THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

JOANN F. HEDRICK,

Grievant,

v. **Docket No. 2009-0611-DHHR**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES\ MILDRED MITCHELL-BATEMAN HOSPITAL,

Respondent.

DECISION

Grievant Joann Hedrick had been employed by the Department of Heath and Human Resources ("DHHR") at Mildred Mitchell-Bateman Hospital ("Bateman") for eight years when she filed this grievance on October 28, 2008.[1] In her grievance Ms. Hedrick alleges the following:

> Workplace harassment by management. Intimidating, hostile work environment, unwelcome verbal comments. Targeting this employee for union affiliation which interfered with work performance.

As relief Grievant seeks:

- Reinstatement of this employee's job - rescind my resignation;
- Disciplinary action according to policy on management; and
- Targeting behavior on the employee to cease.

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[1] It appears that Grievant filed a similar grievance on October 31, 2008. Since this grievance had already been filed, these two grievances were considered the same and retained the docket number set out above. *See* Grievance Board Order, November 25, 2008.

A level one hearing was held and the grievance was denied by a level one decision dated January 30, 2009. The parties participated in a level two mediation on May 19, 2009, and Grievant appealed to level three. A level three hearing was conducted in the Charleston office of the West Virginia Public Employees Grievance Board on October 27, 2009. Grievant was present at the hearing and was represented by Gordon J. Simmons, UE Local 170, WVPWU.[2] Respondent DHHR was represented by Jennifer K. Akers, Assistant Attorney General. The only issue raised at the hearing was whether Grievant's resignation was final and binding upon the parties. At the conclusion of the hearing the parties agreed to submit Proposed Findings of Fact and Conclusions of Law, the last of which was received by the Grievance Board on November 20, 2009. This grievance became mature for decision on that date.

Synopsis

Grievant argues that she withdrew her resignation before it was accepted by her employer and therefore the resignation was void. In the alternative, Grievant argues that, due to her medical condition, she was not competent to sever her employment contract. Respondent demonstrated that Grievant's resignation was accepted by an authorized agent prior to Grievant's effort to rescind it. Grievant failed to prove that she was legally incapacitated to contract when she resigned. Accordingly, the grievance is denied.

After a thorough review of the entire record in this matter, the following facts are found to have been proven by a preponderance of the evidence.

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[2] West Virginia Public Workers Union.

Findings of Fact

1. At the time of her resignation, Grievant had been employed at Bateman for eight years. Grievant was classified as a Health Service Worker for the first five years and was classified as a Health Service Assistant for the remainder of her employment.[3]

2. Grievant's immediate supervisor at Bateman was her Nurse Supervisor Kristen Thompson. On October 27, 2008, Grievant placed a written resignation on Ms. Thompson's desk and returned to work. At the time, Ms. Thompson was working on a report and did not look up.

3. The written resignation that Grievant left for Ms. Thompson stated the following:

> Please consider this my two-weeks notice, on October 27, 2008, I have enjoyed the pts. But it is time for me to move on I wish the best to everyone and I have truly cared about you all. Thank you for being part of my life.
>
> Joann F. Hedrick[4]

Grievant signed the written resignation.

4. Within a few minutes, Ms. Thompson finished the report she was completing when Grievant was in her office. She read Grievant's resignation and filled out a standard form related to employment termination. This form is commonly referred to as the "pink slip." Respondent's Exhibit 1.

5. Nurse Supervisor Thompson immediately took the pink slip to the Bateman Human Resources office to consult with Kieth Anne Worden, the Human Resources

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[3] A Health Service Assistant is one step and one pay grade higher in the Health Service class series than a Health Service Worker.

[4] Grievant's Exhibit 1. The resignation is copied herein as it was written by Grievant.

Director for Bateman. Director Worden helped Ms. Thompson draft a memorandum to Grievant accepting Grievant's resignation and suggesting that Grievant contact Vickie Crager, at Benefits Coordination, for an explanation of her benefit options.

6. After Ms. Thompson left her office, Director Worden completed a "WV-11" form[5] regarding Grievant's resignation and sent it to the DHHR central office.

7. Nurse Supervisor Thompson left the Bateman Human Resources office and found Grievant to give her the memorandum accepting Grievant's resignation. The entire process was completed in less than thirty minutes.[6] This written memorandum, initialed and hand delivered by Nursing Supervisor Thompson, was the only written notification received by Grievant that her resignation had been accepted.

8. On October 30, 2008, Grievant had a meeting with Director Worden and Ms. Thompson regarding other issues.[7] At that meeting, Grievant expressed her desire to rescind her resignation and continue her employment. Director Worden told Grievant that her resignation had been accepted and Respondent would not consent to her rescinding it.

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[5] The WV-11 form was not fully explained but it was apparent from the context of the testimony that it is a form informing the main office of the DHHR that an employee has resigned or otherwise terminated her employment.

[6] Grievant testified that Ms. Thompson gave her the Memorandum seven minutes after Grievant submitted the resignation. Ms. Thompson indicated the process took nearly half an hour. The exact amount of time is not critical to the outcome of this matter, but it is apparent that Ms. Thompson wasted no time in processing Grievant's resignation. Upon receiving the Memorandum from Ms. Thompson, Grievant quipped that accepting Grievant's resignation was the fastest thing her nurse supervisor had ever done.

[7] The nature of the additional issues was not specified in any detail in the level three hearing.

9. A doctor who had been treating Grievant since March 23, 2007 sent a letter dated March 10, 2009, to an Administrative Law Judge at the Unemployment Office regarding Grievant's condition at the time she resigned.[8] After describing Grievant's medical problems the doctor stated that: "I would argue that at the time [she resigned] she was irrational and therefore incompetent to make a decision regarding her job." Grievant's Exhibit 3. The doctor did not state that he had examined Grievant at or near the time she submitted her resignation.

Discussion

This grievance does not involve a disciplinary matter. Consequently, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008). The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not. *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant first argues that the tender of her resignation was an offer to end her employment with Respondent. Grievant's position is that she rescinded her offer to resign before Respondent officially accepted the resignation and her resignation has no effect. DHHR counters that it accepted Grievant's resignation through the actions of the supervisors and once the resignation was accepted, Respondent was under no obligation to allow Grievant to rescind it.

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[8] Even though this letter was presented as an exhibit by Grievant, the details of her diagnosis and the identity of the doctor will not be discussed herein in an effort to preserve the privacy of Grievant's medical records to the extent possible.

The starting point for examining resignation grievances is that, "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. Dept. of Corrections*, Docket No. 94-CORR-1092 (Sept. 11, 1995); *Jenkins v. Dep't of Health and Human Resources/Mildred Mitchell-Bateman Hosp.*, Docket No. 02-HHR-214 (Oct. 22, 2002). As a general rule, an employee may be bound by his representations that he is resigning when the representations are made to a person with the authority to address such personnel matters. *See Welch v. W. Va. Dept. of Corrections*, Docket No. 95-CORR-261 (Jan. 31, 1996). To determine whether an employee's act of resignation was forced by others, rather than voluntary, the circumstances surrounding the resignation must be examined in order to measure the ability of the employee to exercise free choice. *McClung v. W. Va. Dep't of Public Safety*, Docket No. 89-DPS-240 (Aug. 14, 1989); *See Adkins v. Civil Serv. Comm'n*, 171 W. Va. 132, 298 S.E.2d 105 (1982).

Grievant does not deny that she submitted her resignation and she did not argue in this hearing that she was forced to resign. Rather, her first assertion is that she rescinded the resignation before it was accepted by Respondent. The Grievance Board has held that an offer to resign by a classified, state employee may be withdrawn at any time before it is accepted by the employer. The tender of a resignation by such employee, is a mere offer to mutually rescind the contract of employment and is not binding on either party to the contract until its acceptance by the employer. *Falquero v. W. Va. Dep't of Envtl. Protection,* Docket No. 2008-1596-DEP (Dec. 16, 2008); *Le Masters v. Board of Education of Grant District*, 105 W.Va. 81, 141 S.E. 515 (1928).

There is no doubt that Grievant's resignation was accepted by her Nurse Supervisor, Kristen Thompson. Within a short time after receiving Grievant's resignation Ms. Thompson gave Grievant a written memorandum accepting it. Additionally, Supervisor Thompson had processed the pink slip for Grievant. Thompson also gave this information to the Bateman Human Relations Director, Kieth Anne Worden, who forwarded the appropriate documentation to the DHHR central office. Grievant did not attempt to rescind her resignation until three days later. Grievant argues that neither Nurse Supervisor Thompson nor Director Worden had the authority to accept her resignation on behalf of Bateman. She asserts that only the Bateman Chief Executive Officer ("CEO") has the authority to take personnel actions and the CEO had not acted upon Grievant's resignation before Grievant rescinded it. The Grievance Board has directly addressed this specific issue in *Jenkins v. Dep't of Health & Human Res./Mildred Mitchell-Bateman Hosp.,* Docket No. 02-HHR-214 (Oct. 22, 2002). In that case, the Administrative Law Judge specifically found that a Director of Nursing and an Assistant Director of Nursing at Bateman have authority to accept resignations from their subordinates. *Id,* at Finding of Fact 6 and Conclusion of Law 4. Consequently, Grievant's resignation was accepted and Respondent was under no obligation to allow her to rescind it. *Smith v. Dep't of Health & Human Res.*, Docket No. 2009-1542-DHHR (Nov. 10, 2009).

Grievant's second argument is that her medical condition rendered her incompetent to make a binding offer to resign. The only evidence that was offered to support this proposition was a letter submitted to an Unemployment Administrative Law Judge by Grievant's treating physician. This letter written on March 10, 2009, nearly five months after grievant resigned, appears to have been prepared to assist Grievant with an

unemployment compensation claim. The doctor notes in the first sentence that he is writing as her "psychiatrist and therefore as her advocate." He states that he has been treating Grievant since March 23, 2007, and described Grievant's diagnosed disorders. He then wrote: "I would argue that at the time [she resigned] she was irrational and therefore incompetent to make a decision regarding her job." He ends the letter by opining that Ms. Hedrick should be reinstated and that "[s]omeone like her who struggled with her psychiatric problems and was able to work effectively despite her difficulties should be given our full support." Grievant's Exhibit 3.

It has been held in many West Virginia cases that:

> The fundamentals of a legal contract are competent parties, legal subject matter, valuable consideration and mutual assent. There can be no contract if there is one of these essential elements upon which the minds of the parties are not in agreement.

Syl. pt. 5, Virginian Export Coal Co. v. Rowland Land Co., 100 W.Va. 559, 131 S.E. 253 (1926); *Syl. pt. 2, Go-Mart, Inc. v. Olson*, 198 W.Va. 559, 482 S.E.2d 176 (1996). If Grievant truly was incompetent she would not necessarily be bound by her offer to end her employment contract as long as the parties could be restored to their original positions.[9]

The only evidence related to Grievant's competence was the physician's letter. Respondent objected to the admission of the letter because it had not been raised before level three, it was prepared for another proceeding, it was not sworn testimony and the

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[9] "Where a contract with an incompetent has been entered into in good faith, without fraud or imposition, for a fair consideration, without notice of infirmity and before an adjudication of incompetency, and has been executed in whole or in part, it will not be set aside ***unless the parties can be restored to their original position.***" (Emphasis added) *Go-Mart, Inc. v. Olson*, 198 W.Va. 559, 482 S.E.2d 176 (1996) (citing 95 A.L.R. 1442 (1935).

doctor was not available to be cross examined. These objections are well taken and even though the undersigned allowed the letter to be admitted into the record, it can be given little or no weight regarding the issue of Grievant's competence to contract at the time Grievant resigned. First the doctor noted in the letter that he was acting as Grievant's advocate, which does not indicate that his opinion was unbiased. Next, while Grievant was generally under the doctor's care at the time she resigned, the doctor did not state that he had examined her during the relevant time period or that he had conducted any specific tests to determine if Grievant was competent to contract. In fact, the doctor indicated in his last sentence that Grievant "was able to work effectively despite her difficulties." Grievant's Exhibit 3. This statement is simply not consistent with a finding that Grievant was incompetent to conduct her own affairs. Finally, there is no evidence that the doctor used the term "incompetent" in his letter to mean that Grievant met the legal definition of a person who was legally incapacitated to enter into a binding contract. Consequently, this letter alone is insufficient to prove by a preponderance of the evidence that Grievant was not competent to offer her resignation.

Grievant did not prove by a preponderance of the evidence that she rescinded her resignation before it was accepted by an authorized agent of Respondent, or that she was not competent to offer her resignation to terminate her employment contract. Accordingly, the grievance is DENIED.

Conclusions of Law

1. This grievance does not involve a disciplinary matter. Consequently, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008).

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. Dept. of Corrections*, Docket No. 94-CORR- 1092 (Sept. 11, 1995); *Jenkins v. Dep't of Health and Human Resources/Mildred Mitchell- Bateman Hosp.*, Docket No. 02-HHR-214 (Oct. 22, 2002). As a general rule, an employee may be bound by her representations that she is resigning when the representations are made to a person with the authority to address such personnel matters. *See Welch v. W. Va. Dept. of Corrections*, Docket No. 95-CORR-261 (Jan. 31, 1996); *Jenkins supra.*

3. An offer to resign by a classified, state employee may be withdrawn at any time before it is accepted by the employer. The tender of a resignation by such employee is a mere offer to mutually rescind the contract of employment and is not binding on either party to the contract until its acceptance by the employer. *Le Masters v. Board of Education of Grant District*, 105 W.Va. 81, 141 S.E. 515 (1928); *Falquero v. W. Va. Dep't of Envtl. Protection,* Docket No. 2008-1596-DEP (Dec. 16, 2008).

4. Grievant's offer to resign was accepted by her supervisor, who was authorized to accept it, prior to Grievant's effort to rescind the resignation. Respondent was under no obligation to allow Grievant to rescind her resignation after it had been accepted by an authorized agent of the Respondent. *Jenkins v. Dep't of Health and Human Resources/Mildred Mitchell- Bateman Hosp.*, Docket No. 02-HHR-214 (Oct. 22, 2002); Smith v. *Dep't of Health & Human Res.*, Docket No. 2009-1542-DHHR (Nov. 10, 2009).

5. "The fundamentals of a legal contract are competent parties, legal subject matter, valuable consideration and mutual assent. There can be no contract if there is one of these essential elements upon which the minds of the parties are not in agreement." *Syl. pt. 5, Virginian Export Coal Co. v. Rowland Land Co.*, 100 W.Va. 559, 131 S.E. 253 (1926); *Syl. pt. 2, Go-Mart, Inc. v. Olson*, 198 W.Va. 559, 482 S.E.2d 176 (1996).

6. Grievant did not prove by a preponderance of the evidence that she was not competent to offer her resignation to terminate her employment contract.

Accordingly, the Grievance is DENIED.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *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: FEBRUARY 16, 2010.

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WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE