THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SHIRLEY M. PRICE,

GRIEVANT,

v. **Docket No. 2011-0218-DHHR**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES / WELCH COMMUNITY HOSPITAL,

RESPONDENT.

DISMISSAL ORDER

Grievant, Shirley M. Price, is employed as a licensed practical nurse by the Department of Health and Human Resources ("DHHR"). She works at Welch Community Hospital in Welch, West Virginia. Ms. Price filed a level one grievance form dated August 22, 2010, in which she alleged the following:

> In Feb. 2010 had a mass in lung diagnosed as mold. Filed a Workers Comp claim. When Brickstreet asked personnel at this hospital, they said this hospital was never flooded and no mold was here, which is not true.

As relief Grievant seeks:

> Want people in administrative positions to admit that there was and is mold in my workplace so I can claim my compensation which I am entitled to.

A level one hearing was held on October 28, 2010, and an Order was issued dismissing the grievance dated November 16, 2010. Grievant appealed this decision to level two.

Respondent filed a Motion to Dismiss that was received by the West Virginia Public Employees Grievance Board on April 7, 2011,[1] alleging that Grievant's claim does not

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[1] Respondent is represented by Jennifer Akers, Assistant Attorney General.

constitute a "grievance" pursuant to W. VA. CODE § 6C-2-2(i)(2) because the Respondent has no authority related to Workers Compensation claims. Grievant's representative[2] filed a Response to the Respondent's Motion which was received at the West Virginia Public Employees Grievance Board on April 8, 2011. A level two mediation was held with the parties on April 11, 2011, and an Order was entered the next day. Grievant made a timely appeal to level three.

Respondent filed a renewed Motion to Dismiss which was received at the West Virginia Public Employees Grievance Board on July 1, 2011. The allegations in the Renewed Motion are the same as those set out in the original Motion.

Findings of Fact

1. Grievant, Shirley M. Price, is employed by DHHR as a licenced practical nurse at Welch Community Hospital ("Hospital") in Welch, West Virginia.

2. Due to medical problems related to her lungs, Grievant filed a workers compensation claim with Brickstreet Insurance, the workers compensation carrier for the DHHR.

3. Grievant claims that her lung ailment resulted from exposure to mold while she was working at the Hospital.

4. Grievant also claims that Brickstreet Insurance denied her claim because an administrator at the Hospital told Brickstreet that there was no mold in the hospital and that the Hospital had never been in a flood.

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[2] Gordon Simmons, UE local 170, West Virginia Public Workers Union.

Discussion

The only issue for consideration in this decision is Respondent's Motion to Dismiss. Respondent notes that the remedy Grievant seeks is for "people in administrative positions to admit that there was and is mold in my workplace so I can claim my compensation which I am entitled to." Respondent's position is that Grievant's remedy is solely through the Workers Compensation procedure and not with the grievance procedure.

The entire response by Grievant's representative to Respondent's motion is:

> 1. The denial of workers compensation claim by Brickstreet to Grievant was based entirely in Respondent's false assertion that there was no mold present at Welch Community Hospital.
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> 2. Grievant intends to prove that Respondent's assertion was false.[3]

Assuming that Grievant was able to prove to an Administrative Law Judge of the West Virginia Public Employees Grievance Board that the Hospital administration had misled the Workers Compensation insurer about mold in the facility, there would be no remedy available to her in this procedure. The West Virginia Public Employees Grievance Board has no authority to grant Workers Compensation benefits nor to make Workers Compensation eligibility determinations. For Grievant to prevail in her Workers Compensation claim she has to provide evidence in that forum.

The Procedural Rules for the West Virginia Public Employees Grievance Board state in part that:

> A grievance may be dismissed, in the discretion of the administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.

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[3] Grievant's Response to Respondent's Motion to Dismiss.

156 C.S.R. 1 § 6.11. The remedy Grievant seeks is wholly unavailable pursuant to the West Virginia Public Employees Grievance Procedure. Accordingly, the Grievance is DISMISSED.

Conclusions of Law

1. Grievant failed to state a claim on which relief can be granted by the West Virginia Public Employees Grievance Board. The remedy Grievant seeks is wholly unavailable through the West Virginia Public Employees Grievance Procedure. *See* 156 C.S.R. 1 § 6.11.

2. "A grievance may be dismissed, in the discretion of the administrative law judge, if no claim upon which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.' 156 C.S.R. 1 § 6.11." *Robinson/Anderson v. W. Va. Univ.,* Docket No. 06-HE-416 (Mar. 31, 2008).

Accordingly, Respondent's Motion is GRANTED and the grievance is DISMISSED.

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: JULY 22, 2011

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WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE