

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**PAUL LOUIS SMITH,
Grievant,**

v.

Docket No. 2020-0630-AUD

**STATE AUDITOR'S OFFICE,
Respondent.**

DISMISSAL ORDER

On November 15, 2019, Grievant, Paul Louis Smith, an employee of the Department of Health and Human Resources, filed a grievance against Respondent, the State Auditor's Office, alleging the State Auditor's Office had failed to timely pay travel expenses after rejecting submitted reimbursement requests without giving a reason. After review of the grievance file and the relevant statutes, the undersigned, by letter dated December 4, 2019, notified Grievant that it appeared the Grievance Board lacked jurisdiction to hear the grievance, as Grievant did not appear to be employed by the State Auditor's Office, and required Grievant to file a response by December 18, 2019, if he still believed he had the right to pursue this grievance. Grievant did not file a response.

Synopsis

Grievant is employed by the Department of Health and Human Resources. Grievant filed the grievance against the West Virginia State Auditor's Office. Grievant is not employed by the West Virginia State Auditor's Office. The Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance must be dismissed.

The undersigned makes the following Findings of Fact:

Findings of Fact

1. Grievant is employed by the Department of Health and Human Resources as a member of the Child Protective Services Worker Crisis Team.
2. Grievant filed this grievance on November 19, 2019, against the State Auditor's Office, alleging the State Auditor's Office had failed to timely pay travel expenses after rejecting submitted reimbursement requests without giving a reason
3. Grievant is not an employee of the West Virginia State Auditor's Office.
4. The undersigned notified Grievant by letter dated December 4, 2019, that it appeared the Grievance Board lacked jurisdiction to hear the grievance, as Grievant did not appear to be employed by the State Auditor's Office, and required Grievant to file a response if he still believed he had the right to pursue this grievance. Grievant did not file a response.
5. Grievant was given until December 18, 2019, to file a response if he still believed he had the right to pursue this grievance. Grievant did not file a response.

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. The undersigned notified Grievant by letter dated December 4, 2019, that it appeared the Grievance Board lacked jurisdiction to hear the grievance, as Grievant did not appear to be employed by the State Auditor's Office, and required Grievant to file a response by

December 18, 2019, if he still believed he had the right to pursue this grievance. Grievant did not file a response. Grievant did not respond.

"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). "'Employee' means any person hired for permanent employment by an employer for a probationary, full- or part-time position." W. VA. CODE § 6C-2-2(e)(1).

Grievant filed this grievance against the West Virginia State Auditor's Office, which is not his employer. 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).

4. "'Employee' means any person hired for permanent employment by an employer for a probationary, full- or part-time position." W. VA. CODE § 6C-2-2(e)(1).

5. As Grievant is not employed by 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: February 4, 2020

Billie Thacker Catlett
Chief Administrative Law Judge