. The Grievant did not respond as requested by July 29.

A second and final letter was sent to the Grievant (by certified mail and email) and the Department on August 7, 2015, which advised the parties the Board had scheduled this appeal for consideration at its August 20, 2015 meeting. The letter specifically noted that, absent communication from the Grievant, the Board would consider her appeal to have been abandoned and would move to dismiss.

A quorum of four members of the MERB met to consider a Motion to Dismiss for abandonment of the grievance on Thursday, August 20, 2015. The Grievant was neither present

nor represented at the hearing.

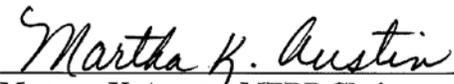
DISCUSSION

Delaware courts have held that when a party appeals to an administrative board but does not appear for the hearing, the board may dismiss the appeal for failure to prosecute. *Ringer v. Dept. of Transportation*, Nos. 06-06-360/361 (Sept. 24, 2008), (citing *Han v. Red Lobster*, 2004 WL 1427008, at p. 1 (Del. Super. Ct., June 25, 2004).

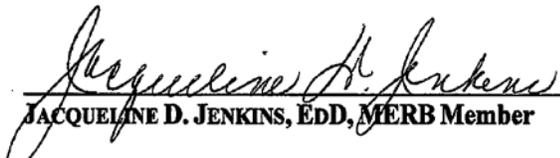
The Grievant failed to appear to be heard or to respond to specific and repeated requests to notify the Board that she wished to continue her appeal. Consequently, this appeal is dismissed.

DECISION AND ORDER

It is this 27th day of August, 2015, by a unanimous vote of 4-0, it is the Decision and Order of the Board to dismiss the Grievant's appeal for failure to appear and for abandoning the grievance.


MARTHA K. AUSTIN, MERB Chairwoman


PAUL R. HOUCK, MERB Member


JACQUELINE D. JENKINS, EDD, MERB Member


VICTORIA D. CAIRNS, MERB Member

APPEAL RIGHTS

29 *Del. C.* §5949 provides that the grievant shall have a right of appeal to the Superior Court on the question of whether the appointing agency acted in accordance with law. The burden of proof on any such appeal to the Superior Court is on the grievant. All appeals to the Superior Court must be filed within thirty (30) days of the employee being notified of the final action of the Board.

29 *Del. C.* §10142 provides:

- (a) Any party against whom a case decision has been decided may appeal such decision to the Court.
- (b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.
- (c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.
- (d) The court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Mailing date: August 27, 2015

Distribution:

Original: File

Copies: Grievant
Agency's Representative
Board Counsel
MERB Website