THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

REGINA PENNINGTON SHORT,

Grievant,

v. **Docket No. 2012-0492-DHHR**

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCE/ BUREAU FOR CHILDREN AND FAMILIES, REGION IV,

Respondent.

DISMISSAL ORDER

Grievant, Regina Pennington Short, filed a grievance against her employer, Department of Health and Human Resources, Bureau for Children and Families, on November 1, 2011. In her grievance, Grievant challenged the delay in her receiving expense reimbursements and the treatment received from her supervisors. Grievant seeks to "(1) Be treated fairly and with respect, (2) Be paid the money I am owed and in the future receive it in a timely manner, and (3) Be supplied with equipment that works."

On November 10, 2011, a Notice of Waiver was issued by the Level One Grievance Evaluator, stating that as this matter involved a compensation matter, she had no authority to determine such matter. As such, pursuant to 156 C.S.R. 1 § 4.3.3, this grievance was waived to Level Two. A Level Two mediation was scheduled to be conducted on September 10, 2012. On June 21, 2012, Respondent filed a Motion to Dismiss. On July 5, 2012, a telephonic hearing on this Motion to Dismiss was conducted by William B. McGinley, Acting Chief Administrative Law Judge.[1] At this telephonic hearing, Grievant appeared without counsel. Respondent appeared by

[1] For administrative purposes, this matter was reassigned to the undersigned administrative law judge on July 6, 2012.

counsel, Michael E. Bevers, Esq., Assistant Attorney General. This matter is now mature for consideration.

Synopsis

Grievant filed a grievance regarding expense reimbursements due her from Respondent. Grievant resigned from her position with Respondent effective June 8, 2012, after the filing of her grievance, but before the scheduled Level Two mediation. Grievant's resignation from her employment with Respondent rendered her grievance moot. Accordingly, this grievance is DISMISSED.

Findings of Fact

1. Grievant was employed by Respondent Department of Health and Human Resources, Bureau for Children and Families, as a Child Protective Service Worker.

2. On November 10, 2011, the Level One grievance evaluator waived this matter to Level Two of the grievance process because it concerned issues of compensation.

3. The Level Two mediation was scheduled for September 10, 2012.

4. By letter dated May 30, 2012, Grievant resigned her position with Respondent.

5. Grievant's resignation from her position with Respondent became effective on June 8, 2012.

6. The expenses at issue in the original grievance have now been paid in full.

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: "'Employee' means any person hired for permanent employment by an employer for a probationary, full- or part-time position." W. VA. CODE § 6C-2-2(e)(1). 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.” *See,* W. VA. CODE § 6C-2-2(i). Only an employee may file a grievance. *See,* W. VA. CODE § 6C-2-2(a)(1).

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). It is undisputed that Grievant ended her employment on or around June 8, 2012. 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 issues raised in her grievance moot. A decision on this grievance either granting or denying the relief sought would have no effect on Grievant's employment. There are no issues of back pay or benefits that have been raised or argued by Grievant that need to be addressed. 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). Any 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: August 6, 2012.

_____

Carrie H. LeFevre
Administrative Law Judge