THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

TERRENCE E. OLSON,
Grievant,

v. **DOCKET NO. 2012-1083-MU**

MARSHALL UNIVERSITY,
Respondent.

DISMISSAL ORDER

Grievant, Terrence E. Olson, filed a grievance against his employer, Marshall University, on April 9, 2012. The statement of grievance reads:

> On March 28th, 2012 Chief James Terry told me that he had to take my firearm, because of my illness, until I had been seen by the University Doctor. It should be noted that I had already had my own Doctor send a letter about my physical condition. My understanding from Chief Terry was that if their Doctor approved it, I would be reissued my firearm. It should also be noted that no Officer who has been off on medical leave has ever had to especially qualify with their weapon before coming back to work. We just qualify on the next scheduled date. The treatment towards me handles me in a different way.

As relief Grievant sought, "[i]mmediate reissue of my firearm, a list of persons involved in making the decision to take my firearm, and a written apology from all persons involved in the decision to take my firearm."

A hearing was held at level one on April 19, 2012. While the grievance was denied at that level, it was recommended that Grievant be given the opportunity to qualify with the firearm. Grievant was allowed to do so, but he did not obtain a passing score. Grievant appealed to level two on or about May 11, 2012. On or about June 19, 2012, Respondent filed a Motion to Dismiss this grievance, on the grounds that the grievance was moot. On

June 22, 2012, Grievant objected to the dismissal of the grievance. Grievant did not voice any disagreement with the facts as set forth in the Motion to Dismiss, nor did he state grounds for his objection other than stating that, "[m]y lack of recieving [sic] due process is well documented." Grievant appears *pro se*, and Respondent is represented by Jendonnae L. Houdyschell, Senior Assistant Attorney General. This matter is mature for consideration.

Synopsis

On March 26, 2012, Grievant was temporarily re-assigned from patrol duties to dispatch duties to accommodate his medical condition, and was asked to turn in his service weapon. Grievant then requested and was granted a medical leave of absence beginning June 1, 2012, and ending December 2, 2013. Grievant has requested that he be allowed to retire effective December 3, 2013. There is no relief that can be granted, and this grievance is moot.

The following Findings of Fact are made based on the documentation submitted with the Motion to Dismiss.

Findings of Fact

1. Grievant is employed by Marshall University ("MU"). On March 26, 2012, he was re-assigned from patrol duties to dispatch duties to accommodate his medical condition, and was thereafter asked to turn in his service weapon.

2. Grievant requested and was granted a medical leave of absence beginning June 1, 2012, and ending December 2, 2013. Grievant has requested that he be allowed

to retire effective December 3, 2013. Absent some change in circumstances, Grievant will not be returning to work at Marshall.

Discussion

The Procedural Rules of the W. Va. Public Employees Grievance Board provide that, "[a] grievance may be dismissed, in the discretion of the administrative law judge, if no claim upon which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested." 156 C.S.R. 1 § 156-1-6 6.11(2007).

> When there is no case in controversy, the Grievance Board will not issue advisory opinions. *Brackman v. Div. of Corr./Anthony Corr. Center,* Docket No. 02-CORR-104 (Feb. 20, 2003); *Gibb v. W. Va. Div. of Corr.*, Docket No. 98-CORR-152 (Sept. 30, 1998). In addition, 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]." *Bragg v. Dept. 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).

Pritt, et al., v. Dep't of Health and Human Res., Docket No. 2008-0812-CONS (May 30, 2008). In situations where "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).

This Grievance Board has continuously refused to address issues when the relief sought is "speculative or premature, or otherwise legally insufficient." *Stepp v. Dep't. of Trans./Div. of Highways,* Docket No. 06-DOH-215 (Oct 27, 2006) citing *Dooley v. Dep't. of Trans./Div. of Highways*, 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). "[R]elief 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 County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993). Typically, a Grievant must show "an injury-in-fact, economic or otherwise" to have what "constitutes a matter cognizable under the grievance statute." *Lyons v. Wood County Bd. of Educ.*, Docket No. 89-54-601 (Feb. 28, 1990); *Dunleavy v. Kanawha County Bd. of Educ.*, Docket No. 20-87-102-1 (June 30, 1987). Thus, relief such as a public apology, which Grievant has listed in his relief sought, is not available from this Grievance Board. *Emrick v. Wood County Bd. of Educ.*, Docket No. 03-54-300 (Mar. 9, 2004); *Hall v. W. Va. Div. of Corr.*, Docket No. 89-CORR-687 (Oct. 19, 1990). "The Grievance Board has also held, 'a letter stating that actions of certain employees were inappropriate is in the nature of a request for an apology, which is not available from this Grievance Board.' *Emrick, supra*." *Lawrence v. Bluefield State College*, Docket No. 2008-0666-BSC (June 19, 2008).

Grievant seeks to have his firearm returned, a list of names, and an apology. However, Grievant has been granted a medical leave of absence for the next year and a half. Absent some change in circumstances, Grievant will not ever return to work. Grievant's firearm cannot be returned to him if he does not return to work, and the

Grievance Board does not award relief such as an apology. Requiring Respondent to provide Grievant with a list of names of those involved in the decision to take his firearm serves no purpose. There is no relief which can be granted given the current circumstances, and this grievance is moot.

The following Conclusions of Law support the Dismissal of this grievance.

Conclusions of Law

1. The Procedural Rules of the W. Va. Public Employees Grievance Board provide that, "[a] grievance may be dismissed, in the discretion of the administrative law judge, if no claim upon which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested." 156 C.S.R. 1 § 156-1-6 6.11(2007).

2. "[T]he 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].' *Bragg v. Dept. 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)." *Pritt, et al., v. Dep't of Health and Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008).

3. In instances where "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).

4. "[R]elief 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 County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993).

Accordingly, this grievance is **DISMISSED** from the docket of the Grievance Board.

Any party may appeal this Dismissal Order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Dismissal 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 appealing party must also provide the Board with the civil action number so that the certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

BRENDA L. GOULD
Acting Deputy Chief
Administrative Law Judge

Date: July 16, 2012