

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**HERBERT M. SKEENS JR.,**  
**Grievant,**

**v.**

**Docket No. 2019-1485-MAPS**

**DIVISION OF ADMINISTRATIVE SERVICES,**  
**Respondent.**

**DISMISSAL ORDER**

On April 17, 2019, Grievant filed a grievance against Respondent stating, "DOP denying my transfer to DHHR stating I am not qualified. Stating that none of my time with the WV Regional Jail Authority can be counted as experience due to my classification there being considered out of class even though they were an exempt agency." As relief Grievant sought, "[m]y time with the Regional Jail be credited as work experience and that my transfer to the DHHR be granted." On April 23, 2019, Respondent, by counsel, filed *Respondent's Motion to Dismiss Grievance*. Grievant responded to the motion by letter dated April 25, 2019. Grievant appears *pro se*.<sup>1</sup> Respondent appears by counsel, Briana J. Marino, Assistant Attorney General.

**Synopsis**

Grievant filed his grievance against his employer, the Division of Administrative Services, protesting the actions of the Division of Personnel in disqualifying his application for a position with the Department of Health and Human Resources. The decision of the Division of Personnel relating to Grievant's application for employment with a state agency not already his employer is not a grievable event. The Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance must be dismissed.

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

The undersigned makes the following Findings of Fact:

### **Findings of Fact**

1. Grievant filed this grievance on April 17, 2019, against the Division of Administrative Services protesting the actions of the Division of Personnel in disqualifying his application for a position with the Department of Health and Human Resources.
2. Grievant is employed by the Division of Administrative Services.
3. Grievant applied for a position with another state agency, the Department of Health and Human Resources, and his application for that position was disqualified by the Division of Personnel as lacking the requisite years of experience.
4. Grievant filed the instant grievance protesting the decision of the Division of Personnel and requesting as relief for his years of experience to be credited and that his transfer to the Department of Health and Human Resources be granted.

### **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).

"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 including:

(i) Any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination;

(ii) Any discriminatory or otherwise aggrieved application of unwritten policies or practices of his or her employer;

(iii) Any specifically identified incident of harassment;

(iv) Any specifically identified incident of favoritism; or

(v) Any action, policy or practice constituting a substantial detriment to or interference with the effective job performance of the employee or the health and safety of the employee.

W. VA. CODE § 6C-2-2(i)(1).

The Division of Administrative Services is Grievant's employer and the grievance process is available to Grievant only to protest issues related to his employment with the Division of Administrative Services. The issue Grievant attempts to grieve is the action of the Division of Personnel relating to his application for employment with a different state agency. The decision of the Division of Personnel relating to Grievant's application for employment with a state agency not already his employer is not a grievable event. 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. "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 including:

(i) Any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination;

(ii) Any discriminatory or otherwise aggrieved application of unwritten policies or practices of his or her employer;

(iii) Any specifically identified incident of harassment;

(iv) Any specifically identified incident of favoritism; or

(v) Any action, policy or practice constituting a substantial detriment to or interference with the effective job performance of the employee or the health and safety of the employee.

W. VA. CODE § 6C-2-2(i)(1).

7. The decision of the Division of Personnel relating to Grievant's application for employment with a state agency not already his employer is not a grievable event. Therefore, 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: June 7, 2019**

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