

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

<b>CHRISTIE KAHN,</b>	)	
	)	
Employee/Grievant,	)	<b>Docket No. 15-10-636</b>
v.	)	
	)	<b>DECISION AND ORDER</b>
<b>DEPARTMENT OF HEALTH AND SOCIAL SERVICES,</b>	)	
<b>DIVISION OF MANAGEMENT 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 9:00 a.m. on August 4, 2016 in the Delaware Commission of Veterans Affairs Hearing Room, at the Robbins Building, located at 802 Silver Lake Blvd., Suite 100, Dover, DE 19904.

**BEFORE** W. Michael Tupman, Chair, Paul Houck, and Victoria D. Cairns, Members, a quorum of the Board under 29 *Del. C.* §5908(a).

**APPEARANCES**

Stacey Cohee  
Deputy Attorney General  
Legal Counsel to the Board

Deborah L. Murray-Sheppard  
Board Administrator

Christie Kahn  
Employee/Grievant *pro se*

Zoe Plerhoples  
Deputy Attorney General  
on behalf of the DHSS, Division of  
Management Services  
*(Substituting for counsel of record,  
Kevin Slattery, DAG)*

## **BRIEF SUMMARY OF THE EVIDENCE**

A hearing was convened by the Merit Employee Relations Board (the Board) on Thursday, August 4, 2016 to consider a motion to dismiss the grievance of Christie Kahn (Grievant), the employee/grievant, against the Department of Health and Social Services, Division of Management Services (Agency).

The Grievant was employed by the Agency in the position of Accountant. By letter dated September 4, 2015, Kahn was dismissed from her employment. Counsel filed a grievance on her behalf directly with the Board (pursuant to Merit Rule 12.9<sup>1</sup>) which was received on October 2, 2015.

A hearing on the merits of the grievance was scheduled for January 7, 2016. The parties were notified by letter dated October 30, 2015 that, pursuant to Merit Operating Rule 13-B, exhibits and witness lists were due on or before Monday, December 28, 2015. The parties were also notified that a prehearing teleconference would be scheduled and convened by the Board's counsel during the week of December 28, 2015.

On December 22, 2015, counsel for the Grievant requested postponement of the hearing in order to allow time for the parties to attempt to resolve issues concerning the adequacy of production in response to a subpoena duces tecum which had been issued at the Grievant's request. The postponement was granted without objection by the Agency.

By letter dated February 8, 2016, the hearing was rescheduled for June 2, 2016. The parties were advised their exhibits were due on or before Friday, May 20 and the prehearing teleconference was subsequently scheduled for May 24, 2016.

By letter to the Board dated May 13, 2016, the Grievant's counsel withdrew his appearance. The Board Administrator sent a letter by certified mail and email to the grievant,

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<sup>1</sup> 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...

requesting she contact the Board immediately to clarify whether she would be representing herself at the scheduled hearing on June 2, or whether she wished to postpone the hearing. The letter was returned to the Board's office marked, "Return to Sender; Unclaimed; Unable to Forward." The Board Administrator also called and left two voice messages on the grievant's home answering machine, but the Grievant did not respond.

By letter dated May 23, 2016, the prehearing teleconference was canceled and the June 2, 2016 hearing was postponed. The Grievant was requested to contact the Board on or before June 15 to advise as to how she wished to proceed with her grievance. She was also advised her grievance may be dismissed by the Board if she failed to present evidence in support of her grievance. Again, no response was received from the grievant to this letter.

Finally, on July 7, 2016, the Board sent a letter to the Grievant (by US certified mail and email) which stated:

The Merit Employee Relations Board has made repeated unsuccessful efforts to communicate with you concerning your pending appeal by email, U.S. mail and certified mail.

This office has received no response to my letter of May 23, 2016 in which you were requested to contact this office by June 15, if you wished to continue to pursue your grievance.

Consequently, the Board will move to dismiss your grievance at its **August 4, 2016** meeting, based upon your apparent abandonment of the matter...

The Grievant did not respond to this letter or email.

### **CONCLUSIONS OF LAW**

The burden of proof in a dismissal case is on the discharged employee to establish the employer did not have "just cause" to dismiss her, as that term is defined in Merit Rule 12.1.<sup>2</sup>

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<sup>2</sup> 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

*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.

Multiple attempts were made to contact the Grievant by email, telephone 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.

The Grievant did not appear at the August 4, 2016 hearing which was properly and publicly noticed since July 8, 2016. 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 **18th** day of **August, 2016**, by a vote of 3-0, the Decision and Order of the Board to dismiss the appeal because it finds the Grievant has abandoned her grievance.



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**W. MICHAEL TUPMAN, MERB CHAIR**



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**PAUL R. HOUCK, MERB Member**



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**VICTORIA D. CAIRNS, MERB Member**

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committed the charged offense; offering specified due process rights specified in this chapter; and imposing a penalty appropriate to the circumstances.