

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**SUSAN B. SAVAGE,
Grievant,**

v.

Docket No. 2018-1237-MISC

**UNITED HOSPITAL CENTER,
Respondent.**

DISMISSAL ORDER

On April 29, 2018, Grievant filed a grievance against West Virginia University alleging harassment, assigned docket number 2018-1171-WVU. A *Dismissal Order* in docket number 2018-1171-WVU was entered on May 16, 2018, dismissing the grievance. The *Dismissal Order* found that Grievant was an employee of United Hospital Center, which is an affiliate of the West Virginia University Health System, but that the West Virginia University Health System is a private corporation. On May 17, 2018, Grievant sent a letter to the West Virginia Public Employees Grievance Board referencing docket number 2018-1171-WVU, and stating that she wished to proceed to level three because she had been terminated from employment after filing her previous grievance. It did not appear that Grievant was aware docket number 2018-1171-WVU had been dismissed at the time she filed her letter.

By letter dated July 6, 2018, the undersigned accepted Grievant's letter as a separate grievance filed to level three to protest her termination from employment, which is the instant action. The letter further notified the parties that, as it appeared Grievant was employed by a private corporation and not West Virginia University, it did not appear the Grievance Board had jurisdiction to hear the grievance. The undersigned instructed

Grievant to respond, in writing, by July 23, 2018, stating why the grievance should not be dismissed for lack of jurisdiction. Grievant did not respond to the letter.

Synopsis

Grievant was employed by United Hospital Center and grieves her dismissal from employment. United Hospital Center is a part of the West Virginia University Health System, a private corporation that is affiliated with West Virginia University, but is not a part of West Virginia University. The Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance is dismissed.

The undersigned makes the following Findings of Fact:

Findings of Fact

1. Grievant was employed by United Hospital Center and grieves her dismissal from employment.
2. United Hospital Center is a part of the West Virginia University Health System, a private corporation that is affiliated with West Virginia University, but is not a part of West Virginia University.

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 (2018). “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.

"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 purpose of [the grievance statute] is to provide a procedure for the resolution of employment grievances raised by the public employees of the State of West Virginia, except as otherwise excluded in this article.” W. VA. CODE § 6C-2-1(a). “‘Employer’ means 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.” W. VA. CODE § 6C-2-2(g).

The West Virginia University Health System is a private corporation that is affiliated with West Virginia University, but is not a part of West Virginia University. W.VA. CODE § 18-11C-1 *et seq.* Although the corporation may utilize both corporation employees and

university personnel, in *Savage v. West Virginia University*, Docket Number 2018-1171-WVU, West Virginia University previously found that Grievant was not an employee of West Virginia University and Grievant has listed United Hospital Center as her employer on her original grievance filing. See W.VA. CODE § 18-11C-4(d). Grievant was provided an opportunity to dispute that she was not employed by West Virginia University and assert why the Grievance Board would have jurisdiction, and failed to do so. Therefore, the Grievance Board lacks jurisdiction in this matter, and the grievance must be dismissed.

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

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 (2018). “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. "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)).

3. "The purpose of [the grievance statute] is to provide a procedure for the resolution of employment grievances raised by the public employees of the State of West Virginia, except as otherwise excluded in this article." W. VA. CODE § 6C-2-1(a). "'Employer' means 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." W. VA. CODE § 6C-2-2(g).

4. As Grievant's employer is a private corporation not subject to the grievance procedure, the Grievance Board lacks jurisdiction in this matter, and the grievance must be dismissed.

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* W. VA. CODE ST. R. § 156-1-6.20 (2018).

DATE: September 14, 2018

Billie Thacker Catlett
Chief Administrative Law Judge