

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

NWAYNNA CLARK,	)	
Employee/Grievant,	)	
	)	<b>DOCKET No. 15-06-628</b>
v.	)	<b>ORDER OF DISMISSAL</b>
DEPARTMENT OF HEALTH AND SOCIAL	)	
SERVICES, DIVISION OF PUBLIC HEALTH,	)	
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 Thursday, August 20, 2015, at the Public Service Commission, Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

**BEFORE** Martha K. Austin, Chair, Paul Houck, Jacqueline Jenkins, EdD, and Victoria D. Cairns, Members, a quorum of the Board under 29 *Del. C.* §5908(a).

**APPEARANCES**

Rae Mims  
Deputy Attorney General  
Legal Counsel to the Board

Deborah L. Murray-Sheppard  
Board Administrator  
MERB

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

## **BACKGROUND**

A hearing was convened by the Merit Employee Relations Board (MERB) on Thursday, August 20, 2015, to consider the merit grievance of Nawayna Clark (Grievant) against the Department of Health and Social Services, Division of Public Health.

The Grievant filed a dual appeal with the State Office of Human Resources Management (HRM) and the Merit Employee Relations Board (MERB) on June 1, 2015, asserting she had been demoted without just cause. By letter dated June 2, 2015, asserting she had been demoted without just cause. By letter dated June 2, 2105, the Grievant was advised by MERB that her appeal would be heard first by HRM, and that if she was not satisfied with the outcome at that level, she could choose to continue to pursue the appeal to hearing before MERB.

The HRM Hearing Officer issued his decision on July 10, 2015, denying the grievance. Upon receipt of a copy of the decision on July 13, 2015, the MERB administrator forwarded it to the Grievant and requested she advise MERB by July 29, 2015, as to whether she wished to continue her appeal. The letter was sent by certified mail and receipt was acknowledged on July 16, 2015. The Grievant did not respond as requested by July 29.

A second and final letter was sent to the Grievant (by certified mail and email) and the Department on August 7, 2015, which advised the parties the Board had scheduled this appeal for consideration at its August 20, 2015 meeting. The letter specifically noted that, absent communication from the Grievant, the Board would consider her appeal to have been abandoned and would move to dismiss.

A quorum of four members of the MERB met to consider a Motion to Dismiss for abandonment of the grievance on Thursday, August 20, 2015. The Grievant was neither present

nor represented at the hearing.

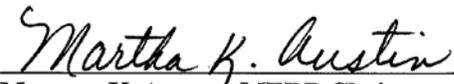
**DISCUSSION**

Delaware courts have held that when a party appeals to an administrative board but does not appear for the hearing, the board may dismiss the appeal for failure to prosecute. *Ringer v. Dept. of Transportation*, Nos. 06-06-360/361 (Sept. 24, 2008), (citing *Han v. Red Lobster*, 2004 WL 1427008, at p. 1 (Del. Super. Ct., June 25, 2004).

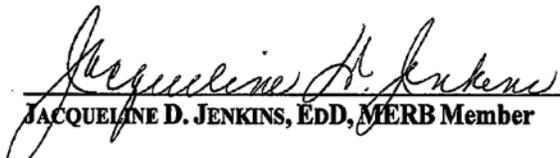
The Grievant failed to appear to be heard or to respond to specific and repeated requests to notify the Board that she wished to continue her appeal. Consequently, this appeal is dismissed.

**DECISION AND ORDER**

It is this 27<sup>th</sup> day of August, 2015, by a unanimous vote of 4-0, it is the Decision and Order of the Board to dismiss the Grievant's appeal for failure to appear and for abandoning the grievance.

  
MARTHA K. AUSTIN, MERB Chairwoman

  
PAUL R. HOUCK, MERB Member

  
JACQUELINE D. JENKINS, EDD, MERB Member

  
VICTORIA D. CAIRNS, MERB Member