

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**ABIGAIL LAMB,
Grievant,**

v.

Docket No. 2020-0783-MAPS

**DIVISION OF CORRECTIONS AND REHABILITATION/
BUREAU OF PRISONS AND JAILS/PRUNTYTOWN
CORRECTIONAL CENTER AND JAIL,
Respondent.**

DISMISSAL ORDER

Grievant, Abigail Lamb, had been employed at the Pruntytown Correctional Center and Jail as a temporary exempt employee. After being terminated from that position, Grievant filed the instant grievance alleging wrongful termination from her position and seeking reinstatement to her temporary employment and back pay. Respondent filed a Motion to Dismiss this grievance on September 4, 2020. Grievant did not file any response to this motion. Grievant appears by Michael Crim, Esquire. Respondent appears by Briana J. Marino, Assistant Attorney General. The Motion to Dismiss involves a question of law and is mature for consideration.

Synopsis

Grievant was hired as no more than 1,000 hours in a 12-month period as a temporary exempt employee. Temporary employees are not afforded the statutory right to file a grievance. Accordingly, the grievance is dismissed from the docket.

The undersigned makes the following Findings of Fact.

Findings of Fact

1. Grievant was hired to a Correctional Officer I-temporary position at Pruntytown Correctional Center and Jail as temporary appointment pursuant to the West Virginia Division of Personnel Temporary Appointment Agreement and applicable Division of Personnel rules.

2. Grievant executed and returned the conditional offer letter outlining the hiring process including a drug screen and criminal background check. The letter also contained language informing Grievant that her position was a temporary position.

3. Grievant executed the Temporary Appointment Agreement limiting her employment to no more than 1,000 hours in a 12-month period and that no minimum number of hours was guaranteed on or about September 19, 2019.

4. The Temporary Appointment Agreement indicates that Grievant does not have the right of appeal before the State Personnel Board or Public Employees Grievance Board and that her employment may be ended at any time with or without cause.

5. On or about January 6, 2020, Grievant was notified by Respondent that her services as a temporary employee were no longer necessary. This was followed by a formal letter stating the same dated January 6, 2020.

6. Thereafter, Grievant filed the instant grievance alleging wrongful termination and seeking reinstatement to her prior employment.

Discussion

Respondent asserts that Grievant is not an “employee” within the meaning of WEST VIRGINIA CODE § 6C-2-2, and therefore has no standing to file a grievance. When the employer asserts an affirmative defense, it must be established by a preponderance of the evidence. See *Lewis v. Kanawha County Bd. of Educ.*, Docket No. 97-20-554 (May 27, 1998); *Lowry v. W. Va. Dep't of Educ.*, Docket No. 96-DOE-130 (Dec. 26, 1996); *Hale v. Mingo County Bd. of Educ.*, Docket No. 95-29-315 (Jan. 25, 1996). See generally *Payne v. Mason County Bd. of Educ.*, Docket No. 96-26-047 (Nov. 27, 1996); *Trickett v. Preston County Bd. of Educ.*, Docket No. 95-39-413 (May 8, 1996). In addition, standing is a party’s right to make a legal claim or seek judicial enforcement of a duty or right. BLACK’S LAW DICTIONARY (Eighth Edition 2004).

The Public Employees Grievance Procedure was established to allow public employees and their employer to reach solutions to problems which arise within the scope of their respective employment relationships. W. VA. CODE § 6C-2-1(a); See *Farley v. Morgan County Bd. of Educ.*, Docket No. 01-32-615D (April 30, 2002). WEST VIRGINIA CODE § 6C-2-2(e)(1) defines “employee” for the purposes of the grievance procedure as follows:

(1) "Employee" means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

To qualify as an employee within the meaning of the grievance statute, the employee must have permanent employment status. BLACK’S LAW DICTIONARY 566

(Eighth Edition 2004) defines “permanent employment” as “work that, under a contract, is to continue indefinitely until either party wishes to terminate it for some legitimate reason.”

The Division of Personnel Legislative Rule defines a “permanent employee” as follows:

Permanent Employee: Any classified employee who was hired from a register and who has completed the probationary period prescribed by the State Personnel Board for the job class, or any classified exempt employee who was hired to fill a position for an unlimited period of time, notwithstanding the appointing authority’s right to terminate the employee for cause or at his or her will.

W. VA. CODE R. § 143 C.S.R. 1.3.66 (2007).

Permanent employment clearly contemplates a continuing relationship. The employment relationship does not end by a set period of time that defines the term of employment. Rather, it continues indefinitely until one of the parties takes specific steps to terminate it.

Grievant’s employment did not fit that standard. Grievant was hired under a temporary exempt employment contract that was specifically limited to 1,000 hours. While employed in this temporary status Grievant was exempt from the DOP rules. The form Grievant signed specifically notified her of these limitations, including the fact that she was not eligible to participate in the Public Employees Grievance Procedure. The Grievance Board has held that temporary employees, even if employed on a full-time basis, are not hired for “permanent employment” and, accordingly, are not eligible to file grievances. *Lilly v. Div. of Natural Res.*, Docket No. 98-DNR-011 (Mar. 26, 1998); *Edmond, et al. v. Div. of Juvenile Servs.*, Docket No. 99-DJS-293 (Feb. 22, 2000); *Gill v.*

Div. of Natural Res., Docket No. 2009-1598-CONS (May 22, 2009); *McGinnis v. Dep't of Health and Human Res./Lakin Hospital*, Docket No. 2014-1661-DHHR (Sept. 3, 2014); *Waybright v. Dep't of Health and Human Res.*, Docket No. 2012-1317-DHHR (June 15, 2012).

Respondent has proven by a preponderance of the evidence that Grievant does not fall under the definition of “employee” as contained in WEST VIRGINIA CODE §§ 6C-2-1, *et seq.* Grievant has no standing to pursue her claim through the grievance procedure. This grievance must be dismissed.

The following Conclusions of Law support this ruling.

Conclusions of Law

1. Standing is a party’s right to make a legal claim or seek judicial enforcement of a duty or right. BLACK’S LAW DICTIONARY (Eighth Edition 2004). The Public Employees Grievance Procedure was established to allow public employees and their employer to reach solutions to problems which arise within the scope of their respective employment relationships. W. VA. CODE § 6C-2-1(a); *See Farley v. Morgan County Bd. of Educ.*, Docket No. 01-32-615D (April 30, 2002).

2. For the purposes of the Public Employees Grievance Procedure, an employee must be a person hired for “permanent employment” with a covered employer to have standing to file a grievance. W. VA. CODE § 6C-2-2(e)(1).

3. Temporary employees, even if employed on a full-time basis, are not hired for “permanent employment” and, accordingly, are not eligible to file grievances. *Lilly v.*

Div. of Natural Res., Docket No. 98-DNR-011 (Mar. 26, 1998); *Edmond, et al. v. Div. of Juvenile Servs.*, Docket No. 99-DJS-293 (Feb. 22, 2000); *Gill v. Div. of Natural Res.*, Docket No. 2009-1598-CONS (May 22, 2009); *McGinnis v. Dep't of Health and Human Res./Lakin Hospital*, Docket No. 2014-1661-DHHR (Sept. 3, 2014); *Waybright v. Dep't of Health and Human Res.*, Docket No. 2012-1317-DHHR (June 15, 2012).

4. Because Grievant's employment with the Respondent was as an exempt temporary employee and not permanent, she does not have standing to file a grievance under the Public Employees Grievance Procedure set out in W. VA. CODE §§ 6C-2-1, *et seq.*

Accordingly, the 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* 156 C.S.R. 1 § 6.20 (2018).

Date: October 20, 2020

Ronald L. Reece
Administrative Law Judge