WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

CAROLYN K. SMITH,
Grievant,

vs. **DOCKET NO. 2011-0105-HRC**

HUMAN RIGHTS COMMISSION,
Respondent.

DISMISSAL ORDER

Respondent filed a Motion to Dismiss asserting that the retirement of the Grievant on February 28, 2011, rendered this grievance moot. Grievant seeks the removal from her personnel files of a reprimand received on July 27, 2010, for leaving work early. Grievant did not respond or object to the Motion.

"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 Co. Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993). It has been held by the Grievance Board that voluntary retirement moots a grievance related to a reprimand, as any potential harm is merely speculative. *Mitias v. Public Service Commission*, Docket No. 05-PSC-107R (Sep. 22, 2010). c.f, *Komorowski v. Marshall Co. Bd. of Educ.*, Docket No. 08-25-007 (March 23, 2007); *King v. Dep't of Transp.*, Docket No. 06-DOH-020 (Oct. 20, 2006); *Jones v. Cabell Co. Bd. of Educ.*, Docket No. 97-06-041 (Aug. 6, 1997). "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. Dep't 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).

For the foregoing reasons, Respondent's Motion is granted and thus hereby 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).

Entered: April 4, 2011

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M. Paul Marteney
Administrative Law Judge