WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

KIMBERLY ANN PORTER,
Grievant,

v. **Docket No. 2012-1165-DHHR**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
MILDRED MITCHELL-BATEMAN HOSPITAL
Respondent.

DISMISSAL ORDER

On April 20, 2012, Kimberly Ann Porter, Grievant, filed this grievance against the Department of Health and Human Resources/Mildred Mitchell-Bateman Hospital (MMBH), Respondent, at Level One of the Grievance procedure, stating "Have been made to work out of classification since July 27, 2009." As relief, Grievant seeks "I would like for the additional full time job that was assigned to me (outside medical consults) on July 27, 2009 be posted and filled by another employee. I would like to continue to perform all of my original job duties of an OA II in the Admissions Department at MMBH."

On July 30, 2013, Respondent submitted a *Motion to Dismiss* in the above-styled grievance matter on the grounds that this instance grievance is moot. On August 8, 2013, a telephonic hearing was conducted with regard to Respondent's *Motion to Dismiss*. Present by telephone were Gordon Simmons, representative for Grievant and B. Allen Campbell, Supervising Senior Assistant Attorney General, counsel for Respondent.

The following Findings of Fact are made based on the documentation submitted and testimony from the telephonic hearing on August 8, 2013.

Findings of Fact

1. Grievant, Kimberly Ann Porter, was employed by Respondent as an Office Assistant II (OA II).

2. Grievant filed a grievance on April 20, 2012, asserting that she had been working out of her classification since July 27, 2009, and requesting that the additional job duties assigned to her (outside medical consults) be posted and filled by another employee. Grievant further requests to continue to perform all of her original duties of an Office Assistant II in the Admissions Department at MMBH.

3. The Division of Personnel (DOP) determined that the additional duties assumed by Grievant were duties consistent with an OA II classification and that this grievance was simply about whether Respondent had the authority to assign the additional duties. Consequently, DOP was dismissed as a party to this action by Order dated June 4, 2013.

4. Grievant voluntarily resigned her position in writing effective April 30, 2013.

5. Grievant did not seek any monetary relief in her grievance and changing the duties assigned to her prior position after her resignation would be meaningless.

Discussion

As set out in a recent West Virginia Supreme Court decision, *Joseph Komorowski v. Marshall County Board of Education*, No. 11-1659 and 11-1767

(Kanawha County 11-AA-52 and 09-AA-67), this grievance is moot because Grievant voluntarily resigned while her grievance was pending. Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not proper issues before the Public Employees Grievance Board. *Id.* This grievance is moot, because the relief sought by Grievant is not available from the Grievance Board after her resignation. Consequently, the grievance must be dismissed.

"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).

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. 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). *See also Joseph Komorowski v. Marshall County Board of Education*, No. 11-1659 and 11-1767 (Kanawha County 11-AA-52 and 09-AA-67).

3. Because the relief sought by Grievant is no longer available after her voluntary resignation, the grievance is moot and must be dismissed pursuant to Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 6.11 (2008).

Accordingly, the grievance is **DISMISSED.**

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).

DATE: AUGUST 19, 2013

_____
WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE