

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

JOAN HARRIS,)
Employee/Grievant,) **DOCKET No. 19-06-730**
v.)
DEPARTMENT OF HEALTH AND SOCIAL) **DECISION ON THE
SERVICES,) MERITS
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 November 21, 2019 in the Delaware Public Service Commission Hearing Room, Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

BEFORE W. Michael Tupman, Chair; Paul R. Houck, 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

Rae M. Mims
Deputy Attorney General
Legal Counsel to the Board

Joan Harris
Employee/Grievant, *pro se*

Deborah L. Murray-Sheppard
Board Administrator

Allison McGowan
Deputy Attorney General
on behalf of the Department of
Health and Social Services

PRELIMINARY PROCEDURAL MATTERS

As a preliminary matter, the Board heard oral argument on a Motion to Dismiss filed by DHSS on October 29, 2019, asserting the grievance is moot, untimely and fails to state a claim of discrimination under Merit Rule 2.1. The Board unanimously voted to grant in part and deny in part the Motion to Dismiss. The Board held the two discrete acts in which the Grievant's job duties and responsibilities were either removed or reassigned are time-barred under the Merit Rules. The Board denied the Agency's motion to dismiss the Grievant's claim that she was required to work in a racially hostile environment in violation of Merit Rule 2.1.

The Board heard evidence on the claim that the Grievant suffered a continuing course of hostile actions which were severe and pervasive. It limited the time period of consideration to July 2017 through July 2018. It also received evidence concerning a 2016 incident involving a change in her reporting relationship to a manager with whom she had a conflict.

Following receipt of the Grievant's evidence, DHSS moved for involuntary dismissal of the grievance, asserting the evidence was insufficient to support the conclusion that a racially hostile work environment existed.

BRIEF SUMMARY OF THE EVIDENCE

The Department of Health and Social Services (“DHSS”) offered and the Board admitted into evidence, without objection, fourteen (14) exhibits, marked as Exhibits A through N. DHSS called no witnesses.

The employee/grievant, Joan Harris (“Harris”), offered six (6) exhibits and the Board accepted three (3) into evidence, marked as Exhibits 3, 5, and 6. Harris testified on her own behalf.

FINDINGS OF FACT

Ms. Harris was hired by the Stockley Center in 2007 in a Resource Management position reporting to the facility's Executive Director. In 2015, she was promoted to the Activities Program Administrator position and continued to report to the Executive Director.

In 2016, the Stockley Center management was reorganized, and the Activities Program Administrator now reported to the Residential Director. A new Residential Director was hired in 2016. After his hire, Ms. Harris experienced what she considered to be "harsh treatment" in management meetings from the Residential Director, Assistant Residential Director and the Director of Nursing. She testified she felt she was being called out in front of her colleagues and that meetings felt like a power struggle. She took her complaints to the facility's Executive Director, who addressed the concerns by having Ms. Harris report directly to her again.

Stockley's Executive Director retired in March, 2017 and the Residential Director was promoted into the Executive Director position. As a result, Ms. Harris was again reporting to the individual with whom she had a strained relationship in 2016.

In July, 2017, Ms. Harris' job duties were modified. Specifically, she was relieved of her responsibilities as the Activities Director, but was assigned new duties related to Stockley's admissions, warehouse, respite, and social service functions. She did not file a grievance contesting these changes to her duties, although she loved coordinating activities for the residents. In her words, her passion "is for the residents".

She was notified on June 15, 2018 that her job duties were again being modified. Neither her wages nor her benefits were reduced as a result of changes in her job title and responsibilities. She filed a grievance contesting the change in her job duties on July 3, 2018. This grievance was untimely as it was not filed within fourteen (14) days as required by Merit Rule 18.6.

During the period of July, 2017 through July 3, 2018, the grievant testified to instances in which she felt she was disrespected and treated differently, which she believed were because she was the only African American in Stockley's management staff. She related an incident in which she raised her staff's concerns about discontinued aquatics treatments, which became heated and resulted in the Executive Director confronting her about her "tone" in the presence of the Resource Manager. She also testified about management meetings in which she felt she was not consulted prior to being directed to implement changes which affected her subordinates. She testified she felt demeaned. She also testified that working with her managers made it difficult for her to succeed.

CONCLUSIONS OF LAW

Merit Rule 2.1 provides:

Discrimination in any human resource action covered by these rules or Merit system law because of race, color, national origin, sex, religion, age, disability, sexual orientation, or other non-merit factors is prohibited.

In order to prevail on a hostile work environment complaint, the grievant must prove that:

- (1) she suffered intentional discrimination based on a protected classification; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected her; (4) the discrimination would detrimentally affect a reasonable, similarly situated employee; and (5) *respondeat superior* liability existed. *LeCompte v. DHSS*, MERB Docket No. 12-07-550 (February 15, 2013).

The Board concludes as a matter of law that Ms. Harris failed to meet her burden to prove there was a racially hostile work environment at DHSS. The Board finds there were changes in

duties and responsibilities, tension between team members and that Ms. Harris passionately advocated for her client population. However, the Board finds there was no testimony or other evidence of racial animus or that DHSS added or removed responsibilities from Harris in order to cause her to be unable to perform her job. A hostile work environment is not merely a change in the workplace environment that the employee does not like or finds inconvenient. *Yatsko v. DHSS*, MERB Docket 19-02-719 (September 9, 2019). In order to prevail, the grievant must meet the legal standards set forth above. Those standards have not been met in this case.

ORDER

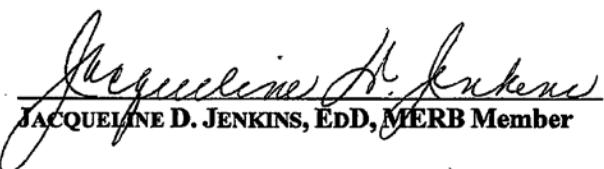
It is this 31st day of March, 2020, by a vote of 5-0, the Decision and Order of the Board to grant the Agency's Motion for Involuntary Dismissal as the Grievant failed to meet her burden to prove the Agency created a hostile work environment.



W. MICHAEL TUPMAN, MERB CHAIR



PAUL R. HOUCK, MERB Member



JACQUELINE D. JENKINS, EDD, MERB Member



VICTORIA D. CAIRNS, MERB Member



SHELDON N. SANDLER, ESQ., MEMBER