

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**STANLEY BEAFORE,**  
**Grievant,**

**v.**

**Docket No. 2022-0602-DOC**

**DIVISION OF NATURAL RESOURCES,**  
**Respondent.**

**DISMISSAL ORDER**

Grievant, Stanley Beafore, was employed by Respondent, Division of Natural Resources. On February 10, 2022, Grievant filed this grievance against Respondent protesting Respondent's alleged failures regarding the reclassification and reallocation of his position. For relief, Grievant seeks "[t]he money I have fought for and been deprived of for over two years since the reclassification. In addition, my state retirement benefit adjusted accordingly."

On February 18, 2022, Respondent, by counsel, filed *Respondent's Motion to Dismiss* asserting the grievance must be dismissed as untimely filed and moot. On March 8, 2022, Grievant filed his response to the motion to dismiss opposing the dismissal. Grievant appears *pro se*. Respondent appears by counsel, Katie Franklin, Assistant Attorney General.

**Synopsis**

Grievant was employed by Respondent, Division of Natural Resources. Grievant alleges Respondent's failures regarding the reclassification and reallocation of his position over a period of two years. Grievant filed the grievance approximately two months after he retired. Respondent moved to dismiss the grievance as untimely filed and moot. The grievance was untimely filed. Accordingly, the grievance is dismissed.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

### **Findings of Fact**

1. Grievant was employed by Respondent, Division of Natural Resources, as a Park Superintendent 3.

2. In 2019, the Superintendent classification series underwent a reclassification review by the Division of Personnel. As a result of this review, the position Grievant occupied was reclassified from a Park Superintendent 4 to a Park Superintendent 3.

3. Grievant disagreed with the classification determination and asserts he was told by the Chief of Parks and Deputy Chief of Parks that the classification determination was in error and would be corrected.

4. Grievant further asserts he was told he could not grieve the decision until a final decision was made and that a final decision was never made.

5. On September 27, 2021, the position Grievant occupied was reallocated by the Division of Personnel to Park Superintendent 4.

6. To ascertain if Grievant met the minimum qualifications to hold the position, Grievant was required to submit an application for instatement into the position, which he completed on October 5, 2021.

7. No determination was made regarding whether Grievant met the minimum qualifications for instatement into the position of Park Superintendent 4.

8. As a result of Grievant's disgruntlement over the above, Grievant chose to retire effective December 17, 2021.

## Discussion

“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 (2018) “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.

When an employer seeks to have a grievance dismissed on the basis that it was not timely filed, the employer has the burden of demonstrating such untimely filing by a preponderance of the evidence. Once the employer has demonstrated a grievance has not been timely filed, the employee has the burden of demonstrating a proper basis to excuse his failure to file in a timely manner. *Higginbotham v. W. Va. Dep't of Pub. Safety*, Docket No. 97-DPS-018 (Mar. 31, 1997); *Sayre v. Mason County Health Dep't*, Docket No. 95-MCHD-435 (Dec. 29, 1995), *aff'd*, Circuit Court of Mason County, No. 96-C-02 (June 17, 1996). See *Ball v. Kanawha County Bd. of Educ.*, Docket No. 94-20-384 (Mar. 13, 1995); *Woods v. Fairmont State College*, Docket No. 93-BOD-157 (Jan. 31, 1994); *Jack v. W. Va. Div. of Human Serv.*, Docket No. 90-DHS-524 (May 14, 1991).

An employee is required to “file a grievance within the time limits specified in this article.” W. VA. CODE § 6C-2-3(a)(1). The Code further sets forth the time limits for filing a grievance as follows:

Within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing . . . .

W. VA. CODE § 6C-2-4(a)(1). “Days’ means working days exclusive of Saturday, Sunday, official holidays and any day in which the employee's workplace is legally closed under the authority of the chief administrator due to weather or other cause provided for by statute, rule, policy or practice.” W. VA. CODE § 6C-2-2(c). In addition, the time limits are extended when a grievant has “approved leave from employment.” W. VA. CODE § 6C-2-4(a)(2).

The time period for filing a grievance ordinarily begins to run when the employee is “unequivocally notified of the decision being challenged.” *Harvey v. W. Va. Bureau of Empl. Programs*, Docket No. 96-BEP-484 (Mar. 6, 1998); *Whalen v. Mason County Bd. of Educ.*, Docket No. 97-26-234 (Feb. 27, 1998); *Goodwin v. Div. of Highways*, Docket No. 2011-0604-DOT (March 4, 2011).

In this case, Respondent asserts that Grievant, at the latest, was required to file his grievance by January 11, 2022, within fifteen days of his retirement. Grievant essentially argues that he was never unequivocally notified of the decisions he was challenging so the grievance is timely filed.

It appears true that Grievant did not receive a response to his application notifying him of a decision to challenge. However, Grievant's ability to be instated into the position as a Park Superintendent 4 ended when he retired on December 17, 2021. It is from that date Grievant would have fifteen days to file his grievance. Grievant was required to file his grievance by January 11, 2022, and Grievant did not file his grievance until February 10, 2022, almost two months after his retirement. Therefore, the grievance must be dismissed. As the grievance was clearly untimely filed, it is not necessary to address the argument that the grievance is also moot.

The following Conclusions of Law support the decision reached.

### **Conclusions of Law**

1. "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 (2018) "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. When an employer seeks to have a grievance dismissed on the basis that it was not timely filed, the employer has the burden of demonstrating such untimely filing by a preponderance of the evidence. Once the employer has demonstrated a grievance

has not been timely filed, the employee has the burden of demonstrating a proper basis to excuse his failure to file in a timely manner. *Higginbotham v. W. Va. Dep't of Pub. Safety*, Docket No. 97-DPS-018 (Mar. 31, 1997); *Sayre v. Mason County Health Dep't*, Docket No. 95-MCHD-435 (Dec. 29, 1995), *aff'd*, Circuit Court of Mason County, No. 96-C-02 (June 17, 1996). See *Ball v. Kanawha County Bd. of Educ.*, Docket No. 94-20-384 (Mar. 13, 1995); *Woods v. Fairmont State College*, Docket No. 93-BOD-157 (Jan. 31, 1994); *Jack v. W. Va. Div. of Human Serv.*, Docket No. 90-DHS-524 (May 14, 1991).

3. An employee is required to “file a grievance within the time limits specified in this article.” W. VA. CODE § 6C-2-3(a)(1). The Code further sets forth the time limits for filing a grievance as follows:

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W. VA. CODE § 6C-2-4(a)(1). “Days’ means working days exclusive of Saturday, Sunday, official holidays and any day in which the employee's workplace is legally closed under the authority of the chief administrator due to weather or other cause provided for by statute, rule, policy or practice.” W. VA. CODE § 6C-2-2(c). In addition, the time limits are extended when a grievant has “approved leave from employment.” W. VA. CODE § 6C-2-4(a)(2).

4. The time period for filing a grievance ordinarily begins to run when the employee is “unequivocally notified of the decision being challenged.” *Harvey v. W. Va. Bureau of Empl. Programs*, Docket No. 96-BEP-484 (Mar. 6, 1998); *Whalen v. Mason*

*County Bd. of Educ.*, Docket No. 97-26-234 (Feb. 27, 1998); *Goodwin v. Div. of Highways*, Docket No. 2011-0604-DOT (March 4, 2011).

5. Respondent proved that the grievance was not timely filed and Grievant failed to prove a proper basis to excuse his failure to timely file his 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: April 19, 2021**

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**Billie Thacker Catlett**  
**Chief Administrative Law Judge**