

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**BEAU SHAW ROBERTS,  
Grievant,**

**v.**

**Docket No. 2019-0267-MAPS**

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

**DISMISSAL ORDER**

Grievant filed this grievance on August 16, 2018. Grievant last communicated with the Grievance Board on September 13, 2018, when he requested that his grievance be transferred from level one to level three. The last action taken in the grievance was in response to an email from Respondent resulting in the issuance of an order on November 28, 2018, which continued the matter and placed it in abeyance until February 25, 2019. It further directed Grievant to advise the Grievance Board by that date as to how he wished to proceed. Grievant has not contacted the Board and no action has been taken since then. The Grievance Board no longer has valid contact information for Grievant. As a result of Grievant's failure to pursue further action in the grievance and failure to provide valid contact information to the Grievance Board, this matter has been reviewed on the Grievance Board's own motion.

**Synopsis**

After filing the grievance on August 16, 2018 and requesting a transfer on September 13, 2018, Grievant failed to pursue further action in the grievance and failed to provide valid contact information to the Grievance Board in spite of being told to do so by February 25, 2019, through the November 28, 2018 Order of Continuance and

Abeyance. These failures constitute abandonment of the grievance. Therefore, the grievance must be dismissed.

The undersigned makes the following Findings of Fact based upon the records of the Grievance Board in this matter:

### **Findings of Fact**

1. This grievance was filed on August 16, 2018.
2. The last action in the grievance took place on November 28, 2018, when the undersigned issued an Order of Continuance and Abeyance instructing Grievant to contact the Grievance Board by February 25, 2019, regarding his intentions in this action.
3. On January 7, 2019, mail to Grievant's last known address was returned as undeliverable/unable to forward. On March 12, 2019, Grievance Board staff attempted to contact Grievant by the email address on file with the Grievance Board but were unable to do so. On October 14, 2020, Grievance Board staff attempted to contact Grievant by the telephone number on file with the Grievance Board and were unable to do so.

### **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). "Grievances may be disposed of in three ways: by decision on the merits, nonappealable dismissal order, or appealable dismissal order." W. VA. CODE ST. R. § 156-1-6.19. "Nonappealable dismissal orders may be based on grievances dismissed for the following: settlement; withdrawal; and, in accordance with Rule 6.15, a party's failure to pursue." W. VA. CODE ST. R. § 156-1-6.19.2. "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.

In this case, Grievant filed a grievance on August 16, 2018. No action has been taken in the grievance since November 28, 2018. Grievant moved with no forwarding address and without notifying the Grievance Board of a change in address. On January 7, 2019, mail to Grievant’s last known address was returned as undeliverable/unable to forward. Grievance Board staff attempted to contact Grievant via his last known email address and phone number, to no avail. Based on the length of time that has passed since the last action taken in the grievance and Grievant’s failure to properly notify the Grievance Board of changes to Grievant’s contact information, it appears Grievant has abandoned the grievance. “Abandoning a grievance is a valid reason for dismissal pursuant to W. VA. CODE ST. R. § 156-1-6.19.3 (2008).” *Katona v. Dept. of Health & Human Res.*, Docket No. 2018-0133-DHHR (Jan. 16, 2018).

### **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. “Grievances may be disposed of in three ways: by decision on the merits, nonappealable dismissal order, or appealable dismissal order.” W. VA. CODE ST. R. § 156-1-6.19.

3. “Nonappealable dismissal orders may be based on grievances dismissed for the following: settlement; withdrawal; and, in accordance with Rule 6.15, a party's failure to pursue.” W. VA. CODE ST. R. § 156-1-6.19.2.

4. “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.

5. “Abandoning a grievance is a valid reason for dismissal pursuant to W. VA. CODE ST. R. § 156-1-6.19.3 (2008).” *Katona v. Dept. of Health & Human Res.*, Docket No. 2018-0133-DHHR (Jan. 16, 2018).

6. Grievant has abandoned the grievance based on the failure to provide valid contact information and the length of time since the last action in the grievance.

Accordingly, the grievance is **DISMISSED**.

Any party may appeal this Dismissal Order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Dismissal 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: October 20, 2020**

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**Joshua S. Fraenkel**  
**Administrative Law Judge**