

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**TERRY RAY SHAFER,  
Grievant,**

**v.**

**Docket No. 2021-0258-KanCH**

**KANAWHA-CHARLESTON HEALTH DEPARTMENT,  
Respondent.**

**DISMISSAL ORDER**

On August 4, 2021, an *Order to Show Cause* was issued against Grievant for failing to appear at the properly scheduled level three hearing on July 29, 2021. On August 17, 2021, Grievant responded stating, "I missed my grievance hearing because I had an RA flare and could [barely] move. I had bought several trucks that a new owner had gave me a limited time to remove and in doing so I overdid my self."

"If neither the grievant nor the grievant's representative, if applicable, appears for a scheduled grievance hearing, the administrative law judge may issue a show cause order, requiring the grievant to show good cause for the grievant's absence, and advising that the failure to respond with a set time limit will result in the dismissal of the grievance for failure to prosecute." W.VA. CODE ST. R. § 156-1-6.16 (2018).

"Nonappealable dismissal orders may be based on grievances dismissed for the following: settlement; withdrawal; and, in accordance with Rule 6.15, a party's failure to pursue." W. VA. CODE ST. R. § 156-1-6.19.2. "Appealable dismissal orders may be issued in grievances dismissed for all other reasons, including, but not limited to, failure to state a claim or a party's failure to abide by an appropriate order of an administrative law judge. Appeals of any cases dismissed pursuant to this provision are to be made in the same manner as appeals of decisions on the merits." W. VA. CODE ST. R. § 156-1-6.19.3.

Grievant has failed to demonstrate good cause for his failure to appear. Grievant's failure to appear was not caused by an emergency circumstance nor was Grievant incapacitated such that he was unable to contact the Grievance Board. Grievant provided no justifiable excuse for his failure to request a continuance of the hearing or to even make any attempt to notify the Grievance Board or Respondent prior to the hearing of his alleged inability to appear.

Further, this was the second time Grievant had failed to appear for a scheduled level three hearing. Grievant failed to appear for his April 1, 2021 hearing and an *Order to Show Cause* was issued. Grievant answered that he had been in a car accident more than a week prior to the hearing and had "barely been able to get out of bed." Although Grievant's answer did not provide justification for why Grievant had not contacted the Grievance Board to request a continuance, Grievant was given the benefit of the doubt to allow the hearing to be rescheduled.

Grievant was aware from the prior *Order to Show Cause* that failure to appear without requesting a continuance could result in dismissal of his grievance and he failed to appear yet again. The grievance procedure is to be West Virginia Code "fair, efficient, cost-effective, and consistent." W. VA. CODE § 6C-2-1(b). Allowing the grievance to go forward after Grievant twice failed to appear would result in an unfair burden to Respondent.

Accordingly, it is hereby **ORDERED** that this matter be **DISMISSED** and **STRICKEN** from the dockets of the Grievance Board for Grievant's failure to prosecute.

Any party may appeal this order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this order. See W. VA. CODE § 6C-2-5. 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. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The civil action number should be included so that the certified record can be properly filed with the circuit court. See *also* W. VA. CODE ST. R. § 156-1-6.20 (2018).

ENTERED: August 25, 2021

---

Billie Thacker Catlett  
Chief Administrative Law Judge