

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**PRISCILLA ANN THOMAS,
Grievant,**

v.

Docket No. 2024-0446-LogED

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

DISMISSAL ORDER

Priscilla Ann Thomas, Grievant, filed this action on or about December 12, 2023, against the Logan County Board of Education, Respondent. Grievant alleges “[H]arassment, race, age, retaliation/whistleblower, gender, Americans with Disabilities Act (ADA), fraud, nepotism, and not keeping every applicant’s applications on job postings on file or taking stuff out of staff’s employment file claiming it as loss or documents are not on file anymore, favoritism, etc.” Grievant seeks “[H]ire in a full-time position, discipline all people involved, compensation, damages, back pay, etc.”

A level one conference was held in this matter on January 11, 2024. The grievance was denied. A level two mediation was conducted on June 12, 2024. Grievant appealed to level three. A level three hearing was conducted on October 10, 2024, before Administrative Law Judge Wesley White. On that date, the hearing was converted to an evidentiary hearing to address Respondent’s Motion to Dismiss for timeliness. The case was reassigned to the undersigned on November 15, 2024, for administrative reasons. The Logan County Board of Education appeared through its personnel director, Elizabeth Thompson, and by its attorney, Donald C. Wandling, Wandling Law Office, L.C. Grievant appeared *pro se*. This case is in a proper posture for a ruling on the motion.

Synopsis

Respondent posted a job vacancy on October 5, 2023, for the position of Communications-in-Schools Site Coordinator and Home Bound Teacher. On October 10, 2023, Grievant made application for the positions. Grievant was notified by Respondent that she was not the successful candidate for either position on or about October 24, 2023. Grievant filed this action on or about December 12, 2023, challenging the action of Respondent. The record of this matter demonstrates that Grievant failed to file a grievance within fifteen days following the occurrence of the event upon which the grievance is based. Accordingly, this grievance is dismissed as untimely.

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

Findings of Fact

1. Grievant has been an employee of the Logan County Board of Education for many years and was most recently employed as a substitute teacher.
2. Respondent posted a job vacancy on October 5, 2023, for the position of Communications-in-Schools Site Coordinator and Home Bound Teacher. Applications were to be filed no later than October 11, 2023.
3. On October 10, 2023, Grievant posted an application for the positions. Grievant is not certified as a teacher and is not qualified for the position of Home Bound Teacher.
4. Respondent telephoned Grievant sometime between October 11, 2023, and October 24, 2023, and notified Grievant that she was not qualified for the position of Homebound Teacher and that she had not been hired for the position of Communications-in-Schools Site Coordinator.

5. Grievant acknowledged that she was aware no later than October 24, 2023, that she had not been hired for either position.

6. Grievant filed this action on or about December 12, 2023, challenging the action of Respondent.

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). It is within an administrative law judge’s discretion as to whether a hearing needs to be held before a decision is made on a motion to dismiss. *See Armstrong v. W. Va. Div. of Culture & History*, 229 W. Va. 538, 729 S.E.2d 860 (2012).

Respondent asserts that this grievance was not filed within the time allowed by WEST VIRGINIA CODE § 6C-2-4 and, therefore, it must be dismissed. Timeliness is an affirmative defense, and the burden of proving the affirmative defense by a preponderance of the evidence is upon the party asserting the grievance was not timely filed. Once the employer has demonstrated a grievance has not been timely filed, the employee has the burden of demonstrating a proper basis to excuse his failure to file in a timely manner. *See Higginbotham v. W. Va. Dep’t of Pub. Safety*, Docket No. 97-DPS-018 (Mar. 31, 1997); *Sayre v. Mason County Health Dep’t*, Docket No. 95-MCHD-435 (Dec. 29, 1995), *aff’d*, Circuit Court of Mason County, No. 96-C-02 (June 17, 1996). *See also Ball v. Kanawha County Bd. of Educ.*, Docket No. 94-20-384 (Mar. 13, 1995); *Woods v. Fairmont State College*, Docket No. 93-BOD-157 (Jan. 31, 1994); *Jack v. W. Va. Div. of Human Serv.*, Docket No. 90-DHS-524 (May 14, 1991).

The Public Employees Grievance Board is an administrative agency, established by the Legislature, to allow a public employee and his or her employer to reach solutions to problems which arise within the scope of their employment relationship. See W. VA. CODE § 6C-2-1 *et seq.* There are established and recognized constraints for filing and pursuing a grievance in accordance with the West Virginia grievance statutes and applicable regulations. To be considered timely, and, therefore, within the jurisdiction of the Grievance Procedure, a grievance must be timely filed within the time limits set forth in the grievance statute. If proven, an untimely filing will defeat a grievance and the merits of the grievance to be addressed. *Lynch v. W. Va. Dep't of Transp.*, Docket No. 97-DOH-060 (July 16, 1997), *aff'd*, *Circuit Court of Kanawha County*, No. 97-AA-110 (Jan. 21, 1999). If the respondent meets the burden of proving the grievance is not timely, the grievant may attempt to demonstrate that he should be excused from filing within the statutory timelines. See *Kessler v. W. Va. Dep't of Transp.*, Docket No. 96-DOH-445 (July 28, 1997).

WEST VIRGINIA CODE § 6C-2-3(a)(1) requires an employee to “file a grievance within the time limits specified in this article.” W. VA. CODE § 6C-2-3(a)(1). Further, § 6C-2-4(a)(1) sets forth the time limits for filing a grievance, stating as follows:

Within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing

W. VA. CODE § 6C-2-4(a)(1). 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). See *Rose v. Raleigh County Bd. of Educ.*, 199 W. Va. 220, 483 S.E.2d 566 (1997); *Naylor v. W. Va. Human Rights Comm’n*, 180 W. Va. 634, 378 S.E.2d 843 (1989).

Grievant did not timely file this grievance. The grievable event was the Respondent’s failure to hire Grievant pursuant to the bulletin of job posting dated October 5, 2023. Grievant was aware by October 24, 2023, that she had not been hired for either posted position. More than fifteen days had passed from the date that Grievant became aware of her non-selection and the filing of the grievance. This grievance was not filed “within fifteen days following the occurrence of the event upon which the grievance is based” as required by statute. Accordingly, the Motion to Dismiss is granted.

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). It is within an administrative law judge’s discretion as to whether a hearing needs to be held before a decision is made on a motion to dismiss. See *Armstrong v. W. Va. Div. of Culture & History*, 229 W. Va. 538, 729 S.E.2d 860 (2012).

2. Timeliness is an affirmative defense, and the burden of proving the affirmative defense by a preponderance of the evidence is upon the party asserting the

grievance was not timely filed. Once the employer has demonstrated a grievance has not been timely filed, the employee has the burden of demonstrating a proper basis to excuse his failure to file in a timely manner. *See Higginbotham v. W. Va. Dep't of Pub. Safety*, Docket No. 97-DPS-018 (Mar. 31, 1997); *Sayre v. Mason County Health Dep't*, Docket No. 95-MCHD-435 (Dec. 29, 1995), *aff'd*, Circuit Court of Mason County, No. 96-C-02 (June 17, 1996). *See also Ball v. Kanawha County Bd. of Educ.*, Docket No. 94-20-384 (Mar. 13, 1995); *Woods v. Fairmont State College*, Docket No. 93-BOD-157 (Jan. 31, 1994); *Jack v. W. Va. Div. of Human Serv.*, Docket No. 90-DHS-524 (May 14, 1991).

3. WEST VIRGINIA CODE § 6C-2-3(a)(1) requires an employee to “file a grievance within the time limits specified in this article.” W. VA. CODE § 6C-2-3(a)(1). Further, § 6C-2-4(a)(1) sets forth the time limits for filing a grievance, stating as follows:

Within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing

4. 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). *See Rose v. Raleigh County Bd. of Educ.*, 199 W. Va. 220, 483 S.E.2d 566 (1997); *Naylor v. W. Va. Human Rights Comm'n*, 180 W. Va. 634, 378 S.E.2d 843 (1989).

5. The grievance was not filed “within fifteen days following the occurrence of the event upon which the grievance is based” as required by the statute.

Accordingly, the grievance is **DISMISSED**.

“An appeal of the decision of the administrative law judge shall be to the Intermediate Court of Appeals in accordance with § 51-11-4(b)(4) of this code and the Rules of Appellate Procedure.” W. VA. CODE § 6C-2-5(b). Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such an appeal and should not be named as a party to the appeal. However, the appealing party must serve a copy of the petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

Date: December 10, 2024

Ronald L. Reece
Administrative Law Judge