

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**MERLE ANDREW MALOY,
Grievant,**

v.

Docket No. 2019-0553-MAPS

**WEST VIRGINIA MILITARY AUTHORITY,
Respondent.**

DISMISSAL ORDER

On October 31, 2018, Grievant, Merle Maloy, filed a grievance contesting what he alleged to be a wrongful termination of his employment by Respondent, West Virginia Military Authority ("WVMA"). He seeks reinstatement to his position. By letter dated November 7, 2018, Chief Administrative Law Judge Catlett informed Mr. Maloy that it appeared that the West Virginia Public Employees Grievance Board does not have jurisdiction to hear his claim and gave him an opportunity to respond. Mr. Maloy replied in a letter dated November 16, 2018, requesting that the Grievance Board hear his grievance.

SYNOPSIS

Grievant was employed by the West Virginia Military specifically in the Air National Guard. Grievant's employment is specifically exempted from the grievance procedure by statute. The Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance is dismissed. The undersigned make the following Findings of Fact.

Findings of Fact

1. Grievant was employed as a Technician 2 by the West Virginia Military Authority for the Air National Guard.
2. On October 31, 2018, Grievant filed a grievance with the West Virginia Public Employees Grievance Board contesting the termination of his employment.
3. By letter dated November 7, 2018, Chief Administrative Law Judge Catlett informed Mr. Maloy that it appeared that the West Virginia Public Employees Grievance Board does not have jurisdiction to hear his claim and gave him an opportunity to respond.
4. Grievant replied in a letter dated November 16, 2018, requesting that the Grievance Board hear his grievance.

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 West Virginia Public Employees Grievance Board informed Grievant by letter that it does not have jurisdiction to hear his grievance and Grievant responded with a request the the Grievance Board hear his claim.

"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).

Grievant is an employee of the West Virginia Military Authority which is established by W. VA. CODE §15-1J-4.¹ Section (d)(7) of that statute grants the WVMA the power and authority to hire employees at an appropriate salary. However, at W. VA. CODE §15-1J-4 (d)(11) the statute specifically states:

Due to the at-will employment relationship with the authority,
its employees may not avail themselves of the state grievance
procedure . . .

As noted above the West Virginia Public Employees Grievance Board has "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

¹ W. VA. CODE §15-1J-4 - (a) The West Virginia Military Authority is hereby established to administer national security, homeland security and other military-related or sponsored programs.

W. Va. 766, 197 S.E.2d 111 (1973)).” With regard to the employees of the WVMA the Legislature specifically excluded the Grievance Board from hearing claims by employees of that agency. Accordingly, the Grievance Board lacks jurisdiction in this matter, and the grievance must be dismissed.

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). “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. The Legislature specifically enacted a provision which states that ““Due to the at-will employment relationship with the authority, its employees may not avail themselves of the state grievance procedure. . .” W. VA. CODE §15-1J-4(d)(10).

5. As Grievant’s employment is specifically exempted from the grievance procedure by 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 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* 156 C.S.R. 1 § 6.20 (2018).

DATE: January 10, 2019.

WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE