

BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE

LOUIS LaSORTE,)	
)	
Employee/Grievant,)	
)	DOCKET No. 10-09-481
v.)	
)	DECISION AND ORDER
DEPARTMENT OF NATURAL RESOURCES)	
AND ENVIRONMENTAL CONTROL,)	
)	
Employer/Respondent.)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the Board) at 9:30 a.m. on December 2, 2010 at the Delaware Commission of Veterans Affairs, Robbins Building, 802 Silver Lake Boulevard, Suite 100 Dover, DE 19904.

BEFORE Martha K. Austin, Chair, John F. Schmutz, Paul R. Houck, Victoria D. Cairns, and Jacqueline Jenkins, a quorum of the Board pursuant to 29 *Del. C.* §5908(a).

APPEARANCES

W. Michael Tupman
Deputy Attorney General
Legal Counsel to the Board

Kevin R. Slattery
Deputy Attorney General
on behalf of the Department of Natural Resources
and Environmental Control

BRIEF SUMMARY OF THE EVIDENCE

The Board did not hear any witness testimony but heard legal argument by the Department of Natural Resources and Environmental Control (DNREC) on its motion to dismiss this appeal for lack of jurisdiction. The employee/grievant, Louis LaSorte, did not file an opposition to the motion to dismiss and did not appear for the hearing.

FINDINGS OF FACT

LaSorte worked for DNREC until March 17, 2010 when he went on short-term disability leave. His short-term disability benefits expired after 183 days (on September 16, 2010). He has been on long-term disability leave since then and is no longer a State employee.

CONCLUSIONS OF LAW

The Board concludes as a matter of law that it does not have jurisdiction to hear LaSorte's appeal of a disability termination "because such jurisdiction is vested exclusively with the State Employee Benefits Committee under the Disability Insurance Program." *Benson v. Department of Transportation*, MERB Docket No. 07-12-407, at p.5 (June 19, 2008) (citing *Helper v. Department of Correction*, MERB Docket No. 07-02-381 (Aug. 20, 2007)).

"The Disability Insurance Program is a comprehensive remedial scheme governing disability benefits to participating employees. Absent a clear statutory provision to the contrary, the Board does not believe that it has jurisdiction to hear an appeal of a termination based on disability because such appeals are the exclusive provenance of the State Employee Benefits Committee." *Benson*, at


p.5 (citing 29 *Del. C. Ch. 52A*).

DECISION AND ORDER

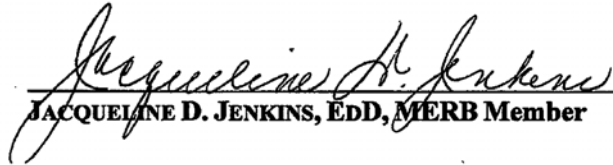
It is this 6th day of **December** 2010, by a unanimous vote of 5-0, the Decision and Order of the Board to dismiss LaSorte's appeal for lack of jurisdiction.


MARTHA K. AUSTIN, MERB Chairwoman


VICTORIA D. CAIRNS, MERB Member


JOHN F. SCHMUTZ, MERB Member


PAUL R. HOUCK, MERB Member


JACQUELINE D. JENKINS, EDD, 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'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.
- (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: **December 6,** 2010

Distribution:

Original: File

Copies: Grievant

Agency's Representative

Board Counsel

OMB/HRM