THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

LISA MARIE MARLOW,
Grievant,

v. **Docket No. 2010-1528-DHHR**

WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES/
WILLIAM R. SHARPE, JR. HOSPITAL,
Respondent.

DISMISSAL ORDER

Grievant Lisa Marie Marlow was employed by Respondent as a registered nurse at the William R. Sharpe, Jr. Hospital. On January 3, 2011, Grievant filed a grievance challenging the termination of her employment. Prior to filing that action, Grievant had filed other grievances related to her employment with Respondent. On May 26, 2011, Respondent filed a Motion to Dismiss the above-styled grievance for reasons more fully set out below. Grievant appears in this matter by her representative, Gordon Simmons, UE Local 170. Respondent appears by its counsel, Anne B. Ellison, Assistant Attorney General. This motion is mature for a ruling after the undersigned requested that Grievant respond to the motion on or before June 13, 2011. No objection to the motion was raised.

Synopsis

The issue of an improper directive raised in this grievance is a moot issue since Grievant is no longer an employee of Respondent. As of December 29, 2010, Grievant's employment with Respondent ended. On May 23, 2011, Grievant withdrew her grievance challenging her termination from employment. Accordingly, this grievance is dismissed.

After a review of the entire record in this matter, the undersigned makes the following findings of fact.

Findings of Fact

1. Grievant was employed by Respondent until December 29, 2010, when she was dismissed from her job as a result of job abandonment.

2. On December 30, 2010, Grievant filed a grievance alleging that she had not abandoned her job or resigned her position, and that she had been terminated without good cause. This grievance was assigned Docket No. 2011-0945-DHHR.

3. Prior to being dismissed from her employment, Grievant filed the above-styled grievance asserting that she was given an improper directive. This grievance was filed on May 22, 2010.

4. On May 23, 2011, Grievant withdrew her challenge to her termination in Docket No. 2011-0945-DHHR.

Discussion

The Respondent has moved that this grievance be dismissed because the relief requested by the Grievant is moot due to her dismissal. "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]." *Pritt, et al., v. Dep't of Health & Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008). The Grievance Board will not hear issues that are moot. *Cobb, et al. v. Div. of Highways*, Docket No. 2009-1017-CONS (Dec. 31, 2009).

This Board has found that where a grievant is no longer an employee, "a decision on the merits of her grievance would be a meaningless exercise, and would merely constitute an advisory opinion." *Muncy v. Mingo County Bd. of Educ.*, Docket No. 96-29-

211 (Mar. 28, 1997). "Because it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the question raised by this grievance would merely be an advisory opinion. 'This Grievance Board does not issue advisory opinions. *Dooley v. Dep't of Transp.,* Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.,* Docket No. 91-35-229/239 (Nov. 27, 1991).' *Priest v. Kanawha County Bd. of Educ.,* Docket No. 00-20-144 (Aug. 15, 2000)." *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002).

Any decision addressing the claim of an improper directive would be meaningless since Grievant is no longer employed by Respondent. Furthermore, the determination of whether or not the decision to terminate was for good cause has been withdrawn by the Grievant. In addition, no objection to this motion was raised. Because Grievant would gain no concrete remedy from this grievance, it is now moot and any ruling would amount to an advisory opinion.

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.[1]

Because Grievant is no longer employed by the Department of Health and Human Resources, any prospective relief that might be available is moot. Accordingly, the grievance fails to raise a claim on which relief can be granted and is dismissed.

The following conclusions of law support the decision reached in this Order.

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[1]156 C.S.R. 1 § 6.11.

Conclusions of Law

1. "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]." *Pritt, et al., v. Dep't of Health & Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008). The Grievance Board will not hear issues that are moot. *Cobb, et al. v. Div. of Highways*, Docket No. 2009-1017-CONS (Dec. 31, 2009).

2. "'This Grievance Board does not issue advisory opinions. *Dooley v. Dep't of Transp.,* Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.,* Docket No. 91-35-229/239 (Nov. 27, 1991).' *Priest v. Kanawha County Bd. of Educ.,* Docket No. 00-20-144 (Aug. 15, 2000)." *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002).

3. Because Grievant is no longer employed by Respondent, any prospective relief that might normally be available to her is moot.

Accordingly, the 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 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 (eff. July 7, 2008).

Date: June 30, 2011

Ronald L. Reece
Administrative Law Judge