CHARLES W. BRACKMAN,

Grievant,

v. DOCKET NO. 04-DOH-173

DEPARTMENT OF TRANSPORTATION/

DIVISION OF HIGHWAYS,

Respondent.

DECISION

Grievant Charles W. Brackman filed this grievance on November 3, 2004, stating, “Violation Title 143 Legislative Rule WV Division of Personnel, 17.2 Nepotism.” His stated relief sought is “Equality and Restitution.”

A level four hearing was held in the Grievance Board's office on May 24, 2005. Grievant was represented by David Hedrick and Respondent was represented by counsel, Barbara Baxter. The matter became mature for decision on July 5, 2005, the deadline for filing of the parties' proposed findings of fact and conclusions of law.

Issues and Arguments

Grievant contends that the employment situation of Steve Wilson violates the rule against nepotism because his sister, Teresa Boggs, supervises William Farren, who is Mr. Wilson's immediate supervisor. Mr. Brackman is also supervised by Ms. Boggs, although he works in a different department than Mr. Wilson. Mr. Brackman did not clearly state how this situation has negatively impacted his employment, and when asked to clarify atlevel four, he stated, “I believe there has been a lot of discriminatory decisions made against me because of the nepotism situation.” He also stated, “I wasn't given a fair opportunity or an equal opportunity.” Respondent contends that the arrangement does not violate any policies or rules against nepotism because there is an intervening level of supervision between Ms. Boggs and her brother, and because she defers to a higher-level supervisor any decisions relating to Mr. Wilson's employment.

Based on a preponderance of the evidence, I find the following material facts have been proven:

Findings of Fact

1. Mr. Brackman was, at the time this grievance was filed, employed by DOH in District 9 as a Materials Technician in Greenbrier County. Mr. Brackman is no longer working in the materials section.

2. The materials section is divided into two subsections, the field and the laboratory. Teresa Boggs is the Acting Materials Supervisor, and supervises both departments, which are headed by coordinators. Ms. Boggs is also the Laboratory Coordinator, and William Farren is the Field Coordinator. The Technicians work under the Coordinators, and Steve Wilson is a Materials Technician in the field section.

3. Mr. Wilson is Ms. Boggs' brother.

4. Mr. Wilson's salary, although he is in the same classification as Mr. Brackman, is $1,300 per month less. In the year preceding this grievance, Mr. Brackman was assigned more overtime than Mr. Wilson. Although Mr. Wilson is assigned more field work than Mr. Brackman, he is the field technician and Mr. Brackman is a laboratory technician.

Discussion

Since this grievance is not about discipline, Grievant must prove all of his claims by a preponderance of the evidence, which means he must provide enough evidence for the undersigned Administrative Law Judge to decide that his claim is more likely valid than not. *See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

The Division of Personnel ("DOP") adopted a Nepotism Policy in its Administrative Rules which states:

> No appointing authority shall influence or attempt to influence the employment or working conditions of his or her immediate family. It is the responsibility of the appointing authority to administer the employment of relatives of any agency employee in a consistent and impartial manner.
>
> No employee shall directly supervise a member of his or her immediate family. More specifically, no employee shall review or audit the work of a member of his or her immediate family, or take part in discussions concerning employment, assignment, compensation, discipline or related matters involving a member of his or her immediate family. In the event that an individual, through marriage, adoption, etc. is placed in a prohibited business relationship with a member of his or her immediate

> family, the situation shall be resolved within thirty calendar days. Resolution may be made by transfer, reassignment, resignation, etc. of one of the involved employees or by other accommodation which protects the interests of the public.

While the grievance appears to raise a valid claim and evidence adduced at levels three and four suggests that the chain of command that puts Mr. Wilson under the indirect supervision of his sister does constitute nepotism, Mr. Brackman has entirely failed to state a claim that would entitle him to relief, because he has not shown any harm. "The Grievance Board has consistently refused to issue decisions where it appears the grievanthas suffered no real injury on the basis that such decisions would be merely advisory." (See footnote 1) Mr. Brackman did not mention how he was affected in his Statement of Grievance, and unspecifically explained his relief sought at both level three and level four. Although he appeared to be making a case that Mr. Wilson was favored by Ms. Boggs in terms of overtime and field work, Mr. Brackman actually received more overtime, and he failed to explain why the field technician should not work more in the field than the lab technician.

Mr. Brackman also failed to ask for any specific relief, but it appears at this time that he simply wants it established that the nepotism policy was violated. "Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the [Grievance Board]. (See footnote 2)

Further, by the time this grievance arrived at level four, Mr. Brackman was no longer in the section supervised by Ms. Boggs, as he now works construction. This makes the nepotism question moot as far as Mr. Brackman is concerned. The Grievance Board will not hear issues that are moot. "Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not properly cognizable [issues]." (See footnote 3) Accordingly, Mr. Brackman has failed to meet his burden of proving he is entitled to any relief in this grievance, whether or not the basis for his claim is valid. The following conclusions of law support this discussion:

Conclusions of Law

1. Since this grievance is not about discipline, Grievant must prove all of his claims by a preponderance of the evidence, which means he must provide enough evidence for the undersigned Administrative Law Judge to decide that his claim is more likely valid than not. *See Unrue v. W. Va.*

Div. of Highways, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). If the evidence supports both sides equally, then Grievant has not met his burden. *Id.*

2. "The Grievance Board has consistently refused to issue decisions where it appears the grievant has suffered no real injury on the basis that such decisions would be merely advisory." *Champ v. Pendleton County Bd. of Educ.*, Docket No. 01-36-419R (July 14, 2003); *Khoury v. Public Serv. Comm'n*, Docket No. 95-PSC-501 (Jan. 31, 1996); *Smith v. W. Va. Parkways Economic Development and Tourism Auth.*, Docket No. 97-PEDTA- 484 (Apr. 17, 1998).

3. "Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the [Grievance Board]. *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993).

4. The Grievance Board will not hear issues that are moot. "Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not properly cognizable [issues]." *Bragg v.Dept. of Health & Human Res.,* Docket No. 03-HHR-348 (May 28, 2004); *Burkhammer v. Dep't of Health & Human Res.,* Docket No. 03-HHR-073 (May 30, 2003); *Pridemore v. Dep't of Health & Human Res.*, Docket No. 95-HHR-561 (Sept. 30, 1996).

5. Grievant has failed to show he has been harmed by the alleged violation of the anti-nepotism policy, and this grievance is moot. He is not entitled to any relief.

For the foregoing reasons, this grievance is hereby **DENIED.**

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred, and such appeal must be filed within thirty 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 Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

July 29, 2005

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M. Paul Marteney

Administrative Law Judge

Footnote: 1

Champ v. Pendleton County Bd. of Educ., Docket No. 01-36-419R (July 14, 2003).

Footnote: 2

Miraglia v. Ohio County Bd. of Educ., Docket No. 92-35-270 (Feb. 19, 1993).

Footnote: 3

Bragg v. Dep't of Health & Human Res., Docket No. 03-HHR-348 (May 28, 2004).