

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**RONALD LEE MOONEY III,  
Grievant,**

**v.**

**Docket No. 2019-0635-DVA**

**DEPARTMENT OF VETERANS ASSISTANCE,  
Respondent.**

**DISMISSAL ORDER**

On November 26, 2018, Grievant, Ronald Lee Mooney III, filed a grievance against Respondent, Department of Veterans Assistance, alleging he had been denied five years military service credit by the Consolidated Public Retirement Board due to the negligence of the “benefit coordinator.” Grievant requested as relief \$208,800, the amount of five years of Grievant’s current salary. On January 22, 2019, Grievant filed a request for default judgment. On February 7, 2019, Respondent, by counsel, sent an email entitled “DVA’s Response to Request for Default Judgment/DVA’s Motion to Dismiss Grievance. On the same date, Grievance Board staff notified Grievant by email that any response to the motion to dismiss must be filed by February 22, 2019, that a decision on the motion would be made based on the submissions of the parties without further hearing, and that failure to respond may result in dismissal of the grievance. Grievant did not file a response to the motion. Grievant appears *pro se*<sup>1</sup>. Respondent appears by counsel, Mark S. Weiler, Assistant Attorney General.

**Synopsis**

Grievant is employed by the Department of Veterans Assistance and filed this grievance alleging he had been denied five years military service credit by the

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<sup>1</sup> “For one’s own behalf.” BLACK’S LAW DICTIONARY 1221 (6<sup>th</sup> ed. 1990).

Consolidated Public Retirement Board towards his retirement benefit due to the negligence of Respondent's "benefit coordinator." Respondent moved to dismiss the grievance for lack of jurisdiction. Grievant's complaint is not a "grievance" as defined by statute. The Grievance Board is not authorized by statute to hear tort claims and award money damages for negligence. 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 is employed by the Department of Veterans Assistance.
2. On November 16, 2018, the Consolidated Public Retirement Board entered a *Final Order* adopting the *Recommended Decision of Hearing Officer* denying Grievant's appeal of the Consolidated Public Retirement Board's denial of Grievant's application for military service credit for his retirement.
3. The Consolidated Public Retirement Board determined Grievant was required by statute to request this credit within the first twelve months of his employment and failed to do so. Grievant asserted that he had failed to timely request the credit because Respondent's benefits coordinator told him he had to be employed for twelve months before he could request such credit. The Consolidated Public Retirement Board made no factual finding regarding Grievant's allegation but found it had no authority to deviate from the twelve-month limitation set by statute.
4. Grievant filed this grievance on November 26, 2018, alleging he had been denied five years military service credit by the Consolidated Public Retirement Board due to the negligence of the Respondent's benefit coordinator and requested relief of

\$208,800, the amount of five years of Grievant's current salary, "considering I am now going to have to work five additional years to be eligible for retirement."

5. On February 7, 2019, Respondent, by counsel, moved to dismiss the grievance for lack of jurisdiction.

6. On the same date, Grievance Board staff notified Grievant by email that any response to the motion to dismiss must be filed by February 22, 2019, that a decision on the motion would be made based on the submissions of the parties without further hearing, and that failure to respond may result in dismissal of the grievance.

7. Grievant did not file a response to the motion.

### **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.

Respondent asserts the grievance must be dismissed for lack of jurisdiction as issues related to retirement are not grievable. Despite notice and opportunity to be heard, Grievant failed to respond to the motion to dismiss.

"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).

“Grievance” means a claim by an employee alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee. . . .” W. VA. CODE § 6C-2-2(i)(1). “Grievance’ does not mean any pension matter or other issue relating to public employees insurance in accordance with article sixteen, chapter five of this code, retirement or any other matter in which the authority to act is not vested with the employer.” W. VA. CODE § 6C-2-2(i)(2). Grievant grieves the action of the Consolidated Public Retirement Board denying him five years military service

credit towards his retirement. As Grievant protests an action regarding his retirement benefits, Grievant's complaint is not a "grievance" as defined by statute.

Grievant asserted Respondent's benefits coordinator was negligent in providing him incorrect information that caused the denial of five years of military service credit for Grievant's retirement. To the extent that Respondent had the authority to act regarding the alleged misinformation provided by Respondent, the relief Grievant requested is also wholly unavailable. Money damages for negligence are "tort-like" damages. "Tort" is a legal term that means "A private or civil wrong or injury. . .for which the court will provide a remedy in the form of an action for damages." BLACK'S LAW DICTIONARY 1489 (6<sup>th</sup> ed. 1990). The Grievance Board is not authorized by statute to hear tort claims and award money damages for negligence. 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. “‘Grievance’” means a claim by an employee alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee. . . .” W. VA. CODE § 6C-2-2(i)(1). “‘Grievance’ does not mean any pension matter or other issue relating to public employees insurance in accordance with article sixteen, chapter five of this code, retirement or any other matter in which the authority to act is not vested with the employer.” W. VA. CODE § 6C-2-2(i)(2).

5. Grievant’s complaint is not a “grievance” as defined by statute.

6. The Grievance Board is not authorized by statute to hear tort claims and award money damages for negligence.

7. As the Grievance Board lacks jurisdiction in this matter 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: April 19, 2019**

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**Billie Thacker Catlett**  
**Chief Administrative Law Judge**