

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

AARON WIECZOREK,	)	
	)	
Employee/Grievant,	)	
	)	
v.	)	DOCKET No. <u>25-12-1002</u>
	)	
DELAWARE DEPARTMENT	)	DECISION ON MOTION TO DISMISS
OF TRANSPORTATION,	)	
	)	
Employer/Respondent.	)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the “Board”) on April 1, 2026, at the Delaware Public Service Commission, Silver Lake Plaza, Cannon Bldg., Suite 100, 861 Silver Lake Boulevard, Dover, DE 19904. The hearing was open to the public pursuant to 29 *Del. C.* § 10004(a)(1).

BEFORE Jennifer Cohan, Chairperson, Sheldon N. Sandler, Esq., and Lester Johnson 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

Aaron Wieczorek, Esq.
Employee/Grievant, *pro se*

Nicole Hartman, Esq.
Deputy Attorney General
Counsel for DelDOT

The Department of Transportation (“Agency”) filed a motion to dismiss the grievance filed by Aaron Wieczorek (the “Grievant”) on February 6, 2026, asserting the Board lacks jurisdiction to hear this grievance because §8(e) of the Epilogue to the State Budget ¹precludes the Board from hearing grievances concerning critical reclassification determinations. The Grievant filed a written response in opposition to the Agency’s motion on February 19, 2026.

The Board reviewed the written motion and response, as well as the grievance, and heard the arguments of the parties at its April 1, 2026 meeting.

BACKGROUND

The Grievant is employed with the Agency as a Materials and Research Tech V in the Agency’s Materials and Research Section. In July 2023, the Agency submitted a critical reclassification request to the Department of Human Resources (“DHR”), seeking to reclassify certain positions within the Agency. The Agency selected the positions that it sought to reclassify.² The Grievant’s position was not among the positions that were submitted for reclassification. Ultimately, effective June 28, 2025, DHR reclassified certain Materials and Research Tech V positions working within the Grievant’s Section to EPS Manager I and II positions.

The Grievant filed a grievance against the Agency claiming the Agency violated the Merit

¹ (e) CRITICAL RECLASSIFICATIONS. The classification of any position whose salary is covered by the appropriations in Section 1 of this Act may be changed to be effective the first day of the first full pay cycle following the approval date if the requested change is certified critical by the appointing authority and is approved by the Secretary of the Department of Human Resources, the Director of the Office of Management and Budget and the Controller General prior to the effective date. Critical reclassification determinations, pay grade determinations, FLSA determinations and grievances alleging working out of class which arose out of a denial of a critical reclass shall not be appealed to the Merit Employee Relations Board. *Epilogue to the Fiscal Year 2005 Budget Act*.
<https://budget.delaware.gov/budget/fy2025/index.shtml>

² The Agency submitted the Classification Request Form as part of an exhibit labeled “Attachment 1” to its Motion to Dismiss. The Board notes that this Classification Request Form seems to be incomplete, as the answer to Question No. 2 on the Form (page 4) states “See attached list of [Budget Positions] to be reclassified” however, that list was not provided in the attachment.

Rules (“MR”) 2.1, 3.1, 3.3, 10.4, and 18.5 by not including his position in its Critical Reclassification Request. The grievance made its way through the merit system grievance process, and advanced for consideration by the Board pursuant to MR 18.6. The Grievant maintains that the Agency and DHR “deliberately omitted” his position from the DOT reclassification request despite including incumbents “identically situated” to the Grievant.³

DISCUSSION

The Agency moved to dismiss this grievance, asserting the Board lacks jurisdiction to hear an appeal concerning a challenge to or arising out of a critical reclassification, arguing that the Grievant “is grieving his position’s non-reclassification.”⁴

Section 8(e) of the Epilogue to the Fiscal Year 2025 Budget Act states in pertinent part: “Critical reclassification determinations, pay grade determinations, FLSA determinations and grievances alleging working out of class which arose out of a denial of a critical reclass shall not be appealed to the Merit Employee Relations Board.”

The Grievant argues, however, that he is not grieving a denial of a critical reclassification decision; rather, he is grieving the Agency’s decision *to not include* his position in the reclassification process of identical positions. The grievance challenges the Agency’s “internal, pre-submission selection process which resulted in a non-uniform application of pay for functionally equivalent work.”⁵ The Grievant maintains this decision violates MR 3.1 which states:

3.1 The DHR Secretary shall establish and maintain a method of classifying and reviewing all positions. Positions substantially alike in duties and responsibilities and requiring essentially the same knowledge, skills and abilities shall be grouped into the same class and pay grade.

³ Merit Rule Appeal to the MERB Appeal Form.

⁴ Agency’s Motion to Dismiss at 3.

⁵ Grievant’s Response to the Motion to Dismiss at 5.

Section 8(e) of the Budget Epilogue clearly limits the Board from considering critical reclassification determinations, but in this case, the Grievant's position was not subject to a critical reclassification. Therefore, there is no critical reclassification determination from which to grieve. This cited Epilogue language does not extend to this grievance because it challenges the process of *identifying* positions to submit for reclassification, and raises questions concerning the obligation of the Agency to review the duties and responsibilities of his position in the classified service to determine consistency with the classification plan, as provided under MR 3.0.

The Grievant relies upon this Board's 2005 decision in *Carl McIlroy v. The Department of Health and Social Services*⁶ to support his position. In *McIlroy*, the grievance at issue challenged the employing agency's failure to process a critical reclassification request. The Board's decision states:

. . . While [MR 3.0] is not designed to give each individual the ability to compel a critical reclassification review of his or her position each time the duties thereof are modified, the Rule should not be construed to allow the Agency to effectively "stone-wall" for its own purposes the employee's request that the duties of his or her position be examined for consistency with the position's classification.

Clearly, not every employee request seeking a critical reclassification review of his or her job duties can or should be honored. But it is equally clear that there are some situations where position duties are changed and must be reported by the [employing agency] and considered by [DHR] . . . The gate keeper in this situation has traditionally been the employing [a]gency as it is the [a]gency which supports and sends the request for a critical classification forward to [DHR]. But what about the situation where the [a]gency fails or refuses to process a critical reclassification request? What is the recourse of the employee? One answer is that the employee can file a grievance asserting a violation of the Merit Rule which imposes the requirement on the [a]gency and [DHR] to make timely adjustments upon changed responsibilities [citation omitted]. This is the case whether or not the matter is placed beyond the jurisdiction of the Merit Employee Relations Board by the Budget Epilogue language.

. . . This limitation on the jurisdiction of the Board does not however mean that an employee can not file a grievance against an appointing authority who fails or refuses to address an employee's legitimate concern that his or her position has

⁶ MERB Docket No. 03-09-296 (2005).

significantly change[d] in a manner which should be recognized under the Merit Rules such as [MR 3.1 and 3.3]. It would be patently unfair for an [a]gency to keep an employee [in] a position with a classification which does not properly reflect the duties actually performed by the employee. Indeed, [MR 3.1] mandates that the appointing authority shall report such changes to [DHR] in such manner as [DHR] shall prescribe.⁷

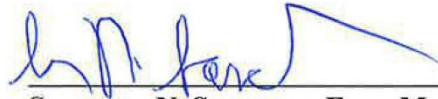
The Board finds the *McIlroy* rationale to be controlling. Accordingly, the Board concludes as a matter of law that it has jurisdiction to hear this grievance.

ORDER

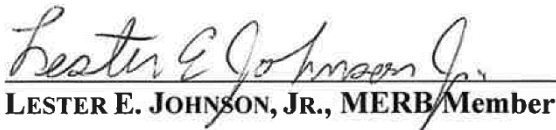
It is this **21st** day of **July, 2026**, by a unanimous vote of 3-0, the Decision and Order of the Board to deny the Agency's Motion to Dismiss. A hearing on the merits of the grievance will be scheduled.



JENNIFER COHAN, MERB Chairperson



SHELDON N. SANDLER, ESQ., MEMBER



LESTER E. JOHNSON, JR., MERB Member

⁷ *McIlroy*, MERB Docket No. 03-09-296 (2005) at 4-5.