

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**JUSTIN MILES SPRATT,
Grievant,**

v.

Docket No. 2021-2415-MISC

**WEST VIRGINIA UNIVERSITY MEDICAL CORPORATION,
Respondent.**

DISMISSAL ORDER

On May 10, 2021, Grievant filed a grievance against "WVU Medical Corporation UHA" alleging wrongful termination of his employment as a physician with "WVU UHA." By letter dated May 27, 2021, the Grievance Board notified Grievant that it appeared the Grievance Board lacked jurisdiction to hear the grievance as West Virginia University Medical Corporation was not an employer subject to the grievance procedure. By letter dated June 11, 2021, Grievant asserted that the grievance was permitted as Grievant was also employed by West Virginia University School of Medicine as an assistant professor, a title that was part of his contract with West Virginia University Medical Corporation, he was paid by the State of West Virginia, and received PEIA coverage.

Synopsis

Grievant was employed by the West Virginia University Medical Corporation and grieves his dismissal from that employment. West Virginia University Medical Corporation is a domestic non-profit corporation that is affiliated with West Virginia University but is not a part of West Virginia University. The Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance is dismissed.

The undersigned makes the following Findings of Fact:

Findings of Fact

1. Grievant was employed as a physician by the West Virginia University Medical Corporation, doing business as University Health Associates. Grievant was also employed as an assistant professor by West Virginia University.

2. West Virginia University Medical Corporation is a domestic non-profit corporation that is affiliated with West Virginia University, but is not a part of West Virginia University.

3. By letter dated April 27, 2021, Katherine Dean, Assistant Health Care Counsel, West Virginia University Health Systems, terminated Grievant's employment with the West Virginia University Medical Corporation.

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.

"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). "'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).

West Virginia University Medical Corporation is a domestic non-profit corporation that is affiliated with West Virginia University through the West Virginia University Health System, but is not a part of West Virginia University. W.VA. CODE § 18-11C-1 *et seq.* Although the corporation may utilize both corporation employees and university personnel, and Grievant was employed also as an assistant professor at West Virginia University, it is clear from the grievance filing that he was terminated from his employment with the corporation, rather than the University. If Grievant was also terminated from his

employment as an assistant professor with West Virginia University, he would be required to file a grievance against West Virginia University challenging that action. The Grievance Board has no jurisdiction to hear a grievance against West Virginia University Medical Corporation regarding Grievant's private employment as a physician with that corporation. 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). "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.

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). "'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).

4. As Grievant's employer is a corporation not subject to the grievance procedure, 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: July 21, 2021



Billie Thacker Catlett
Chief Administrative Law Judge