

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

ERIC HILLER,)	
)	
Employee/Grievant,)	
)	<u>DOCKET NO. 24-08-933</u>
v.)	
)	
DEPARTMENT OF LABOR, DIVISION OF UNEMPLOYMENT INSURANCE,)	DECISION AND ORDER
)	
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 18, 2026, at the Delaware Public Service Commission, Silver Lake Plaza, Cannon Bldg., Suite 100, 861 Silver Lake Blvd., Dover, Delaware 19904. The hearing was open to the public at the Grievant’s request.

BEFORE Sheldon Sandler, Acting Chair, Lester Johnson, and Curtis Linton, a quorum of the Board under *29 Del. C. §5908(a)*.

APPEARANCES

Jennifer Singh, Esq.
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Eric Hiller
Pro Se

David deBruin, Esq.
Deputy Attorney General
on behalf of the Department of
Labor

BRIEF SUMMARY OF THE EVIDENCE

Eric Hiller, the employee/grievant (“Grievant”) offered 86 documents into evidence, marked as Exhibits 1, 13, 16-17, 19, 21-25, 28, 30, 32-33, 35, 39-40, 43-46, 50-51, 53, 55, 59, 61-62, 64, 71-73, 76, 78-80, 90-91, 93-97, 99-102, 105-106, 108-111, 113-114, 116-120, 122, 124, 129, 131, 133-135, 137, 139-142, 146-149, 151-152, and 158-165.

The Department of Labor, Division of Unemployment Insurance (“UI” or “Agency”) offered 22 documents into evidence, marked as Exhibits B through W.

Grievant testified on his own behalf and called Marlon Tann, James Billups, and Jodi Harper, Mr. Hiller’s former co-workers in UI.

The Agency called Tristan Press, Human Resources Administrator for the Department of Human Resources.

FINDINGS OF FACT

Mr. Hiller began working for Department of Labor, Division of Unemployment Insurance as a Labor Law Enforcement Officer II on August 2, 2020.¹ In July of 2023, Mr. Hiller applied for the position of Tax Collection Manager – Fox Valley and was selected for the job.² His start date was July 16, 2023.³ On April 1, 2024, Mr. Hiller’s manager, Daniel Nelson, advised Mr. Hiller that he was approved to work out of the Dover office.⁴ Mr. Nelson resigned from the Agency shortly thereafter—his last day was May 15, 2024.⁵ On May 16, 2024, Secretary Hubbard advised Mr. Hiller that his assigned work site was Fox Valley in Wilmington, and that Mr. Nelson

¹ Grievant Exhibit 78.

² Agency Exhibit B.

³ *Id.*

⁴ Agency Exhibit C.

⁵ Transcript (“TR”) p. 131.

did not have the authority to allow Mr. Hiller to work in Dover.⁶

On May 22, 2024, Secretary Hubbard advised Mr. Hiller that he was required to attend a meeting in-person at Fox Valley and advised that if he disagreed with the denial of his request to work from Dover, he could file a grievance.⁷ Mr. Hiller never filed a grievance in response to the Secretary's decision regarding his work site.⁸ Instead, on May 22, 2024, Mr. Hiller responded to Secretary Hubbard's email stating "[t]here is no 'request to work from Dover,' as you so claim (see my prior communications) as **Dover IS** my work location." Secretary Hubbard responded on May 24, 2024, noting that Mr. Hiller's email sounded "accusatory and hostile."⁹ Secretary Hubbard further stated that Mr. Hiller was required to report to Fox Valley and communicate with her and all other staff appropriately.¹⁰ On May 31, 2026, Mr. Hiller responded to Secretary Hubbard's email with the following:

While I certainly can respect your option (sic) that my email reads "accusatory and hostile," I note that you don't ever identify what, in fact, you deemed "hostile" within my email so I don't share in your view or characterization of it as such still. In fact, it is YOU who have directed a threat to terminate MY current employment; so if **anyone** is under "hostile" circumstances, it most certainly is **not** you in point of fact.¹¹

Mr. Hiller further stated that despite Secretary Hubbard's mandate that he report to his assigned work site of Fox Valley, Mr. Hiller stated that "[a]s has always been a condition of my hiring at DOL, I will make myself available for (limited) coverage at the Fox Valley office location, so long as DOL continues to provide transportation and it falls within my compensated hours of work."¹²

⁶ Agency Exhibit E.

⁷ Agency Exhibit G.

⁸ March 18, 2026 Transcript ("TR") pp. 32-33.

⁹ Agency Exhibit H and Grievant Exhibit 97.

¹⁰ Grievant Exhibit 97.

¹¹ *Id.*

¹² *Id.*

On June 4, 2024, Director Scott sent Mr. Hiller a counseling letter noting that the position for which Mr. Hiller applied was always located in Fox Valley, and Secretary Hubbard denied Mr. Hiller's request to work from Dover on May 16, 2024.¹³ Director Scott provided Mr. Hiller until June 20, 2024 to make arrangements to report to work at Fox Valley and provided Mr. Hiller alternative positions available within UI in Dover for which he could apply.¹⁴ Mr. Hiller did not file a grievance in response to this counseling letter.¹⁵ On June 18, 2024, Mr. Hiller sent Director Scott an email criticizing him for failing to adequately communicate with Mr. Hiller.¹⁶

Mr. Hiller did not report to work at Fox Valley on June 21, 2024, so on that same date, Director Scott sent Mr. Hiller a written reprimand for insubordination.¹⁷ This written reprimand also outlined the progressive discipline that would be imposed if Mr. Hiller did not begin reporting to Fox Valley.¹⁸ Also on June 21, 2024, Mr. Hiller emailed Ms. Press questioning if she knew Mr. Scott would be disciplining Mr. Hiller.¹⁹ Within this email, Mr. Hiller asked “[i]s that seriously the response from the Administrator of Human Resources...?” and “I’ll ask again, did you have advanced knowledge that this meeting would involve me receiving discipline?”²⁰ Director Scott issued Mr. Hiller a second written reprimand on June 21, 2024 for Mr. Hiller's inappropriate behavior toward his coworkers, including the Secretary.²¹ Mr. Hiller did not file a grievance in response to either written reprimand.

Following a vacation the last week of June 2024, Mr. Hiller reported to work in Dover on

¹³ Agency Exhibit I.

¹⁴ *Id.*

¹⁵ TR p. 33.

¹⁶ Grievant Exhibit 117.

¹⁷ Agency Exhibit K.

¹⁸ *Id.*

¹⁹ Grievant Exhibit 151.

²⁰ *Id.*

²¹ Agency Exhibit J.

July 1, 2024, not to Fox Valley as he had been directed. As a result, on that same date, Director Scott issued Mr. Hiller a letter suspending him for one day for insubordination.²² Director Scott again outlined the steps that would be followed if Mr. Hiller continued to fail to report to Fox Valley and advised Mr. Hiller of his right to a pre-decision meeting.²³

On July 2, 2024, Mr. Hiller called in sick, but on July 3, 2024, he again reported to work in Dover.²⁴ As a result, Director Scott issued Mr. Hiller a letter suspending him for three days again listing the next discipline that would be imposed if he did not report to Fox Valley and advising him of his right to a pre-decision meeting.²⁵

Mr. Hiller requested July 5, 2024 off, but his request was denied. He did not report to work at Fox Valley.²⁶ Director Scott issued Mr. Hiller a letter suspending him for five days and advised that the next step would be termination.²⁷ After receiving this suspension letter, Mr. Hiller requested a pre-determination meeting.²⁸

Mr. Hiller did not report to Fox Valley on his next scheduled workday, July 8, 2024, so Director Scott sent Mr. Hiller a Recommendation for Termination letter.²⁹ This letter advised Mr. Hiller that he was being placed on administrative leave with pay.³⁰

Mr. Hiller's pre-determination meeting was scheduled for July 10, 2024. Ms. Press notified Mr. Hiller of this meeting by emailing him at the email address he listed on his PHRST record and

²² Agency Exhibit L.

²³ *Id.*

²⁴ TR p. 35 and Agency Exhibit M.

²⁵ Agency Exhibit M.

²⁶ TR p. 35 and Agency Exhibit N.

²⁷ Agency Exhibit N.

²⁸ Grievant Exhibit 79 and Agency Exhibit O.

²⁹ Agency Exhibit P.

³⁰ *Id.*

contact sheet information.³¹ Mr. Hiller did not respond to this email, so Mr. Press emailed him again on July 9, 2024.³² When Mr. Hiller did not appear for the meeting on July 10, 2024, Ms. Press emailed him again, and the Agency held the meeting without him.³³ On July 24, 2024, Secretary Hubbard sent Mr. Hiller a termination letter effective that date.³⁴ Prior to that time, Mr. Hiller did not request another pre-determination meeting on any of the discipline he received.³⁵

On July 25, 2024, Ms. Press received a letter from Mr. Hiller dated July 16, 2024 requesting payroll information and when the pre-determination meeting would be held.³⁶ Insofar as this letter was not received until after Mr. Hiller's official termination, no meeting was scheduled.

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.

Here, the Agency presented substantial evidence demonstrating that Mr. Hiller was insubordinate by repeatedly refusing to report to his assigned workplace after multiple clear directives to do so. The position Mr. Hiller was hired for in July of 2023 was posted as "Tax Collection Manager – Fox Valley."³⁷ Mr. Hiller argued that he was hired to perform this position

³¹ TR p. 37.

³² Agency Exhibit Q.

³³ *Id.*

³⁴ Agency Exhibit R.

³⁵ *Id.*

³⁶ Agency Exhibit S and TR p. 39.

³⁷ Agency Exhibit B.

in Dover but did not provide any evidence to refute the Agency's assertion that the position was in Wilmington at the Fox Valley office. For example, Mr. Hiller had no explanation for why the Agency's email about his hiring explicitly stated that the position was in Fox Valley.³⁸ Additionally, it is unclear why Mr. Hiller would have needed permission from Director Scott or Mr. Nelson to work in Dover, if that was the location as which he was hired to work.³⁹ Finally, Mr. Hiller relied on a Fleet Services Authorized Driver Designation Application listing a work site of Dover to support his claim that he was hired to work in Dover, but Mr. Hiller signed that document on November 14, 2022, long before he accepted the Tax Collection Manager position.⁴⁰ In short, the Agency presented substantial evidence that Mr. Hiller was hired to perform the Tax Collection Manager position in Wilmington at the Fox Valley office.

Despite the fact that Mr. Hiller was hired to work in Wilmington, the Agency did not fully enforce this requirement until May 16, 2024. On that date, Secretary Hubbard, specifically and clearly notified Mr. Hiller that his prior supervisor did not have authority to change Mr. Hiller's work location and she explicitly denied his request to work out of Dover.⁴¹ On May 24, 2024, the Secretary again notified Mr. Hiller that she expected him to report to work in Fox Valley.⁴² Mr. Hiller did not report to Fox Valley, so on June 4, 2024, Director Scott sent Mr. Hiller a counseling letter advising Mr. Hiller of options to address his work site concerns, including using the Fleet van pool to report to Fox Valley and of two alternative positions with UI available in Dover.⁴³ In closing, Director Scott's letter stated:

This letter serves as formal notice of counseling about your continued failure to

³⁸ *Id.*

³⁹ Agency Exhibits C and E.

⁴⁰ Grievant Exhibit 135 and TR pp. 63-64.

⁴¹ Agency Exhibit E.

⁴² Agency Exhibit H.

⁴³ Agency Exhibit I.

report to Fox Valley. To summarize, you are not permitted to work remotely and are expected to report to work each day in Fox Valley no later than June 21, 2024. Your work schedule is Monday through Friday from 8 – 4:30 PM. Failure to adhere to these instructions may result in discipline, up to and including termination.⁴⁴

Mr. Hiller never reported to work at Fox Valley despite receiving a written reprimand on June 21, 2024, which listed the progressive disciplinary steps that would be taken if he continued to refuse to report to work at Fox Valley.⁴⁵ Because he never reported to work at Fox Valley, he received a one day suspension letter on July 1, 2024, a three day suspension letter on July 3, 2024, and a five day suspension letter on July 5, 2024.⁴⁶ Each of these letters listed the disciplinary steps that would be followed if his insubordination continued, notified Mr. Hiller that he was entitled to a pre-decision meeting, and provided him instructions as to how to request a pre-decision meeting.⁴⁷ Mr. Hiller requested a pre-decision meeting on July 5, 2024 but still did not report to work at Fox Valley the next business day.⁴⁸ As a result, on July 8, 2024, Director Scott sent Mr. Hiller a recommendation for termination letter, advising Mr. Hiller that he was being placed on leave, with pay, pending a pre-decision hearing.⁴⁹ Mr. Hiller was directed to report to Fox Valley multiple times and did not do so. He was then counseled, reprimanded, and suspended and still did not do so. In sum, Mr. Hiller repeatedly ignored or refused direct instruction from his employer and was, therefore, clearly insubordinate.

Mr. Hiller argued that Secretary Hubbard’s May 16, 2024 denial of his request to work in Dover was in retaliation to an email he sent to Director Scott on May 10, 2024 stating that the Agency may be “falsifying its actual efforts on the CAP being reported to the FED” and Director

⁴⁴ *Id.*

⁴⁵ Agency Exhibit J.

⁴⁶ Agency Exhibits L, M, and N.

⁴⁷ *Id.*

⁴⁸ Agency Exhibit P.

⁴⁹ *Id.*

Scott's "lack of communication and discussion is creating further confusion."⁵⁰ Secretary Hubbard responded to this email by stating "I am out at an event in Dover, but I ask that we stop email on this issue at this point."⁵¹ Here, the Board found that Mr. Hiller did not establish that the Agency retaliated against him. First, the question of whether Secretary Hubbard's denial of Mr. Hiller's request to work in Dover was retaliatory is not properly before the Board. Secretary Hubbard first communicated this decision to Mr. Hiller on May 16, 2024, and then on May 22, 2024, Secretary Hubbard specifically advised Mr. Hiller that if he disagrees with her decision to deny his request to work from Dover, he was free to file a grievance.⁵² Mr. Hiller did not do so. In fact, he did not file any grievance until August 18, 2024 and only in regard to his July 8, 2024 five day suspension and August 9, 2024 termination. If Mr. Hiller believed the denial of his request to work from Dover was inappropriate retaliatory discipline, he had 14 days from May 16, 2024 to file a grievance about that matter, and he did not do so.⁵³ As such, that question is outside of the Board's jurisdiction.⁵⁴

Alternatively, in order to establish that his *termination* was retaliatory, Mr. Hiller must establish that: (1) he engaged in protected activity; (2) that he suffered an adverse employment action; and (3) that there is a causal connection between the protected class and the adverse employment action.⁵⁵ Mr. Hiller argued that his email was whistle blowing and thus constituted engagement in protected activity, and that there can be no dispute that he suffered an adverse

⁵⁰ TR pp. 82 – 84.

⁵¹ Grievant Exhibit 46.

⁵² Agency Exhibit G.

⁵³ Under Merit Rule 18.6, "Grievants shall file, within 14 calendar days of the date of the grievance matter or the date they could reasonably be expected to have knowledge of the grievance matter, a written grievance which details the complaint and relief sought with their immediate supervisor."

⁵⁴ 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.

⁵⁵ *Finney v. DelDOT*, MERB Docket No. 19-11-741 (2020).

employment action when he was terminated. Setting aside whether Mr. Hiller engaged in protected activity, he did not present any evidence of a causal connection between his engagement in protected activity and his termination. The Agency proffered a legitimate, non-retaliatory reason for Mr. Hiller's termination—insubordination—and the Grievant did not offer any evidence that the Agency's reason was pretextual. Mr. Hiller's belief that the Secretary denied his request to work in Dover in retaliation for whistle blowing did not excuse him from reporting to work at the assigned location of the position. Mr. Hiller's appropriate course of action would have been to file a grievance in response to the Secretary's denial. Instead, he repeatedly ignored and flouted the Agency's directives without an explanation.⁵⁶ The Board concludes as a matter of law that Mr. Hiller did not meet his burden to establish a prima facie case of retaliation.

In addition to having a sufficient basis to terminate Mr. Hiller, the Agency offered "specified due process rights" as required by Rule 12.1. Based upon the abundant notice the Agency provided Mr. Hiller as well as the progressive discipline, it is clear that before the Agency recommended he be terminated, it granted Mr. Hiller sufficient opportunity to remediate his conduct and continue his employment. Mr. Hiller was notified of the recommendation to terminate his employment, and the reasons therefor, and offered a pre-decision meeting as required under the Merit Rules.⁵⁷ Mr. Hiller requested a pre-decision meeting, and the Agency held the meeting.⁵⁸ Ms. Press sent Mr. Hiller several notifications about this meeting, but he did not appear.⁵⁹ According to Mr. Hiller's HR contact information, he twice listed a personal email address of

⁵⁶ While Mr. Hiller objected to having to report to Fox Valley prior to the time he was to officially report, he did not do so after that time or respond to the counseling letter, written reprimands, one-day suspension, or three-day suspension.

⁵⁷ Agency Exhibit P.

⁵⁸ Agency Exhibit T.

⁵⁹ Agency Exhibit Q.

ehiller@gmail.com.⁶⁰ Mr. Hiller testified that was the wrong email address as he has used ehillerdol@gmail.com “for years.”⁶¹ While that may be true, Mr. Hiller did not present any evidence that he notified his employer about the change or updated his contact information of record. It is unclear how Mr. Hiller expected anyone at DOL or DHR to know that the email listed on his employee contact sheet was incorrect if he never changed it. Here, the employer attempted to contact Mr. Hiller multiple times about the pre-decision meeting, but he did not attend.⁶²

The Agency specifically notified Mr. Hiller what was expected of him and what would happen if he did not comply. He was notified that progressive discipline would be imposed, including suspension with review for termination.⁶³ And he was advised of his right to a pre-determination meeting contemporaneously with the imposition of four separate disciplines.⁶⁴ Mr. Hiller was issued a recommendation for termination letter on July 8, 2024 and subsequently terminated 16 days later on July 24, 2024.⁶⁵ While Mr. Hiller sent Ms. Press a letter inquiring about a pre-decision meeting dated July 16, 2024, Ms. Press did not receive the letter until July 25, 2024, after Mr. Hiller was terminated. There is no evidence that Mr. Hiller called or emailed Ms. Press or any of his DOL supervisors any time between July 8, 2024 and when he received his termination letter. Here, it is clear that the Agency complied with the Merit Rules and provided Mr. Hiller repeated opportunities to remediate or meet with his employers “to respond to the proposed action and offer any reasons why the proposed penalty may not be justified or [was] too severe.”⁶⁶ As such, Mr. Hiller was afforded due process prior to his termination.

⁶⁰ Agency Exhibit U.

⁶¹ TR p. 138.

⁶² Agency Exhibits and T.

⁶³ Agency Exhibits J – N.

⁶⁴ *Id.*

⁶⁵ Agency Exhibits P and R.

⁶⁶ Merit Rule 12.6.

Finally, termination was appropriate based upon Mr. Hiller's conduct. In deciding whether a penalty is appropriate to the circumstances, the Board considers both mitigating and aggravating factors. *Grievant v. Dep't of Health and Social Servs.*, MERB Docket No. 20-05- 756, at 12 (Jan. 11, 2021). Here, Mr. Hiller did not present any mitigating evidence. Mr. Hiller repeatedly defied direct mandates from his employer, and to date, has not explained why he never reported to Fox Valley. When asked by the Board what his plan was in refusing to do so, Mr. Hiller only explained why he disagreed with the Secretary's decision and said,

Rather than have a conversation -- because again, I was at Dover, all that ever transpired was e-mails. E-mails, e-mails, e-mails. That's all that ever. I never had any -- Director Scott never -- requested a grievance and stuff. I -- I was suddenly -- my access card was turned off, unknown when.⁶⁷

Through 86 exhibits and a hearing which extended over more than four hours, Mr. Hiller never explained why he repeatedly refused to follow his employer's clear and unequivocal directives.

Mr. Hiller was provided innumerable opportunities to remediate his insubordination and more than adequate notice of the discipline to which he would be subject if he did not report to Fox Valley. Mr. Hiller never complied with the directives of his superiors (including the DOL Secretary), and the Agency directly followed the outlined discipline.

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


⁶⁷ TR p. 137.

ORDER

It is this **10th** day of **June**, 2026, by a unanimous vote of 3-0, the Decision and Order of the Board to deny the grievance.



SHELDON N. SANDLER, ESQ., ACTING CHAIR



LESTER E. JOHNSON, JR., MERB Member



CURTIS D. LINTON, MERB Member