THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

SHARON MARIE MICHAEL-PLATI,
Grievant,

v. **Docket No. 2010-0954-HamED**

HAMPSHIRE COUNTY BOARD OF EDUCATION,
Respondent.

DISMISSAL ORDER

Grievant, Sharon Marie Michael-Plati, grieves her dismissal by her employer, the Hampshire County Board of Education. Grievant was dismissed by letter dated December 10, 2009, on the grounds of willful neglect of duty after she failed to report to work. This grievance was denied at level one. Level two mediation was unsuccessful. Respondent filed a Motion to Dismiss on August 12, 2011. Grievant responded to this motion on August 20, 2011. The undersigned Administrative Law Judge conducted a phone conference addressing the Motion to Dismiss on September 12, 2011. Grievant appeared and represented herself. Respondent appeared by its counsel, Denise M. Spatafore, Dinsmore & Shohl LLP. The matter is now mature for a ruling.

Synopsis

Grievant was off of her job as a classroom aide beginning September 23, 2005, continued to be off work for the following two years while on Workers' Compensation. Respondent provided Grievant with three different aide positions at three different schools between February of 2008 and September of 2008 in an attempt to accommodate Grievant. Each time, Grievant provided a medical statement that she could not perform the duties of the position. Grievant did not return to work at the beginning of the 2009-

2010 school year due to a compensable injury. Grievant's refusal to fulfill her contractual role as a classroom aide constituted willful neglect of duty. Grievant has presented no claim on which relief can be granted. Accordingly, Respondent's Motion to Dismiss is granted.

The following findings of fact are based upon the record of this grievance.

Findings of Fact

1. Grievant was employed as a classroom aide and was injured at work on September 23, 2005.

2. For approximately two years, Grievant received temporary total disability benefits from Workers' Compensation, along with a permanent partial disability award.

3. Beginning in early 2008, Grievant provided doctor's notes explaining her physical restrictions. Between February of 2008 and September of 2008, Respondent offered Grievant three different aide positions at three different schools. Each time, Grievant provided a medical note that she could not perform the duties of the position.

4. Based upon the most recent doctor's note, which provided that Grievant's only restrictions were climbing stairs and not driving more than twenty minutes, on September 18, 2008, Respondent transferred Grievant to an aide position at Hampshire High School that would accommodate her limitations. After being notified of the transfer, Grievant provided an additional doctor's note that indicated that she could not work with the assigned special education students.

5. Grievant remained off work, providing doctor's notes with the same restrictions, throughout the 2008-2009 school year.

6. Grievant did not return to work at the beginning of the 2009-2010 school year. Superintendent Robin Lewis and Finance Director Denise Hott held a conference with Grievant on October 23, 2009, to discuss Grievant's condition and possible return to work. Grievant stated that she was still unable to return to work in any type of position, and no accommodations were possible.

7. The Hampshire County Board of Education voted to terminate Grievant's employment on December 7, 2009, for willful neglect of duty.[1]

Discussion

Pursuant to the Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 6.11 (2008), "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."

As defined by statute, a grievance must allege "a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee." W. VA. CODE § 6C-2-2(i). The scope of the authority of the Grievance Board is limited to that set forth in the Grievance statutes. *Skaff v. Pridemore*, 200 W. Va. 700, 490 S.E.2d 787 (1997).

This grievance has suffered through delay and a somewhat contentious pattern. Grievant's first grievance form insisted on this grievance beginning at level one as the only

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[1]Pursuant to West Virginia Code, school personnel may be suspended or dismissed at any time for immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a nolo contendere to a felony charge. W. VA. CODE § 18A-2-8; *Kanawha County Bd. of Educ. v. Sloan*, 219 W. Va. 213, 632 S.E.2d 899 (2006).

statement of grievance. The grievance was denied by the superintendent on February 1, 2010. Grievant appealed to level two. Over the course of the ensuing year the mediation was scheduled and continued numerous times on Grievant's motion. In any event, Grievant amended her grievance form when appealing to level two stating, "I was terminated on Dec 7th, 2009 & had a Level One hearing & nothing has been resolved. I have been wrongfully been [sic] terminated for not returning to work when there are no jobs for me to return to with my restrictions." Grievant seeks, "job within restrictions of my doctor." This case presents an unfortunate situation; however, the undersigned agrees with Respondent that, under these circumstances, Grievant fails to state a claim upon which relief can be granted.

The undisputed facts of this grievance demonstrate that on multiple occasions the Respondent offered Grievant work assignments that were within her doctor's restriction. Grievant continued to refuse the assignments and offered additional doctor's notes to provide the reasons for her refusals. Respondent made clear during the phone conference to discuss this matter that Grievant was not dismissed for any reason related to her work performance. Respondent's actions were motivated due to the fact that Grievant has been unable to work in any capacity since 2005.[2]

The phone conference in the matter made apparent that Respondent would be more than willing to provide any documentation that Grievant may need in pursuing other

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[2]While the issue of Grievant's Workers' Compensation claim was not developed in this grievance, the Grievance Board has previously ruled that once an employee's Workers' Compensation claim has concluded, and the employee refuses to return to work, the employee may be dismissed. *Addair v. W. Va. Dep't of Health and Human Resources*, Docket No. 03-HHR-147 (Feb. 2, 2004).

assistance from other government agencies, and that Grievant recognized that she could not identify a claim upon which relief could be granted. It is understandable that Grievant was concerned about any stigma attached to the termination of her contract, and that is why the undersigned goes to some length to point out the unfortunate facts behind the Respondent's action. Respondent has demonstrated that they attempted to accommodate Grievant's restrictions long before this grievance was filed, to no avail. The undersigned explained to Grievant that even if she were to prevail upon the merits, an order to put Grievant back to work would be meaningless given her current medical restrictions. Grievant offered no objection. Respondent has demonstrated by a preponderance of the evidence that Grievant presents no claim upon which relief can be granted and a remedy wholly unavailable to the grievant is requested.

The following conclusions of law support the ruling set out in this order.

Conclusions of Law

1. "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." Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 6.11 (2008).

2. This grievance presents no claim on which relief can be granted and the remedy requested is wholly unavailable.

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 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: September 21, 2011

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Ronald L. Reece
Administrative Law Judge