



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

FRANCIS CHUDZIK,)
)
 Appellant,)
)
 v.) C.A. No. N17A-12-004 JAP
)
 DEPARTMENT OF LABOR)
 AND MERIT EMPLOYEE)
 RELATIONS BOARD,)
)
 Appellees.)
)
)

Upon Appeal from the Merit Employee Relations Board,
AFFIRMED

MEMORANDUM OPINION

This is an appeal from the Merit Employee Relations Board. Francis Chudzik appeals the Board's November 13, 2017 decision dismissing Chudzik's grievance against his employer, the Department of Labor. The Board found that Chudzik's grievance, which claimed he was retaliated against by the Department of Labor because he had filed a prior grievance, was moot and dismissed the case. For the reasons that follow, the Board's decision is **AFFIRMED**.

BACKGROUND

Francis Chudzik is employed as a supervisor by the Delaware Department of Labor's Office of Labor Law Enforcement. In February 2016, as the result of an internal investigation, Chudzik was reprimanded in writing and involuntarily transferred from the Office of Labor Law Enforcement to the Office of Workers' Compensation. Chudzik filed a grievance claiming that the Department of Labor violated Merit Rule 10.6 when it transferred him.¹ In August 2016, the Office of Management and Budget ("OMB") found that Chudzik's transfer was in violation of Merit Rule 10.6 and granted his grievance request with respect to the transfer, but denied the request to remove the written reprimand from his file. Chudzik appealed the denied portion of his grievance to the Board. The Board ultimately granted Chudzik's grievance to remove the written reprimand from his file.

Around the same time, in August 2016, Chudzik was asked to sit as an interviewer on a panel assigned with hiring a new employee.

¹ The Merit Rules were adopted under the statutory authority granted in 29 Del. C. § 5914, and "apply to initial probationary, Merit and limited term employees." Merit Rule 1.1. Merit Rule 10.6 provides: "Transfer. To promote the efficiency of the service, *unrelated to employee performance*, employees may be transferred to another position for which they meet job requirements in the same paygrade within the same agency with or without competition." Merit Rule 10.6 (emphasis added).

Chudzik appealed to the Superior Court on February 20, 2018. The Board filed its answering brief on March 12, 2018, and the Department of Labor adopted the Board's brief as its own. Upon review of the opening brief, answer, reply, and the entire record below, this is the Court's ruling.

ANALYSIS

Standard of Review

This Court has statutorily conferred jurisdiction over appeals from the Merit Employees Relations Board.⁸ On appeal, the Court reviews a decision of the Board to “to determine whether it acted within its statutory authority, whether it properly interpreted and applied the applicable law, whether it conducted a fair hearing and whether its decision is based on sufficient substantial evidence and is not arbitrary.”⁹ Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”¹⁰ Questions of law are reviewed *de novo*.¹¹ However, the Court does not reweigh the evidence, determine issues of credibility,

⁸ 29 Del. C. § 10142(a).

⁹ *Avallone v. Dep't of Health & Soc. Servs.*, 14 A.3d 566, 570 (Del. 2011).

¹⁰ *Histed v. E.I. Du Pont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993).

¹¹ *Gibson v. Merit Employee Relations Bd.*, 16 A.3d 937, 2011 WL 1376278, at *2 (Del. 2011) (Table).

