

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

REGINA JOHNSON,)	
)	
Employee/Grievant,)	
)	DOCKET No. 09-02-443
v.)	
)	
DEPARTMENT OF HEALTH AND)	
SOCIAL SERVICES,)	DECISION AND ORDER
)	
Employer/Respondent.)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (“the Board”) on August 26, 2009 at 9:00 a.m. in the Delaware Room at the Public Archives Building, 121 Duke of York Street, Dover, DE 19901.

BEFORE Martha K. Austin, Chair, John F. Schmutz, and Joseph D. Dillon, Members, a quorum of the Board under 29 *Del. C.* §5908(a).

APPEARANCES

W. Michael Tupman, Esquire
Deputy Attorney General
Legal Counsel to the Board

Regina Johnson
Employee/Grievant *pro se*

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

BRIEF SUMMARY OF THE EVIDENCE

The Board did not hear any evidence. The Board heard legal argument from the parties on the motion by the Department of Health and Social Services (“DHSS”) to dismiss the appeal of the employee/grievant, Regina Johnson (“Johnson”), for lack of jurisdiction.

FINDINGS OF FACT

The jurisdictional facts are not in dispute.

After a hearing on December 29, 2008, the Step 3 Hearing Officer issued a decision on January 15, 2009 denying Johnson’s grievance. By e-mail dated January 21, 2009, the Hearing Officer forwarded a copy of that decision to Johnson. By letter dated February 18, 2009, the Board’s Acting Administrator acknowledged receipt of Johnson’s appeal to the Board (received by facsimile that same day).

CONCLUSIONS OF LAW

Merit Rule 18.9 provides:

If the grievance has not been settled, the grievant may proceed, within 20 calendar days of receipt of the Step 3 decision or 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. Section 5931 and MERB procedures.

Under the Merit Rules, a grievant's obligation to file a timely appeal to the Board "is jurisdictional." *Cunningham v. DHSS*, Civ.A.No. 95A-10-003, 1996 WL 190757, at p.2 (Del. Super., Mar. 27, 1996) (Ridgely, Pres. J.). Where the deadline has "passed, the Board had no jurisdiction to hear Appellant's grievance." *Id.* "[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, ORDER (Del. 1994)).

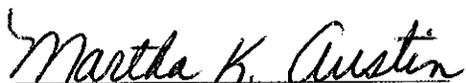
Johnson received a copy of the Step 3 decision on January 21, 2009. Merit Rule 18.9 required her to appeal to the Board within twenty calendar days (by February 10, 2009). She did not file her appeal to the Board until February 18, 2009.

The Board concludes as a matter of law that it does not have jurisdiction to hear Johnson's appeal because she filed her appeal to the Board eight days late.

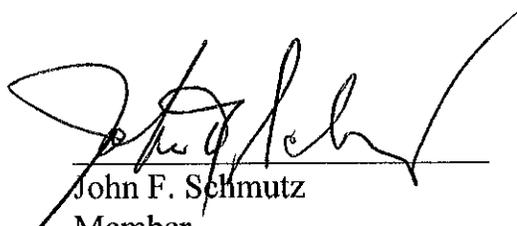
DECISION AND ORDER

It is this 3rd day of September, 2009, by a unanimous vote of 3-0, the

Decision and Order of the Board to deny Johnson's appeal.



Martha K. Austin
Chair



John F. Schmutz
Member



Joseph D. Dillon
Member