

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**AARON WHITE,
Grievant,**

v.

Docket No. 2017-2482-MAPS

**DIVISION OF CORRECTIONS/
MOUNT OLIVE CORRECTIONAL COMPLEX,
Respondent.**

DISMISSAL ORDER

Grievant, Aaron White, is employed by Respondent, Division of Corrections at Mount Olive Correctional Complex. On June 30, 2017, Grievant filed this grievance against Respondent stating, "The [g]rievance [h]earing on 26 June 2017 was [p]rotected [a]ctivity and on 29 June 2017[,] AWS Frame was asking myself and COII Elmore about our [f]iles in the presences of Lt. Simpson in AWS Frame Office." For relief, Grievant seeks "monetary damages in the amount of \$50,000.00 for [e]motional [d]istress."

On July 6, 2017, the level one hearing examiner waived the grievance to level two of the grievance process. By order entered July 27, 2017, the Grievance Board allowed the waiver. Following unsuccessful mediation, Grievant appealed to level three on September 6, 2017. On November 28, 2017, Respondent, by counsel, filed *Respondent's Motion to Dismiss* alleging the grievance must be dismissed as Grievant seeks a remedy wholly unavailable to the grievant. By email of the same date, the Grievance Board notified Grievant he had until close of business December 5, 2017, to respond to the motion in writing, and that no hearing would be held on the motion. On the same date, Grievant responded by email stating, "I do not wish to hearing due to illegal activity at Mt.

Olive.”¹ On November 29, 2107, Grievant sent a second email stating, “Also[,] these are not ‘[t]ort like [d]amages” but actual [d]amages that I continue to [s]uffer.” On December 4, 2017, Grievant filed a third statement in which he stated that he does not want the hearing to be dismissed “due to all the [i]llegal [a]ctivity that occurred at Mt. Olive. I want to be heard and I want all the wrongs done to me corrected [through] my [l]egal [r]ights.” Grievant appears *pro se*². Respondent was represented by counsel, John H. Boothroyd, Assistant Attorney General.

Synopsis

Grievant filed the instant grievance alleging retaliation. For relief, Grievant sought only money damages for emotional distress. Respondent moved to dismiss the grievance alleging Grievant seeks a remedy wholly unavailable through the grievance process. The Grievance Board does not have the authority to award damages for emotional distress. Accordingly, the grievance is dismissed.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

Findings of Fact

1. Grievant, Aaron White, is employed by Respondent, Division of Corrections at Mount Olive Correctional Complex.
2. Grievant filed this grievance alleging retaliation.
3. For relief, Grievant seeks only “monetary damages in the amount of \$50,000.00 for [e]motional [d]istress.”

¹ Based on Grievant’s later statements, it appears this statement is incomplete.

² For one’s own behalf. BLACK’S LAW DICTIONARY 1221 (6th ed. 1990).

Discussion

“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. Appeals of any cases dismissed pursuant to this provision are to be made in the same manner as appeals of decisions on the merits.” W. VA. CODE ST. R. § 156-1-6.19.3. “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. “Any party asserting the application of an affirmative defense bears the burden of proving that defense by a preponderance of the evidence.” W. VA. CODE ST. R. § 156-1-3 (2008).

Respondent asserts this grievance must be dismissed as Grievant seeks a remedy that is wholly unavailable as he seeks “tort-like damages.” Grievant opposes the dismissal of his grievance, asserting that he has suffered “actual damages,” not “tort-like damages” and that his grievance should not be dismissed due to “all the [i]llegal [a]ctivity that occurred at Mt. Olive.”

The only remedy Grievant has sought is “monetary damages in the amount of \$50,000.00 for [e]motional [d]istress.” Money damages for emotional distress are “tort-like” damages. “Tort” is a legal term that means “A private or civil wrong or injury. . .for

which the court will provide a remedy in the form of an action for damages.” BLACK’S LAW DICTIONARY 1489 (6th ed. 1990). The Grievance Board is an administrative agency and not a court. “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 Grievance Board is not authorized by statute to hear tort claims or award damages for emotional distress. “Damages such as medical expenses, mental anguish, stress, and pain and suffering are generally viewed as ‘tort-like’ damages which have been found to be unavailable under the Grievance Procedure. *Dunlap v. Dep’t of Environmental Protection*, Docket No. 2008-0808-DEP (Mar. 20, 2009). *Spangler v. Cabell County Board of Education*, Docket No. 03-06-375 (March 15, 2004); *Snodgrass v. Kanawha County Bd. of Educ.*, Docket No. 97-20-007 (June 30, 1997).” *Stalnaker v. Div. of Corrections*, Docket No. 2013-1084-MAPS (Mar. 26, 2014); *See Vest v. Bd. of Educ. of County of Nicholas*, 193 W. Va. 222, 225, 227 n. 11 (1995). As Grievant’s only requested relief is wholly unavailable from the Grievance Board, this grievance must be dismissed.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. “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. Appeals of any cases dismissed pursuant to this provision are to be made in the same manner as appeals of decisions on the merits.” W. VA. CODE ST. R. § 156-1-6.19.3.

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. “Any party asserting the application of an affirmative defense bears the burden of proving that defense by a preponderance of the evidence.” W. VA. CODE ST. R. § 156-1-3 (2008).

4. “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)).

5. “Damages such as medical expenses, mental anguish, stress, and pain and suffering are generally viewed as ‘tort-like’ damages which have been found to be

unavailable under the Grievance Procedure. *Dunlap v. Dep't of Environmental Protection*, Docket No. 2008-0808-DEP (Mar. 20, 2009). *Spangler v. Cabell County Board of Education*, Docket No. 03-06-375 (March 15, 2004); *Snodgrass v. Kanawha County Bd. of Educ.*, Docket No. 97-20-007 (June 30, 1997).” *Stalnaker v. Div. of Corrections*, Docket No. 2013-1084-MAPS (Mar. 26, 2014); See *Vest v. Bd. of Educ. of County of Nicholas*, 193 W. Va. 222, 225, 227 n. 11 (1995).

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* W. VA. CODE ST. R. § 156-1-6.20 (2008).

DATE: December 18, 2017

Billie Thacker Catlett
Chief Administrative Law Judge