

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**HAROLD E. RICHMOND,**

**Grievant,**

**v.**

**Docket No. 2022-0216-DOC**

**DIVISION OF NATURAL RESOURCES and  
DIVISION OF PERSONNEL,**

**Respondents.**

**DISMISSAL ORDER**

Grievant, Harold E. Richmond, was employed by Respondent, Division of Natural Resources (“DNR”), at Pipestem Resort. On September 15, 2021, Grievant filed this grievance against Respondent protesting Respondent’s failure to provide a pay increase to him as a supervisor when his subordinates had received a pay increase.

By letter dated November 5, 2021, Respondent DNR’s chief administrator waived the grievance to level two of the grievance procedure. By order entered November 18, 2021, the Division of Personnel (“DOP”) was joined as a party. The matter was scheduled for level two mediation but was continued and held in abeyance by the joint request of the parties. On May 31, 2022, Respondent DNR, by counsel, filed *Respondent DNR’s Motion to Dismiss* alleging that Grievant had passed away on May 27, 2022. By letter dated June 7, 2022, the undersigned sent notice to Grievant’s last known address, informing Grievant or his estate that Respondent had moved to dismiss the grievance. Grievant or his estate was required to respond to the motion to dismiss no later than July 6, 2022. Grievant is unrepresented. Respondent DNR is represented by counsel, Kate Franklin, Assistant Attorney General. Respondent DOP is represented by counsel, Karen O’Sullivan Thornton, Assistant Attorney General.

## **Synopsis**

Grievant was employed by Respondent DNR at Pipestem Resort as a Tram Supervisor. Grievant grieved his employer's failure to provide a pay increase to him as a supervisor when his subordinates had received a pay increase. Respondent employer moved to dismiss the grievance alleging Grievant had passed away. Neither Grievant nor his estate responded to the motion to dismiss despite notice. Grievant or his estate has abandoned the grievance. Accordingly, the grievance is dismissed.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

### **Findings of Fact**

1. Grievant, Harold E. Richmond, was employed by Respondent DNR at Pipestem Resort as a Tram Supervisor.
2. On September 15, 2021, Grievant filed this grievance against Respondent protesting Respondent's failure to provide a pay increase to him as a supervisor when his subordinates had received a pay increase
3. Respondent asserts Grievant passed away on May 27, 2022.
4. Notice was sent to Grievant or his estate at his last known address on June 7, 2022, requiring a response to the motion to dismiss no later than July 6, 2022.
5. More than sixty days have passed and the Grievance Board has received no response to the motion to dismiss.

### **Discussion**

"Grievances may be disposed of in three ways: by decision on the merits, nonappealable dismissal order, or appealable dismissal order." W. VA. CODE ST. R. § 156-1-6.19 (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. “A grievance may be dismissed, in the discretion of the administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.” W. VA. CODE ST. R. § 156-1-6.11. “Any party asserting the application of an affirmative defense bears the burden of proving that defense by a preponderance of the evidence.” W. VA. CODE ST. R. § 156-1-3.

Respondent DNR moved to dismiss the grievance alleging Grievant had passed away, serving its motion upon Grievant or his estate at his last known address. The undersigned also notified Grievant or his estate by letter to his last known address that he or his estate must respond to the motion to dismiss within thirty days. Neither Grievant nor his estate has responded to the motion to dismiss after more than sixty days. Failure to respond to the motion to dismiss and the undersigned's letter requiring a response constitutes abandonment of the grievance. “Abandoning a grievance is a valid reason for dismissal pursuant to W. VA. CODE ST. R. § 156-1-6.19.3 (2008).” *Katona v. Dept. of Health & Human Res.*, Docket No. 2018-0133-DHHR (Jan. 16, 2018).

The following Conclusions of Law support the decision reached.

### **Conclusions of Law**

1. “Grievances may be disposed of in three ways: by decision on the merits,

nonappealable dismissal order, or appealable dismissal order.” W. VA. CODE ST. R. § 156-1-6.19 (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.

2. “Abandoning a grievance is a valid reason for dismissal pursuant to W. VA. CODE ST. R. § 156-1-6.19.3 (2008).” *Katona v. Dept. of Health & Human Res.*, Docket No. 2018-0133-DHHR (Jan. 16, 2018).

3. The failure of Grievant or his estate to respond to the motion to dismiss despite notice constitutes abandonment of the grievance.

Accordingly, the grievance is **DISMISSED**.

Any party may appeal this decision to the Intermediate Court of Appeals.<sup>1</sup> Any such appeal must be filed within thirty (30) days of receipt of this decision. W. VA. CODE

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<sup>1</sup> On April 8, 2021, Senate Bill 275 was enacted creating the Intermediate Court of Appeals. The act conferred jurisdiction to the Intermediate Court of Appeals over “[f]inal judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to §29A-5-4 or any other provision of this code[.]” W. VA. CODE § 51-11-4(b)(4). The West Virginia Public Employees Grievance Procedure provides that an appeal of a Grievance Board decision be made to the Circuit Court of Kanawha County. W. VA. CODE § 6C-2-5. Although Senate Bill 275 did not specifically amend West Virginia Code § 6C-2-5, it appears an appeal of a decision of the Public Employees Grievance Board now lies with the Intermediate Court of Appeals.

§ 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 named as a party to the appeal. However, the appealing party is required to serve a copy of the appeal petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

**DATE: August 17, 2022**

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**Billie Thacker Catlett**  
**Chief Administrative Law Judge**