

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**JOHN JOSEPH SIKORA,
Grievant,**

v.

Docket No. 2024-0491-AGR

**WEST VIRGINIA DEPARTMENT OF AGRICULTURE,
Respondent.**

DISMISSAL ORDER

On January 2, 2024, Grievant, John Joseph Sikora, filed a grievance against Respondent, West Virginia Department of Agriculture (“WVDA”), protesting his suspension from employment. On January 24, 2024, Respondent, by counsel, filed a motion to dismiss asserting the Grievance Board lacked jurisdiction over the grievance. Grievant was given until January 31, 2024, to respond to the motion. Grievant did not file a response to the motion. Grievant appears *pro se*.¹ Respondent appears by counsel, Anthony D. Eates II, Deputy Attorney General.

Synopsis

Grievant is employed by the West Virginia Department of Agriculture and filed this grievance protesting his suspension from employment. The West Virginia Department of Agriculture is under the supervision and control of the Commissioner of Agriculture, a constitutional officer. Employees of constitutional officers are not employees entitled to the grievance procedure unless the employee is covered under the civil service system. Employees of the West Virginia Department of Agriculture are not covered under the civil service system. Therefore, the Grievance Board does not have jurisdiction to hear the grievance. Accordingly, the grievance must be dismissed.

¹ “For one’s own behalf.” BLACK’S LAW DICTIONARY 1221 (6th ed. 1990).

The undersigned makes the following Findings of Fact:

Findings of Fact

1. Grievant is employed by the WVDA.
2. Grievant was suspended from employment and filed the instant grievance to protest the suspension.
3. The WVDA is under the supervision and control of the Commissioner of Agriculture. W. VA. CODE § 19-1-1.
4. The Commissioner of Agriculture is a constitutional officer of the State of West Virginia elected by popular vote of its citizens. W. VA. CONST. ART. VII, § 1; W. VA. CODE § 19-1-2.
5. The Commissioner of Agriculture is authorized by statute to employ such employees as are necessary in the performance of the duties of his office through the Department of Agriculture. W. VA. CODE § 19-1-3.

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). “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. “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.

"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).

"'Grievance'" means a claim by an employee alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee. . . ." W. VA. CODE § 6C-2-2(i)(1) (2023). "'Employee' means any person hired for permanent employment by an employer for a probationary, full- or part-time position." W. VA. CODE § 6C-2-2(e)(1). "'Employee' does not mean an employee of a Constitutional officer unless he or she is covered under the civil service system. . . ." W. VA. CODE § 6C-2-2(e)(3).

The Grievance Board has consistently found that the Grievance Board lacks jurisdiction over grievances by employees of the WVDA. *See, Kisamore v. W. Va. Dep't of Agric.*, Docket No, 89-AGR-237 (July 26, 1989); *Clutter v. W. Va. Dep't of Agric.*, Docket No. 2009-1372-AGR (May 28, 2009). The WVDA is under the supervision and

control of the Commissioner of Agriculture. W. VA. CODE § 19-1-1. The Commissioner of Agriculture is a constitutional officer of the State of West Virginia elected by popular vote of its citizens. W. VA. CONST. ART. VII, § 1; W. VA. CODE § 19-1-2. The Commissioner of Agriculture is authorized by statute to employ such employees as are necessary in the performance of the duties of his office through the WVDA. W. VA. CODE § 19-1-3. The statute does not place employees of the WVDA into the civil service system. Therefore, as Grievant is not an employee entitled to grieve, 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. “‘Employee’ means any person hired for permanent employment by an employer for a probationary, full- or part-time position.” W. VA. CODE § 6C-2-2(e)(1).

5. “‘Employee’ does not mean an employee of a Constitutional officer unless he or she is covered under the civil service system. . . .” W. VA. CODE § 6C-2-2(e)(3).

6. The West Virginia Department of Agriculture is under the supervision and control of the Commissioner of Agriculture. W. VA. CODE § 19-1-1.

7. The Commissioner of Agriculture is a constitutional officer of the State of West Virginia elected by popular vote of its citizens. W. VA. CONST. ART. VII, § 1; W. VA. CODE § 19-1-2.

8. The Commissioner of Agriculture is authorized by statute to employ such employees as are necessary in the performance of the duties of his office through the Department of Agriculture. W. VA. CODE § 19-1-3. The statute does not place employees of the WVDA into the civil service system.

9. The Grievance Board lacks jurisdiction in this matter as Grievant is not an employee entitled to grieve.

Accordingly, this Grievance is **DISMISSED**.

Any party may appeal this decision to the Intermediate Court of Appeals.² Any such appeal must be filed within thirty (30) days of receipt of this decision. W. VA. CODE

² 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

§ 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: February 7, 2024

Billie Thacker Catlett
Chief Administrative Law Judge

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.