

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

JOYCELYN BENNETT,)	
)	
Employee/Grievant,)	Docket No. 17-01-666
v.)	
)	DECISION AND ORDER
DEPARTMENT OF HEALTH AND SOCIAL SERVICES,)	
DIVISION OF SUBSTANCE ABUSE AND)	
MENTAL HEALTH, TREATMENT ACCESS)	
CENTER,)	
)	
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 January 17, 2019, at the Delaware Public Service Commission Hearing Room, Cannon Building, located at 861 Silver Lake Blvd., Dover, DE 19904.

BEFORE W. Michael Tupman, Chair, Paul Houck, Victoria D. Cairns, 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

The Grievant did not appear for the hearing

Kevin Slattery
Deputy Attorney General
on behalf of the DHSS, Division of
Substance Abuse and Mental Health

BRIEF SUMMARY OF THE EVIDENCE

A hearing was convened by the Merit Employee Relations Board (the Board) on Thursday, January 17, 2019 to consider a motion to dismiss the grievance of Joycelyn Bennett (Bennett), the employee/grievant, against the Department of Health and Social Services, Division of Substance Abuse and Mental Health, Treatment Access Center (Agency).

The Grievant was employed by the Agency in a Senior Social Worker/Case Manager position. By letter dated January 5, 2017, Bennett was notified she would receive a 3-day suspension, to be served upon her return to work (as she was on leave from duty at the time of the letter). Bennett filed a grievance directly with the Board (pursuant to Merit Rule 12.9¹) which was received on January 17, 2017.

By letter dated February 1, 2017, MERB scheduled a hearing on the merits for June 1, 2017. Thereafter on May 4, 2017, the Agency filed a motion to dismiss the grievance, asserting the grievant did not have a right of direct appeal to MERB. Bennett was afforded the opportunity to respond to the motion and the parties were advised that MERB would hear the Agency's motion on June 1, 2017.

By email dated May 10, 2017, Bennett requested the hearing be postponed because she was out of work on medical leave. She requested the hearing be rescheduled after she returned to work. The Agency did not object to the request for continuance. The June 1, 2017 hearing was continued and Bennett was requested to notify the Board when she returned to work. The grievance was held in abeyance pending Bennett's return to work.

The Board's Administrator spoke with Bennett by telephone on July 31, 2017, at which time she stated she was working with the State's Return to Work Coordinator to return to work on

¹ Merit Rule 12.9: Employees who have been dismissed, demoted or suspended may file an appeal directly with the Director or the MERB within 30 days of such action...

a part-time basis. Bennett confirmed she would notify the Board promptly upon her return so that the hearing could be rescheduled.

On September 28, 2017, MERB sent a letter to Bennett documenting the July 31 conversation, noting there had been no further communication since that telephone call. The Grievant was requested to notify the Board by October 11, 2017, concerning her return to work status.

On November 7, 2017, the Agency notified MERB that Bennett had transitioned to long-term disability and then been terminated from State service under that program on July 6, 2017. The email communication also stated that at some point the State's Long Term Disability Return-To-Work Coordinator might be working with Bennett in an effort to locate a position for her to return to, but that her status was in the hands of the long-term disability provider at that time.

The MERB Administrator again spoke with Bennett on December 18, 2017, when she stated she was preparing to return to work. She was again asked to provide notification as soon as she returned to work.

On August 3, 2018, the MERB Administrator again emailed Bennett, stating,

Your case is still open. If you would like to have it scheduled for hearing, please send me an email requesting the hearing be scheduled and provide a copy (by cc:) to Mr. Slattery [*email address provided*].

I have hearing dates available on September 6 and October 18. Please be reminded that your exhibits and witness lists will need to be submitted to the Board 13 days prior to hearing (i.e., August 24 or October 5).

Bennett did not respond to this email.

A letter was sent by certified mailed to Bennett on October 30, 2018, which summarized the limited communication between Bennett and the Board since May, 2017. The letter concluded,

As of today, I have received no further communication from you. Please advise me on or before **Wednesday, November 14, 2018** if you are requesting a MERB hearing on your grievance. **If I do not hear from you by November 14, the file will be closed.**

The certified letter was returned to MERB, marked “unclaimed”. The Grievant did not respond to the email.

A final letter was sent on November 19, 2018 (again by certified mail and email) to Bennett and Agency counsel:

This letter constitutes a final effort to contact the Grievant concerning the above-referenced appeal. A final letter to Ms. Bennett sent on October 30, 2018, requested she advise this office on or before November 14, 2018.

Having received no response from Ms. Bennett, the Merit Employment Relations Board has scheduled consideration of its motion to dismiss this appeal (based upon abandonment by the Grievant) at its meeting on **Thursday, January 17, 2019.**

Again, Bennett did not respond to the email and the certified letter was returned to MERB, marked “unclaimed”.

The Notice of Hearing in this matter was publicly posted on the Board’s website on December 4, 2018, where it remained until the date of the hearing. The Grievant did not appear at the MERB hearing.

CONCLUSIONS OF LAW

The burden of proof in a disciplinary suspension case is on the employee to establish the employer did not have “just cause” to discipline her, as that term is defined in Merit Rule 12.1.² *Avallone v. DHSS*, 14 A.3d 566, 578 (Del. 2010). In order to meet this burden, the employee/grievant must provide evidence to support her contention that just cause did not exist.

This Board has held that, consistent with Delaware court precedent, when a party appeals to an administrative agency such as MERB but does not appear for the hearing, the Board may

² Merit Rule 12.1. Employees shall be held accountable for their conduct. Disciplinary measures up to and including dismissal shall be taken only for just cause. "Just cause" means that management has sufficient reasons for imposing accountability. Just cause requires: showing that the employee has committed the charged offense; offering specified due process rights specified in this chapter; and imposing a penalty appropriate to the circumstances.

dismiss the appeal for failure to prosecute. *Ringer v. Department of Transportation*.³

Multiple attempts were made to contact the Grievant by email and US certified mail in order to determine whether she wished to continue to pursue her grievance. The Grievant has not responded to any of those efforts since August, 2018.

The Grievant did not appear at the January 17, 2019 hearing which was properly and publicly noticed since December 4, 2018. Consequently, the Board concludes she has abandoned her grievance. *Stubbolo v. Dept. of Transportation*, MERB Docket No. 10-03-469 @ p. 3 (March 4, 2011).

ORDER

It is this **31st** day of **January, 2019**, by a vote of 4-0, the Decision and Order of the Board to dismiss the appeal because it finds the Grievant has abandoned her grievance.



W. MICHAEL TUPMAN, MERB CHAIR



PAUL R. HOUCK, MERB Member



VICTORIA D. CAIRNS, MERB Member



SHELDON N. SANDLER, ESQ., MEMBER

³ MERB 06-06-360/361 (September, 2008) at p. 3, citing *Han v. Red Lobster*, Civ.A.No. 03A-04-015, 2004 WL 1427008, a p. 1 (Del.Super., June 2004) (Silverman, J.)