

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

CALEB WILEY,
Grievant,

v.

Docket No. 2018-1467-GSC

GLENVILLE STATE COLLEGE,
Respondent.

DISMISSAL ORDER

Grievant, Caleb Wiley, filed a grievance against Respondent, Glenville State College, alleging he had been employed by Respondent as a Peer Tutor, for which he had not been paid¹. On July 27, 2018, the grievance was dismissed at level one finding that Grievant was an employee of Huttonsville Correctional Center, not Glenville State College, and that the grievance was not timely filed. On August 7, 2018, Grievant appealed to level two asserting he was employed by Respondent and that his grievance was timely filed. Grievant appears *pro se*². Respondent appears by chief administrator, Dr. Tracy L. Pellett, President, *pro se*.

Synopsis

Grievant is an inmate at Huttonsville Correctional Center. Grievant filed this grievance against Glenville State College alleging that he had not been paid for work he performed as a Peer Tutor for Glenville State College. Inmates are expressly excluded from the grievance procedure by statute. The Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance must be dismissed.

The undersigned makes the following Findings of Fact:

¹ Grievant did not file his grievance with the Grievance Board as required. The Grievance Board was made aware of the grievance upon receipt of the level one decision.

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

Findings of Fact

1. Grievant is incarcerated at Huttonsville Correctional Center.
2. On September 13, 2017, Grievant signed a “Tutor Agreement” with Glenville State College which states, in pertinent part, “I am agreeing to employment with the GSC Academic Center for the above[-]named semester.”
3. Grievant filed the instant grievance alleging he had not been paid for his work as a tutor.
4. On July 27, 2018, Respondent, by its chief administrator, denied the grievance, finding that Grievant was an employee of Huttonsville Correctional Center, not Glenville State College, and that the grievance was not timely filed.
5. On August 7, 2018, Grievant appealed to level two asserting he was employed by Respondent, citing the language in the “Tutor Agreement,” and that his grievance was timely filed.

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. "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.

"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). "'Employee' means any person hired for permanent employment by an employer for a probationary, full- or part-time position." W. VA. CODE § 6C-2-2(e)(1). "Employee' does not mean an employee of a Constitutional officer unless he or she is covered under the civil service system, an employee of the Legislature or a patient or inmate employed by a state institution." W. VA. CODE § 6C-2-2(e)(3).

Inmates are not employees as defined in the grievance procedure, and, therefore, have no right to file a grievance. Grievant does not dispute that he is an inmate. Therefore, as Grievant is not an employee as defined within the grievance procedure

statute, 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).

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. “‘Employee’ means any person hired for permanent employment by an employer for a probationary, full- or part-time position.” W. VA. CODE § 6C-2-2(e)(1).

5. “‘Employee’ does not mean an employee of a Constitutional officer unless he or she is covered under the civil service system, an employee of the Legislature or a patient or inmate employed by a state institution.” W. VA. CODE § 6C-2-2(e)(3).

6. Grievant is not an employee as defined within the grievance procedure statute as he is an inmate.

7. As Grievant is not an employee as defined by the grievance procedure statute, 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: August 27, 2018

Billie Thacker Catlett
Chief Administrative Law Judge