

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**ROBERT A. HANS,
Grievant,**

v.

Docket No. 2019-1339-DodED

**DODDRIDGE COUNTY BOARD OF EDUCATION,
Respondent.**

DISMISSAL ORDER

Grievant, Robert A. Hans, was employed by Respondent, Doddridge County Board of Education. On March 26, 2019, Grievant filed this grievance directly to level three of the grievance process contesting the circumstances of his resignation from employment and asserting discrimination and violation of law and policy by Respondent.

On April 9, 2019, Respondent, by counsel, filed Respondent's Motion to Dismiss asserting the grievance was untimely filed. Grievant responded to the motion by letter dated April 17, 2019. Grievant appears *pro se*¹. Respondent was represented by counsel, Denise M. Spatafore, Dinsmore & Shohl LLP.

Synopsis

Grievant was previously employed by Respondent as a substitute bus driver and resigned his position. Grievant filed the instant grievance challenging his resignation. Respondent moved to dismiss the grievance as untimely filed. The grievance was untimely filed. 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:

¹ For one's own behalf. BLACK'S LAW DICTIONARY 1221 (6th ed. 1990).

Findings of Fact

1. Grievant was previously employed by Respondent as a substitute bus driver.
2. Grievant resigned from his employment on January 28, 2019.
3. Respondent approved Grievant's resignation on February 5, 2019.
4. On March 26, 2019, Grievant filed this grievance contesting his resignation.

Discussion

When an employer seeks to have a grievance dismissed on the basis that it was not timely filed, the employer has the burden of demonstrating such untimely filing by a preponderance of the evidence. Once the employer has demonstrated a grievance has not been timely filed, the employee has the burden of demonstrating a proper basis to excuse his failure to file in a timely manner. *Higginbotham v. W. Va. Dep't of Pub. Safety*, Docket No. 97-DPS-018 (Mar. 31, 1997); *Sayre v. Mason County Health Dep't*, Docket No. 95-MCHD-435 (Dec. 29, 1995), *aff'd*, Circuit Court of Mason County, No. 96-C-02 (June 17, 1996). See *Ball v. Kanawha County Bd. of Educ.*, Docket No. 94-20-384 (Mar. 13, 1995); *Woods v. Fairmont State College*, Docket No. 93-BOD-157 (Jan. 31, 1994); *Jack v. W. Va. Div. of Human Serv.*, Docket No. 90-DHS-524 (May 14, 1991).

An employee is required to "file a grievance within the time limits specified in this article." W. VA. CODE § 6C-2-3(a)(1). The Code further sets forth the time limits for filing a grievance as follows:

Within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating

the nature of the grievance and the relief requested and request either a conference or a hearing

W. VA. CODE § 6C-2-4(a)(1). “Days’ means working days exclusive of Saturday, Sunday, official holidays and any day in which the employee's workplace is legally closed under the authority of the chief administrator due to weather or other cause provided for by statute, rule, policy or practice.” W. VA. CODE § 6C-2-2(c). In addition, the time limits are extended when a grievant has “approved leave from employment.” W. VA. CODE § 6C-2-4(a)(2).

Respondent asserts Grievant resigned from his employment on January 28, 2019, and Respondent approved Grievant’s resignation on February 5, 2019. In support, Respondent attached a copy of the resignation letter and the minutes of the February 5, 2019 meeting of the Board.² Respondent asserts the grievance was untimely filed. Grievant responded to the motion but did not dispute Respondent’s assertion that the grievance was untimely filed or the authenticity of documents provided by Respondent in support, or provide any excuse for his untimely filing. Grievant repeated the assertion of his grievance that he had been coerced into resigning but did not dispute that he had signed the resignation letter.

Grievant asserts he was coerced into resigning on January 28, 2019. Grievant makes no allegations regarding the acceptance of his resignation. Therefore, it is from January 28, 2019, that Grievant had fifteen days to file this grievance, which would have been February 19, 2019. Grievant’s filing on March 26, 2019, was more than a month

² The Grievance Board may properly consider exhibits attached to a grievance form or motion. See Syl. Pt. 1, *Forshey v. Jackson*, 222 W.Va. 743, 671 S.E.2d 748 (2008).

past the deadline for filing. Therefore, the grievance was untimely filed and must be dismissed.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. When an employer seeks to have a grievance dismissed on the basis that it was not timely filed, the employer has the burden of demonstrating such untimely filing by a preponderance of the evidence. Once the employer has demonstrated a grievance has not been timely filed, the employee has the burden of demonstrating a proper basis to excuse his failure to file in a timely manner. *Higginbotham v. W. Va. Dep't of Pub. Safety*, Docket No. 97-DPS-018 (Mar. 31, 1997); *Sayre v. Mason County Health Dep't*, Docket No. 95-MCHD-435 (Dec. 29, 1995), *aff'd*, Circuit Court of Mason County, No. 96-C-02 (June 17, 1996). See *Ball v. Kanawha County Bd. of Educ.*, Docket No. 94-20-384 (Mar. 13, 1995); *Woods v. Fairmont State College*, Docket No. 93-BOD-157 (Jan. 31, 1994); *Jack v. W. Va. Div. of Human Serv.*, Docket No. 90-DHS-524 (May 14, 1991).

2. An employee is required to “file a grievance within the time limits specified in this article.” W. VA. CODE § 6C-2-3(a)(1). The Code further sets forth the time limits for filing a grievance as follows:

Within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing

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3. Respondent proved the grievance was not timely filed.

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: June 3, 2019

Billie Thacker Catlett
Chief Administrative Law Judge