NADEAN JACK, .

Grievant, .

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v. . Docket Number: 95-HHR-431

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WEST VIRGINIA DEPARTMENT OF HEALTH .

AND HUMAN RESOURCES / WEST VIRGINIA .

DEPARTMENT OF ADMINISTRATION, .

DIVISION OF PERSONNEL, .

Respondents. .

D E C I S I O N

Nadeen Jack (hereinafter Grievant) filed this grievance against her employer and the West Virginia Department of Administration, Division of Personnel, pursuant to the provisions of West Virginia Code §§29-6A-1, et seq., on August 16, 1993. Grievant challenges the salary assigned to her by her employer and the pay range assigned to her position by the Division of Personnel. On August 19, 1993, she agreed to waive her grievance to level three of the grievance procedure. A level three hearing was conducted on January 21, 1994, and the case was denied by decision dated June 7, 1994. Grievant appealed the level threedecision to this Grievance Board on March 20, 1995. Thereafter, an evidentiary hearing was scheduled for December 12, 1995. (See footnote 1)

On December 5, 1995, Grievant's employer filed a Motion to Dismiss the claim contending that Grievant's appeal to level four was not perfected in a timely fashion. At the hearing, the parties were

given an opportunity to present their respective positions in relation to this motion and, after consideration of their arguments, Grievant's appeal was determined to be untimely pursuant to the provisions of W. Va. Code §29-6A-4(d)(1). This Code section states, in pertinent part,

> If the grievant is not satisfied with the action taken by the chief administrator or his designee, within five days of the written decision the grievant may request, in writing, on a form furnished by the employer, that the grievance be submitted to a hearing examiner as provided for in section five [§ 29-6A-5] of this article. . .

Grievant's appeal to level four almost nine months after her receipt of the level three decision was obviously outside of the time allowed for an appeal under this statutory provision. Further, upon a finding that no facts exist which would be sufficient to support the application of any equitable doctrine to toll the five-day time limit, this case is hereby **DISMISSED FOR LACK OF JURISDICTION** and the employer's Motion to Dismiss is **GRANTED**. The preliminary ruling made by the Undersigned at the hearing is **AFFIRMED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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ALBERT C. DUNN, JR.

Administrative Law Judge

December 21, 1995

Footnote: 1 This case was originally consolidated with another case that is pending before this Board that concerns similar issues of fact and law surrounding the establishment of pay grades and ranges for the classified position of economic service worker. However, upon request of the employer, the case was deconsolidated and set for hearing on September 26, 1995, based upon the fact that Grievant is classified as a social service worker.