THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

SARA L. FIZER,
Grievant,

v. **Docket No. 2008-1698-DHHR**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
MILDRED MITCHELL-BATEMAN HOSPITAL,
Respondent.

DISMISSAL ORDER

Grievant, Sara l. Fizer, filed a grievance against her employer, Department of Health and Human Resources ("DHHR"), on May 29, 2008, alleging:

> Pt. was aggietated. [sic] Pt was verbally acting out. Pt was physically acting out; kicking me & hitting me. I asked the RN to give the Pt. a PRN. The RN refused to give a PRN to a pt who needed relief from her aggitatior. [sic] This is pt. neglect & puts staff in a dangerous position.

As relief, Grievant seeks, "[t]o remove the written repremand [sic] that resulted from my file. To be paid for my lost hours of work. For nurses to give PRN's when needed. For HSA to change assignments when a pt. is targeting a staff & could do better w/someone else."

The level one grievance was placed in abeyance at the request of Grievant on July 25, 2008. By notice dated September 3, 2008, Christopher B. Amos, Grievance Unit Manager, notified Grievant that, due to her leaving employment with Bateman Hospital and DHHR, her grievance was rendered inactive at level one. Within this notification, Mr. Amos indicated the matter is being waived to level two for "a disposition determination." Thereafter, Respondent filed a Motion to Dismiss the grievance. A level two mediation session was noticed and scheduled for February 25, 2009; however, this level two proceeding was canceled and a phone conference was conducted before the undersigned

Administrative Law Judge to address the Motion to Dismiss. Grievant did not appear for the phone conference. It is noted that Grievant's knowledge of the phone conference is not in dispute, as evidenced by her communication with Heather Bartholomew of the Grievance Board reminding her of the conference. Nevertheless, Grievant failed to participate in the conference addressing the Motion to Dismiss. Respondent DHHR appeared by Jennifer K. Akers, Assistant Attorney General. The Motion to Dismiss is now mature for consideration.

The following material facts are evident from the record of the grievance:

Findings of Fact

1. Grievant was employed by DHHR as a Health Service Worker (HSW) at Mildred Mitchell-Bateman Hospital.

2. On May 21, 2008, Grievant was given a written reprimand by her supervisor, Karen Thompson, RN, Nurse Manager. The reprimand reflects that on May 15, 2008, Grievant displayed unprofessional conduct with staff and the nurse manager as well as the nursing supervisor. In addition, Grievant left her shift without approval of her supervisor.

3. Grievant grieved this written reprimand on May 29, 2008.

4. Grievant left the employ of DHHR on August 24, 2008.

Discussion

Grievant is seeking to have the written reprimand removed from her personnel file; to be paid for hours for which she did not work; for nurses to be subject to different responsibilities when a patient is "targeting" a staff member. This grievance is in the proper

posture for the undersigned to decide whether Grievant still has standing to pursue the claims now that she is no longer employed by Respondent.

Grievant asserts she is entitled to be paid for lost hours of work, presumably paid leave, but did not identify the type of leave she wished to receive. As with all state entities, paper work must be completed to support the outlay of funds. It is unclear why Grievant did not complete any forms to properly request paid leave, but the record is clear that Grievant left the hospital in the middle of her shift without prior approval from her supervisor. Without this approval, Grievant cannot receive paid leave. Accordingly, no outstanding issue of compensation exists within this set of facts that might result in grounds to deny a dismissal request.

Grievant herself has ensured that she will no longer be subjected to the hospital's management decisions with which she disagreed by resigning her position on August 24, 2008. This action makes it unnecessary for the Grievance Board to act in this matter even if she had proven the action of her supervisor was improper. *See*, *Collins v. Dep't of Transp./Div. of Highways*, Docket No. 02-DOH-227/248 (Jan. 30, 2003). In essence, all Grievant seeks is a declaration that she was right in requesting the patient in question be subdued and the supervising nurse was wrong in refusing to act – an advisory opinion. "This Grievance Board does not issue advisory opinions." *Collins*, *supra*. When there is no case in controversy, the Grievance Board will not issue advisory opinions. *Bragg v. Dep't of Health & Human Res.*, Docket No. 03-HHR-348 (May 28, 2004); Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 156-1-6 6.21(2008).

In addition, Grievant's resignation has rendered the issue of her written reprimand moot. 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*, *supra*; *Burkhammer v. Dep't of Health & Human Res.*, Docket No. 03-HHR-073 (May 30, 2003). A decision on this grievance either granting or denying the relief sought would have no effect on Grievant's employment, hence the grievance is now moot.

Grievant left Respondent's employment before the level one hearing, rendering her grievance moot. *See*, *King v. Dep't of Transp./Div. of Highway* Docket No. 06-DOH-020 (Oct. 10, 2006); *Bragg*, *supra*. There are no issues of back pay or benefits that have been raised or argued by Grievant that need to be addressed. The remaining issues are moot and a decision would amount to an advisory opinion. Accordingly, this grievance must be dismissed.

The following conclusions of law support the decision reached:

Conclusion of Law

1. When there is no case in controversy, the Grievance Board will not issue advisory opinions. *Bragg v. Dep't of Health & Human Res.*, Docket No. 03-HHR-348 (May 28, 2004); Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 156-1-6 6.21(2008).

3. "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*, *supra*; *Burkhammer v. Dep't of Health & Human Res.*, Docket No. 03-HHR-073 (May 30, 2003).

4. Grievant's voluntary resignation from employment with Respondent rendered her grievance moot.

Accordingly, this grievance is **DISMISSED**.

Any party may appeal this Order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this 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* 156 C.S.R. 1 § 6.20 (2008).

Date: March 4, 2009

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Ronald L. Reece
Administrative Law Judge