

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**WILLIAM HARVEY ARCHIBALD,  
Grievant,**

**v.**

**Docket No. 2024-0368-MISC**

**ADJUTANT GENERAL'S OFFICE/  
WEST VIRGINIA MILITARY AUTHORITY,  
Respondent.**

**DISMISSAL ORDER**

On October 24, 2023, Grievant filed a grievance against Respondent alleging harassment. After review of the relevant statutes, the undersigned, by letter dated October 25, 2023, notified Grievant that it appeared the Grievance Board lacked jurisdiction to hear the grievance, and required Grievant to file a response by November 9, 2023, if he still believed he had the right to pursue his grievance. Grievant did not file a response to the letter.

**Synopsis**

Grievant is employed by the West Virginia Military Authority as a Trades Specialist 3. Grievant filed a grievance alleging harassment. Grievant's employment with Respondent is specifically exempted from the grievance procedure by statute. The Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance is dismissed.

The undersigned makes the following Findings of Fact:

**Findings of Fact**

1. Grievant is employed by the West Virginia Military Authority as a Trades Specialist 3.
2. Grievant filed the instant grievance against Respondent alleging harassment.

3. By letter dated October 25, 2023, the undersigned notified Grievant that it appeared the Grievance Board lacked jurisdiction to hear his claim and instructed Grievant to respond by November 9, 2023, if he still believed he had the right to pursue his grievance.

4. Grievant did not respond to the letter.

### **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.

"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). "'Employer'" means 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.” W. VA. CODE § 6C-2-2(g).

Grievant is an employee of the West Virginia Military Authority. West Virginia Military Authority employees are “exempt from both the classified services category and the classified exempt services category as set forth in section four, article six, chapter twenty-nine of this code.” W. VA. CODE §15-1J-5(a)(1). “Due to the at-will employment relationship with the authority, its employees may not avail themselves of the state grievance procedure as set forth in article six-a, chapter twenty- nine of this code<sup>1</sup>. . .” W. VA. CODE §15-1J-4(d)(10).

Grievant’s employment is specifically exempted from the grievance procedure by statute. 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

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<sup>1</sup> West Virginia Code § 29-6A-1 *et seq.* was repealed and recodified into the present grievance procedure in West Virginia Code § 6C-2-1 *et seq.*

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). "'Employer'" means 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." W. VA. CODE § 6C-2-2(g).

4. "West Virginia Military Authority employees are "exempt from both the classified services category and the classified exempt services category as set forth in section four, article six, chapter twenty-nine of this code." W. VA. CODE §15-1J-5(a)(1). "Due to the at-will employment relationship with the authority, its employees may not avail themselves of the state grievance procedure as set forth in article six-a, chapter twenty-nine of this code. . ." W. VA. CODE §15-1J-4(d)(10).

5. As Grievant's employment is specifically exempted from the grievance procedure by statute, the Grievance Board lacks jurisdiction in this matter, and the grievance must be dismissed.

Accordingly, this Grievance is **DISMISSED**.

Any party may appeal this decision to the Intermediate Court of Appeals.<sup>2</sup> 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 17, 2023**

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

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<sup>2</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.