

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**JODI WASHINGTON,
Grievant,**

v.

Docket No. 2020-0001-DVA

**DEPARTMENT OF VETERANS ASSISTANCE,
Respondent.**

DISMISSAL ORDER

On July 1, 2019, the Grievance Board received a *Grievance Form for Levels 1, 2, and 3* Grievant filed against “WV Veteran Nurs. Fac.” protesting her termination from employment as a result of the action of the West Virginia Veterans Nursing Facility’s Director of Nursing. The West Virginia Veterans Nursing Facility is a facility of the Department of Veterans Assistance (“DVA”). On July 3, 2019, Respondent, by counsel, filed *DVA’s Motion to Dismiss Grievance* asserting that Grievant was never an employee of Respondent but was instead employed by a staffing agency used by Respondent. By letter attached to an email dated July 16, 2019, Grievant responded to the motion to dismiss. Thereafter, Grievant sent several documents in support of her response, also by email.

Synopsis

Grievant was employed by a private corporation that provided staffing services to Respondent. As Grievant was employed by a private corporation and not Respondent, the Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance is dismissed.

The undersigned makes the following Findings of Fact:

Findings of Fact

1. Grievant is employed by Management Registry Inc., doing business as Employers Unity LLC.
2. Employers Unity LLC is a staffing agency used by the West Virginia Veterans Nursing Facility to help carry out nursing services at the facility.
3. Grievant was stationed at the West Virginia Veterans Nursing Facility as an Employers Unity LLC employee.
4. Grievant was not an employee of the West Virginia Veterans Nursing Facility or the Department of Veterans Assistance.

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). “‘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).

Although Grievant in her response to the motion to dismiss did not address Respondent’s allegation that she was not an employee of Respondent, Grievant provided a document from the Unemployment Compensation Division stating that Grievant’s employer was “Management Registry Inc, DBA Employers Unity LLC.” While Grievant alleges her employment was terminated through the action of the West Virginia Veterans Nursing Facility’s Director of Nursing, the grievance procedure is only available to employees of public employers. Grievant is not an employee of the West Virginia Veterans Nursing Facility; she is an employee of a private corporation. 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). "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. As Grievant was employed by a private corporation and not 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: August 27, 2019

Billie Thacker Catlett
Chief Administrative Law Judge