THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

KAREN J. ROBINSON,
Grievant,

v. **Docket No. 2010-1579-DHHR**

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

DISMISSAL ORDER

Grievant, Karen Robinson, filed this grievance on June 15, 2010, against her employer, William R. Sharpe, Jr. Hospital. Her statement of grievance reads, "Hostile Work Environment." For relief, Grievant seeks, "To be made whole."

A level one hearing was held on September 14, 2010. Grievant was represented by Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent was represented by Terry Small, Acting Chief Executive Officer of Sharpe Hospital. On October 1, 2010, the level one Grievance Evaluator issued a written decision denying the grievance. Thereafter, the parties agreed in principal to a Settlement Agreement and Release, which moved Grievant from the alleged hostile work environment.

The grievance was placed in abeyance by Order entered on March 2, 2011. The Grievance Board noticed this for a level three hearing before the undersigned Administrative Law Judge for October 29, 2012. Respondent filed a Motion to Dismiss on October 19, 2012. Grievant was given until October 26, 2012, to file a response, but did

not respond to the Motion to Dismiss. After the level one hearing, Respondent was represented by its counsel, James "Jake" Wegman, Assistant Attorney General. The Motion to Dismiss is now mature for a ruling.

Synopsis

Respondent asserts that Grievant received her relief requested in this matter, and the grievance is now moot. Grievant argues that her supervisor created a hostile work environment. The proposed Settlement Agreement moved Grievant so that she was no longer supervised by the same co-worker. In addition, her co-worker left employment at Sharpe Hospital on April 2, 2011. Grievant has received complete relief in this grievance, and the case is now moot.

The following findings of fact are undisputed.

Findings of Fact

1. Grievant filed this grievance on June 10, 2010, alleging a hostile work environment.

2. Grievant argued that her supervisor, Craig Hyre, created the hostile work environment.

3. The parties agreed in principal to a Settlement Agreement and Release on or about May 10, 2011. This settlement moved Grievant from the Maintenance Department to Fiscal Services. Mr. Hyre was removed as Grievant's supervisor.

4. For reasons not reflected in the record, Grievant and her representative have refused to sign the Settlement Agreement and have also declined to propose edits or modifications to the agreement.

5. Mr. Hyre left employment at Sharpe Hospital on April 2, 2011.

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."

Respondent moves that the undersigned dismiss this grievance because the relief that Grievant sought has been provided and no additional relief can be granted. In addition, the grievance is now 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]." *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).

It is undisputed that Grievant was moved away from the supervisor that she alleged had created a hostile work environment. In addition, this employee is no longer working at Sharpe Hospital. The only issue raised in her statement of grievance is this allegation of a hostile work environment. While her relief sought is somewhat unclear, it is clear to the undersigned that she has been provided complete relief from the employee that allegedly created the hostile work environment. Accordingly, this grievance is now moot.

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

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. When it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the questions raised by this grievance would merely be an advisory opinion.

4. Because Grievant has been provided complete relief from the employee that allegedly created the hostile work environment this grievance is now 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: November 9, 2012

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Ronald L. Reece
Administrative Law Judge