

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

FRANKLIN CAROTHERS,
Grievant,

v.

Docket No. 2023-0900-GSU

GLENVILLE STATE UNIVERSITY,
Respondent.

ORDER UPHOLDING LEVEL ONE DISMISSAL ORDER

Grievant, Franklin Carothers, filed this action against Respondent, Glenville State University, on or about June 8, 2023. Grievant asserts non-renewal of tenure track employment contract as of May 12, 2023, due to retaliation. Grievant seeks compensation for loss of income. Mark A. Manchin, Chief Administrator, Glenville State University, dismissed the grievance as untimely filed by Dismissal Order entered June 15, 2023.

On July 21, 2023, Grievant filed a grievance form requesting level two mediation. Mediation was conducted on October 2, 2023. During the mediation, Respondent's counsel provided the chief administrator's Dismissal Order. The Grievance Board had not previously received the order. Effective June 9, 2023, if a grievance is dismissed at level one for untimeliness, the grievance may not proceed to alternative dispute resolution but, instead, may only be appealed to level three. The administrative law judge must review the dismissal order and either uphold the dismissal or overturn the dismissal and return the grievance to level one for disposition. W.VA. CODE § 6C-2-3(c)(1).

Accordingly, this matter was transferred to the level three docket and was reassigned to the undersigned for administrative reasons. Grievant was ordered to file a statement in support of his appeal of the dismissal order by October 18, 2023. It was further ordered that Respondent may file a response within ten days of receipt of Grievant's statement. The parties were notified that if Grievant fails to file a statement,

the grievance will be removed from the level three docket and the level one dismissal order will be final.

Effective June 9, 2023, a level one dismissal order is final and a grievance may not proceed on the merits but only on appeal of the dismissal order as follows:

A grievance must be filed within the time frames established in §6C-2-4 of this code. If the level one evaluator determines that the grievance was not timely filed, an order dismissing the grievance shall be issued. . . This decision may be appealed to level three, and an administrative law judge shall review the order. If the dismissal is upheld an order shall be issued and the grievance shall be removed from the grievance board's docket. If the dismissal is overturned an order shall be entered stating with particularity the facts and the law found to be in error in the order below. The grievance will be returned to level one for disposition. W. VA. CODE § 6C-2-3(c)(1).

In this case, the grievance was dismissed for untimeliness and what can be viewed as either mootness or a lack of standing. All that is referenced in the dismissal order is that Grievant was not an employee of Glenville State University when he signed the grievance form on June 5, 2023. In any event, since the latter were not fully developed in the record of this case, the undersigned need only address timelines. The grievance process must be started within 15 days following the occurrence of the event upon which the grievance is based, or within 15 days of the most recent occurrence of a continuing practice. W. VA. CODE § 6C-2-4(a)(1); *Seifert v. Hancock County Bd. of Educ.*, Docket No. 02-15-079 (July 17, 2002). The time period for filing a grievance ordinarily begins to run when the employee is "unequivocally notified of the decision being challenged." *Harvey v. W. Va. Bureau of Empl. Programs*, Docket No. 96-BEP-484 (Mar. 6, 1998); *Whalen v. Mason County Bd. of Educ.*, Docket No. 97-26-234 (Feb. 27, 1998).

The limited record of this case establishes that Grievant failed to file this grievance within the statutory timeframes. This finding can be viewed as undisputed given that Grievant failed to file a statement supporting his appeal of the dismissal order. Pursuant

to W. VA. CODE § 6C-2-3(c)(1) the level one dismissal order is upheld, and the grievance is **ORDERED** removed from the grievance board's docket.

Entered this 9th day of February, 2024.

Ronald L. Reece
Administrative Law Judge