

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**GREG WRIGHT,**  
**Grievant,**

**v.**

**Docket No. 2019-1175-MAPS**

**WEST VIRGINIA MILITARY AUTHORITY,**  
**Respondent.**

**DISMISSAL ORDER**

On February 23, 2019, Grievant filed a grievance against Respondent alleging Respondent was mishandling Grievant's workers' compensation claim. After review of the relevant statutes, the undersigned, by letter dated February 27, 2019, notified Grievant that it appeared the Grievance Board lacked jurisdiction to hear the grievance, and required Grievant to file a response by March 13, 2019, if he still believed he had the right to pursue his grievance. On March 4, 2019, Grievant filed a response by letter.

**Synopsis**

Grievant is employed by the West Virginia Military Authority as a System Administrator. Grievant's employment with Respondent is specifically exempted from the grievance procedure by statute. 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 the West Virginia Military Authority as a System Administrator.
2. Grievant filed the instant grievance against Respondent alleging Respondent was mishandling Grievant's workers' compensation claim.

3. By letter dated February 27, 2019, the undersigned notified Grievant that it appeared the Grievance Board lacked jurisdiction to hear his claim.

4. By letter dated March 1, 2019, Grievant provided additional detail regarding his claim but did not dispute that he was an at-will employee.

### **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).

Grievant is an employee of the West Virginia Military Authority. West Virginia Military Authority employees are “exempt from both the classified services category and the classified exempt services category as set forth in section four, article six, chapter twenty-nine of this code.” W. VA. CODE §15-1J-5(a)(1). “Employee positions are contingent on the receipt of the necessary federal and/or state funds” so employees are “deemed an at-will employee who may be discharged or released from his or her respective position without cause or reason.” W. VA. CODE §15-1J-5(a)(2) and (3). “Due to the at-will employment relationship with the authority, its employees may not avail themselves of the state grievance procedure as set forth in article six-a, chapter twenty-nine of this code. . .” W. VA. CODE §15-1J-4(d)(10).

Grievant’s employment is specifically exempted from the grievance procedure by statute. 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. "West Virginia Military Authority employees are "exempt from both the classified services category and the classified exempt services category as set forth in section four, article six, chapter twenty-nine of this code." W. VA. CODE §15-1J-5(a)(1). "Employee positions are contingent on the receipt of the necessary federal and/or state funds" so employees are "deemed an at-will employee who may be discharged or released from his or her respective position without cause or reason." W. VA. CODE §15-1J-5(a)(2) and (3). "Due to the at-will employment relationship with the authority, its employees may not avail themselves of the state grievance procedure as set forth in article six-a, chapter twenty- nine of this code. . ." W. VA. CODE §15-1J-4(d)(10).

5. As Grievant's employment is specifically exempted from the grievance procedure by statute, 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: April 16, 2019**

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