LILLIAN G. TAYLOR, .

Grievant, .

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v. . Docket Number: 94-HHR-534

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WEST VIRGINIA DEPARTMENT OF HEALTH .

AND HUMAN RESOURCES, .

Respondent. .

D E C I S I O N

Procedural History

Lillian Taylor (hereinafter Grievant) was employed as an Office Assistant II with the West Virginia Department of Health and Human Resources (hereinafter Health) for approximately eighteen years, until her retirement effective August 1, 1994. Grievant was given a reprimand on March 4, 1994, for allegedly questioning her supervisor's authority. She was again reprimanded on April 6, 1994, for allegedly falling asleep during a unit meeting. She filed a grievance challenging the first reprimand on March 17, 1994, pursuant to the provisions of West Virginia Code §§29-6A-1, et seq. This claim was denied at the lower two levels of thegrievance procedure. A level three hearing was held on July 6, 1994, however, no formal decision has been issued.

On August 30, 1994, the Grievance Board received a letter dated August 12, 1994, from Grievant's union representative, requesting that a level four hearing be scheduled to address the two disciplinary actions taken against Grievant, and also the claim that Grievant was forced to retire on

August 1, 1994. This appeal was accepted and docketed by this Board and a hearing was scheduled for November 16, 1994. On October 25, 1994, Health, through its counsel, filed a Motion to Dismiss the case indicating that the parties had agreed to a settlement of the issues regarding the two reprimands. Grievant's representative responded by letter dated November 4, 1994, indicating that Grievant's claim with regard to her involuntary retirement still remained. The level four hearing previously scheduled was conducted at Health's office in Sutton, West Virginia, to address the issue of Grievant's alleged forced retirement. At this hearing, the parties agreed that the earlier grievance concerning Grievant's discipline had been settled. The case became mature for decision on December 9, 1994, after receipt of Grievant's post-hearing brief.

Timeliness of Grievant's Filing

At the level four hearing, Health, through its counsel, made an oral Motion to Dismiss the case based upon the argument that Grievant's claim challenging her alleged involuntary retirement was not timely filed pursuant to W. Va. Code §29-6A-4(a). Health contends that Grievant's retirement was effective August 1, 1994;however, her appeal to level four was not received by this Board until August 30, 1994. (See footnote 1) Grievant testified in regard to this issue that her representative had given her the August 12, 1994 letter on that date and told her to mail it to this Board. She then stated that she did not know exactly when she mailed it, but that she believed it had been mailed "within a few days" of August 12th.

W.Va. Code §29-6A-4(a) states, in pertinent part,

> Within ten days following the occurrence of the event upon which the grievance is based, or within ten days of the date on which the event became known to the grievant, or within ten days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative, or both, may file a written grievance with the immediate supervisor of the grievant.

Generally, this statutory provision establishes that grievances must be filed within ten days of the occurrence of the event giving rise to the substantive claim of the grievance. "Days" is defined in Code §29-6A-2(c) as "working days exclusive of Saturday, Sunday or official holidays."

In this case, the letter dated August 12, 1994, given to Grievant by her representative, came to the Board along with its envelope containing a post office stamp indicating that it had been mailed from Orma, West Virginia, on August 27, 1994, to the Charleston Post Office. The envelope was addressed to the Board's previous address of 240 Capitol Street, Charleston, West Virginia. The

Charleston Post Office affixed a label to the enveloperequesting that the Board notify the sender of its new address. This label was dated August 29, 1994, and the letter was received by the Board on August 30, 1994.

According to this Board's administrative regulations, section 2.2(a) defines the term "file" as follows: "[t]o insure that documents or articles are recieved by the Board in its main offices . . ." Here, Grievant's filing was not recieved by this Board until August 30, 1994, twenty-one working days from August 1, 1994. Grievant's filing was clearly untimely as it was received by this Board more than ten days from the date of the occurrence of the event of which she complains. The fact that Grievant's representative gave Grievant the letter to mail does not change this holding. As cited above, "the grievant or the designated representative, or both, may file a written grievance" within the time established. Therefore, Health's Motion to Dismiss is **GRANTED** and this grievance is **DISMISSED**.

The following findings of fact have been properly deduced from the evidentiary record developed in the case.

Findings of Fact

1. Grievant's retirement from employment with Health was effective August 1, 1994.

2. Grievant filed a grievance challenging that she had been forced to retire, and requesting that she be reinstated.

3. Grievant's grievance was mailed to this Grievance Board on August 27, 1994.

The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusions of law.

Conclusions of Law

1. Generally, W. Va. Code §29-6A-4(e) establishes that grievances must be filed within ten days of the occurrence of the event giving rise to the substantive claim of the grievance.

2. "Days" is defined in Code §29-6A-2(c) as "working days exclusive of Saturday, Sunday or official holidays."

3. Grievant's claim was not filed within ten days of the "occurrence of the event upon which the grievance is based"

Therefore, this grievance is hereby **DISMISSED** as untimely and the Grievance Board's jurisdiction to considered this matter has not been properly invoked. Respondent's Motion to Dismiss is hereby **GRANTED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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ALBERT C. DUNN, JR.

Administrative Law Judge

March 2, 1995

Footnote: 1 There was no argument on the issue of whether it was appropriate for this grievance to be filed directly at level four pursuant to the expedited grievance process of Code §29-6A-4(e).