LLOYD W. KRATZER,

Grievant,

v. Docket No. 03-MCHD-244

MONONGALIA COUNTY HEALTH DEPARTMENT,

Respondent.

D E C I S I O N

Lloyd W. Kratzer ("Grievant"), employed by the Monongalia County Health Department (MCHD) as an Accounting Technician, filed a grievance directly to level four on August 13, 2003, in which he alleged that he had been dismissed without cause. For relief, Grievant requested written acknowledgment that he had been dismissed without cause, and that he be allowed to work the two-week notice he had intended to give, or compensation for that time. A level four hearing was conducted on September 24, 2003, at which time Grievant appeared *pro se*, and MCHD was represented by Phillip M. Magro, Esq., Assistant Prosecuting Attorney. By letter dated October 5, 2003, Grievant advised the undersigned and MCHD that he had decided to accept an offer of two weeks pay, and would withdraw the grievance upon receipt of payment. Nevertheless, Mr. Magro notified the Grievance Board, by letter dated October 10, 2003, that the settlement offer had been made contingent upon Grievant withdrawing his appeal of an unemployment compensation claim. Because Grievant continued to pursue the unemployment claim, the check would not be issued. At that time, the record was closed, and the matter was mature for decision.

The following findings of fact have been derived from the evidence presented at the level four hearing.

Findings of Fact

1. Grievant was employed by MCHD as an Accounting Technician beginning January 16, 2002, through July 31, 2003.

2. On July 31, 2003, MCHD Executive Director James Strosnider, Assistant Director Linda Chico, Supervisor Linda Tolley, and Personnel Specialist Kathy Messenger, met with Grievant to discuss the lack of respect he exhibited toward Ms. Tolley, and his refusal to

assist the systems administrator who had questions regarding the purchasing process.

3. Grievant admitted that he had not assisted the administrator because it was not important enough to interrupt what he was doing, and he did not believe that it was part of his job to assist with purchasing questions. Grievant became quite angry and ended the meeting by standing up and stating that the administrators would have his resignation by the end of the day.

4. Upon her return to the Business Office, Ms. Tolley observed Grievant packing his personal items. Ms. Tolley advised Grievant that it would be best if the separation was immediate. Grievant packed his things, turned over his keys and ID badge and left the premises.

5. Ms. Chico sent Grievant a letter, dated July 31, 2003, in which she stated, “I accept your voluntary verbal resignation as presented during our meeting of July 31, 2003.”

6. Grievant later denied that he had resigned, and, based upon information he received from a Division of Personnel employee, considered himself fired because he was not allowed to work a two-week notice.

Discussion

The issue presented here is whether Grievant is entitled to two weeks pay upon his resignation. In nondisciplinary matters, the grievant has the burden of proving his case by a preponderance of the evidence. Tucci v. W. Va. Dep't of Transp./Div. of Highways, Docket No. 94-DOH-592 (Feb. 28, 1995). Although Grievant initially asserts that he had not resigned, he did not pursue this point at hearing, instead arguing that because MCHD would not allow him to work a two-week notice, his employment was terminated. MCHD denies that Grievant was terminated, or that he is due any type of severance pay.

"A resignation is, by definition, a voluntary act on the part of an employee seeking to end the employer-employee relationship. Smith v. W. Va. Dep't of Corrections, Docket No. 94-CORR-1092 (Sept. 11, 1995). See Welch v. W. Va. Dep't of Corrections, Docket No. 95-CORR-261 (Jan. 31, 1996). As a general rule, an employee may be bound by his verbal representation that he is resigning when it is made to a person or persons with the authority to address such personnel matters. See, Welch, supra; Copley v. Logan County Health Dep't, Docket No. 90-LCHD-531 (May 22, 1991). The representations must be such that a reasonable person would

believe that the employee intended to sever his relationship with the employer." Hale-Smith v. Mingo County Bd. of Educ., Docket No. 98-29-075 (Sept. 30, 1998). Grievant's statement of resignation was witnessed by four individuals, none of whom expressed any question as to his intent.

Grievant cites no authority for his claim to severance pay. Grievant apparently relies on Division of Personnel (DOP) Administrative Rule, Section 12.2(b) provides that:

If the appointing authority requires a dismissed employee to immediately vacate the workplace in lieu of any advance notice of discharge, or if an employee who receives notice of dismissal for cause elects to immediately vacate the workplace, the employee is entitled to receive severance payattributable to the time he or she otherwise would have worked, up to a maximum of fifteen calendar days after vacating the workplace. Receipt of severance pay does not affect any other right to which the employee is entitled with respect to the dismissal.

This provision does not apply in the present situation because Grievant was not dismissed for cause. DOP's Rule, Section 12.1, “Resignations,” does not require a notice period. Further, Grievant's after-the-fact claim that he intended to give a ten-day notice is not credible, inasmuch as he immediately returned to his office and began packing his things. No mention was made of a notice when the statement of resignation was made, or when Grievant returned his keys and ID badge. It appears that Grievant may have acted impulsively, but at this juncture he is simply not entitled to severance pay.

The following conclusions of law support the decision reached.

Conclusions of Law

1. In nondisciplinary matters, the grievant has the burden of proving his case by a preponderance of the evidence. Tucci v. W. Va. Dep't of Transp./Div. of Highways, Docket No. 94-DOH-592 (Feb. 28, 1995).

2. "A resignation is, by definition, a voluntary act on the part of an employee seeking to end the employer-employee relationship. Smith v. W. Va. Dep't of Corrections, Docket No. 94-CORR-1092 (Sept. 11, 1995). See Welch v. W. Va. Dep't. of Corrections, Docket No. 95-CORR-261 (Jan. 31, 1996). As a general rule, an employee may be bound by his verbal representations that he is resigning when they are made to a person or persons with the authority to address such personnel matters. See, Welch, supra; Copley v. Logan County

Health Dep't, Docket No. 90-LCHD-531 (May 22, 1991). The representations must be such that a reasonable person would believe that the employeeintended to sever his relationship with the employer." Hale-Smith v. Mingo County Bd. of Educ., Docket No. 98-29-075 (Sept. 30, 1998).

3. Grievant verbally, voluntarily resigned his position to the proper authority.

4. Grievant failed to prove by a preponderance of the evidence that he is entitled to ten days of severance pay.

Accordingly, this grievance is DENIED.

Any party or the Division of Personnel may appeal this Decision to the circuit court of the county in which the grievance arose, or the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. W. Va. Code § 29-6A-7 (1998). 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. 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 appealing party must also provide the Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

Date: November 10, 2003

Sue Keller

Senior Administrative Law Judge