

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

DIANE GLENN,)	
)	
Employee/Grievant,)	DOCKET NO. 25-12-1005
)	
v.)	
)	
STATE FIRE PREVENTION COMMISSION,)	DECISION AND ORDER
)	ON MOTIONS
Employer/Respondent.)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the “Board”) at 9:07 a.m. on March 4, 2026, at the Delaware 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; Lester E. Johnson, Jr. and Curtis D. Linton, 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

Michael DeSantis, Esq.
Offit Kurman, P.A.
on behalf of the Grievant

Nicole Hartman
Deputy Attorney General
Legal Counsel to Employer

The Merit Employee Relations Board (the “Board”) convened a hearing on Wednesday, March 4, 2026, to consider two motions in the pending grievance of Diane Glenn (“Grievant”) against the State Fire Prevention Commission (“Agency”). On December 16, 2025, the Agency filed a Motion to Dismiss the grievance, asserting the Board lacked jurisdiction to hear the case. In response, on February 9, 2026, the Grievant filed an Opposition to the Agency’s Motion to Dismiss, and as part of the relief sought, requested that the Board remand the grievance to the Department of Human Resources (“DHR”). The Board construed the Grievant’s request to be a Motion to Remand. At the hearing, counsel for the Parties were provided the opportunity to summarize their arguments and to answer questions from the Board. This decision results from the Board’s consideration of the Parties’ arguments.

PROCEDURAL BACKGROUND

On August 6, 2025, the Grievant filed a Step 1 grievance alleging violations of Merit Rule (“MR”) 2.1 and 19 *Del. C.* § 5953(b). The Agency did not hold a Step 1 meeting or issue a decision on the grievance, as provided by MR 18.6.¹ On August 27, 2025, the Grievant filed a Step 2 grievance, and the Agency did not hold a Step 2 meeting or issue a decision on the grievance, as provided by MR 18.7. On October 10, 2025, the Grievant appealed her grievance to DHR, and requested a Step 3 hearing. To date, DHR has not taken any action on the Step 3 grievance.

PARTIES CONTENTIONS

In its Motion to Dismiss, the Agency argues that the Board should dismiss the grievance in its entirety for lack of jurisdiction because DHR failed to hear the grievance or issue a written decision. In response, the Grievant opposes the Agency’s request for dismissal, and instead, urges

¹ The circumstances surrounding the Agency’s decision to not hold a Step 1 hearing relate to the merits of the case and are not before the Board for consideration at this time.

the Board to remand the grievance to DHR to conduct a Step 3 hearing.

DISCUSSION

Title 29, Section 5931(a) and (b) provide:

(a) The rules shall provide for the establishment of a plan for resolving employee grievances and complaints. The final 2 steps of any such plan shall provide for hearings before the Secretary or the Secretary's designee and before the Board, respectively, unless a particular grievance is specifically excluded or limited by the Merit Rules. 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 this chapter or the Merit Rules. The rules shall require that the Board take final action on a grievance within 90 calendar days of submission to the Board. Upon approval of all parties, the 90 days may be extended an additional 30 calendar days.

(b) Should the plan required by subsection (a) of this section provide for various stages, phases or steps to be followed, the failure of the employing department or agency to respond or consider the grievance or complaint within the time required by the rules shall automatically result in the grievance or complaint moving to the next stage, phase or step unless the delay results from an agreement in writing between the employing department or agency and the employee who filed the grievance or complaint, or the employee has indicated in writing to the personnel office of the department or agency his or her opposition to the automatic movement to the next stage, phase or step.

Merit Rule 18.4 provides, in pertinent part:

Failure of the employing agency to comply with time limits shall automatically move the grievance to the next step unless the parties have a written agreement to delay, or grievants have opposed in writing moving the grievance automatically to the next step. Failure of the grievant to comply with time limits shall void the grievance. The parties may agree to the extension of any time limits or to waive any grievance step. . . .

Merit Rule 18.8 provides:

Step 3: Any appeal shall be filed in writing to the DHR Secretary within 14 calendar days of receipt of the Step 2 reply. This appeal

shall include copies of the written grievance and responses from the previous steps. The parties and the DHR Secretary (or designee) may agree to meet and attempt an informal resolution of the grievance, and/or the DHR Secretary (or designee) shall hear the grievance and issue a written decision with 45 calendar days of the appeal's receipt. The Step 3 decision is final and binding upon agency management.

Merit Rule 18.9 provides:

If the grievance has not been settled, 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.

Once a grievant files a Step 3 appeal to DHR, unless the parties and DHR Secretary agree to informally resolve the grievance, DHR “*shall* hear the grievance and issue a written decision.” MR 18.8 (emphasis added); see also 29 Del. C. § 5931(a). Although MR 18.4 generally provides that “[f]ailure of the *employing agency* to comply with time limits shall automatically move the grievance to the next step,” the Merit Rules do not provide a path to ‘green light’ a grievance beyond the three-step process. See also 29 Del. C. § 5931(b). MR 18.4 applies to the first two steps of the three-step grievance procedure, which involve meetings between a grievant and their supervisors or the leadership within their employing agency. See MR 18.6, 18.7. At Step 3, the grievant and employing agency present evidence to DHR, and accordingly, it is incumbent upon DHR to schedule the hearing and issue the decision, as mandated by MR 18.8 and 29 Del. C. § 5931(a).

Only after DHR issues its written decision can the Board hear an appeal on a grievance filed under the three-step grievance procedure. See *Ringer v. Dept. of Transportation*, MERB Docket No. 09-07453 at 4 (March 11, 2010) (citing *Pinkett v. Dept. of Health and Social Servs.*, MERB Docket No. 08-02-415 (May 21, 2009)). In fact, any appeal to the Board must be filed “within 20 calendar days of receipt of the Step 3 decision.” MR 18.9. Since the Grievant did not

receive a Step 3 decision, she cannot appeal to the Board. *See Ringer* MERB Docket No. 09-07453 at 4; *Pinkett*, MERB Docket No. 08-02-415 at 3–4.

The Board has authority under 29 *Del. C.* § 5931(a) to provide relief for any wrong arising under a misapplication of the Merit Rules or Chapter 59 of Title 29. Since DHR has not yet held a hearing on this grievance or issued a written decision on the grievance, in violation of 29 *Del. C.* § 5931(a) and MR. 18.8, the Board remands this grievance to DHR to conduct a Step 3 hearing.

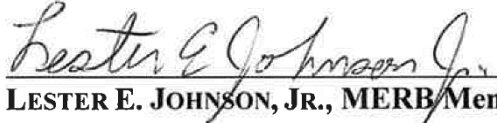
ORDER

It is this **20th** day of **March, 2026**, by a vote of 3-0, the Decision and Order of the Board is as follows:

1. The Board grants the Grievant’s Motion to Remand, and directs DHR to hold a Step 3 hearing on this grievance, in accordance with 29 *Del. C.* § 5931 and MR 18.8, 18.9, within twenty (20) days of the date of this Order.
2. The Board denies the Agency’s Motion to Dismiss as moot, without prejudice.



JENNIFER COHAN, MERB Chairperson



LESTER E. JOHNSON, JR., MERB Member



CURTIS D. LINTON, MERB Member