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BEFORE THE MERIT RELATIONS BOARD

OF THE STATE OF DELAWARE

CHRISTOPHER G. GIBSON,	)	
	)	
Employee/Grievant,	)	
	)	**DOCKET No. 07-12-410**
v.	)	
	)	
VIOLENT CRIMES COMPENSATION BOARD,	)	**DECISION AND ORDER**
	)	
Employer/Respondent.	)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board ("the Board") on February 27, 2008 at 10:00 a.m. at the Margaret M. O'Neill Building, Suite 213, 410 Federal Street, Dover, DE 19901.

BEFORE John F. Schmutz, Substitute Chair, Joseph D. Dillon, and Martha K. Austin, Members, a quorum of the Board pursuant to 29 *Del. C.* §5908(a).

APPEARANCES

W. Michael Tupman, Esquire
Deputy Attorney General
Counsel to the Board

Jean Lee Turner
Administrative Assistant to the Board

Christopher G. Gibson *pro se*

Kevin R. Slattery, Esquire
Deputy Attorney General
on behalf of the Violent Crimes
Compensation Board

SUMMARY OF THE EVIDENCE

The grievant, Christopher G. Gibson, did not offer any exhibits into evidence and did not call any witnesses. He argued on his own behalf in opposition to the employer's motion to dismiss.

The Violent Crimes Compensation Board ("VCCB") did not call any witnesses but relied on oral argument of counsel. The VCCB attached four exhibits to its motion to dismiss: Mr. Gibson's Merit Grievance Form dated January 19, 2007 (Tab A); e-mail dated February 7, 2007 from Ms. Gertrude Burke to Mr. Gibson (Tab B); Step Three Grievance Decision dated October 29, 2007 (Tab C); and Mr. Gibson's notice of appeal to the Board dated December 19, 2007 (Tab D).

FINDINGS OF FACT

Mr. Gibson dated his Merit Grievance form January 19, 2007. He attached to that grievance a memorandum dated January 22, 2007 [1] to Patrician Diienno, Human Resources Manager, listing a long chronology of events at work dating back to July 2005. The last item on the list was January 4, 2007: "Gibson and employee Latanya Bailey observed employee Keisha Pascali wearing black jeans and a black suede jacket. [Ms.] Burke issued Gibson a reprimand for Business attire."

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[1] The Board does not understand how Mr. Gibson filed a Step 1 grievance on January 19, 2007 attaching a memorandum dated three days later. If in fact Mr. Gibson did not file the grievance until January 22, 2007, then clearly the grievance is time-barred.

Mr. Gibson contended that he did not receive actual notice of the reprimand from Ms. Burke until January 5, 2007 so he timely filed his Step 1 grievance within fourteen days.

CONCLUSIONS OF LAW

Merit Rule 18.6 provides:

> **Step 1. Grievants shall file, within 14 calendar days of the date of the grievance matter or the date they could reasonably be expected to have knowledge of the grievance matter, a written grievance which details the complaint and relief sought with their immediate supervisor.**

Merit Rule 18.4 provides:

> **Failure of the grievant to comply with time limits shall void the grievance.**

Under the Merit Rules, a grievant's obligation to file a timely appeal at each step of the grievance process "is jurisdictional." *Cunningham v. Department of Health & Social Services*, Civ.A. No. 95A-10-003, 1996 WL 190757, at p.2 (Del. Super., Mar. 27, 1996) (Ridgely, Pres. J.). Where the deadline has "passed, the Board had no jurisdiction to hear Appellant's grievance." *Id.* "'[A]ppellant's pro se status does not excuse a failure to strictly comply with the jurisdictional requirements of [the Merit Rules].'" *Id.* (quoting *Gibson v. State*, No. 354, 1994, ORDER (Del. 1994)).

"The burden of proof on any such appeal to the Board . . . is on the employee." 29 *Del. C.* §5949(b). "[T]he statutory plan places the burden upon an employee in an appeal to the [Board]. In other words, on such an appeal, an employee must present evidence sufficient to rebut the presumption that the [agency's action] was correct." *Hopson v. McGinnes*, 391 A.2d 187,

188 (Del. 1978).

The Board concludes as a matter of law that Mr. Gibson did not meet his burden of proving that he filed a timely Step 1 grievance with his employer. All of the events listed in the the chronological history of events attached to his grievance -- with the possible exception of the last entry on January 4, 2007 -- took place more than fourteen days prior to the date of his Step 1 grievance (January 19, 2007).

Mr. Gibson alleges that his supervisor, Ms. Burke, reprimanded him for wearing inappropriate attire to work on January 4, 2007. The Board believes that is the date of the "grievance matter" for purposes of Merit Rule 18.6 and the fourteen calendar period for filing a Step 1 grievance started to run on January 4, 2007. Mr. Gibson did not file his Step 1 grievance until January 19, 2007, fifteen days after the grievance matter.

Mr. Gibson contended that the fourteen-day time period did not begin to run until January 5, 2007 -- the day he received actual notice of the reprimand from Ms. Burke for inappropriate attire -- because he could not reasonably have been expected to know about the reprimand until he had actual notice. The Board concludes as a matter of law that Mr. Gibson has not met his burden of proof on this issue. He did not provide the Board with any documentation regarding his alleged reprimand. Without such evidence, the Board has no way of knowing for sure the date Mr. Gibson may have been reprimanded, or the date when he received notice (for example, by initialing or signing receipt of the reprimand).

It is possible that Ms. Burke cited Mr. Gibson for inappropriate attire on January 4, 2007 but did not write up a reprimand until the next day. Or, Ms. Burke may have given Mr. Gibson an oral reprimand upon observing his inappropriate attire on January 4, 2007. In either scenario,

Mr. Gibson had knowledge of the grievance matter as of January 4, 2007 and did not file his Step 1 grievance until January 19, 2007, fifteen days later.

The Board concludes as a matter of law that Mr. Gibson did not file a timely Step 1 grievance within fourteen calendar days of the grievance matter. Under Merit Rule 18.4, "[fa]ilure of the grievant to comply with time limits shall void the grievance." Accordingly, the Board does not have jurisdiction to hear Mr. Gibson's appeal.

DECISION AND ORDER

It is this 26th day of March, 2008, by a unanimous vote of 3-0, the Decision and Order of the Board that the Grievant's appeal is denied.

John F. Schmutz
Substitute Chair

Martha K. Austin
Member

Joseph D. Dillon
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's 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.
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> (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: March 27, 2008

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