# WEST VIRGINIA PUBLIC EMPLOYEES

# GRIEVANCE BOARD

**VICKIE RAINEY,**

**Grievant,**

**v.** **Docket No. 2008-0278-DOT**

**DIVISION OF MOTOR VEHICLES,**

**Respondent.**

## DISMISSAL ORDER

Vickie Rainey ("Grievant"), an employee of the Division of Motor Vehicles ("DMV") filed this grievance on August 22, 2007, with the West Virginia Division of Highways ("DOH"), challenging her non-selection for the position of Transportation Realty Trainee. Noting that Grievant was not a DOH employee, DOH forwarded the grievance to DMV for consideration on August 23, 2007. A level one hearing was held on September 6, 2007, before Stephen A. Edens, DMV Level One Hearing Administrator, who issued a decision dated September 21, 2007, concluding that the matter was not properly before DMV, in that it had no authority to provide the requested relief of placing Grievant in a position at another agency.

Grievant appealed to level two of the grievance procedure, and this matter was scheduled for a mediation before the undersigned. A telephone conference was held on January 23, 2008, during which Grievant appeared pro se, and Respondent appeared by Janet James, Assistant Attorney General. At that time, the parties and the undersigned discussed whether this grievance stated a claim upon which relief could be granted, and the undersigned provided the parties with a timeframe for submission of written argumentsregarding whether the grievance should proceed. Respondent submitted a Motion to Dismiss and supporting memorandum on January 28, 2008, and Grievant

submitted no response by the agreed-upon deadline of February 20, 2008.

The material facts in this matter are undisputed by the parties and are contained in the following findings of fact:

**Findings of Fact**

**1. Grievant has been employed by the DMV for approximately seven years, currently assigned to the Elkins Regional Office as a Transportation Services Manager 1.**

**2. Grievant applied for a Transportation Realty Trainee position which was posted by DOH on June 22, 2007.**

**3. Grievant was interviewed by DOH, but was not selected for the position.**

**4. DOH is a separate agency from DMV, although both are agencies within the West Virginia Department of Transportation. Each agency has its own separate administration, policies, and personnel.**

**5. DOH personnel interview and select employees for DOH positions, pursuant to policies of that agency. DMV has no authority regarding DOH's selection of employees.**

**Discussion**

**It is undisputed that Grievant is an employee of DMV and was at the time she applied for the position which is the subject of this grievance. However, she contends that she is also an employee of the Department of Transportation, which should allow her to file a grievance against any agency within that department. W. Va. Code § 6C-2-2(f) defines "employer" for purposes of the grievance procedure, as follows:**

> **a state agency, department, board, commission, college, university, institution, state board of education, department of education, county board of education, regional educational service agency or multicounty vocational center, or agent thereof, using the services of an employee as defined in this section.**

**(Emphasis added.) In turn, the same statute, in subsection (d)(1), defines "employee" as "any person hired for permanent employment by an employer for a probationary, full- or part-time position."**

**There is no question that DOH is not "using the services" of Grievant, nor has that agency**

**ever hired her for permanent employment. While the grouping of various agencies within larger departments is an administrative management system for state government, this does not mean that an employee of one agency is also employed by other agencies within that department. Each agency functions separately and independently with regard to management, personnel, and the various policies pertaining to conducting the business of the particular agency. (See footnote 1) Grievant is an employee of DMV, and the grievance procedure is only available to her to challenge actions taken by her employer.**

**As established by statute, any matter in which authority to act is not vested with the state department, board, commission or agency utilizing the services of the grievant is not grievable. *Brining v. Div. of Corrections*, Docket No. 05-CORR-284 (Dec. 7, 2005); *SeeSmith v. Dep't of Health and Human Res.*, Docket No. 05-HHR-218 (Aug. 5, 2005). (See footnote 2) Grievant's requested relief, to be placed in a position at DOH, is not something within the authority of DMV. Therefore, this grievance states a claim upon which relief cannot be granted and must be dismissed. Rules of Practice and Procedure of the W. Va. Public Employees Grievance Bd., 156 CSR 1 § 6.11 (2007).**

**The following conclusions of law are appropriate.**

**Conclusions of Law**

**1. As established by statute, any matter in which authority to act is not vested with the state department, board, commission or agency utilizing the services of the grievant is not grievable. *Brining v. Div. of Corrections*, Docket No. 05-CORR-284 (Dec. 7, 2005); *See Smith v. Dep't of Health and Human Res.*, Docket No. 05-HHR-218 (Aug. 5, 2005).**

**2. For purposes of the grievance procedure, an "employer" is the "agency, department, board, commission, college, university,**

> **institution, state board of education, department of education, county board of education, regional educational service agency or multicounty vocational center, or agent thereof, using the services of an employee." W. Va. Code § 6C-2-2(f).**

**3. Grievant is an employee of the Division of Motor Vehicles, and her employer has no authority regarding selection for positions with the Division of Highways, a separate agency. 4. This grievance fails to state a claim upon which relief may be granted. Rules**

**of Practice and Procedure of the W. Va. Public Employees Grievance Bd., 156 CSR 1 § 6.11 (2007).**

**Accordingly, this grievance is DISMISSED from the dockets of this Grievance Board. This Order is final upon the parties and is enforceable in the Circuit Court of Kanawha County. Any party may appeal this decision to the Circuit Court of Kanawha County within thirty days of receipt of the Order. This Order is not automatically stayed pending the outcome of the appeal. W. Va. Code § 6C-2-5(c). Neither the West Virginia Public Employees Grievance Board nor any of its administrative law judges is a party to such appeal and should not be so named.**

**Date: March 11, 2008**

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**DENISE M. SPATAFORE**

**Administrative Law Judge**

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***Footnote: 1***

***The Department of Transportation also includes the Aeronautics Commission, the Division of Public Transit, the Public Port Authority, the Parkways, Economic Development and Tourism Authority, and the State Rail Authority.***

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***Footnote: 2***

***These decisions referenced provisions in the old grievance statute, specifically W. Va. Code 29-6A-2, which contained a very similar definition of "employer."***