THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

KAELAN ROMAN,
Grievant,

v. **Docket No. 2011-0389-CONS**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
HOPEMONT HOSPITAL,
Respondent.

DISMISSAL ORDER

Kaelan Roman, Grievant, filed her first grievance against her employer, Hopemont Hospital, on May 5, 2010, challenging an attendance improvement plan. Grievant filed her second grievance on September 16, 2010, challenging her termination on September 13, 2010. These two grievances were consolidated into the instant grievance. Respondent filed a Motion to Dismiss both of these grievances on January 20, 2011. For reasons more fully stated below, this motion is granted. Respondent appears in this matter by its counsel, James Wegman, Assistant Attorney General. Grievant appears by her representative, Gordon Simmons, UE Local 170. Grievant and her representative were given a considerable amount of time to respond to the motion, and provide some status on her intent to pursue the matter; however, no response or status was provided. Accordingly, the Motion to Dismiss is mature for consideration.

Synopsis

Respondent moves the Grievance Board to dismiss the grievances as the Grievant appears to have abandoned her grievances. In addition, Grievant has failed to pursue her

grievance after the matter was scheduled by the Grievance Board for a level three hearing on at least two occasions. Grievant's whereabouts are also unknown. The undersigned gave Grievant and her representative ample time to respond to this motion, and provide a status update. None was forthcoming. Accordingly, the undersigned views this motion as unopposed and grants the Respondent's request.

The following findings of fact are undisputed.

Findings of Fact

1. Following the consolidation of the two grievances, a level three hearing was scheduled to be held on July 20, 2011. This hearing was continued at the request of the Grievant.

2. Another level three hearing was scheduled for January 25, 2012. Grievant's representative requested that this hearing be continued. It was then called into question by Respondent whether or not the location of Grievant was known. Grievant's representative was unable to answer that question.

3. Respondent filed a Motion to Dismiss based upon the Grievant appearing to have abandoned her grievance. Respondent alleges that elements of the grievance have also become moot with the passage of time.

Discussion

Rules of Practice and Procedure of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 156-1-6 6.2 provides that an, "administrative law judge has the authority and discretion to control the processing of each grievance assigned such judge and to take any action considered appropriate consistent with the provisions of W. VA. CODE § § 6C-2-1,

et seq." The issue before the undersigned Administrative Law Judge is Respondent's Motion to Dismiss. The burden of proof is on Respondent to demonstrate the motion should be affirmed by a preponderance of the evidence.

The Grievance Board has a long history in which cases have been dismissed for failure to pursue because a grievant failed to respond to several letters, failed to attend a scheduled hearing without proper request, and/or the Grievance Board received undelivered mail because of an unreported change of address. As with the prior cases, this case will be decided only on the undisputed facts.

It is hereby noted that this case was previously scheduled for hearing on two occasions and that, thereafter, the location of Grievant became unknown. The undersigned made repeated requests to Grievant's representative to provide some update on whether or not Grievant wished to pursue her grievances. No response was provided to either the Motion to Dismiss or Grievant's intention to pursue her grievances.

Accordingly, the undersigned finds that Respondent's Motion to Dismiss is well-founded, and it is hereby **GRANTED**. The grievance is **Ordered** dismissed from the docket of the Grievance Board.

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 § 6.19 (eff. Dec. 27, 2007).

Date: April 9, 2012

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Ronald L. Reece
Administrative Law Judge