

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**MARIA KAZDA,
Grievant,**

v.

Docket No. 2023-0868-DOE

**WEST VIRGINIA DEPARTMENT OF EDUCATION,
Respondent.**

DISMISSAL ORDER

Maria Kazda, Grievant, filed this action against her former employer, West Virginia Schools of Diversion and Transition, on May 19, 2023. Grievant alleges that “[O]n May 12, 2023, I was informed that I would no longer be working for WSDST because I was banned from the host agency property. The reason given was: On May 11, 2023 Jacob Green [WVSDT Superintendent] received a copy of a letter from Steve Fraley, Executive Director of Academy Programs indicating that it has been alleged by one of his staffmembers (sic) that you referred to a group of students in the substance abuse program as ‘druggies.’” Grievant seeks “to be compensated at my full rate until I can find another suitable place of employment and damages for creating a toxic work environment which included slander and bullying leading to health issues.” This case was filed directly to level three of the grievance process on or about May 19, 2023. Respondent filed a Motion to Dismiss the grievance on June 8, 2023. Grievant was provided an opportunity to respond to the Motion to Dismiss by June 26, 2023. Grievant did not respond. This motion is mature for a ruling. The West Virginia Department of Education appears by Anthony D. Eates II, Deputy Attorney General. Grievant appears by Philip Reale II, Esquire.

Synopsis

Grievant was employed by Respondent as a math teacher in the West Virginia Department of Education's Schools of Diversion and Transition. By letter dated May 10, 2023, Academy Programs notified the West Virginia Department of Education that, because of Grievant's unprofessional conduct, Grievant was no longer permitted to access their property effective May 23, 2023. The West Virginia Department of Education placed Grievant on administrative leave with pay on May 12, 2023. The West Virginia Department of Education notified Grievant it planned to recommend her termination to the State Superintendent of Schools. Respondent moved to dismiss the grievance because Grievant has failed to state a claim for which relief can be granted. Grievant resigned by letter dated May 22, 2023. Grievant's request for damages is not available because the Grievance Board does not have the authority to award "tort-like" damages. It is undisputed that Grievant resigned her employment by letter dated May 22, 2023. As Grievant is grieving the circumstances of her employment and her prospective dismissal, the grievance is moot. This case is dismissed.

The following Findings of Fact are based on the undisputed facts of this case.

Findings of Fact

1. Grievant was employed as a math teacher in the West Virginia Department of Education's Schools of Diversion and Transition (WVSDT). The WVSDT provides educational services to over 6, 000 juveniles and adults in residential and other state-operated facilities.

2. Grievant's employment was at-will.

3. Grievant was assigned to teach math at Academy Programs, located in Fairmont, West Virginia. Academy Programs provides residential and in-home services for children with behavioral disorders.

4. By letter dated May 10, 2023, Academy Programs notified the West Virginia Department of Education that, because of Grievant's unprofessional conduct, Grievant was no longer permitted to access their property effective May 23, 2023.

5. The West Virginia Department of Education placed Grievant on administrative leave with pay on May 12, 2023. The West Virginia Department of Education notified Grievant it planned to recommend her termination to the State Superintendent of Schools. Grievant was never terminated.

6. Grievant filed the present grievance on May 19, 2023, directly to level three. For relief, Grievant seeks to be compensated until she can find other employment and money damages.

7. Grievant resigned by letter dated May 22, 2023.

Discussion

"Grievances may be disposed of in three ways: by decision on the merits, nonappealable dismissal order, or appealable dismissal order." W. VA. CODE ST. R. § 156-1-6.19. "Nonappealable dismissal orders may be based on grievances dismissed for the following: settlement; withdrawal; and, in accordance with Rule 6.15, a party's failure to pursue." W. VA. CODE ST. R. § 156-1-6.19.2. "Appealable dismissal orders may be issued in grievances dismissed for all other reasons, including, but not limited to, failure to state a claim or a party's failure to abide by an appropriate order of an administrative law judge. Appeals of any cases dismissed pursuant to this provision are to be made in

the same manner as appeals of decisions on the merits.” W. VA. CODE ST. R. § 156-1-6.19.3. “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.” W. VA. CODE ST. R. § 156-1-6.11. “Any party asserting the application of an affirmative defense bears the burden of proving that defense by a preponderance of the evidence.” W. VA. CODE ST. R. § 156-1-3 (2018).

Part of the remedy sought by Grievant is money damages, which would be considered “tort-like” damages. “Tort” is a legal term that means “A private or civil wrong or injury. . .for which the court will provide a remedy in the form of an action for damages.” BLACK’S LAW DICTIONARY 1489 (6th ed. 1990). The Grievance Board is an administrative agency and not a court. “Administrative agencies and their executive officers are creatures of statute and delegates of the Legislature. Their power is dependent upon statutes, so that they must find within the statute warrant for the exercise of any authority which they claim. They have no general or common-law powers but only such as have been conferred upon them by law expressly or by implication.” Syl. Pt. 4, *McDaniel v. W. Va. Div. of Labor*, 214 W. Va. 719, 591 S.E.2d 277 (2003) (citing Syl. Pt. 3, *Mountaineer Disposal Service, Inc. v. Dyer*, 156 W. Va. 766, 197 S.E.2d 111 (1973)). The Grievance Board is not authorized by statute to hear tort claims or award damages other than restoration of lost wages. “Damages such as medical expenses, mental anguish, stress, and pain and suffering are generally viewed as ‘tort-like’ damages which have been found to be unavailable under the Grievance Procedure. *Dunlap v. Dept of Environmental Protection*, Docket No. 2008-0808-DEP (Mar. 20, 2009). *Spangler v. Cabell County Board of Education*, Docket No. 03-06-375 (March 15, 2004); *Snodgrass*

v. Kanawha County Bd. of Educ., Docket No. 97-20-007 (June 30, 1997).” *Stalnaker v. Div. of Corrections*, Docket No. 2013-1084-MAPS (Mar.26, 2014); See *Vest v. Bd. of Educ. of County of Nicholas*, 193 W. Va. 222, 225, 227 n. 11 (1995). Grievant’s request for money damages is wholly unavailable from the Grievance Board.

It is undisputed that Grievant resigned her employment with Respondent. The grievance process is intended to provide a forum for public employees to address grievances with their employees. W. VA. CODE § 6C-2-1(a). 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). There is no remedy that the undersigned can grant Grievant. Therefore, the grievance is moot.

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

Conclusions of Law

1. “Grievances may be disposed of in three ways: by decision on the merits, nonappealable dismissal order, or appealable dismissal order.” W. VA. CODE ST. R. § 156-1-6.19. “Nonappealable dismissal orders may be based on grievances dismissed for the following: settlement; withdrawal; and, in accordance with Rule 6.15, a party’s failure to pursue.” W. VA. CODE ST. R. § 156-1-6.19.2. “Appealable dismissal orders may be issued in grievances dismissed for all other reasons, including, but not limited to, failure to state a claim or a party’s failure to abide by an appropriate order of an administrative

law judge. Appeals of any cases dismissed pursuant to this provision are to be made in the same manner as appeals of decisions on the merits.” W. VA. CODE ST. R. § 156-1-6.19.3.

2. “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.” W. VA. CODE ST. R. § 156-1-6.11. “Any party asserting the application of an affirmative defense bears the burden of proving that defense by a preponderance of the evidence.” W. VA. CODE ST. R. § 156-1-3 (2018).

3. “Administrative agencies and their executive officers are creatures of statute and delegates of the Legislature. Their power is dependent upon statutes, so that they must find within the statute warrant for the exercise of any authority which they claim. They have no general or common-law powers but only such as have been conferred upon them by law expressly or by implication.” Syl. Pt. 4, *McDaniel v. W. Va. Div. of Labor*, 214 W. Va. 719, 591 S.E.2d 277 (2003) (citing Syl. Pt. 3, *Mountaineer Disposal Service, Inc. v. Dyer*, 156 W. Va. 766, 197 S.E.2d 111 (1973)).

4. “Damages such as medical expenses, mental anguish, stress, and pain and suffering are generally viewed as ‘tort-like’ damages which have been found to be unavailable under the Grievance Procedure. *Dunlap v. Dept of Environmental Protection*, Docket No. 2008-0808-DEP (Mar. 20, 2009). *Spangler v. Cabell County Board of Education*, Docket No. 03-06-375 (March 15, 2004); *Snodgrass v. Kanawha County Bd. of Educ.*, Docket No. 97-20-007 (June 30, 1997).” *Stalnaker v. Div. of Corrections*, Docket No. 2013-1084-MAPS (Mar.26, 2014); *See Vest v. Bd. of Educ. of County of Nicholas*, 193 W. Va. 222, 225, 227 n. 11 (1995).

5. Grievant's request for money damages is wholly unavailable from the Grievance Board.

6. "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).

7. Since Grievant is no longer an employee of Respondent, the issues raised in this grievance are moot.

Accordingly, this grievance is **Dismissed**.

Any party may appeal this Dismissal Order to the Intermediate Court of Appeals.¹ Any such appeal must be filed within thirty (30) days of receipt of this Dismissal Order. 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 named

¹On April 8, 2021, Senate Bill 275 was enacted, creating the Intermediate Court of Appeals. The act conferred jurisdiction to the Intermediate Court of Appeals over "[f]inal judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to §29A-5-4 or any other provision of this code[.]" W. VA. CODE § 51-11-4(b)(4). The West Virginia Public Employees Grievance Procedure provides that an appeal of a Grievance Board decision be made to the Circuit Court of Kanawha County. W. VA. CODE § 6C-2-5. Although Senate Bill 275 did not specifically amend W. VA. CODE § 6C-2-5, it appears an appeal of a decision of the Public Employees Grievance Board now lies with the Intermediate Court of Appeals.

as a party to the appeal. However, the appealing party is required to serve a copy of the appeal petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

Date: August 8, 2023

Ronald L. Reece
Administrative Law Judge