

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**MICHAEL TERANGO,
Grievant,**

v.

Docket No. 2023-0229-LewED

**LEWIS COUNTY BOARD OF EDUCATION,
Respondent.**

DISMISSAL ORDER

Grievant, Michael Terango, filed this grievance against his former employer, Lewis County Board of Education, on or about September 20, 2022. The Statement of Grievance indicates that “[I]n January 2022, I received a phone call from Robin Lewis, Superintendent of Lewis County Schools, telling me that I would henceforth be on paid administrative leave because of battery accusations by separate students. The principal, Julie Radcliffe, then had me arrested for battery by West Virginia State Police, and I was forced to resign as a West Virginia Studies teacher at Robert L. Bland Middle School.” Grievant seeks reinstatement, back pay, a public apology and an independent investigation of the Lewis County Schools Administration.

The grievance was dismissed at level one due to lack of standing. Grievant appealed to level two. Respondent filed a Motion to Dismiss on or about October 24, 2022. This case was reassigned to the undersigned for administrative reasons on December 19, 2022. The undersigned issued an Order Taking Motion to Dismiss Under Advisement on December 20, 2022. Respondent then filed a Supplement to its Motion to Dismiss on or about January 4, 2023. Grievant was given until January 26, 2023, to respond to the supplemental motion. Grievant failed to respond to the motion. Grievant

appeared *pro se*. Respondent appeared by its counsel Jason S. Long, Dinsmore & Shohl LLP. The Motion to Dismiss is now mature for a ruling.

Synopsis

Grievant was employed by the Lewis County Board of Education as a classroom teacher during the 2021-22 school year. On February 1, 2022, Grievant entered into an agreement to resign from his employment effective at the conclusion of the 2021-2022 contract year. Respondent acknowledged that it neglected to fulfill a term of the agreement. Grievant indicated that Respondent failed to make a payment in satisfaction of this term in his level two appeal. Upon receipt of the level two appeal, Respondent satisfied the neglected term of the agreement which led Grievant to depart from employment. Respondent has established by a preponderance of the evidence that Grievant is no longer an employee of the Lewis County Board of Education. Grievant lacks standing before the West Virginia Public Employees Grievance Board.

The following Findings of Fact are based on the record of this case.

Findings of Fact

1. Grievant was employed by the Lewis County Board of Education as a classroom teacher during the 2021-2022 school year.
2. On February 1, 2022, Grievant entered into an “Employment Agreement” with the Lewis County Board of Education.
3. That Agreement provided that Grievant resign, effective at the conclusion of the 2021-2022 contract year. Grievant remained on paid administrative leave for the remainder of the 2021-2022 school year.

4. The Agreement also provided that Grievant's final pay would include 17-days of paid accrued leave.

5. Simultaneously, with the February 1, 2022, Agreement, Grievant submitted his written resignation to the Lewis County Board of Education.

6. Grievant initiated a level one grievance on or about September 20, 2022. This grievance was denied at level one. Grievant appealed to level two.

7. On or about October 24, 2022, Respondent filed a Motion to Dismiss due to lack of standing.

8. The undersigned entered an Order Taking Motion to Dismiss Under Advisement on December 20, 2022. The Order indicated that Grievant argues that he has not been paid for 17-days of accrued leave which was a term of the "Employment Agreement."

9. Respondent asserts that it was unaware of the non-payment. Upon receipt of the level two appeal, Respondent issued payment of the 17-days of paid accrued leave.

10. The terms of the "Employment Agreement" have been satisfied and Grievant's resignation from employment is in full force and effect.

Discussion

Respondent asserts that Grievant is not an "employee" within the meaning of WEST VIRGINIA CODE § 6C-2-2, and therefore has no standing to pursue his grievance. Respondent also asserts that this matter is now moot since Grievant is no longer employed by Respondent. When the employer asserts an affirmative defense, it must be established by a preponderance of the evidence. See *Lewis v. Kanawha County Bd. of Educ.*, Docket No. 97-20-554 (May 27, 1998); *Lowry v. W. Va. Dep't of Educ.*, Docket No.

96-DOE-130 (Dec. 26, 1996); *Hale v. Mingo County Bd. of Educ.*, Docket No. 95-29-315 (Jan. 25, 1996). See generally *Payne v. Mason County Bd. of Educ.*, Docket No. 96-26-047 (Nov. 27, 1996); *Trickett v. Preston County Bd. of Educ.*, Docket No. 95-39-413 (May 8, 1996). In addition, standing is a party's right to make a legal claim or seek judicial enforcement of a duty or right. BLACK'S LAW DICTIONARY (Eighth Edition 2004).

The Public Employees Grievance Procedure was established to allow public employees and their employers to reach solutions to problems which arise within the scope of their respective employment relationships. W. VA. CODE § 6C-2-1(a); See *Wilson v. Dep't of Health and Human Res.*, Docket No. 2011-1769-DHHR (Oct. 31, 2011). WEST VIRGINIA CODE § 6C-2-2(e)(1) defines "employee" for the purposes of the grievance procedure, as follows:

(1) "Employee" means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

WEST VIRGINIA CODE § 6C-2-2(g) defines "employer" for the 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.)

A "Grievance" is "a claim by an employee." W. VA. CODE § 6C-2-2(i). Only an employee may file a grievance. W. VA. CODE § 6C-2-2(a)(1). Respondent aptly points out in its Motion to Dismiss that this Board has dismissed grievances once the Grievant is no longer employed by the Respondent. See *Fizer v. Dep't of Health and Human Res.*, Docket No.

2008-1698-DHHR (Mar. 4, 2009); *Bragg v. Dep't of Health and Human Res.*, Docket No. 03-HHR-348 (May 28, 2004).

As Respondent asserted in both of its Motions to Dismiss, Grievant lacks standing as he voluntarily severed his employment from Respondent when he resigned on February 1, 2022. The terms of the "Employment Agreement" have been satisfied and Grievant's resignation from employment is in full force and effect. The Lewis County Board of Education has proven by a preponderance of the evidence that Grievant resigned his employment by mutual agreement, and therefore lacks standing before the Public Employees Grievance Board.

The following Conclusions of Law support the dismissal of this case.

Conclusions of Law

1. The Public Employees Grievance Procedure was established to allow public employees and their employers to reach solutions to problems which arise within the scope of their respective employment relationships. W. VA. CODE § 6C-2-1(a); See *Wilson v. Dep't of Health and Human Res.*, Docket No. 2011-1769-DHHR (Oct. 31, 2011).

2. When the employer asserts an affirmative defense, it must be established by a preponderance of the evidence. See *Lewis v. Kanawha County Bd. of Educ.*, Docket No. 97-20-554 (May 27, 1998); *Lowry v. W. Va. Dep't of Educ.*, Docket No. 96-DOE-130 (Dec. 26, 1996); *Hale v. Mingo County Bd. of Educ.*, Docket No. 95-29-315 (Jan. 25, 1996). See generally *Payne v. Mason County Bd. of Educ.*, Docket No. 96-26-047 (Nov. 27, 1996); *Trickett v. Preston County Bd. of Educ.*, Docket No. 95-39-413 (May 8, 1996). In addition, standing is a party's right to make a legal claim or seek judicial enforcement of a duty or right. BLACK'S LAW DICTIONARY (Eighth Edition 2004).

3. WEST VIRGINIA CODE § 6C-2-2(e)(1) defines “employee” for the purposes of the grievance procedure, as follows:

(1) "Employee" means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

4. WEST VIRGINIA CODE § 6C-2-2(g) defines “employer” for the 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.)

5. The Lewis County Board of Education has proven by a preponderance of the evidence that Grievant resigned his employment by mutual agreement, and therefore lacks standing before the Public Employees Grievance Board.

Accordingly, this grievance is **DISMISSED**.

Any party may appeal this Dismissal Order to the Intermediate Court of Appeals.¹ Any such appeal must be filed within thirty (30) days of receipt of this Dismissal Order. 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

¹On 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 W. VA. 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.

appeal petition upon the Grievance Board by registered or certified mail. W. VA. CODE §
29A-5-4(b).

Date: February 21, 2023

Ronald L. Reece
Administrative Law Judge