THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

DONNA V. MORGAN,
Grievant,

v. **Docket No. 2012-0480-DEA**

DIVISION OF REHABILITATION SERVICES,
Respondent.

DISMISSAL ORDER

Grievant, Donna Morgan, filed this grievance at level one on November 3, 2011, stating that "Employee was subjected to 59 [degrees] for over 3[.5] hours." Her relief sought indicates that "if the temperature is below 68 degrees employees are to be sent home without having to take leave." The grievance was denied at level one. A level two mediation session was conducted on August 24, 2012. Grievant appealed to level three on September 8, 2012. Respondent filed a Motion to Dismiss this grievance on September 25, 2012. Grievant was provided an opportunity to respond to this Motion to Dismiss, but did not do so. Grievant appeared by her representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent appeared by its counsel, Katherine A. Campbell, Assistant Attorney General. The matter is now mature for a ruling.

Synopsis

Grievant is requesting relief in the form of a new policy being created by Respondent. The undersigned is without authority to order such relief. 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 undisputed.

Findings of Fact

1. Grievant is employed by Respondent and assigned to work in a federal government building located in Clarksburg, West Virginia.

2. On the day in question, a heating problem developed in the building and was reported to the appropriate officials. The maintenance crew worked on fixing the heating problem on the same day.

3. This grievance was filed on the day of the occurrence. Grievant seeks an order establishing a policy that employees should be sent home if the temperature of the building is 68 degrees or below.

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."

Grievant, in essence, seeks an order establishing a policy that employees should be sent home if the temperature of the building is 68 degrees or below. "The undersigned has no authority to require an agency to adopt a policy or to make a specific change in a policy, absent some law, rule or regulation which mandates such a policy be developed or changed. *Skaff v. Pridemore*, 200 W. Va. 700, 490 S.E.2d 787 (1997); *Olson v. Bd. of Trustees*, Docket No. 99-BOT-513 (Apr. 5, 2000); *Gary and Gillespie v. Dep't of Health and*

Human Resources, Docket No. 97-HHR-461 (June 9, 1999)." *Frame v. Dep't of Health and Human Res.,* Docket No. 00-HHR-240/330 (April 20, 2001).

Based upon the above, no claim upon which relief can be granted is stated and the remedy requested is wholly unavailable to the Grievant; these facts present no case in controversy. 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).

The following conclusions of law support the dismissal of this grievance.

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. "The undersigned has no authority to require an agency to adopt a policy or to make a specific change in a policy, absent some law, rule or regulation which mandates such a policy be developed or changed. *Skaff v. Pridemore*, 200 W. Va. 700, 490 S.E.2d 787 (1997); *Olson v. Bd. of Trustees*, Docket No. 99-BOT-513 (Apr. 5, 2000); *Gary and Gillespie v. Dep't of Health and Human Resources,* Docket No. 97-HHR-461 (June 9, 1999)." *Frame v. Dep't of Health and Human Res.,* Docket No. 00-HHR-240/330 (April 20, 2001).

3. This grievance presents no claim upon which relief can be granted and a remedy wholly unavailable is requested.

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: October 25, 2012

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Ronald L. Reece
Administrative Law Judge