

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

<b>JAY LYNCH,</b>	)	
	)	<b>DOCKET NO. 17-10-679</b>
Employee/Grievant,	)	
	)	
<b>v.</b>	)	
	)	
<b>DEPARTMENT OF HEALTH AND SOCIAL</b>	)	<b>DECISION AND ORDER</b>
<b>SERVICES, DIVISION OF CHILD SUPPORT</b>	)	
<b>SERVICES,</b>	)	
	)	
Employer/Respondent.	)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the Board) at 10:00 a.m. on February 1, 2018 at the Public Service Commission Conference Room, Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

**BEFORE** W. Michael Tupman, Chair, Paul R. Houck, Jacqueline Jenkins, Ed.D, and Sheldon N. Sandler, Esq., Members, a quorum of the Board under 29 *Del. C.* §5908(a).

**APPEARANCES**

Rae M. Mims  
Deputy Attorney General  
Legal Counsel to the Board

Deborah L. Murray-Sheppard  
Board Administrator

Jay Lynch  
Employee/Grievant *pro se*

Kevin Slattery  
Deputy Attorney General  
on behalf of the Department of  
Health and Social Services

## **BRIEF SUMMARY OF THE EVIDENCE**

The Board heard legal argument on the motion by the Department of Health and Social Services (“DHSS”) to dismiss the appeal of the employee/grievant, Jay Lynch (“Lynch”), for lack of jurisdiction. Lynch had filed a written response to DHSS’ motion to dismiss and DHSS also filed reply argument.

DHSS appended two documents to its motion to dismiss: the merit rule appeal filed by Lynch; and an email dated September 26, 2017 from the Step 3 Hearing Officer to a DHSS representative and Lynch which states, “Please see the attached decision for Mr. Lynch’s merit grievance.” Lynch did not offer any documents into evidence.

## **FINDINGS OF FACT**

The jurisdictional facts are not in dispute.

Lynch works for the Department of Health and Social Services/Division of Child Support Services as a Social Services Senior Administrator.

On January 15, 2017, Lynch was selected to this position (which is classified as a Pay Grade 18 position and had a salary midpoint of \$68,534) through a competitive application process. On or about January 23, 2017, Lynch was advised by the Director of the Division of Child Support Services that his advanced starting salary (effective January 15, 2017) would be \$68,139.01.

Thereafter, on March 6, 2017, Lynch was advised that his advanced starting salary would only be \$64,859.

Lynch initiated a merit system grievance, alleging violations of Merit Rule 4, Pay Plan, specifically section 4.4, Starting Rate on Initial Appointment, subsections 4.4.1 through 4.4.3. The grievance was processed through Step 3. The Step 3 hearing was held on July 12,

2017, and the Hearing Officer's decision was issued on September 26, 2017. The decision was provided to Lynch via electronic mail.

Lynch filed an appeal with the Merit Employee Relations Board on October 27, 2017.

### **CONCLUSIONS OF LAW**

Merit Rule 18, Grievance Procedure, states at sections 18.8 and 18.9:

18.8 Step 3: Any appeal shall be filed in writing to the Director within 14 calendar days of receipt of the Step 2 reply. This appeal shall include copies of the written grievance and responses from the previous steps. The parties and the Director (or designee) may agree to meet and attempt an informal resolution of the grievance, and/or the Director (or designee) shall hear the grievance and issue a written decision with 45 calendar days of the appeal's receipt. The Step 3 decision is final and binding upon agency management.

18.9 If the grievance has not been settled, the grievant may present, within 20 calendar days of receipt of the Step 3 decision or of the date of the informal meeting, whichever is later, a written appeal to the Merit Employee Relations Board (MERB) for final disposition according to 29 Del.C. §5931 and MERB procedures.

The Board has previously addressed its jurisdiction with respect to timely appeals of Step 3 decisions. In *Flaherty v. DHSS*, MERB Docket 15-07-631 (2015), the Board held:

Under the Merit Rules, a grievant's obligation to file a timely appeal to the Board "is jurisdictional." *Cunningham v. DHSS*, Civ.A. No. 95-A-10-003, 1996 WL 190757, at p.2 (Del.Super., March 27, 1996) (Ridgely, Pres. J.), *aff'd*, 679 A.2<sup>nd</sup> 469 (Del. 1996). Where the deadline has "... passed, the Board had no jurisdiction to hear Appellant's grievance." 1996 WL 10757, at p. 2. "[A]ppellant's pro se status does not excuse a failure to timely comply with the jurisdictional requirements of [the Merit Rules]." *Id.* (quoting *Gibson v. State*, No. 354, 1994 (Del. 1994).

Lynch does not dispute that he received the Step 3 decision on September 26, 2017. His appeal was filed with the Board on October 27, 2017, thirty one (31) calendar days after he received the Step 3 decision.

The Board concludes as a matter of law that Lynch did not file a timely appeal

pursuant to Merit Rule 18.9. Consequently, the Board does not have jurisdiction to hear this appeal and the grievance is void, pursuant to Merit Rule 18.4, which states, “Failure of the grievant to comply with time limits shall void the grievance.”

**DECISION AND ORDER**

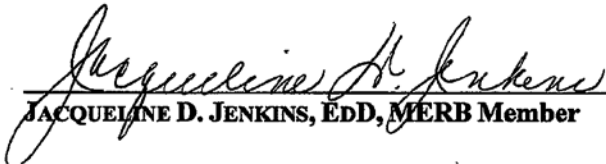
It is this **21st** day of February, 2018, by a vote of 4-0, the Decision and Order of the Board to dismiss Lynch’s appeal for failure to state a claim upon which relief can be granted.



**W. MICHAEL TUPMAN, MERB CHAIR**



**PAUL R. HOUCK, MERB Member**



**JACQUELINE D. JENKINS, EDD, MERB Member**



**SHELDON N. SANDLER, ESQ., MEMBER**