

BRIEF SUMMARY OF THE EVIDENCE

A hearing was convened by the Merit Employee Relations Board (“MERB”) on Thursday, August 19, 2021 to consider a motion to dismiss the grievance of Erica Crosby (“Crosby”) against the Division of Services for Children, Youth and Their Families (“Agency”). The Grievant was not present in person or telephonically, nor was she represented by counsel at the hearing.

FINDINGS OF FACT

On March 16, 2020, the Grievant was hired as a Youth Rehabilitative Institutional Superintendent with the Division of Youth Rehabilitative Services (“DYRS”) within DSCYF. She was notified of her dismissal via hand-delivery on August 17, 2020, prior to the completion of the one-year probationary period of employment required by Merit Rule 9.1.

The Grievant filed a dual appeal of her dismissal¹ with the Department of Human Resources (“DHR”) on September 18, 2020, and with the MERB on September 23, 2020, pursuant to Merit Rule 12.9.² The DHR Hearing Officer issued a decision denying the grievance on November 25, 2020. By email dated December 14, 2020, the Grievant requested MERB to hear her grievance.

By letter dated March 18, 2021, the MERB evidentiary hearing was scheduled for June 3, 2021. By email dated May 19, 2021, the Grievant asked for a continuance of the hearing in order to allow time for her to obtain counsel and documentation for the MERB hearing. MERB granted her request on May 20, 2021 and the hearing was continued.

By email dated May 24, 2021, the Grievant requested a subpoena duces tecum be issued for documents, which was issued on May 26, 2021. The Agency filed a Motion to Quash the subpoena

¹ Merit Rule 9.2 Employees may be dismissed at any time during the initial probationary period. Except where a violation of Chapter 2 is alleged, probationary employees may not appeal the decision.

² Merit Rule 12.9 Employees who have been dismissed, demoted or suspended may file an 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.

on June 10, 2021. The Motion to Quash was forwarded to the Grievant for her response on or before June 28, 2021. The Grievant did not provide a written response.

On June 17, 2021 the Agency filed a Motion to Dismiss the Grievant's appeal for untimeliness and lack of jurisdiction. The Motion to Dismiss was forwarded to the Grievant for her response on or before July 9, 2021. The Grievant did not provide a written response.

On July 20, 2021, the Grievant was sent notice from the MERB that a hearing on the Motion to Dismiss was scheduled to be heard on August 19, 2021. She was notified that only the Motion to Dismiss would be heard on that date, and that if the Board denied the motion, a hearing on the merits of the grievance would be scheduled for a later date. This correspondence was sent by email and by certified USPS mail. The USPS tracking service indicated that the letter was delivered on July 26, 2021 to the home address the Grievant provided to the Board.

On August 18, 2021 the Grievant was emailed a reminder of the hearing to take place the next day at 9:00 a.m., along with teleconference instructions should she choose to call in rather than appear in person.

The Grievant failed to appear or to call into the hearing when it was convened at 9:00 a.m. on August 19, 2021. The Board delayed consideration of this grievance in order to allow the Grievant time to join the meeting.

CONCLUSIONS OF LAW

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

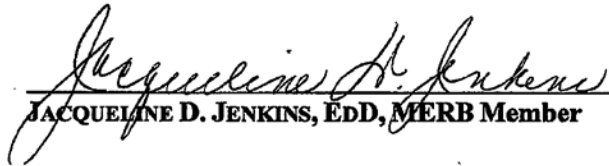
It is this 7th day of **September, 2021**, by a vote of 5-0, the Decision and Order of the Board to dismiss the grievance because the Grievant failed to appear following repeated notifications of the time and place of this hearing. Consequently, the Board concludes the Grievant has abandoned her grievance.



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