

**OF THE STATE OF DELAWARE**

## DECISION AND ORDER

After due notice of time and place this matter came to a hearing before the Merit Employee Relations Board (the Board) at 9:15 a.m. on March 1, 2012 at the Public Service Commission, Cannon Building, 861 Silverlake Boulevard, Dover, DE 19904.

Kevin R. Slattery  
Deputy Attorney General  
on behalf of the Department of Services  
for Children, Youth and Their Families

### **BRIEF SUMMARY OF THE EVIDENCE**

The Board heard legal argument on the motion by the Department of Services for Children, Youth and their Families (DSCYF) to dismiss the appeal of the employee/grievant, Connie Olsen (Olsen), for lack of jurisdiction. Olsen did not file a response to that motion, and neither Olsen nor her counsel of record (Roy S. Shiels, Esquire) appeared for the hearing. The Board Administrator called Mr. Shiels' office but no one knew where he was or how to contact him. After waiting fifteen minutes, the Board went forward with the hearing.

DSCYF attached to its motion to dismiss four documents: Olsen's Employee Performance Review for the period January 1-December 31, 2012 (Tab "A"); Step Two Grievance Decision dated April 25, 2011 (Tab "B"); Olsen's Employee Performance Review for the period January 1-December 31, 2010 (revised) (Tab "C"); and Step Three Grievance Decision dated July 21, 2011 (Tab "D").

### **FINDINGS OF FACT**

For Olsen's first performance review for January 1-December 31, 2010, she received an overall rating of "Needs Improvement." Olsen filed a grievance. At Step Two, the Hearing Officer decided that Olsen's "performance rating should be changed to Meets Expectations to reflect performance based on the first half of the year and performance deficiencies noted by her new Administrator the latter part of the year."

DSCYF revised Olsen's 2010 performance review to give her an overall rating of "Meets Expectations."

### **CONCLUSIONS OF LAW**

“Standing of a classified employee to maintain a grievance shall be limited to an alleged wrong that affects his or her status in his or her present position.” 29 Del. C. §5943(a).

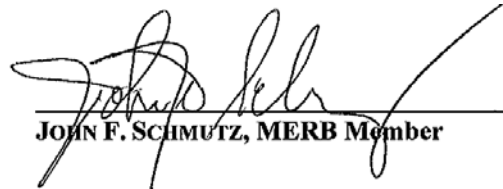
The Board concludes as a matter of law that Olsen’s overall rating of “Meets Expectations” in her revised 2010 performance review did not affect her status in her position of Administrative Specialist II. With that rating, she remained eligible for promotion and pay raises. Her performance review did not have any adverse effect on her position.

The Board concludes as a matter of law that by statute Olsen does not have standing to grieve her revised 2010 performance review and that the Board does not have jurisdiction over her appeal.

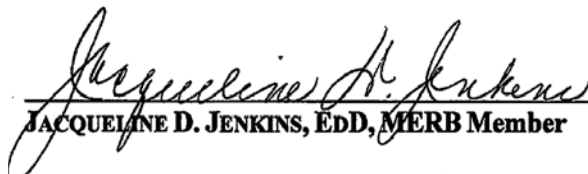
### **DECISION AND ORDER**

It is this **5th** day of March, 2012, by a unanimous vote of 4-0, the Decision and Order of the Board to dismiss Olsen’s appeal for lack of jurisdiction.

  
MARTHA K. AUSTIN, MERB Chairwoman

  
JOHN F. SCHMUTZ, MERB Member

  
VICTORIA D. CAIRNS, MERB Member

  
JACQUELINE D. JENKINS, EDD, MERB Member