

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

NATALIE SALADINO,)	
)	DOCKET No. 23-12-904
Employee/Grievant,)	
)	
DELAWARE DEPARTMENT OF HEALTH AND)	DECISION GRANTING MOTION
SOCIAL SERVICES, DIVISION OF SUBSTANCE)	TO DISMISS
ABUSE AND MENTAL HEALTH,)	
)	
Employer/Respondent.)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the “Board”) on December 4, 2024, in the Delaware Division of Professional Regulation Hearing Room, Silver Lake Plaza, Cannon Bldg., 2nd Floor, 861 Silver Lake Boulevard, Dover, DE 19904. The hearing was open to the public.

BEFORE Jennifer Cohan, Chairperson; Sheldon N. Sandler, Esq., Joseph A. Pika, III, PhD, and Lester E. Johnson, Jr., Members; a quorum of the Board under 29 *Del. C.* §5908(a).

APPEARANCES

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

Deborah L. Murray-Sheppard
Board Administrator

Eric Zubrow
Deputy Attorney General
Counsel to the DHSS, Division of
Substance Abuse and Mental Health

BRIEF SUMMARY OF THE EVIDENCE

The Board heard legal argument on the motion of the Department of Health and Social Services (“Agency”) to dismiss the grievance for lack of jurisdiction. The Agency attached two documents to its motion: the Grievant’s Request for ADA Accommodation dated July 31, 2023; and the October 25, 2023, letter from the Department of Human Resources transitioning the Grievant to Long-Term Disability.

The employee/grievant, Natalie Saladino (“Grievant”), did not file a written response to the motion to dismiss. Ms. Saladino did not appear for the hearing.

PRELIMINARY ISSUES

The Agency moved to dismiss the grievance as a preliminary matter, asserting the Board lacked jurisdiction over an appeal of a disability termination, “because such jurisdiction is vested exclusively in the State Employee Benefits Committee under the Disability Insurance Program,” pursuant to 29 *Del. C.* Ch. 52A.¹ The Agency’s motion to dismiss was forwarded to the Grievant on November 5, 2024, for a written response and the Grievant was advised by the Board administrator that she would have the opportunity to respond verbally to the Motion at the December 4, 2024, hearing.²

On the evening before the hearing, the Grievant sent an e-mail to the Board Administrator asking for a continuance of the December 4 hearing and requesting an extension in which to

¹ Citing to *LaSorte v. DNREC*, MERB Docket 10-09-481, p. 2 (December 6, 2010) (quoting *Benson v. Department of Transportation*, MERB Docket 07-12-407, p. 5 (June 19, 2008)).

² The Agency’s Motion was forwarded to the Grievant by email and US Mail on November 5, 2024, with a requested response date of November 15, 2024. A second email was sent on November 18, 2024, requesting she advise the Board if she intended to file a response to the motion. She was also reminded that she would have the opportunity to respond to the Agency’s motion at the December 4, 2024, hearing (which was noticed on October 4, 2024). The Board Administrator also called and left a message for the Grievant at the number provided on her grievance on November 19, at 11:30 a.m. The Grievant did not respond to any of the communications from the Board until 11:35 p.m. on Tuesday, December 3, 2024, when she filed her motions.

respond to the Agency's motion to dismiss. Copies of the Grievant's motions were provided to the Board for review before the commencement of the hearing the next morning.

FINDINGS OF FACT

The Grievant was employed as a Psychiatric Social Worker II by the Department of Health and Social Services, Division of Substance Abuse and Mental Health, and assigned to work with the Promise Unit. On February 12, 2023, the Grievant requested Family Medical Leave Act ("FMLA") protected leave. She was approved for continuous FMLA Leave from February 13 through March 30, 2023. She was later approved for short-term disability insurance ("STDI") benefits by the State's provider, the Hartford, for the period of March 15 through August 13, 2023. Thereafter, the Grievant was approved to return to work on a part-time basis. On July 27, 2023, she requested an Americans with Disabilities Act ("ADA") accommodation to include a 25-hour weekly schedule with work to be performed remotely. The request also noted her return to full-time work was expected to be October 2, 2023.

Because the Grievant's requested accommodation could not be met in her position with the Promise Unit, the Agency secured an alternate assignment as an Operations Support Specialist in the Enrollment and Eligibility Unit. Despite the fact that the Operations Support Specialist was a lower classified position, the Grievant continued to be compensated at the higher rate of a Psychiatric Social Worker II.

The Grievant was notified by certified letter from the Department of Human Resources ("DHR") on October 25, 2023:

... On August 8, 2023, you returned to work in a partial STDI and part-time capacity as a reasonable accommodation. On August 13, 2023, your partial STDI status was terminated in accordance with 19 *Del. C.* §5253, which provides that:

Long-term disability benefits for participating employees shall commence upon the expiration of a 182-calendar-day waiting period. The waiting period shall commence on the first day following the onset of the disability as determined by the [*State Employee Benefits*]

Committee, in its sole discretion. If an employee returns to work for 14 or fewer consecutive calendar days during such 182-calendar-day waiting period and cannot thereafter continue to work, the periods worked shall not be deemed to have interrupted the 182-calendar-day waiting period.

A new period of STDI shall not be constituted if a participating employee returns to work on a part-time basis. As such, you were transitioned into a partial Long Term Disability Insurance (LTDI) status with the Hartford.³

The letter also directed her to return to work full duty without restrictions by November 1, 2023, and stated "... if you are unable to return you will be terminated and transitioned into full long-term disability."⁴

The Grievant filed a dual grievance of her termination pursuant to Merit Rule 12.9.⁵ DHR heard the grievance on February 7, 2024, and issued its decision on August 9, 2024. The Grievant then advanced her grievance to be heard by this Board.

CONCLUSIONS OF LAW

The Board concludes as a matter of law that it does not have jurisdiction to hear this grievance of a disability termination "because jurisdiction is vested exclusively with the State Employee Benefits Committee under the Disability Insurance Program."⁶

The Board held in *Benson v. DOT*,⁷

The Board concludes as a matter of law that Merit Rule 12 does not apply to a termination for disability. The Rule applies to "disciplinary measures", which may include dismissal. But the Board does not believe that a dismissal based on disability is a disciplinary measure for employee misconduct. Under the

³ Exhibit B to the Agency's Motion to Dismiss.

⁴ *Supra*.

⁵ 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.

⁶ Citing *Benson v. Dept. of Transportation*, MERB Docket No. 07-12-407, at p. 5 (June 19, 2008); *LaSorte v. DNREC*, MERB Docket No. 10-09-481 at p. 2 (December 6, 2010).

⁷ *Supra* at p. 8.

Disability Insurance Program, if the former employee recovers from a disability, he or she may be returned to work. *See 29 Del. C. §5257.*⁸ This right of reinstatement distinguishes a termination for disability from a disciplinary dismissal for employee misconduct, which bars classified state employment for three years. *See Merit Rule 6.4.10.*⁹

The separation from employment based on a determination of disability is not inherently disciplinary, punitive or related to any wrongdoing. There were no disciplinary actions taken against the Grievant. Because she is now in a long-term disability status, she is provided with access to the State's return to work process should she be able, at some point, to perform the essential functions of her former position.

DECISION AND ORDER

It is this **20th** day of **December, 2024**, by a vote of 4-0, the Decision and Order of the Board to grant the Agency's Motion to Dismiss Ms. Saladino's grievance for lack of jurisdiction.

⁸ **§ 5257. Return to work.**

(a) Once an employee has been determined to have the ability to return to employment by the Committee, the employee will receive the following assistance:

(1) Merit employees may be placed in any vacant merit position, for which they qualify, by the Secretary of the Department of Human Resources.

(2) Nonmerit state employees, and employees from nonstate employers will be placed by that employer into a vacant position within their respective agency for which the employee qualifies.

(b) Once an individual has been determined to have the ability to return to employment by the committee, the individual will receive the following assistance:

(1) Former merit employees enrolled in and previously deemed eligible for the Long-Term Disability Program may, when available and appropriate, be placed by the Department of Human Resources in any merit position, for which they qualify without a certification list, as long as the paygrade does not exceed their paygrade at the time of their acceptance into and eligibility for the Short-Term Disability Program. Exceptions to the paygrade limitation may be made for vacancies for which a documented shortage of qualified applicants exists.

(2) Former nonmerit employees enrolled in and previously deemed eligible for the Long-Term Disability Program will be placed by their previous employer into a vacant position within their respective agency for which they qualify.

⁹ **6.4 Rejection of Application.** Applications may be rejected if any of the following is established about the applicant:

6.4.10 The applicant has been dismissed from State service within the preceding three years.

As the Board does not have jurisdiction to consider the merits of this grievance, the Grievant's Motions are denied.

IT IS SO ORDERED.



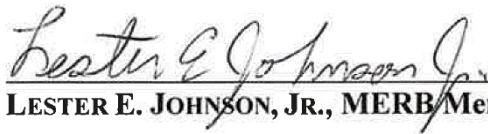
JENNIFER COHAN, MERB Chairperson



SHELDON N. SANDLER, ESQ., MEMBER



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



LESTER E. JOHNSON, JR., MERB Member