

THE WEST PUBLIC EMPLOYEES GRIEVANCE BOARD

**DEBORAH WOTRING,
Grievant,**

v.

Docket No. 2024-0836-MonED

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

ORDER UPHOLDING LEVEL ONE DISMISSAL ORDER

Grievant, Deborah Wotring, filed this action on or about June 10, 2024, challenging her non-selection for a classroom teaching position, a position posted from September 6 to September 13, 2023. Grievant seeks placement in the position, back pay and related benefits plus interest. This grievance was dismissed at level one due to being untimely filed by Doug Clemons, Designee at level one, on or about July 26, 2024. Grievant appealed to level three on or about August 1, 2024. The West Virginia Public Employees Grievance Board acknowledged this appeal on or about August 5, 2024. 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). Grievant appears by Ben Barkey, West Virginia Education Association. Monongalia County Board of Education appears by its counsel, Jennifer S. Caradine. This matter is in the proper posture for a review of the level one order.

Synopsis

The limited 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, the level one dismissal is upheld.

The following Findings of Fact are based on the lower-level record of this case.

Findings of Fact

1. Grievant is a substitute teacher for Monongalia County Board of Education. Grievant filed this action on or about June 10, 2024, in which she asserts that she is the most qualified applicant but was not selected for a 7th grade math position at South Middle. Grievant goes on to state that she applied for the in fall but did not receive the recommendation.

2. Grievant was not selected for the 7th grade math position and received notice of her non-selection on or about November 6, 2023. Exhibits B and C. Grievant does not dispute that she was aware of her non-selection in the fall of 2023. Grievant served as a long-term substitute in the position for the 2023-2023 school year.

3. Grievant argues that she delayed filing the grievance until she was informed that the successful applicant lacked certification to teach 7th grade math.

Discussion

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 at level one for untimeliness. 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 demonstrates that the grievance was not filed within the fifteen-day statutory timeframe. Grievant appears to have asserted “discovery” at level one as an excuse for the late filing. It has long been established that “ignorance of the facts is insufficient to toll the required time period for filing a grievance. *Bailey v. McDowell County Bd. of Educ.*, Docket No. 07-33-399 (Nov. 27, 2008). In *Bailey*, the Grievance Board determined that the “grievable event in this case was the Respondent’s failure to hire Mr. Bailey in 2002, Mr. Bailey knew or should have known of the alleged certification/licensure issue at the time. Certification/licenses are public records and some quantum of diligence must be exercised by a Grievant who wishes to challenge his non-selection.” 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.

“The decision of the administrative law judge is final upon the parties and is enforceable in the circuit court situated in the judicial district in which the grievant is employed.” W. VA. CODE § 6C-2-5(a) (2024). “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: October 31, 2024

Ronald L. Reece
Administrative Law Judge