

# THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

R. D.,<sup>1</sup>

Grievant,

v.

Docket No. 2017-1155-DHHR

DEPARTMENT OF HEALTH AND  
HUMAN RESOURCES/BUREAU  
FOR CHILDREN AND FAMILIES,  
Respondent.

## DISMISSAL ORDER

Grievant, R. D., is employed by the Department of Health and Human Resources ("DHHR") as an Office Assistant 2 with the Bureau for Children and Families ("BCF"). R.D. filed a grievance form dated November 11, 2016 alleging: "False allegation to OIG resulting in reprimand without good cause & improper denial of benefits." As relief, Grievant seeks, "To be made whole in every way including removal of discipline, restoration of benefits and reversal of any and all adverse actions by Respondent." A level one hearing was conducted on February 21, 2017. Grievant appeared and was represented by Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent appeared through Maureen Rogers, Interim Community Services Manager ("CSM") for DHHR in Kanawha County. A decision denying the grievance was rendered on March 14, 2017.

Grievant appealed to level two on the same day. Respondent through its counsel, Michael Bevers, Assistant Attorney General, filed a Motion to Dismiss on April 7, 2017.

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<sup>1</sup> The Grievant's name will be replaced with initials to protect the Grievant's privacy rights as a recipient of certain State and/or Federal benefits.

Grievant's representative filed a response to the motion on April 19, 2017. By letter dated April 28, 2017, Chief Administrative Law Judge Catlett informed the parties that no ruling would be made on the Motion to Dismiss until the parties participated in mediation. A mediation was conducted on June 2, 2017, after which Grievant appealed to level three.<sup>2</sup>

Respondent filed a renewed Motion to Dismiss on June 26, 2017, attaching an affidavit thereto. The Grievance Board notified Grievant's representative that any reply to the renewed motion needed to be filed prior to the close of business on July 13, 2017. No reply to the renewed motion was received. This matter is now mature for a ruling on the motion. Because Chief ALJ Catlett conducted the mediation in this matter the undersigned has been assigned to render a decision on the motion.

### **Synopsis**

Grievant alleges receiving a reprimand and being denied benefits by Respondent. Grievant seeks removal of any disciplinary action and restoration of all benefits. Respondent did not administer a reprimand or any other discipline to Grievant. The benefits Grievant seeks to be restored are SNAP benefits received through a nutrition program which is totally separate from Grievant's employment. The Grievance Board has no jurisdiction to grant relief related to the SNAP program and there is no relief available for a disciplinary action since none was taken. Because there is no relief available through the grievance procedure the grievance must be DISMISSED.

### **Findings of Fact**

1. R. D. is employed by Respondent DHHR/BCF as an Office Assistant 2 in Charleston, West Virginia. Grievant has been so employed for more than seven years.

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<sup>2</sup> The appeal to level three was dated June 7, 2017.

2. Between July 2015 and April 2016, there was an indication that Grievant may have failed to list all household income when completing an application for benefits for various programs for low income citizens.<sup>3</sup>

3. The DHHR Office of the Inspector General (“OIG”) investigated the matter and found that Grievant had received an overpayment in Supplemental Nutrition Assistance Program (“SNAP”) benefits for the month of August 2015.<sup>4</sup>

4. A predetermination conference was held with Grievant on October, 31, 2016. CSM Rogers conducted the conference. Grievant demonstrated that the reporting error was the result of confusion concerning the requirements for reporting income of a child living outside Grievant’s home. Respondent explained the reporting requirements and no discipline of any kind was administered.<sup>5</sup>

5. The remedies Grievant seeks are “To be made whole in every way including removal of discipline, restoration of benefits and reversal of any and all adverse actions by Respondent.”

6. Respondent’s Motion to Dismiss asserts, *inter alia*, that the grievance must be dismissed because the remedies sought are unavailable in the Public Employees Grievance Procedure.

7. Grievant’s response to the initial motion stated:

Grievant’s supervisors have obstructed her rightful receipt of benefits in retaliation to her exercise of statutory rights. Her Grievance should therefore not be dismissed.

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<sup>3</sup> Level one decision and affidavit of Maureen M. Roger.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

8. The benefits referred to in Grievant's response are SNAP benefits R. D. receives as an eligible citizen. The SNAP benefits are not related to Grievant's employment.

### **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. Additionally, "[a] grievance may be dismissed, in the discretion of the administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested." W. VA. CODE ST. R. § 156-1-6.11.

The first remedy sought by Grievant is removal of discipline taken against R. D. The discipline alleged to be taken is a reprimand. However, Respondent proved that no disciplinary action was taken against Grievant. Therefore, it is not possible for the discipline to be removed. This remedy is unavailable to Grievant.

The next remedy sought by Grievant is restoration of benefits taken by Respondent. The only benefits taken by Respondent were SNAP benefits Grievant received due to on an overpayment in August 2015. Grievant does not receive SNAP benefits as a result of being an employee. Instead Grievant receives SNAP benefits as an eligible citizen, and receipt of those benefits is totally unrelated to the employment relationship.

The Grievance Board, being an administrative agency is a creature of statute, and has no greater authority than conferred under the governing statutes. *Monongahela Power Co. v. Chief, Office of Water Res., Div. of Env'tl. Prot.*, 211 W.Va. 619, 567 S.E.2d

629, 637 (2002), (citing *State ex rel. Hoover v. Berger*, 199 W.Va. 12, 16, 483 S.E.2d 12, 16 (1996)). Consequently, the jurisdiction of the Public Employees Grievance Board is limited to the grant of authority under WEST VIRGINIA CODE §§ 6C-2-1 *et seq.* *Clutter v. Dep't of Agriculture*, Docket No. 2009-1372-AGR (May 28, 2009).

The statutory grievance procedure defines a “grievance” as follows:

(1) "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 . . .

WEST VIRGINIA CODE § 6C-2-2(i).

Since Grievant’s claim for SNAP benefits is totally outside the employer/employee relationship, any claim made for the restoration of those benefits is made as a citizen and not an employee which places that claim outside the jurisdiction of the Grievance Board. Because the Grievance Board has no jurisdiction to restore SNAP benefits that relief is also wholly unavailable from the West Virginia Public Employees Grievance Board. Accordingly, the grievance is DISMISSED.

### **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.

2. “A grievance may be dismissed, in the discretion of the administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.” W. VA. CODE ST. R. § 156-1-6.11.

3. Since no discipline was imposed, the remedy of removal of all disciplinary action is wholly unavailable to Grievant.

4. The Grievance Board, being an administrative agency is a creature of statute, and has no greater authority than conferred under the governing statutes. *Monongahela Power Co. v. Chief, Office of Water Res., Div. of Env'tl. Prot.*, 211 W.Va. 619, 567 S.E.2d 629, 637 (2002), (citing *State ex rel. Hoover v. Berger*, 199 W.Va. 12, 16, 483 S.E.2d 12, 16 (1996)). Consequently, the jurisdiction of the Public Employees Grievance Board is limited to the grant of authority under WEST VIRGINIA CODE §§ 6C-2-1 *et seq.* *Clutter v. Dep't of Agriculture*, Docket No. 2009-1372-AGR (May 28, 2009).

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WEST VIRGINIA CODE § 6C-2-2(i).

6. Grievant's claim for SNAP benefits is totally outside the employer/employee relationship which places that claim outside the jurisdiction of the Grievance Board. Because the Grievance Board had no jurisdiction to restore SNAP benefits, that relief is also wholly unavailable from the West Virginia Public Employees Grievance Board.

Accordingly, the grievance is DISMISSED.

Any party may appeal this Dismissal Order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Dismissal Order. See 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 so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *also* 156 C.S.R. 1 § 6.20 (2008).

**DATE: October 5, 2017.**

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**WILLIAM B. MCGINLEY  
ADMINISTRATIVE LAW JUDGE**