

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**ANTHONY WARD,
Grievant,**

v.

Docket No. 2024-0393-DOR

**ALCOHOL BEVERAGE CONTROL ADMINISTRATION,
Respondent.**

DISMISSAL ORDER

On November 7, 2023, Grievant filed a grievance against Respondent protesting the termination of his probationary employment alleging violation of the Americans with Disabilities Act and discrimination against him due to his gender and disability. On January 8, 2024, the undersigned entered a *Scheduling Order* stating that it appeared the Grievance Board lacked jurisdiction to hear the grievance. Grievant was to respond by January 8, 2024, to withdraw the grievance, file a written argument why the grievance should not be dismissed, or file an amended grievance statement removing allegations of protected class discrimination. Grievant did not file a response to the order. Grievant appears *pro se*.¹ Respondent appears by counsel, Cassandra L. Means-Moore, Assistant Attorney General

Synopsis

Grievant was employed by Alcohol Beverage Control Administration and filed this grievance against Respondent alleging violation of the Americans with Disabilities Act and discrimination against him due to his gender and disability. The Grievance Board does not have jurisdiction to hear any matter relating to the protected classes set forth in

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

the Human Rights Act. As sex and disability are protected classes, 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 was employed by the Alcohol Beverage Control Administration.
2. On November 7, 2023, Grievant filed a grievance against Respondent protesting the termination of his probationary employment alleging violation of the Americans with Disabilities Act and discrimination against him due to his gender and disability.
3. Grievant failed to respond to the January 8, 2024, *Scheduling Order*, which allowed him the opportunity to amend his grievance or provide argument why the grievance should not be dismissed.

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). "'Grievance' does not mean "[a]ny matter relating to the protected classes set forth in §5-11-1 et seq. of this code." W. VA. CODE § 6C-2-2(i)(2)(B). West Virginia Code §5-11-2 et seq. was the West Virginia Human Rights Act, which prohibited employment discrimination based on race, religion, color, national origin, ancestry, sex, age, blindness or disability.²

² The West Virginia Human Rights Act has since been repealed and replaced by Senate Bill 300, effective February 28, 2024.

Grievant grieves Respondent's alleged discrimination due to his gender and disability. 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. "'Grievance' does not mean "[a]ny matter relating to the protected classes set forth in §5-11-1 *et seq.* of this code." W. VA. CODE § 6C-2-2(i)(2)(B). West Virginia Code §5-11-2 *et seq.* is the West Virginia Human Rights Act, which prohibits employment

discrimination based on race, religion, color, national origin, ancestry, sex, age, blindness or disability.

5. The Grievance Board lacks jurisdiction in this matter as Grievant alleged that Respondent discriminated against him due to his sex and disability.

Accordingly, this Grievance is **DISMISSED**.

Any party may appeal this decision to the Intermediate Court of Appeals.³ 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: March 29, 2024

Billie Thacker Catlett
Chief Administrative Law Judge

³ 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.