

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**DEBRA TAYLOR,
Grievant,**

v.

Docket No. 2018-0768-MISC

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

DISMISSAL ORDER

On November 21, 2017, Grievant Debra Taylor, by counsel, filed a grievance against Respondent, "Child Protective Services," stating, "CPS Report dated 09/07/2017 and investigation resulting from referral #11290097." As relief, Grievant requested that she and/or Donald Taylor "be cleared of all allegations of abuse/neglect..." After review of the grievance file and the relevant statutes, the undersigned, by letter dated December 4, 2017, notified Grievant, by counsel, that it appeared the Grievance Board lacked jurisdiction to hear the grievance, as Grievant did not appear to be an employee with a grievance against her employer, and required Grievant to file a response by December 18, 2017, if she still believed she had the right to pursue this grievance. Grievant did not file a response.

Synopsis

Grievant is not an employee grieving the actions of her public employer, she is a citizen protesting actions taken against her by a state agency. The Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance must be dismissed.

The undersigned makes the following Findings of Fact:

Findings of Fact

1. Grievant filed this grievance on November 21, 2017, protesting action taken against her by Child Protective Services in which she requests to be cleared of “allegations of abuse/neglect.”
2. Grievant does not allege she is employed by a public employer, or protest the actions of her public employer.
3. The undersigned notified Grievant, by counsel, by letter dated December 4, 2017, that it appeared the Grievance Board lacked jurisdiction to hear the grievance.
4. Grievant was given until December 18, 2017, to file a response if she still believed she had the right to pursue this grievance. Grievant did not file a response.

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 (2008). The administrative law judge may dispose of a grievance through an appealable dismissal order. W.VA. CODE ST. R. § 156-1-6.19.3. The undersigned notified Grievant by letter dated December 4, 2017, that it appeared the Grievance Board lacked jurisdiction to hear the grievance since Grievant did not appear to be an employee grieving the actions of her public employer.

"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).

Grievant is not an employee grieving the actions of her public employer, she is a citizen protesting actions taken against her by a state agency. 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 (2008).

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).

4. Grievant is not an employee grieving the actions of her public employer, she is a citizen protesting actions taken against her by a state agency.

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 (2008).

DATE: January 18, 2018

Billie Thacker Catlett
Chief Administrative Law Judge