

BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE

CONNIE OLSEN,)	
)	
Employee/Grievant,)	
)	DOCKET No. 11-04-518
v.)	
)	
DEPARTMENT OF SERVICES FOR)	
CHILDREN, YOUTH AND THEIR)	DECISION AND ORDER
FAMILIES,)	
)	
Employer/Respondent.)	

After due notice of time and place this matter came to a hearing before the Merit Employee Relations Board (the Board) at 9:15 a.m. on March 1, 2012 at the Public Service Commission, Cannon Building, 861 Silverlake Boulevard, Dover, DE 19904.

BEFORE Martha K. Austin, Chair, John F. Schmutz, Dr. Jacqueline Jenkins, and Victoria D. Cairns, 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

Kevin R. Slattery
Deputy Attorney General
on behalf of the Department of Services
for Children, Youth and Their Families

BRIEF SUMMARY OF THE EVIDENCE

The Board heard legal argument on the motion by the Department of Services for Children, Youth and their Families (DSCYF) to dismiss the appeal of the employee/grievant, Connie Olsen (Olsen), for lack of jurisdiction. Olsen did not file a response to that motion, and neither Olsen nor her counsel of record (Roy S. Shiels, Esquire) appeared for the hearing. The Board Administrator called Mr. Shiels' office but no one knew where he was or how to contact him. After waiting fifteen minutes, the Board went forward with the hearing.

DSCYF attached to its motion to dismiss four documents: Olsen's Employee Performance Review for the period January 1-December 31, 2012 (Tab "A"); Step Two Grievance Decision dated April 25, 2011 (Tab "B"); Olsen's Employee Performance Review for the period January 1-December 31, 2010 (revised) (Tab "C"); and Step Three Grievance Decision dated July 21, 2011 (Tab "D").

FINDINGS OF FACT

For Olsen's first performance review for January 1-December 31, 2010, she received an overall rating of "Needs Improvement." Olsen filed a grievance. At Step Two, the Hearing Officer decided that Olsen's "performance rating should be changed to Meets Expectations to reflect performance based on the first half of the year and performance deficiencies noted by her new Administrator the latter part of the year."

DSCYF revised Olsen's 2010 performance review to give her an overall rating of "Meets Expectations."

CONCLUSIONS OF LAW

“Standing of a classified employee to maintain a grievance shall be limited to an alleged wrong that affects his or her status in his or her present position.” 29 Del. C. §5943(a).

The Board concludes as a matter of law that Olsen’s overall rating of “Meets Expectations” in her revised 2010 performance review did not affect her status in her position of Administrative Specialist II. With that rating, she remained eligible for promotion and pay raises. Her performance review did not have any adverse effect on her position.

The Board concludes as a matter of law that by statute Olsen does not have standing to grieve her revised 2010 performance review and that the Board does not have jurisdiction over her appeal.

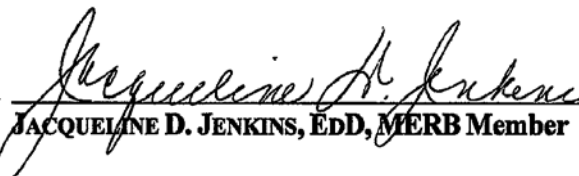
DECISION AND ORDER

It is this **5th** day of March, 2012, by a unanimous vote of 4-0, the Decision and Order of the Board to dismiss Olsen’s appeal for lack of jurisdiction.


MARTHA K. AUSTIN, MERB Chairwoman


JOHN F. SCHMUTZ, MERB Member


VICTORIA D. CAIRNS, 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: **March 5, 2012**

Distribution:

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Agency's Representative
Board Counsel
... OMB/HRM