

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

MARY TALBOT,

Grievant,

v.

Docket No. 2023-0057-MISC

CONNIE KAUFMAN, COUNTY CLERK,

Respondent.

DISMISSAL ORDER

On July 19, 2022, Grievant filed a grievance against Respondent, Connie Kaufman, County Clerk, protesting County Clerk Kaufman's actions regarding an estate. After review of the grievance and the relevant law, the undersigned, by letter dated August 11, 2022, notified Grievant that it appeared the Grievance Board lacked jurisdiction to hear the grievance and required Grievant to file a response by August 24, 2022, if she still believed she had the right to pursue the grievance. Grievant did not file a response.

Synopsis

Grievant filed a grievance against the Barbour County Clerk protesting the County Clerk's actions relating to an estate. Grievant is not an employee grieving the actions of her public employer; she is a citizen protesting actions taken by a county official. The Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance must be dismissed.

The undersigned makes the following Findings of Fact:

Findings of Fact

1. Grievant filed this grievance on July 19, 2022, protesting the Barbour

County Clerk's actions regarding an estate.

2. Grievant does not allege she is employed by a public employer or protest the actions of her public employer.

3. The undersigned notified Grievant by letter dated August 11, 2022, that it appeared the Grievance Board lacked jurisdiction to hear the grievance.

4. Grievant was given until August 24, 2022, to file a response if she still believed she had the right to pursue this grievance. Grievant did not file a response.

Discussion

"Each administrative law judge has the authority and discretion to control the processing of each grievance assigned such judge and to take any action considered appropriate consistent with the provisions of W. VA. CODE § 6C-2-1 *et seq.*" W.VA. CODE ST. R. § 156-1-6.2 (2018). The administrative law judge may dispose of a grievance through an appealable dismissal order. W.VA. CODE ST. R. § 156-1-6.19.3. The undersigned notified Grievant by letter dated July 19, 2022, that it appeared the Grievance Board lacked jurisdiction to hear the grievance since Grievant did not appear to be an employee grieving the actions of her public employer.

"Administrative agencies and their executive officers are creatures of statute and delegates of the Legislature. Their power is dependent upon statutes, so that they must find within the statute warrant for the exercise of any authority which they claim. They have no general or common-law powers but only such as have been conferred upon them by law expressly or by implication." Syl. Pt. 4, *McDaniel v. W. Va. Div. of Labor*, 214 W. Va. 719, 591 S.E.2d 277 (2003) (citing Syl. Pt. 3, *Mountaineer Disposal Service, Inc. v. Dyer*, 156 W. Va. 766, 197 S.E.2d 111 (1973)). "The purpose of [the grievance

statute] is to provide a procedure for the resolution of employment grievances raised by the public employees of the State of West Virginia, except as otherwise excluded in this article.” W. VA. CODE § 6C-2-1(a).

Grievant is not an employee grieving the actions of her public employer; she is a citizen protesting actions taken by a county official. Therefore, the Grievance Board lacks jurisdiction in this matter, and the grievance must be dismissed.

The following Conclusions of Law support the dismissal of this grievance:

Conclusions of Law

1. “Each administrative law judge has the authority and discretion to control the processing of each grievance assigned such judge and to take any action considered appropriate consistent with the provisions of W. VA. CODE § 6C-2-1 *et seq.*” W.VA. CODE ST. R. § 156-1-6.2 (2018).

2. “Administrative agencies and their executive officers are creatures of statute and delegates of the Legislature. Their power is dependent upon statutes, so that they must find within the statute warrant for the exercise of any authority which they claim. They have no general or common-law powers but only such as have been conferred upon them by law expressly or by implication.” Syl. Pt. 4, *McDaniel v. W. Va. Div. of Labor*, 214 W. Va. 719, 591 S.E.2d 277 (2003) (citing Syl. Pt. 3, *Mountaineer Disposal Service, Inc. v. Dyer*, 156 W. Va. 766, 197 S.E.2d 111 (1973)).

3. “The purpose of [the grievance statute] is to provide a procedure for the resolution of employment grievances raised by the public employees of the State of West Virginia, except as otherwise excluded in this article.” W. VA. CODE § 6C-2-1(a).

4. Grievant is not an employee grieving the actions of her public employer; she is a citizen protesting actions taken by a county official.

5. The Grievance Board lacks jurisdiction to hear Grievant's claim.

Accordingly, this Grievance is **DISMISSED**.

Any party may appeal this decision to the Intermediate Court of Appeals.¹

Any such appeal must be filed within thirty (30) days of receipt of this decision. 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 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: November 18, 2022

Billie Thacker Catlett
Chief Administrative Law Judge

¹ 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.