

# **THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**ADRIANA H. LOONEY,  
Grievant,**

**v.**

**Docket No. 2022-0096-MISC**

**WEST VIRGINIA SUPREME COURT OF APPEALS,  
Respondent.**

## **DISMISSAL ORDER**

Grievant, Adrainan Looney, is employed by Respondent, the West Virginia Supreme Court of Appeals, as a Circuit Court Judicial Assistant. She filed a level one grievance dated July 27, 2021, alleging that she should have received twelve years of experience credit for her work as a Family Court Coordinator when she moved to the position of Circuit Court Secretary/Judicial Assistant. Instead, she was only credited with fifty percent credit for her prior service resulting in a significant decrease in her salary. As relief, Grievant Looney seeks to, "Receive full credit for [her] years of service for calculation of salary as a Circuit Court Secretary/Judicial Assistant."

By letter dated August 4, 2021, Respondent's Division of Legal Services Director and Administrative Counsel, Bradley J. Schmalzer, wrote to the Grievance Board requesting that this grievance be dismissed, alleging that the Board lacks jurisdiction. The Grievance Board sent a letter dated August 17, 2021, advising Grievant that it appeared that the Board had no jurisdiction to hear her grievance against her employer. Grievant was given until August 31, 2021, to reply and state a reason why the grievance should not be dismissed. No reply was received. This matter is now mature for a decision on Respondent's request to dismiss.

## **Synopsis**

The Supreme Court of Appeals of West Virginia is responsible for personnel matters regarding its own staff, and Grievant is not an “employee” under the definition found in W. VA. CODE § 6C-2-2(e)(3). Respondent’s request is granted, and the grievance is dismissed due to lack of jurisdiction.

The following facts are found to be proven by a preponderance of the evidence based upon an examination of the entire record developed in this matter.

## **Findings of Fact**

1. Grievant Looney is employed by Respondent, West Virginia Supreme Court of Appeals (“Supreme Court”) as a Circuit Court Secretary/Judicial Assistant.
2. Grievant is not covered under the civil service system.
3. The Supreme Court is a Constitutional office and the Justices are Constitutional officers.

## **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 (2008). 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).

W. VA. CODE § 6C-2-2(d)(3) specifies:

"Employee" does not mean a member of the West Virginia State Police employed pursuant to article two, chapter fifteen of this code, but does include civilian employees hired by the superintendent of the State Police. *"Employee" does not mean an employee of a Constitutional officer unless he or she is covered under the civil service system, an employee of the Legislature or a patient or inmate employed by a state institution.* (Emphasis added)

The Grievance Board has historically found it does not have jurisdiction to hear grievances filed by employees of the judicial branch based on the definition of employee in the grievance statute. *Wolfe v. W. Va. Supreme Court of Appeals*, Docket No. 2013-0713-SCA (Nov. 30, 2012).<sup>1</sup> Accordingly, Respondent's request to dismiss the grievance is **GRANTED** and the grievance is **DISMISSED**.

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<sup>1</sup> *Wolfe* makes the specific conclusion of law that "The Supreme Court of Appeals of West Virginia is a "constitutional officer" for the purpose of W. VA. CODE § 6C-2-2(e)(3)." *Id.* COL 2.

## 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 (2008). The administrative law judge may dispose of a grievance through an appealable dismissal order. W.VA. CODE ST. R. § 156-1-6.19.3.

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. W. VA. CODE § 6C-2-2(d)(3) specifies:

"Employee" does not mean a member of the West Virginia State Police employed pursuant to article two, chapter fifteen of this code, but does include civilian employees hired by the superintendent of the State Police. *"Employee" does not mean an employee of a Constitutional officer unless he or she is covered under the civil service system, an employee of the Legislature or a patient or inmate employed by a state institution.* (Emphasis added)

4. The Supreme Court of Appeals of West Virginia is a "constitutional officer" for the purpose of W. VA. CODE § 6C-2-2(e)(3).

5. Grievant is not an "employee" for the purpose of W. VA. CODE § 6C-2-2(e)(3).

6. The Grievance Board does not have jurisdiction to hear this grievance.

Accordingly, this matter is **DISMISSED** and **STRICKEN** from the docket of the West Virginia Public Employees Grievance Board.

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 Decision. 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: September 17, 2021**

  
**WILLIAM B. MCGINLEY**  
**ADMINISTRATIVE LAW JUDGE**