THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

CALESTA RUFFIN,
Grievant,

v. **Docket No. 2012-0231-DOC**

DIVISION OF NATURAL RESOURCES,
Respondent.

DISMISSAL ORDER

Grievant, Calesta Ruffin, filed this grievance against her former employer, Division of Natural Resources, on August 29, 2011. Grievant challenged a written reprimand for alleged insubordination issued to her on July 13, 2011. Grievant seeks to be made whole including the removal of the disciplinary action and a pay upgrade for performance of extra duties.

This grievance was denied at level one by Decision by Frank Jezioro, Director, dated October 17, 2011. Appeal to level two was perfected on October 24, 2011. Respondent filed a Motion to Dismiss on October 26, 2011, for reasons more fully set out below. Grievant was given a period of weeks to respond to this motion but did not file any response. Respondent appears by its counsel, William R. Valentino, Assistant Attorney General. Grievant appears by her representative, Gordon Simmons, UE Local 170. The Motion to Dismiss is now mature for consideration.

Synopsis

Grievant was given a written reprimand for conduct which she grieved. Grievant severed her employment relationship with Respondent on or around October 15, 2011.

This was after the level one hearing, but before the matter was scheduled for a mediation session. Grievant's resignation from her employment with Respondent rendered her grievance moot. Accordingly, this grievance is dismissed.

The following findings of fact are undisputed.

Findings of Fact

1. Grievant was employed by the Division of Natural Resources.

2. Grievant filed this challenge to a written reprimand in regard to an allegation of insubordination.

3. A level one hearing was conducted on September 29, 2011. The grievance was denied by Decision issued on October 17, 2011.

4. Appeal to level two was perfected on October 24, 2011.

5. Grievant left the employ of Respondent on or about October 15, 2011.

Discussion

Respondent asserts that Grievant is not an "employee" within the meaning of WEST VIRGINIA CODE § 6C-2-2, and therefore has no standing to pursue her grievance. Respondent also asserts that this matter is now moot since Grievant is no longer employed by Respondent. When the employer asserts an affirmative defense, it must be established by a preponderance of the evidence. *See Lewis v. Kanawha County Bd. of Educ.*, Docket No. 97-20-554 (May 27, 1998); *Lowry v. W. Va. Dep't of Educ.*, Docket No. 96-DOE-130 (Dec. 26, 1996); *Hale v. Mingo County Bd. of Educ.*, Docket No. 95-29-315 (Jan. 25, 1996). *See generally Payne v. Mason County Bd. of Educ.*, Docket No. 96-26-047 (Nov. 27, 1996); *Trickett v. Preston County Bd. of Educ.*, Docket No. 95-39-413 (May 8, 1996).

In addition, standing is a party's right to make a legal claim or seek judicial enforcement of a duty or right. BLACK'S LAW DICTIONARY (Eighth Edition 2004).

The Public Employees Grievance Procedure was established to allow public employees and their employers to reach solutions to problems which arise within the scope of their respective employment relationships. W. VA. CODE § 6C-2-1(a); *See Wilson v. Dep't of Health and Human Res.*, Docket No. 2011-1769-DHHR (Oct. 31, 2011). WEST VIRGINIA CODE § 6C-2-2(e)(1) defines "employee" for the purposes of the grievance procedure, as follows:

> (1) "Employee" means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

WEST VIRGINIA CODE § 6C-2-2(g) defines "employer" for the purposes of the grievance procedure, as follows:

> [A] state agency, department, board, commission, college, university, institution, State Board of Education, Department of Education, county board of education, regional educational service agency or multicounty vocational center, or agent thereof, **using the services of an employee** as defined in this section. (Emphasis added.)

A "Grievance" is "a claim by an employee." W. VA. CODE § 6C-2-2(i). Only an employee may file a grievance. W. VA. CODE § 6C-2-2(a)(1).

Respondent aptly points out in its Motion to Dismiss that this Board has dismissed grievances once the Grievant is no longer employed by the Respondent. *See Fizer v. Dep't of Health and Human Res.*, Docket No. 2008-1698-DHHR (Mar. 4, 2009); *Bragg v. Dep't of Health and Human Res.*, Docket No. 03-HHR-348 (May 28, 2004). Grievant has ensured that she will no longer be subjected to Respondent's disciplinary decision with which she disagreed. It is undisputed that Grievant ended her employment on or around

October 15, 2011. This action makes it unnecessary for the Grievance Board to act in this matter even if she had proven the action of Respondent was improper. *See Collins v. Dep't of Transp./Div. of Highways*, Docket No. 02-DOH-227/248 (Jan. 30, 2003).

Grievant's resignation from her employment has rendered the issue of her 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]." *Fizer*, *supra*, *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 after the level one hearing, rendering her grievance moot. 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 now moot. Accordingly, this grievance must be dismissed.

The following conclusions of law support the dismissal of this grievance.

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

2. Grievant's resignation from her 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: December 9, 2011

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Ronald L. Reece
Administrative Law Judge