

BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE

CONNIE CLAY-BICKEL,)	
)	
Employee/Grievant,)	
)	DOCKET No. 19-12-743
v.)	
)	
DELAWARE DEPARTMENT OF LABOR, DIVISION)	ORDER OF DISMISSAL
OF VOCATIONAL REHABILITATION,)	
)	
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, September 3, 2020, at the Public Service Commission, Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

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

APPEARANCES

Carla A.K. Jarosz
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Grievant
Employee/Grievant, *pro se*

Victoria Sweeney, Esq.
Deputy Attorney General
on behalf of the Department of Labor

A hearing was convened by the Merit Employee Relations Board (“MERB”) on Thursday, September 3, 2020, to hear the appeal of Connie Clay-Bickel (“Grievant”) against the Department of Labor, Division of Vocational Rehabilitation (“Agency”).

A quorum of four members of the MERB met to consider a Motion to Dismiss for abandonment of the grievance on Thursday, September 3, 2020. The Grievant was not present or represented at the hearing.

BACKGROUND

The Grievant filed a direct appeal of a five (5) day disciplinary suspension with the MERB, pursuant to Merit Rule (“MR”) 12.9, on December 19, 2019. Upon receipt of the grievance, the MERB Administrator emailed the Grievant to request a copy of the suspension letter. The email notified the Grievant that the notice of suspension was necessary to process the grievance.

By email dated February 5, 2020, the Grievant provided a copy of a letter of resignation from her employment to be effective date of March 28, 2020. The MERB Administrator responded to the Grievant by email, requesting she clarify the effect of the resignation on her pending grievance. The Grievant responded, “The grievance is strengthened by the agency’s adverse employment action.”

On April 21, 2020, the Board Administrator again contacted the Grievant to request that she clarify whether she intended to proceed with her grievance, noting that MERB had been unable to schedule hearings in March, April and May.¹ The Grievant was requested to respond by May 6, 2020; she did not respond.

A second letter was sent both by email and certified mail on May 15, 2020, which read,

This letter constitutes a second and final effort to determine

¹ On March 13, 2020 Governor John Carney issued a Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat. The Board was unable to schedule hearings until the modification of this order to allow public meetings to be resumed on a limited basis and with strict guidelines to insure public safety.

whether the Board should continue to process your grievance. If your response is not received by June 5, 2020, the Board will move to dismiss your grievance.

United States Postal Service ("USPS") tracking records indicate the letter was delivered to the Grievant's address of record on May 16, 2020. The delivery receipt was returned to MERB on May 18, 2020, with the Grievant's initials acknowledging receipt.

On July 17, 2020, the Grievant was notified that the Board had scheduled a hearing for September 3, 2020 and that the Board would move to dismiss her grievance because she had failed to respond to repeated inquiries by the Board. This letter was sent by certified mail and email. The Grievant responded by email to report that she had been injuring and was awaiting surgery, but did not indicate her intent to proceed with the grievance.

On July 20, 2020, the Board Administrator replied to the Grievant's July 17 email to remind her that she had still not provided a copy of the suspension letter. The correspondence further advised the Grievant that she could appear at the September 3, 2020 hearing to show good cause as to why she had not responded to MERB's repeated efforts to contact her concerning the status of her grievance.

On August 24, 2020, the Notice of the September 3 MERB hearing was sent to the Grievant, with a reminder that she could appear before the Board, by email and USPS certified mail. The letter was delivered to the Grievant's address on August 26, 2020.

On the evening of September 2, 2020, the Grievant sent an email addressed to the Board and the Agency's counsel, stating,

I will not hire a Labor Attorney nor obtain expert testimony for which the State can never compensate the expense to contest the discriminatory treatment of the State DVR Director, and the lack of defense of the State of DE to such treatment for which MERB Hearings have twice been grieved. My medical conditions which impair my functional work capacity were regarded by the State DVR Director as "underlying health conditions" rather than medical

conditions with merit, and she was fired as a VR Counselor never successfully working as a Counselor with the disabled. For several years my reasonable requests for work accommodations were denied or lacked any managerial support as no manager would permit their "head to roll".

This email was read into the record 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., June 25, 2004).

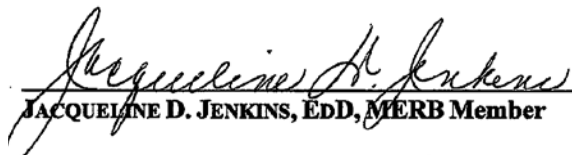
The Grievant failed to appear to be heard and has abandoned her grievance. Consequently, this appeal is dismissed.

DECISION AND ORDER

It is this 25th day of September, 2020, by a unanimous vote of 4-0, the Decision and Order of the Board to dismiss the grievance because the Grievant has failed to actively pursue her claim.


W. MICHAEL TUPMAN, MERB CHAIR


PAUL R. HOUCK, MERB Member


JACQUELINE D. JENKINS, EDD, MERB Member


VICTORIA D. CAIRNS, MERB Member