

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**RODNEY L. GOFF,
GRIEVANT,**

V.

DOCKET NO. 2018-1178-DOT

**DIVISION OF HIGHWAYS,
RESPONDENT.**

DISMISSAL ORDER

Grievant, Rodney L. Goff, is employed by Respondent, Division of Highways. On May 6, 2018, Grievant filed this grievance against Respondent alleging that laundering his work uniforms was causing damage to his washer and dryer and exposing family members to hazardous materials. For relief, Grievant sought for his washer and dryer to be replaced.

Respondent moved to dismiss the claim for failure to state a claim upon which relief could be granted and the grievance was dismissed at level one on June 4, 2018. Grievant appealed to level two on June 7, 2018. On August 31, 2018, Respondent, by counsel, filed *Respondent's Renewed Motion to Dismiss*. On September 10, 2018, Grievant, by representative, filed *Response to Respondent's Renewed Motion to Dismiss*. The administrative law judge assigned to mediate the matter at level two declined to rule on the pending motion and the parties were informed by email dated September 11, 2018, that the mediation would proceed, and that Respondent could renew its motion should the matter be appealed to level three. Mediation was unsuccessful and Grievant appealed to level three on October 1, 2018. By email dated October 23, 2018, Respondent, by counsel, requested a ruling on the previously-filed motion. Grievant

appears by representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent appears by counsel, Xueyan Z. Palmer.

Synopsis

Grievant filed the instant grievance against Respondent alleging that laundering his work uniforms was causing damage to his washer and dryer and exposing family members to hazardous materials. The only relief requested by Grievant was for Respondent to replace his washer and dryer. Respondent moved to dismiss the grievance for failure to state a claim upon which relief can be granted. The Grievance Board is not authorized by statute to hear tort claims or award tort-like damages. Grievant seeks a remedy wholly unavailable through the grievance process. 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 is employed by Respondent, Division of Highways.
2. Grievant is required by his employer to wear a uniform, which must be clean and pressed.
3. Although Respondent provides clean uniforms through a vendor service, if employees run out of clean uniforms between vendor deliveries, they must launder their uniforms personally.
4. Grievant asserts that laundering his uniforms has damaged his personal washer and dryer and, as relief, he seeks for Respondent to replace his washer and dryer.

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 has failed to state a claim upon which relief can be granted as he seeks only “tort-like damages.” Respondent also asserts Grievant provided “no corroborating documentation” that his appliances were actually damaged by laundering his uniforms. Grievant opposes the dismissal of his grievance, asserting Grievant is required to launder his uniforms under pain of discipline and that the grievance should be allowed to proceed to allow Grievant the opportunity to prove his claim.

Respondent's assertion that the grievance should be dismissed for Grievant's failure to provide "corroborating documentation" of his claim is without merit. Grievant was not required to include "corroborating documentation" with his claim. The only filing requirement is that Grievant "stat[e] the nature of the grievance and the relief requested" W. VA. CODE § 6C-2-4(a)(1). Grievant is not required to provide corroborating evidence of his claim until hearing.

However, Grievant has requested a remedy that is wholly unavailable from the Grievance Board. The only relief Grievant requests is the replacement of his washer and dryer. The Grievance Board has previously found in a similar grievance that it did not have the authority to grant a grievant relief for damages to her personal property, a car. *Earnest v. Bd. of Dir./ S. W. Va. Cmty. & Technical Coll.*, Docket Nos. 98-BOD-273/00-HE-396 (Feb. 7, 2003), *aff'd*, Kan. Cnty. Cir. Ct. civil action # 03-AA-32 (Mar. 23, 2004).

Money damages for the replacement of damaged personal property 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 tort-like damages. *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 (2018). “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.

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. The Grievance Board is not authorized by statute to hear tort claims or award tort-like damages. *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).

6. As Grievant's only requested relief is wholly unavailable from the Grievance Board, this grievance must be dismissed.

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 (2018).

DATE: December 3, 2018

Billie Thacker Catlett
Chief Administrative Law Judge