

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**SHAWN M. HALL,
Grievant,**

v.

Docket No. 2022-0519-DOT

**DIVISION OF MOTOR VEHICLES,
Respondent.**

DISMISSAL ORDER

Grievant, Shawn M. Hall, is employed by Respondent, Division of Motor Vehicles. On January 11, 2022, Grievant filed this grievance against Respondent stating, "Whistle-blowing retaliation, harassment, change of duties. 6C-1-3 Discriminatory and retaliatory actions against whistle-blowers prohibited; promotion, increased compensation protected." For relief, Grievant seeks "\$1,000,000.00."

On February 16, 2022, Respondent, by counsel, filed its *Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted* asserting the grievance must be dismissed as Grievant failed to state a claim upon which relief can be granted. By email on February 16, 2022, the Grievance Board notified Grievant that he had until close of business March 3, 2022, to respond to the motion in writing, that no hearing would be held on the motion, and that failure to respond could result in dismissal of the grievance. Grievant did not respond. Grievant appears *pro se*¹. Respondent appears by counsel, Elaine L. Skorich, Assistant Attorney General.

Synopsis

Grievant filed the instant grievance alleging retaliation, harassment, and discrimination. For relief, Grievant sought only money damages of one million dollars

¹ For one's own behalf. BLACK'S LAW DICTIONARY 1221 (6th ed. 1990).

(\$1,000,000). Respondent moved to dismiss the grievance alleging Grievant failed to state a claim upon which relief can be granted. Grievant stated a claim upon which relief can be granted but he seeks a remedy wholly unavailable through the grievance process. The Grievance Board does not have the authority to award tort-like damages. 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 is employed by Respondent, Division of Motor Vehicles.
2. Grievant filed the instant grievance alleging retaliation, harassment, and discrimination.
3. For relief, Grievant sought only money damages of one million dollars (\$1,000,000).
4. Respondent moved to dismiss the grievance alleging Grievant failed to state a claim upon which relief can be granted.
5. Grievant did not respond to the motion to dismiss despite notice that failure to respond could result in dismissal of the grievance.

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. “A grievance may be dismissed, in the discretion of the administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.” W. VA. CODE ST. R. § 156-1-6.11. “Any party asserting the application of an affirmative defense bears the burden of proving that defense by a preponderance of the evidence.” W. VA. CODE ST. R. § 156-1-3.

Grievant filed the instant grievance alleging retaliation, harassment, and discrimination. For relief, Grievant sought only money damages of one million dollars (\$1,000,000). Respondent moved to dismiss the grievance alleging Grievant failed to state a claim upon which relief can be granted. Grievant failed to respond to Respondent’s motion.

Respondent incorrectly asserts that Grievant failed to state a claim upon which relief can be granted. The Grievance Board may hear claims regarding retaliation, harassment, and discrimination. W. VA. CODE § 6C-2-2(i). However, the only remedy Grievant has sought is money damages of “\$1,000,000.” This is a request for relief of “tort-like” damages. “Tort” is a legal term that means “A private or civil wrong or injury. . .for which the court will provide a remedy in the form of an action for damages.” BLACK’S LAW DICTIONARY 1489 (6th ed. 1990).

The Grievance Board is an administrative agency and not a court. “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 Grievance Board is not authorized by statute to hear tort claims.

Ordinarily, the relief provided to a grieving employee under the grievance procedure involves a "make-whole" remedy, intended to restore the grievant to his or her rightful place as an employee. *Matney v. Dep't of Health & Human Res.*, Docket No. 2012-1099-DHHR (Nov. 12, 2013); *Barker v. Lincoln County Bd. of Educ.*, Docket No. 98-22-496 (Mar 30, 1999). See *Graf v. W. Va. Univ.*, 189 W. Va. 214, 429 S.E.2d 496 (1992); *Gillispie v. Kanawha County Bd. of Educ.*, Docket No. 98-20-216 (Aug. 26, 1998); *Sanders v. Putnam County Bd. of Educ.*, Docket No. 97-40-459 (Dec. 3, 1997); *Frost v. Bluefield State College*, Docket No. 2017-0472-BSC (Dec. 7, 2017). The Grievance Procedure allows for fair and equitable relief, which has been interpreted by this Grievance Board to encompass such issues as back pay, travel reimbursement, and overtime, but not to include punitive or tort-like damages. *Dunlap v. Dep't of Environmental Protection*, Docket No. 2008-0808-DEP (Mar. 10, 2009). *Spangler v. Cabell County Board of Education*, Docket No. 03-06-375 (March 15, 2004); *Snodgrass v. Kanawha County Bd. of Educ.*, Docket No. 97-20-007 (June 30, 1997). The Grievance Board does not award tort-like or punitive damages. *Riedel v. W. Va. Univ.*, Docket No.

07-HE-395 (Feb. 24, 2009); *Troutman v. Dep't. of Health and Human Res./William R. Sharpe Jr. Hospital*, Docket No. 2013-0630-DHHR (April 26, 2013).

Although Grievant stated a claim upon which relief can be granted, Grievant's requested relief of tort-like damages is unavailable. Grievant was given the opportunity to answer the motion to dismiss, in which he could have clarified any other available relief he may have been seeking, but failed to respond. Therefore, as Grievant's only request for relief is wholly unavailable from the Grievance Board, this grievance must be dismissed.

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. "A grievance may be dismissed, in the discretion of the administrative law Judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested." W. VA. CODE ST. R. § 156-1-6.11.

3. "Any party asserting the application of an affirmative defense bears the burden of proving that defense by a preponderance of the evidence." W. VA. CODE ST. R. § 156-1-3.

4. "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)).

5. Ordinarily, the relief provided to a grieving employee under the grievance procedure involves a "make-whole" remedy, intended to restore the grievant to his or her rightful place as an employee. *Matney v. Dep't of Health & Human Res.*, Docket No. 2012-1099-DHHR (Nov. 12, 2013); *Barker v. Lincoln County Bd. of Educ.*, Docket No. 98-22-496 (Mar 30, 1999). See *Graf v. W. Va. Univ.*, 189 W. Va. 214, 429 S.E.2d 496 (1992); *Gillispie v. Kanawha County Bd. of Educ.*, Docket No. 98-20-216 (Aug. 26, 1998); *Sanders v. Putnam County Bd. of Educ.*, Docket No. 97-40-459 (Dec. 3, 1997); *Frost v. Bluefield State College*, Docket No. 2017-0472-BSC (Dec. 7, 2017).

6. The Grievance Procedure allows for fair and equitable relief, which has been interpreted by this Grievance Board to encompass such issues as back pay, travel reimbursement, and overtime, but not to include punitive or tort-like damages. *Dunlap v. Dep't of Environmental Protection*, Docket No. 2008-0808-DEP (Mar. 10, 2009). *Spangler*

v. Cabell County Board of Education, Docket No. 03-06-375 (March 15, 2004); *Snodgrass v. Kanawha County Bd. of Educ.*, Docket No. 97-20-007 (June 30, 1997).

7. The Grievance Board does not award tort-like or punitive damages. *Riedel v. W. Va. Univ.*, Docket No. 07-HE-395 (Feb. 24, 2009); *Troutman v. Dep't. of Health and Human Res./William R. Sharpe Jr. Hospital*, Docket No. 2013-0630-DHHR (April 26, 2013).

8. Grievant's request for tort-like damages is wholly unavailable from the Grievance Board.

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 6, 2022

Billie Thacker Catlett
Chief Administrative Law Judge