

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

KHARY DEWITT,

Employee/Grievant,

v.

OFFICE OF THE STATE TREASURER,

Employer/Respondent.

DOCKET No. 19-10-738

**DECISION AND ORDER
OF DISMISSAL**

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the Board) on Thursday, December 19, 2019, at 9:00 a.m. at the Delaware Commission on Veterans Affairs Hearing Room, Suite 100 of the Robbins Building, 802 Silver Lake Boulevard, Dover, DE 19904.

BEFORE Paul R. Houck, Acting Chairman; Jacqueline D. Jenkins, Ed.D, Victoria D. Cairns, and Sheldon N. Sandler, Esq., 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

Khary DeWitt
Employee/Grievant, *pro se*

Allison McCowan
Deputy Attorney General
on behalf of the Office of the State
Treasurer

BRIEF SUMMARY OF THE EVIDENCE

The Board did not admit any exhibits into evidence or take any witness testimony. The Board heard legal argument from the parties on the motion by the Office of the State Treasurer (“Agency”) to dismiss the appeal of the employee/grievant, Khary DeWitt (“DeWitt”), for lack of jurisdiction.

FINDINGS OF FACT

The jurisdictional facts are not in dispute.

Mr. DeWitt was hired on October 9, 2018 as the Director of Banking Services by the Office of the State Treasurer. He was a probationary employee when he was terminated from his employment on September 4, 2019.

On October 2, 2019, Mr. DeWitt mailed a simultaneously-filed grievance to the Secretary of the Department of Human Resources (“DHR”) and the Merit Employee Relations Board (“MERB”) pursuant to Merit Rule (“MR”) 12.9.

On October 7, 2019 the MERB and DHR received Mr. DeWitt’s grievance.¹ By letter dated October 17, 2019, the DHR Administrator for Labor Relations and Employment Practices notified Mr. DeWitt, “Because your appeal was not filed until October 7, 2019, more than 30 days after your termination, it is untimely and cannot be heard by DHR.”

By email dated October 23, 2019, Mr. DeWitt advised MERB that he wished to continue his grievance and have it heard by MERB. A hearing was scheduled for December 19, 2019.

CONCLUSIONS OF LAW

Merit Rule 12.9 provides:

Employees who have been dismissed, demoted or suspended may file an

¹ The envelope in which the appeal to MERB was received has a postal seal indicating it was processed by the post office on October 2, 2019.

appeal directly with the DHR Secretary or the MERB within 30 days of such action. Alternatively, such employees may simultaneously file directly with the DHR Secretary, who must hear the appeal within 30 days. If the employee is not satisfied with the outcome at the DHR Secretary's level, then the appeal shall continue at the MERB.

Merit Rule 18.4 states (in relevant part), "...Failure of the grievant to comply with time limits shall void the grievance."

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.), *aff'd*, 679 A.2d 469 (Del. 1996). Where the deadline has "passed, the Board had no jurisdiction to hear Appellant's grievance." 1996 WL 190757, at p.2. "[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, (Del. 1994)).

Mr. DeWitt admitted he was terminated on Wednesday, September 4, 2019. He placed his grievance, alleging a violation of Merit Rule 2.1, in the mail on Wednesday afternoon, October 2, 2019, at the Middletown, Delaware U.S. Post Office. The appeal envelope was sent by standard mail. It was not received by the Merit Employee Relations Board until Monday, October 7, 2019.

The Board concludes as a matter of law that Mr. DeWitt did not file a timely appeal to the Board under Merit Rule 12.9. Merit Rule 12.9 requires a grievant to file an appeal to the Board within 30 days of termination. Mr. DeWitt mailed his grievance to MERB twenty-nine (29) days after his termination, but it was not received in the MERB office until October 7, thirty-four (34) days after his termination.

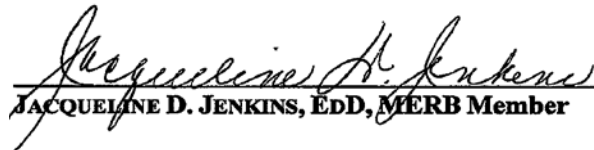
The Board concludes as a matter of law that it does not have jurisdiction over Mr. DeWitt's grievance because it was not timely filed within thirty days of his notice of termination. Merit Rule 12.9. As a result, the grievance is void. Merit Rule 18.4.

DECISION AND ORDER

It is this **19th** day of February, 2020, by a unanimous vote of 4-0, the Decision and Order of the Board to grant the agency's motion to dismiss and to dismiss Mr. DeWitt's grievance for lack of jurisdiction.



PAUL R. HOUCK, MERB Member



JACQUELINE D. JENKINS, EDD, MERB Member



VICTORIA D. CAIRNS, MERB Member



SHELDON N. SANDLER, ESQ., MEMBER