

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

CHARLES DODSON,	)	
	)	
Employee/Grievant,	)	
	)	DOCKET No. 05-12-346
v.	)	
	)	DECISION AND ORDER
DEPARTMENT OF CORRECTION,	)	
	)	
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 September 20, 2012 at the Public Safety Commission, Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

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

APPEARANCES

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

Deborah L. Murray-Sheppard
Board Administrator

PROCEDURAL HISTORY

On February 28, 2007, the Board (comprised of Brenda C. Phillips, Chair, John F. Schmutz, Joseph D. Dillon, and Paul R. Houck, Members) issued a Decision and Order concluding that the Department of Correction “committed a gross abuse of discretion in violation of Merit Rule 18.5 in its decision not to select Mr. Dodson for a lateral transfer to the Department’s Court and Transportation Unit.” As a remedy, the Board ordered the DOC “to place Corporal Dodson in the next available court and transportation unit position.”

The DOC appealed to the Superior Court. The DOC argued that the Board lacked jurisdiction over the grievance because the position for which the employee/grievant, Charles Dodson (Dodson), applied was a lateral transfer and not a promotion.

In an Order dated November 30, 2007, the Court reversed and remanded the case to the Board “for greater clarification of its reasoning that Rule 18.5 applies to the facts of this case. . . . [I]f the Board finds that the facts of this case indicate that [Dodson] was being promoted thus making Rule 18.5 applicable, [the Board] should specifically articulate the basis of that decision including whether the changes in work environment, responsibility and supervision makes this matter a promotion in spite of [Dodson’s] lateral move due to his rank.”¹

According to the DOC, Dodson retired on April 1, 2008 and moved out of state. Dodson did not provide the Board with a forwarding address. The Board Administrator has tried to contact Dodson repeatedly by coordinating with the Pension Office to send notices with his pension checks, but he has not responded.

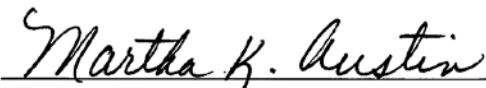
¹ *Department of Correction v. Dodson*, C.A. No. 07A-03-013-WCC, at p.5 (Del. Super., Nov. 30, 2007).

Dodson claimed that the DOC should have selected him from among other candidates for a lateral transfer. If the position he applied for would have been a purely lateral transfer, then the Board would not have jurisdiction to hear his grievance. If in fact it was a promotion, any remedy that Dodson might have been seeking from the Board is now moot because he has retired from the DOC.

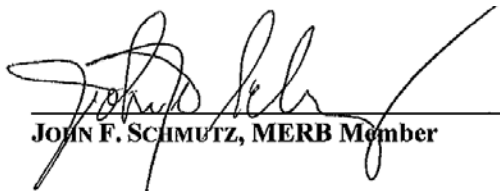
Based on this procedural history, the Board finds that Dodson has abandoned his grievance. To conduct any further fact-finding in this case would serve no purpose other than to render an advisory opinion on events that occurred more than seven years ago. The Board declines to do so.²

ORDER

It is this 24th day of **September, 2012**, by a unanimous vote of 5-0, the Decision and Order of the Board to dismiss Dodson's appeal for failure to prosecute and to vacate the Board's Decision and Order dated February 28, 2007.

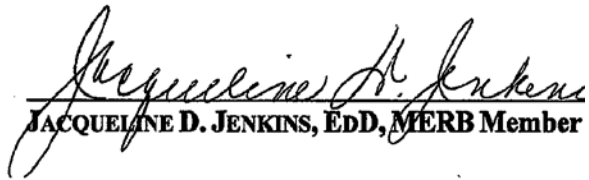


MARTHA K. AUSTIN, MERB Chairwoman



JOHN F. SCHMUTZ, MERB Member

² The procedural posture of the case is further complicated by the passage of time. Two of the four Board members who participated in the earlier Decision and Order (Phillips and Dillon) are no longer on the Board. Members Schmutz and Houck who did participate do not constitute a quorum. For the current Chair (Austin) or one of the newer members (Jenkins and Cairns) to participate in another evidentiary hearing, they would have to review the transcript and record from the November 29, 2006 evidentiary hearing.


JACQUELINE D. JENKINS, EDD, MERB Member


PAUL R. HOUCK, 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: **September 24**, 2012

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Agency's Representative
Board Counsel