

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**MONTANA MCCLOUD,
Grievant,**

v.

Docket No. 2019-1249-LogED

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

DISMISSAL ORDER

On March 11, 2019, Grievant filed a grievance against Respondent protesting Respondent's alleged failure to notify Grievant that she had not passed the performance test for custodian and requesting an "opportunity to take the test again and be hired as a custodian." Grievant listed her employer as "N/A." After review of the grievance statement and the relevant statutes, the undersigned, by letter dated March 20, 2019, notified Grievant that it appeared the Grievance Board lacked jurisdiction to hear the grievance, as Grievant did not appear to be employed by the Logan County Board of Education, and required Grievant to file a response by April 3, 2019, if she believed she had the right to pursue the grievance. Grievant did not file a response.

Synopsis

Grievant filed her grievance against the Logan County Board of Education. Grievant is not employed by the Logan County Board of Education. 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 March 11, 2019, against the Logan County Board of Education, alleging Respondent's failure to notify Grievant that she had not

passed the performance test for custodian and requesting an “opportunity to take the test again and be hired as a custodian.” Grievant listed her employer as “N/A.”

2. The undersigned notified Grievant by letter dated March 20, 2019, that it appeared the Grievance Board lacked jurisdiction to hear the grievance as Grievant did not appear to be employed by the Logan County Board of Education.

3. Grievant was given until April 3, 2019, to file a response if she still believed she had the right to pursue this grievance. Grievant did not file a response.

4. Grievant is not an employee of the Logan County Board of Education.

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). The administrative law judge may dispose of a grievance through an appealable dismissal order. 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). “‘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). “‘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 filed this grievance against the Logan County Board of Education alleging Respondent’s failure to notify Grievant that she had not passed the performance test for custodian and requesting an “opportunity to take the test again and be hired as a custodian.” Grievant listed her employer as “N/A.” Grievant was notified by letter that, if she was not an employee of the Logan County Board of Education, the Grievance Board lacked jurisdiction to hear her grievance and the grievance would be dismissed. Grievant was given the opportunity to respond and failed to respond. The Logan County Board of Education is not Grievant’s employer. 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).

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. "'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).

6. As Grievant is not employed by Respondent, 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: May 14, 2019

Billie Thacker Catlett
Chief Administrative Law Judge