

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**JOHN D. GULLEDGE,
Grievant,**

v.

Docket No. 2021-2209-WVU

**WEST VIRGINIA UNIVERSITY,
Respondent.**

DISMISSAL ORDER

On January 28, 2021, John D. Gulledge filed a grievance form against his employer, West Virginia University, alleging that his wife, an employee of the Department of Health and Human Resources, was being harassed and sought as relief for the alleged harasser to be disciplined.

By email dated January 29, 2021, Grievance Board staff notified Mr. Gulledge that, while he would be permitted to represent his wife in her grievance, the grievance must be filed in her name and directed him to file an amended grievance form. Mr. Gulledge did not file an amended grievance form. On February 17, 2021, the undersigned sent Mr. Gulledge a letter stating, "this grievance will be dismissed on March 4, 2021, unless you respond, in writing, by that date, clearly stating why this grievance should not be dismissed for lack of jurisdiction or unless you file an amended grievance form naming your wife as the grievant and her employer as the respondent." Mr. Gulledge did not file a response or an amended grievance form.

Synopsis

Grievant filed a grievance form against his employer, West Virginia University, alleging that his wife, an employee of the Department of Health and Human Resources, was being harassed and sought as relief for the alleged harasser to be disciplined. Grievant's claim is not a grievance as defined by the West Virginia Public Employees

Grievance Procedure. 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. John Gullledge filed the instant claim on January 28, 2021, against his employer, West Virginia University.
2. Grievant's claim alleges that his wife, an employee of the Department of Health and Human Resources, was being harassed and sought as relief for the alleged harasser to be disciplined.
3. Grievant did not file a grievance claim on his own behalf alleging that his employer has violated any rule, policy or law.

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). “‘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). “‘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).

"Grievance" means a claim by an employee alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee including:

(i) Any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination;

(ii) Any discriminatory or otherwise aggrieved application of unwritten policies or practices of his or her employer;

(iii) Any specifically identified incident of harassment;

(iv) Any specifically identified incident of favoritism; or

(v) Any action, policy or practice constituting a substantial detriment to or interference with the effective job performance of the employee or the health and safety of the employee.

W. VA. CODE § 6C-2-2(i)(1).

Grievant's claim is not a grievance as defined by the West Virginia Public Employees Grievance Procedure. Although Grievant is an employee under the statute, Grievant's claim does not allege a violation applicable to him. Instead, Grievant is attempting to assert a claim applicable to his wife. Grievant would be permitted to act as a representative for his wife but the grievance must be in her name and filed against her 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). 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. "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. "'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).

6. "Grievance" is defined as:

a claim by an employee alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee including:

(i) Any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination;

(ii) Any discriminatory or otherwise aggrieved application of unwritten policies or practices of his or her employer;

(iii) Any specifically identified incident of harassment;

(iv) Any specifically identified incident of favoritism; or

(v) Any action, policy or practice constituting a substantial detriment to or interference with the effective job performance of the employee or the health and safety of the employee.

W. VA. CODE § 6C-2-2(i)(1).

7. Grievant's claim is not a grievance as defined by the West Virginia Public Employees Grievance Procedure. Therefore, 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: March 23, 2021.

Billie Thacker Catlett
Chief Administrative Law Judge