

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

EVAN DOUGLASS,)	
)	
Employee/Grievant,)	Docket No. 19-04-721
v.)	
)	DECISION AND ORDER
DEPARTMENT OF LABOR,)	OF DISMISSAL
)	
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 1, 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, Jacqueline D. Jenkins, Ed.D., and Victoria D. Cairns, 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

Grievant did not appear for hearing

Kevin Slattery
Deputy Attorney General
on behalf of the Department of Labor

BRIEF SUMMARY OF THE EVIDENCE

A hearing was convened by the Merit Employee Relations Board (“Board”) on Thursday, August 1, 2019 at which time it considered a motion to dismiss the grievance of Evan Douglass (“Douglass”) which was filed by the Department of Labor (“Agency”).

On December 27, 2017, Mr. Douglass was offered a position as a Labor Law Enforcement Officer II (“LLEO II”) in the Department of Labor Office of Anti-Discrimination. Prior to accepting the position, Mr. Douglass questioned whether the salary was negotiable and was told it was not. His hire rate was 80% of the midpoint of Pay Grade 13. In his grievance, Mr. Douglass states that on or about August 27, 2018, he learned that two other employees who held LLEO II positions (at least one of whom was hired after Mr. Douglass) were being paid at salaries higher than he.

On August 31, 2018, Mr. Douglass filed a grievance alleging Merit Rule 4.4.2¹ had been violated. Mr. Douglass requested his salary be levelled up to the wages of other LLEO II’s working in the Office of Anti-Discrimination and also that he be awarded back pay for lost wages.

Mr. Douglass’ grievance was processed through the merit system grievance procedure established by Merit Rule 18. On December 18, 2018, a Step 3 hearing was convened by the Department of Human Resources. The Hearing Officer’s decision denying the grievance was issued on March 29, 2019.

By email dated April 22, 2019 (with a time stamp of 11:29 p.m.), Mr. Douglass advanced

¹ Relevant Merit Rule 4.4, Starting Rate on Initial Appointment, states, in relevant part:

4.4.1 Upon initial appointment, employees shall be paid a salary equal to the minimum for their assigned paygrade, except as hereinafter provided.

4.4.2 Agencies may approve a starting rate up to 85% of midpoint where applicants’ qualifications are clearly over and above the job requirements as stated in the class specification. Upon agency request, the DHR Secretary may approve a starting rate higher than the 85th percentile if supported by documentation of the applicant’s qualifications...

his grievance to the MERB.² On May 9, 2019, the parties were notified that MERB would hear the grievance on August 1, 2019.

Thereafter, on July 16, 2019, the Agency filed a Motion to Dismiss the grievance in which it asserted the Board lacked jurisdiction to hear Mr. Douglass' grievance because the grievance did not allege an issue which could be grieved under either Merit Rule 4.4.2 or 2.1, and because it was not filed in a timely manner.

MERB forwarded the Agency's Motion to Mr. Douglass on July 18, 2019, and provided him with the opportunity to respond in writing on or before July 25, 2019. Mr. Douglass responded to this email only by providing a new mailing address. That address was used for all future MERB correspondence concerning this grievance.

Both parties were notified that the motion to dismiss would be treated as a preliminary matter at the August 1 hearing because it was filed only two weeks prior to the scheduled hearing date. A prehearing teleconference was scheduled, confirmed, and conducted on July 24, 2019. Mr. Douglass did not offer any exhibits or witness list, nor did he call into the July 24 prehearing teleconference.

A prehearing order, dated July 25, 2019, was issued in which the MERB Chairman advised the parties that "... they should be prepared to present their case on the merits immediately following the hearing on this preliminary matter in the event that the Board denies the motion to dismiss."

The MERB Administrator attempted to contact Mr. Douglass both by telephone and email numerous times between the filing of the motion to dismiss and hearing date. On July 29, 2019, Mr. Douglass provided a "read" receipt to the final email sent by the Administrator on July 26,

² The grievance form was actually received by MERB when the offices reopened the following morning, April 23, 2019.

2019, requesting that he contact MERB and that he “make every effort to be present at the August 1 hearing...”

Mr. Douglass did not file a written response to the Agency’s motion to dismiss, did not participate in the MERB prehearing teleconference, and did not appear at the August 1, 2019 hearing.

CONCLUSIONS OF LAW

Merit Rule 18.9 states:

If the grievance has not been settled [*by the Step 3 decision*], the grievant may present, within 20 calendar days of receipt of the Step 3 decision or of 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. §5931 and MERB procedures.

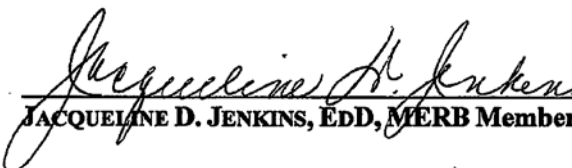
It is undisputed that Mr. Douglass filed his grievance on April 22, 2019, twenty-four (24) days after he received the Step 3 decision on March 29, 2019. The Board concludes as a matter of law that it does not have jurisdiction to hear Mr. Douglass’ grievance because it was not filed within twenty days, as required by Merit Rule 18.9.

ORDER

It is this **22nd** day of **August, 2019**, by a vote of 3-0, the Decision and Order of the Board to grant the motion to dismiss and to dismiss the grievance because the Board lacks jurisdiction to consider a grievance which is not timely filed.



W. MICHAEL TUPMAN, MERB CHAIR



JACQUELINE D. JENKINS, EDD, MERB Member

Victoria D Cairns

VICTORIA D. CAIRNS, MERB Member