

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

GRIEVANT,)	
)	
Employee/Grievant,)	<u>DOCKET No. 24-10-937</u>
)	
v.)	DECISION AND ORDER
)	OF DISMISSAL
DEPARTMENT OF HEALTH AND SOCIAL SERVICES,)	
DIVISION OF PUBLIC HEALTH,)	<i>[PUBLIC, redacted]</i>
)	
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 March 20, 2025, at the Delaware Public Service Commission, Silver Lake Plaza, Cannon Bldg., Suite 100, 861 Silver Lake Blvd., Dover, Delaware 19904. The hearing was closed to the public pursuant to 29 Del. C. §10004(b)(8).

BEFORE Jennifer Cohan, Chair, Joseph Pika, and Sheldon Sandler, Members, a quorum of the Board under 29 *Del. C.* §5908(a).

APPEARANCES

Jennifer Singh, Esq.
Legal Counsel to the Board

Grievant, *pro se*

Patrick Smith
Deputy Attorney General
on behalf of the Department of
Health and Social Services

BRIEF SUMMARY OF THE EVIDENCE

The employee/grievant (“Grievant”) offered fifty-one (51) documents into evidence, of which fifty (50) were admitted and marked as Grievant Exhibits 1-32 and 34-51.

The Department of Health and Social Services, Division of Public Health (“Agency”) offered eighteen (18) documents into evidence, all of which were admitted and marked as Agency Exhibits A through R.

The Grievant testified on her own behalf and called Ricky Williamson, her former co-worker at the Agency.

The Agency called Michelle Mathew, Bureau Chief for Adolescent and Reproductive Health; Lakeesha Johns, Program Director, DPH; Anissa Harris, Human Resources Manager II, DHSS; and Robert Prosser, Management Analyst III, DPH.

FINDINGS OF FACT

The Grievant began working for Department of Health and Social Services, Division of Public Health as an Adolescent Health Program Management Analyst III (MAIII) in June of 2023.¹ The MAIII position is responsible for, *inter alia*, managing program contracts and memoranda of understanding, and assisting with data reports.² The duties associated with the position include maintaining an efficient accounting and tracking system, providing funding projections, attaining proficiency in First State Financials, and performing tasks related to submissions of school-based health centers reports.³

In December of 2023, the Grievant had her first performance review, six months into her tenure, in which she received a “needs improvement” rating. The Grievant’s supervisor, Michelle

¹ Agency Exhibit A.

² *Id.*

³ *Id.*

Mathew, noted three deficiencies in her work: accuracy in completing tasks, meeting deadlines, and communications.⁴

The Grievant was placed on a Performance Improvement Plan on December 20, 2023, which identified the specific improvement needed to remedy the three deficiencies, as well as steps to move toward improvement. The performance improvement plan also listed dates for follow-up meetings, coaching and support. A formal 90-day follow-up was scheduled for March 13, 2024.⁵

As of March 13, 2024, Ms. Mathew noted that she had not seen any improvement in the Grievant's deficiencies, even after weekly one-on-one meetings.⁶ Ms. Mathew noted that "recurring errors related to accuracy continue to persist"⁷; that the Grievant was not using the Outlook calendar and tasks to keep track of deadlines and continued to miss such deadlines⁸; and that the Grievant continued to omit Lakeesha Johns from critical emails.⁹

The Grievant's initial PIP was extended 90 days from April 18, 2024 to July 24, 2024.¹⁰ When the PIP was extended, the Grievant responded she did not receive formalized training and had been required to learn the position on her own.¹¹

On August 12, 2024, the Division of Public Health Director, Steven Blessing, notified the Grievant that he was recommending her termination, noting that despite working under a Performance Improvement Plan for more than 180 days, the Grievant continued to have inaccuracies in task completion, failed to meet deadlines, and failed to sufficiently communicate with management.¹² Director Blessing advised the Grievant that she was entitled to a pre-decision

⁴ Agency Exhibit B.

⁵ Agency Exhibit D.

⁶ *Id.*

⁷ *Id.* (B27).

⁸ *Id.* (B28).

⁹ *Id.* (B31).

¹⁰ Agency Exhibit I.

¹¹ *Id.*

¹² Agency Exhibit M.

meeting to address the deficiencies noted in the termination letter.¹³ This meeting took place on September 5, 2024.

By letter dated September 12, 2024, Director Blessing found that the Grievant “clearly received notice of the expectations outlined in [her] initial performance plan and that management made a substantial effort to assist [her] in achieving the standards outlined in [the] plan.”¹⁴ Director Blessing notified the Grievant of his decision in writing on September 12, 2024.¹⁵ On September 19, 2024, DHSS Secretary Josette Manning notified the Grievant that she was terminated as of that date.¹⁶

Prior to the Grievant’s termination, members of the DHSS human resources department searched for open positions with the Department that would be appropriate for her¹⁷ and reached out to the Grievant’s prior employer, the Department of Finance, to see if Finance had any appropriate position.¹⁸ Neither Department had a suitable open position to which the Grievant could be transferred, so she was terminated effective September 19, 2024.

CONCLUSIONS OF LAW

Merit Rule 12.1 states:

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.

The Board finds that the Agency had just cause to terminate the Grievant.

¹³ *Id.*

¹⁴ Agency Exhibit O.

¹⁵ *Id.*

¹⁶ Agency Exhibit P.

¹⁷ Agency Exhibit N.

¹⁸ Agency Exhibit Q.

A. The Agency presented Substantial Evidence that the Grievant Committed the Charged Offenses.

The Agency accused the Grievant of failing to meet the standards of her job in three areas: 1) accuracy in completing tasks; 2) meeting deadlines; and 3) communications.¹⁹ The Agency presented substantial evidence that the Grievant failed to meet these standards throughout her tenure and was not competently performing her job duties. After the Grievant had been with the Agency for six months, her performance was reviewed and found to need improvement.”²⁰ The Agency documented that the Grievant’s supervisor, Michelle Mathew, held monthly one-on-one meetings with her; that the Grievant struggled with accuracy in completing tasks, including sending vendors the wrong contracts, prematurely closing purchase orders, and providing incorrect information in contracts; that the Grievant failed to timely complete tasks such as submitting written reports; and communicating confusing information to vendors and failing to include the appropriate or pertinent individuals on emails.²¹

In addition to the initial performance review, the written record includes several Agency emails contemporaneously noting the Grievant’s errors²² as well as Ms. Mathew’s notes from weekly meetings with the Grievant memorializing her ongoing deficiencies.²³ The Agency also placed the Grievant on a PIP in December of 2023, once again noting the same three deficiencies in her performance.²⁴ In March of 2024, the Agency documented meeting with the Grievant, when Ms. Mathew stated “after weekly team and one-on-one meetings since the implementation of this PIP, I have not observed successful resolution of the performance areas needing improvement.”²⁵

¹⁹ Agency Exhibit D.

²⁰ *Id.*

²¹ *Id.*

²² Agency Exhibits B, G, K, and L.

²³ Agency Exhibit E.

²⁴ Agency Exhibit D.

²⁵ *Id.* (B17).

As a result, the Agency extended the Grievant's PIP for an additional 90 days.²⁶ The Agency continued to document the Grievant's deficiencies throughout the second 90-day PIP.²⁷

Finally, the Agency's articulated basis for terminating the Grievant set forth in the recommendation and final determination letters were consistent with those repeatedly reiterated to the Grievant. Put simply, from hire date to termination, the Agency documented the Grievant's ongoing struggles. The Board concludes substantial evidence was presented by the Agency to establish that the Grievant failed to competently perform her duties as an MAIII.

It is important to note that the Grievant never disputed that she committed persistent errors. She argued that she was not provided sufficient training²⁸ and argued that though she committed errors, her co-worker did not catch those errors.²⁹ She questioned her supervisor as to whether she had ever completed her job correctly in 15 months,³⁰ and asked her own witness to confirm that her tasks were complex and confusing.³¹ The Grievant attempted to rationalize her ongoing errors, but did not dispute having committed them.

While the Board recognizes the importance of training for all employees, it is clear that the Grievant received DHSS and DPH training when she started and then received ongoing training throughout her tenure. Ms. Mathew and two other co-workers met with the Grievant weekly and had individualized coaching sessions with her.³² In fact, their meetings lasted for an hour and a half on at least a dozen occasions.³³ Additionally, Ms. Mathew provided the Grievant resources to obtain training in appropriate areas. Finally, Lakeesha Johns, an Adolescence Health program

²⁶ TR 88-89 and Agency Exhibit I.

²⁷ Agency Exhibits J, K, and L.

²⁸ March 20, 2025 hearing transcript p. 57 (hereafter annotated as "TR_").

²⁹ TR 123-124.

³⁰ TR 65.

³¹ TR132, 135.

³² TR 30.

³³ TR 36.

manager with DPH, began having informal weekly one-on-one meetings with the Grievant shortly after the Grievant was hired to address and assist with her challenges.³⁴ The Agency provided and documented ample hands-on training to the Grievant from her hire date until her termination.

B. The Agency Afforded the Grievant Due Process Prior to Terminating Her.

Based upon the Grievant's performance review, 90-day PIP and 90-day extension, it is clear that before the Agency recommended she be terminated, it granted the Grievant sufficient opportunity to remediate her deficiencies and continue her employment. The Grievant was notified of the recommendation for termination, and the reasons for such recommendation and offered a pre-decision meeting, as required under the Merit Rules.³⁵ The Grievant exercised her right to a pre-decision meeting which took place on September 5, 2024.³⁶ The Agency provided the Grievant with the due process required by Merit Rule 12.

C. Termination Was Appropriate under the Circumstances.

In deciding whether a penalty is appropriate to the circumstances, the Board considers both mitigating and aggravating factors. *Grievant v. Dept. of Health and Social Servs.*, MERB Docket No. 20-05-756, at 12 (Jan. 11, 2021). Here, in mitigation, the Grievant had over 20 years of service with the State; however, she was provided over a year at DHSS to remediate her shortcomings, including numerous one-on-one and group meetings. In addition, the Grievant's mistakes were negatively impacting the Agency and her co-workers. Ms. Mathew and Ms. Johns testified that because of the Grievant, the Agency would lose access to funding and could not pay vendors.³⁷ Ms. Mathew stated that the time and energy she spent working with the Grievant and away from

³⁴ TR 94.

³⁵ Agency Exhibit M.

³⁶ Agency Exhibit P.

³⁷ TR 27, 29, 99.

her job and the rest of her team was “extreme.”³⁸ Ms. Mathew not only spent a great deal of time specifically with the Grievant but then also correcting errors, scrambling for funding, and reaching out to vendors.³⁹ Ms. Johns testified that she frequently spent significant time correcting the Grievant’s errors such that her own job was adversely affected.⁴⁰

The burden of proof in a disciplinary appeal rests with the Grievant. 29 *Del. C.* § 5949(b). The Board finds the Grievant did not establish by a preponderance of the evidence that the Agency lacked sufficient reasons for imposing accountability and concludes that termination was the appropriate penalty. The Agency did not violate Merit Rule 12.1.

ORDER

It is this 29th day of May 2025, by a unanimous vote of 3-0, the Decision and Order of the Board to deny the grievance.



JENNIFER COHAN, MERB Chairperson



SHELDON N. SANDLER, ESQ., MEMBER



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

³⁸ TR 44.

³⁹ *Id.*

⁴⁰ TR 116.