

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

GWENDOLYN SCOTT-JONES,)	
)	
Employee/Grievant,)	
)	DOCKET No. 13-01-576
v.)	
)	DECISION AND ORDER
DEPARTMENT OF HEALTH AND SOCIAL)	
SERVICES,)	
)	
Employer/Respondent.)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the Board) at 9:10 a.m. on June 20, 2013, at the Public Service Commission, Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

BEFORE Martha K. Austin, Chair, John F. Schmutz, Esq., 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

Laura L. Gerard
Deputy Attorney General
on behalf of the Department of Health
and Social Services

B. Brian Brittingham, Esquire
on behalf of Employee/Grievant
Gwendolyn Scott-Jones

BACKGROUND

A hearing was convened on Thursday, June 20, 2013, to hear the Agency's Motion to Dismiss the appeal of Gwendolyn Scott-Jones ("Grievant") against the Department of Health and Social Services ("Department"). The Grievant was employed by the Department prior to her voluntary resignation on or about August 22, 2012. In her appeal the Grievant alleges the Department violated Merit Rule 2.1 by not approving an alternate work schedule and not allowing her to change to part-time status, due to her race and gender.

On or about May 20, 2013, the Department filed a Motion to Dismiss the appeal asserting the Grievant failed to allege facts sufficient to constitute a violation of Merit Rule 2.1. The Department further alleged the Merit Employee Relations Board ("Board") lacked jurisdiction to consider the appeal because the Grievant is no longer a State employee; consequently she lacks standing to bring the appeal and the issue raised is moot.

A copy of the Department's Motion to Dismiss was forwarded to the Grievant by email and U.S. postal service on May 20, 2013. The Grievant was provided the opportunity to file a written response. By letter dated June 13, 2013, the Grievant advised she elected to forego a formal response in opposition to the Agency's motion.

The Board concludes as a matter of law that it does not have subject matter jurisdiction over this appeal because it became moot when the Grievant voluntarily resigned from State employment. *Reyes v. Dept. of Finance*, MERB Docket No. 12-09-559 (March 12, 2013).

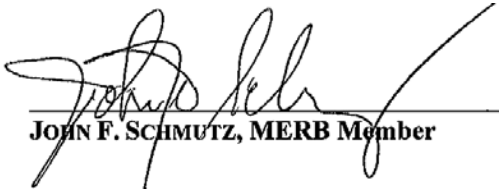
The general rule is that a case becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." 588 A.2d at 1064 (quoting *United States Parole Commission v. Geraghty*, 445 U.S. 388, 396 (1980)). A controversy must remain alive through the course of appellate review. *Moriarty*, 588 A.2d at 1064. Even though there was once an actual controversy, a change in the facts can render an issue or entire case moot. *Id. Reyes*, p. 4.

DECISION AND ORDER

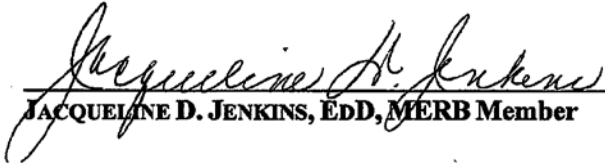
It is this 27th day of June, 2013, by a unanimous vote of 5-0, the Decision and Order of the Board to dismiss Ms. Scott-Jones appeal for lack of subject matter jurisdiction. Because there is no longer any actual case or controversy, her grievance is moot.


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: **June 27, 2013**

Distribution:

Original: File

Copies: Grievant

Agency's Representative

Board Counsel