

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**L. SHAWN -R- SMITH,
Grievant,**

v.

Docket No. 2019-0409-DHHR

**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES/JACKIE WITHROW HOSPITAL,
Respondent.**

DISMISSAL ORDER

The above-styled grievance was filed at level one of the grievance process on September 25, 2018. On October 26, 2019, Respondent submitted a level one waiver waiving this matter to level three. The Grievance Board requested available dates from the parties by letter dated November 16, 2018. Grievant did not respond or provide his available dates. By Notice of Hearing dated December 18, 2018, a level three hearing was scheduled for April 2, 2018. On March 13, 2019, Respondent, by counsel, Katherine Campbell, Esquire, Assistant Attorney General, emailed the Grievance Board stating as follows: “[t]he Hospital CEO informed me via electronic mail dated March 4, 2019, that she spoke with the Grievant who is representing himself in this matter. He told her he does not plan on attending the grievance hearing. He no longer wishes to pursue the grievance, but instead wants to drop it. He has found other employment.” Also, Respondent’s counsel indicated that she had tried to call Grievant on March 6, 2019, and left a message, but that she had not heard from Grievant.

The Grievance Board sent an email to Grievant on March 13, 2019, copying counsel for Respondent, requesting confirmation as to whether he wished to pursue this matter. The Board also called and left messages for Grievant on March 13, 2019, and on

March 20, 2019. As of this date, Grievant has not responded to the Grievant's Board's email or returned its calls.

"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.

By order dated March 21, 2019, this ALJ ordered Grievant to contact the Grievance Board by April 5, 2019, if he wished to pursue this grievance. The order further stated "[t]his grievance will be dismissed if Grievant fails to do as ordered." As of this date, no response has been received. Accordingly, Grievant has failed to abide by an appropriate order of an administrative law judge, and this matter should be dismissed. Therefore, it is hereby **ORDERED** that this matter be **DISMISSED** and **STRICKEN** from the dockets of the Grievance Board for Grievant's failure to abide by an appropriate order of the administrative law judge.

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 *a/so* W. VA. CODE ST. R. § 156-1-6.20 (2018).

Entered this 29th day of April, 2019.

Carrie H. LeFevre
Administrative Law Judge