

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

EVAN DOUGLASS,

Employee/Grievant,

v.

**DEPARTMENT OF LABOR, DIVISION OF
UNEMPLOYMENT INSURANCE,**

Employer/Respondent.

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Docket No. 25-02-942

DECISION AND ORDER

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 May 7, 2025, at the Delaware Public Service Commission, Silver Lake Plaza, Cannon Bldg., 861 Silver Lake Boulevard, Dover, DE 19904.

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

APPEARANCES

Jennifer M. Singh
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Evan Douglass
Employee/Grievant, *pro se*

Victoria W. Counihan
Deputy Attorney General
on behalf of the Department of
Labor

PRELIMINARY PROCEDURAL MATTER

Evan Douglass (“Grievant”) filed a grievance against the Department of Labor, Division of Unemployment Insurance (“Agency”), alleging that the Agency failed to follow the advanced starting salary policy when it determined his pay rate and did not forward his documentation to the Department of Human Resources (“DHR”) for review.

The Agency filed a Motion to Dismiss asserting the Grievant’s appeal of the DHR Step 3 decision was not timely filed. The Grievant filed a responsive email. Both, along with a copy of the grievance appeal, were forwarded to the Board for review prior to the hearing.

As a preliminary matter, the Board heard oral argument on the Agency’s Motion to Dismiss. After reviewing the parties’ written submissions and hearing the parties’ arguments, the Board granted the Agency’s Motion to Dismiss the grievance.

FINDINGS OF FACT

The Grievant is employed by the Department of Labor as an Administrator for Unemployment Insurance Quality Control and Continuous Improvement Processor. He was hired into this position on April 7, 2024. At the time of hire into this position, the Grievant was compensated at 85% of midpoint of the pay range for his position. Believing that the advance starting salary should have been at 100% of the midpoint of the range, he filed a grievance alleging a violation of Merit Rule (“MR”) 4.4.2.¹

The grievance was heard at Step 3 by a DHR Hearing Officer on October 29, 2024. The Hearing Officer’s decision was issued by email on January 21, 2025, at 11:49 A.M. to Mr.

¹ **MR 4.4.2** Agencies may approve a starting rate up to 85% of midpoint where applicants’ qualifications are clearly over and above the job requirements as stated in the class specification. Upon agency request, the DHR Secretary may approve a starting rate higher than the 85th percentile if supported by documentation of the applicant’s qualifications.

Douglass' state email address.

The Grievant advanced his grievance to the Board by email at 3:59 PM on February 11, 2025.

CONCLUSIONS OF LAW

Merit Rule 18.9 provides:

If the grievance has not been settled *[at Step 3]*, the grievant may present, within 20 calendar days of receipt of the Step 3 decision or of the date of the informal meeting, whichever is later, a written appeal to the Merit Employee Relations Board (MERB) for final disposition according to 29 *Del. C.* §5931 and MERB procedures.

The Agency moved to dismiss the grievance because it was not timely filed. The time limits of the grievance procedure are jurisdictional and when a deadline has “passed, the Board ha[s] no jurisdiction to hear [the employee’s] grievance.” *Cunningham v. DHSS*, 1996 WL 190757, at *2 (Del. Super. Mar. 27, 1996), *aff’d*, 679 A.2d 462. The Board does not have jurisdiction to consider an untimely appeal. *Banner v. MERB and DHSS*, N13A-04-013 (Del. Super. Dec. 24, 2014), *aff’d*, 123 A.3d 472 (2015). Further, “[the grievant’s] *pro se* status does not excuse a failure to timely comply with the jurisdictional requirements of [the Merit Rules].” *Echols v. DSCYF*, MERB Docket No. 09-10-456, at p. 4 (Apr. 5, 2010) (quoting *Pinkett v. DHSS*, MERB Docket No. 08-02-415, at p. 5 (May 21, 2009)).

The Grievant admits that the DHR Step 3 decision was delivered to his State email address on January 21, 2025, but argues that although he is at his computer and monitoring email throughout his work day, he was not aware the decision had been sent until the following day, January 22, 2025. There is no dispute that the appeal was filed with the Board on February 11, 2025.

MR 18.9 requires that a written appeal of a Step 3 decision must be presented within twenty days of receipt of the Step 3 decision, not counting the date of issuance. Twenty days following

the January 21, 2025 issuance of the decision was February 10, 2025.

The Board's jurisdiction is limited to considering timely grievances. The determination of when the appeal period closes is an objective calculation not subject to equitable considerations. Because the Grievant failed to comply with the deadline set forth in Merit Rule 18.9 by waiting until twenty-one days after receipt of the Step 3 decision to file, the grievance is void. The Board does not have jurisdiction to hear this grievance, and it must be dismissed.

ORDER

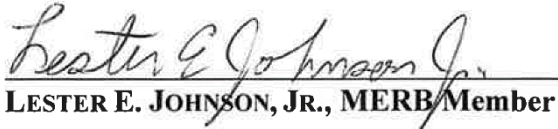
It is this **3rd** day of **June, 2025**, by a unanimous vote of 3-0, the Decision and Order of the Board to grant the Motion to Dismiss and dismiss the grievance.



JENNIFER COHAN, MERB Chairperson



SHELDON N. SANDLER, ESQ., MEMBER



LESTER E. JOHNSON, JR., MERB Member