

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

GRIEVANT,)	
)	
Employee/Grievant,)	
)	DOCKET No. 21-07-809
v.)	
)	DECISION DENYING
)	MOTION TO SHOW CAUSE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES,)	
DIVISION OF CHILD SUPPORT SERVICES,)	[PUBLIC, REDACTED]
)	
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 February 1, 2023, at the Delaware Division of Professional Regulation, Silver Lake Plaza, Cannon Building, Second Floor, 861 Silver Lake Boulevard, Dover, DE 19904. The hearing was closed to the public pursuant to 29 Del. C. §10004(b)(8).

BEFORE Jennifer Cohan, Chairperson, Victoria D. Cairns, Sheldon N. Sandler, Esq., Joseph A. Pika, III, Ph.D., and Dinah M. Davis-Russ, Members, the full Board.

APPEARANCES

Victoria R. Sweeney
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Alpa Bhatia, Esq.
on behalf of the Grievant

Stephen M. Ferguson
Deputy Attorney General
on behalf of the DHSS, Division
of Child Support Services

BRIEF PROCEDURAL SUMMARY

The Employee/Grievant (“Grievant”) initially filed a dual grievance to both the Secretary of the Department of Human Resources and the Merit Employee Relations Board (pursuant to Merit Rule 12.9¹). The Grievant asserted she had been improperly terminated by the Department of Health and Social Services, Division of Child Support Services (“Agency”) on June 17, 2021, from her position as a Child Support Specialist III in violation of Merit Rule 12.1.²

A hearing was convened by a quorum of the Board on July 21, 2022, during which evidence was received and the arguments of parties were heard. The Board issued its decision on October 14, 2022, in which it denied the grievance in part and granted it in part, finding:

[T]he Grievant committed the charged offense of violating the State Acceptable Use Policy and the DCSS Safeguarding Policy by repeatedly accessing the case files of her husband and the custodial parent. The Board further finds the Grievant was afforded due process in processing this grievance. The Board finds, however, that the penalty of termination was excessive.³

The Board directed the Agency to take the following action:

[M]odify the penalty imposed by 1) immediately reinstating the Grievant, without back pay for the period of June 17, 2021, through the hearing date of July 21, 2022; 2) demoting the Grievant to a Child Support Specialist II position; and 3) directing the Grievant to immediately abide by the Agency’s

¹ 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.

² Merit Rule 12.1: Employees shall be held accountable for their conduct. Disciplinary measures up to and including dismissal shall be taken only for just cause. “Just cause” means that management has sufficient reasons for imposing accountability. Just cause requires: showing that the employee has committed the charged offense; offering specified due process rights specified in this chapter; and imposing a penalty appropriate to the circumstances.

³ *Grievant v. Dep’t of Health and Soc. Servs., Division of Child Support Servs.*, MERB Docket No. 21-07-809, p. 8 (October 14, 2022).

Safeguarding Policy. Counsel for the Agency is directed to notify the Board in writing within thirty (30) days of its full compliance herewith.⁴

On October 27, 2022, in response to the Agency's request, the Board's Chair clarified the Board's order as it related to its obligation to provide retroactive payment:

The Order contained in the decision requires that the Agency return the Grievant to work at the demoted position of Child Support Specialist II immediately, i.e., beginning July 22, 2022. As of July 22, 2022, the Grievant is entitled to be made whole at the Child Support Specialist II rate (in the customary manner and consistent with statutory constraints) for the period until the Board's order is fulfilled.

By letter dated November 14, 2022, the Agency notified the Board that it had "rescinded the termination, placed [*the Grievant*] in the position of a Child Support Specialist II, and her backpay is in the process of being issued as directed."

By letter dated November 22, 2022, the Grievant disputed the accuracy of the information contained in the Agency's November 14 letter, asserting:

First, the Department has not issued payment for the appropriate period of backpay. Second, the position that [*Grievant*] has been returned to, while in title what the MERB ordered, is an entirely different function and job than what [*Grievant*] was performing prior to her period of suspension. The fact that the MERB ordered [*Grievant*] to execute the Department's Safeguarding Policy indicates that [*Grievant*] was to be returned to her prior job, albeit in a less senior classification. Further, as noted in the letter submitted by counsel for the department, the fact is that [*Grievant's*] pay has yet to be processed or issued. This delay, despite the plain ruling of the MERB and the reiteration of that ruling by the MERB, has caused [*Grievant*] to suffer significant financial hardship. Additionally, rather than being returned to her prior job, [*Grievant*] has been treated by the agency as if she is an entirely new hire. This led to delays for [*Grievant's*] return to work, and has also contributed to significant financial hardship for [*Grievant*] and her family.

The Grievant requested this Board schedule an evidentiary hearing to address her questions regarding whether the Agency had complied with the Board's Order.

On January 11, 2023, the Board notified the parties that it would convene for the purpose

⁴ Supra, p. 8-9.

of considering the Grievant's Motion for an Order to Show Cause as to why the Agency did not comply with its Order.

Prior to convening this hearing on February 1, 2023, the parties provided written summaries of their respective arguments for the Board's consideration. The Agency appended four (4) exhibits to its argument, all of which were documents related to the Grievant's reinstatement and backpay.⁵ The Grievant appended five (5) new documents to its argument.⁶

The Board reviewed the record of its July 21, 2022 hearing on the merits and heard legal argument from the parties at the February 1, 2023 hearing. This decision results from that hearing.

FINDINGS OF FACT

On October 19, 2022, the Agency contacted the Grievant to inform her that she could return to work on October 24, 2022.⁷ The Grievant responded that she would not be able to return to work until November 7, 2022, citing the need to find childcare for her school-age children before returning to employment.

By email dated October 25, 2022, the Agency notified the Grievant that she was scheduled for an "onboarding appointment" for November 3, 2022, prior to her start date of November 7, 2022.⁸ On October 27, 2022, the Grievant was contacted by her new supervisor, who provided details on the Grievant's schedule, work location and annual salary, as well as where and when to

⁵ Agency Exhibits A, B, C, and D.

⁶ Grievant Exhibits 3, 4, 6, 7, and 11 were new documents related to the Grievant's reinstatement. The remaining exhibits appended to the Grievant's response were all records related to the Board's July 21, 2022 hearing on the merits of this grievance and its October 14, 2022 decision, all of which were included in the record provided to the Board.

⁷ Grievant Exhibit 3; Grievant's Written Argument, 1/19/23, p. 2.

⁸ Grievant Exhibit 11.

report for work on November 7.⁹

The Grievant met with a Human Resource Associate on November 3, 2023, at which time she received and signed a document which provided that she would receive her first paycheck on December 2, 2022, and that her Benefit Enrollment Form needed to be completed and submitted by December 7, 2022.¹⁰

On November 7, 2022, the Grievant returned to work as a Child Support Specialist II. The Grievant was provided (by email) with an “Employment Settlement Worksheet” which set forth the total amount of her backpay for the period of July 22, 2022 through October 23, 2022.¹¹ The Agency’s Human Resource Manager requested the Grievant sign the document “when you come in later today.” Both the Grievant and the Human Resource Manager signed the Agreement on November 7, 2022.¹²

On November 18, 2022, the Agency paid the Grievant backpay for the period of July 22, 2022 through October 23, 2022.¹³

CONCLUSIONS OF LAW

Section 5931(a) of Title 29 of the Delaware Code provides, in pertinent part:

The Secretary and the Board, at their respective steps in the grievance procedure, shall have the authority to grant back pay, restore any position, benefits or rights denied, place employees in a position they were wrongfully denied, or otherwise make employees whole, under a misapplication of any provision of [Chapter 29] or the Merit Rules.

⁹ Agency Exhibit C.

¹⁰ Agency Exhibit C, p.2.

¹¹ Grievant Exhibit 7.

¹² Agency Exhibit B.

¹³ Agency Exhibit A.

Section 5941 of Title 29 of the Delaware Code provides, in pertinent part:

All officers and employees of the State shall comply with and aid in all proper ways in carrying out this chapter and the rules, regulations and orders and rules thereunder. . .

The Board concludes that the Agency complied with the Board's Order and did not violate 29 *Del. C.* § 5941. The Board finds the Grievant received the back-pay as directed in the Board's Order, as clarified by the Chair's letter of October 27, 2022. The Grievant received payment for the period of time following the MERB hearing on July 21, 2022 through October 24, when the Agency directed her to return to work. It was the Grievant's choice not to return to work for another two weeks. The Agency is not responsible for wages during that period when the Grievant was unavailable to work.

The Grievant was not terminated, but served a lengthy unpaid suspension from June 17, 2021 through July 21, 2022. Her suspension was followed by a demotion, as directed by this Board. The fact that she was required to go through an on-boarding process after a lengthy absence from the workplace does not constitute harassment or bad faith on the part of the Agency.

The Board further finds the Grievant was returned to work in a Child Support Specialist II position, as directed. She was assigned to work in the Customer Service Unit based on the Agency's operational need at the time she was returned to work. There is no evidence of bad faith in the Agency's compliance with the Board's order.

The Board denies the Grievant's request for attorney's fees. Her claim that she has not received the full benefit of the Board's Order is without basis in fact and in law. Having found the Agency fully complied with the Board's Order, the Grievant is entitled to no further equitable relief under 29 *Del. C.* §5931(a).

Finally, the Board declines to opine on whether the Grievant complied with its directive

that she abide by the Agency's Safeguarding Policy immediately upon returning to work, as the question is outside of the scope of the Grievant's Motion.

CONCLUSION

It is this **17th** day of April, 2023, by a vote of 4-1, the Decision and Order of the Board to deny the Grievant's Motion for an Order to Show Cause. The Board finds that the Agency complied with the Board's Order by returning the Grievant to work as a Child Support Specialist II and providing her backpay for the period of July 22, 2022 through October 23, 2022.



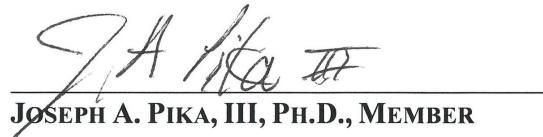
JENNIFER COHAN, MERB Chairperson



VICTORIA D. CAIRNS, MERB Member

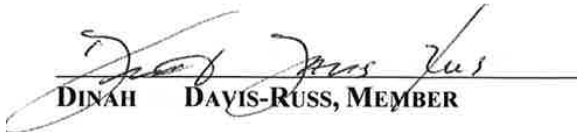


SHELDON N. SANDLER, ESQ., MEMBER



JOSEPH A. PIKA, III, PH.D., MEMBER

I respectfully disagree and would have granted the motion.



DINAH DAVIS-RUSS, MEMBER