

**THE WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD**

**KRISTIN LYNN NEFF,  
Grievant,**

**v.**

**Docket No. 2019-0372-WVU**

**WEST VIRGINIA UNIVERSITY,  
Respondent.**

**DISMISSAL ORDER**

Grievant, Kristin Lynn Neff, filed this grievance against West Virginia University on September 19, 2018. Grievant challenged her alleged termination and seeks reinstatement with back pay. This grievance was filed directly to Level Three. Prior to this hearing, Respondent filed a Motion to Dismiss on October 22, 2018. Grievant communicated to the Grievance Board on November 9, 2018, that she consented to the dismissal of the case. Grievant appeared by her counsel, David Grunau. Respondent appeared by its counsel, Samuel R. Spatafore, Assistant Attorney General. This matter is now mature for a ruling.

**Synopsis**

West Virginia University offered Grievant a position on September 6, 2018. This offer clearly communicated that the position would be effective September 17, 2018. West Virginia University rescinded the offer of employment and notified Grievant on September 14, 2018, of this decision. Grievant was not an employee of West Virginia University at the time of the grieved event. Accordingly, this grievance is dismissed.

The following Findings of Fact are undisputed.

### **Findings of Fact**

1. West Virginia University offered Grievant a position on September 6, 2018.
2. This offer clearly communicated that the position would be effective September 17, 2018.
3. West Virginia University rescinded the offer of employment and notified Grievant on September 14, 2018, of this decision.
4. West Virginia University was not the employer for purposes of the grievance procedure prior to or during the time that the grievance was filed.
5. Grievant's offer of employment was rescinded on September 14, 2018, prior to the effective start date. Grievant never worked nor received compensation for work at West Virginia University for the position in question.

### **Discussion**

Respondent asserts that Grievant is not an "employee" within the meaning of WEST VIRGINIA CODE § 6C-2-2, and therefore has no standing to pursue her grievance. When the employer asserts an affirmative defense, it must be established by a preponderance of the evidence. See *Lewis v. Kanawha County Bd. of Educ.*, Docket No. 97-20-554 (May 27, 1998); *Lowry v. W. Va. Dep't of Educ.*, Docket No. 96-DOE-130 (Dec. 26, 1996); *Hale v. Mingo County Bd. of Educ.*, Docket No. 95-29-315 (Jan. 25, 1996). See generally *Payne v. Mason County Bd. of Educ.*, Docket No. 96-26-047 (Nov. 27, 1996); *Trickett v. Preston County Bd. of Educ.*, Docket No. 95-39-413 (May 8, 1996). In addition, standing is a

party's right to make a legal claim or seek judicial enforcement of a duty or right. BLACK'S LAW DICTIONARY (Eighth Edition 2004).

The Public Employees Grievance Procedure was established to allow public employees and their employers to reach solutions to problems which arise within the scope of their respective employment relationships. W. VA. CODE § 6C-2-1(a); See *Wilson v. Dep't of Health and Human Res.*, Docket No. 2011-1769-DHHR (Oct. 31, 2011). WEST VIRGINIA CODE § 6C-2-2(e)(1) defines "employee" for the purposes of the grievance procedure, as follows:

(1) "Employee" means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

WEST VIRGINIA CODE § 6C-2-2(g) defines "employer" for the purposes of the grievance procedure, as follows:

[A] state agency, department, board, commission, college, university, institution, State Board of Education, Department of Education, county board of education, regional educational service agency or multicounty vocational center, or agent thereof, **using the services of an employee** as defined in this section. (Emphasis added.)

A "Grievance" is "a claim by an employee." W. VA. CODE § 6C-2-2(i). Only an employee may file a grievance. W. VA. CODE § 6C-2-2(a)(1).

It is undisputed that West Virginia University, at no time, used the services of Grievant nor did Grievant perform any services for West Virginia University. Grievant was clearly not an employee pursuant to WEST VIRGINIA CODE § 6C-2-2(e)(1), and West Virginia University was not the employer using the services of an employee pursuant to WEST VIRGINIA CODE § 6C-2-2(g). None of the above is disputed by Grievant.

The following Conclusions of Law support the dismissal of this grievance.

### **Conclusions of Law**

1. The Public Employees Grievance Procedure was established to allow public employees and their employers to reach solutions to problems which arise within the scope of their respective employment relationships. W. VA. CODE § 6C-2-1(a); See *Wilson v. Dep't of Health and Human Res.*, Docket No. 2011-1769-DHHR (Oct. 31, 2011).

2. WEST VIRGINIA CODE § 6C-2-2(e)(1) defines “employee” for the purposes of the grievance procedure, as follows:

(1) "Employee" means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

3. WEST VIRGINIA CODE § 6C-2-2(g) defines “employer” for the purposes of the grievance procedure, as follows:

[A] state agency, department, board, commission, college, university, institution, State Board of Education, Department of Education, county board of education, regional educational service agency or multicounty vocational center, or agent thereof, **using the services of an employee** as defined in this section. (Emphasis added.)

4. A “Grievance” is “a claim by an employee.” W. VA. CODE § 6C-2-2(i). Only an employee may file a grievance. W. VA. CODE § 6C-2-2(a)(1).

5. Grievant was not an employee covered by the grievance procedure prior to filing this grievance. West Virginia University was not the employer for the purpose of the grievance procedure prior to the time that the grievance was filed.

Accordingly, this grievance is **DISMISSED**.

Any party may appeal this Order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this 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 (2018).

**Date: November 19, 2018**

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**Ronald L. Reece**  
**Administrative Law Judge**