

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

STEPHANIE JO STOUT,

Grievant,

v.

Docket No. 2023-0089-LewED

LEWIS COUNTY BOARD OF EDUCATION,

Respondent.

DISMISSAL ORDER

Grievant, Stephanie Jo Stout, was employed by Respondent, Lewis County Board of Education. On July 29, 2022, Grievant filed this grievance against Respondent stating:

The hiring of Jane Lew Elementary Physical Educ. Teacher, posting #1102 on Monday, July 25, 2022. I was not hired for this position because I was a victim of discrimination based on age with regard to a position a substantially younger, less qualified woman received. In doing so the county violated the WV Human Rights Act Code 5-11-9 and Title 126-126-6.2 Legislative Rule Board of Education.

As relief, Grievant requested:

The Jane Lew Elementary Physical Education Teaching position. Lost back and front pay for the time I do not hold that position. All expenses and attorney's fees I incur.

Following the level one conference, a level one decision denying the grievance was rendered on October 18, 2022. Grievant appealed to level two of the grievance process on October 31, 2022. Grievant appealed to level three on March 9, 2023. Grievant, who is self-represented, did not respond to multiple attempts by this Grievance Board to schedule a level three hearing. On October 20, 2023, Respondent, via Jason Long, Esq., Dinsmore & Shohl LLP, filed a motion to dismiss. Grievant did not avail herself

of the opportunity to respond by the end of business on October 24, 2023, and failed to provide a belated response.¹

Synopsis

Grievant was employed by Respondent as a teacher when she grieved her non-selection for a different position with Respondent. Grievant resigned while her grievance was pending. The grievance process is limited to public employees. Thus, Grievant's resignation renders this grievance moot. Grievant also abandoned her grievance through her failure to pursue at level three. Accordingly, this grievance is Dismissed.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

Findings of Fact

1. Grievant, Stephanie Jo Stout, was employed as a classroom teacher by Respondent, Lewis County Board of Education, when she filed this grievance over her non-selection for a different position with Respondent.

2. Grievant resigned effective August 8, 2022, and is no longer a public employee.

3. Grievant failed to provide available level three hearing dates or respond to Respondent's motion to dismiss, and thus abandoned her grievance.

¹W. VA. CODE § 6C-2-3(c)(2) provides a short time frame for a ruling on a motion to dismiss, stating: "Motion to dismiss. -- Any party may, at any time, file a motion to dismiss asserting that the board lacks jurisdiction under §6C-2-2(i) of this code, that the grievant has otherwise failed to state a claim under this article upon which relief may be granted, or that the grievance was not timely filed. Upon filing of such a motion, the chief administrator or administrative law judge shall immediately hold in abeyance all other proceedings, and within 10 days of receipt of filing, issue a ruling on the motion or schedule the motion for a hearing."

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 (2018). “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. “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.

Respondent asserts the grievance is moot because Grievant is no longer employed by Respondent due to her voluntary resignation while the grievance was pending. Grievant provided no response. “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. Dep’t 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); *Pritt, et al., v. Dep’t of Health & Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008).

When it is not possible for any actual relief to be granted, any ruling issued by the Grievance Board would merely be an advisory opinion. *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002); *Spence v. Div. of Natural Res.*, Docket No. 2010-0149-CONS (Oct. 29, 2009). “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).

“The purpose of [the grievance statute] is to provide a procedure for the resolution of employment grievances raised by the public employees of the State of West Virginia, except as otherwise excluded in this article.” W. VA. CODE § 6C-2-1(a). “When a grievant is no longer an employee due to a voluntary resignation while a grievance is pending, ‘a decision on the merits of her grievance would be a meaningless exercise, and would merely constitute an advisory opinion.’ *Muncy v. Mingo County Bd. of Educ.*, Docket No. 96-29-211 (Mar. 28, 1997); *Wright v. Div. Motor Vehicles & Div. of Pers.*, Docket No. 2013-0714-DOT (Jul. 14, 2014).” *Samuel v. DHHR*, Docket No. 2017-2008-DHHR (Aug. 2, 2017). Grievant voluntarily resigned from her employment with Respondent. Thus, any decision on the merits of this grievance would be advisory. The grievance must therefore be dismissed as moot.

Grievant also abandoned her grievance when she failed to pursue it after her appeal to level three of the grievance process. “Abandoning a grievance is a valid reason for dismissal pursuant to W. Va. Code St. R. § 156-1-6.19.3.” *Katona v. Dept. of Health & Human Res.*, Docket No. 2018-0133-DHHR (Jan. 16, 2018). Grievant’s failure to pursue provides further cause for dismissal.

The following Conclusions of Law support the decision reached.

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 (2018). “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. “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.

2. “The purpose of [the grievance statute] is to provide a procedure for the resolution of employment grievances raised by the public employees of the State of West Virginia, except as otherwise excluded in this article.” W. VA. CODE § 6C-2-1(a).

3. “When a grievant is no longer an employee due to a voluntary resignation while a grievance is pending, ‘a decision on the merits of her grievance would be a meaningless exercise, and would merely constitute an advisory opinion.’ *Muncy v. Mingo County Bd. of Educ.*, Docket No. 96-29-211 (Mar. 28, 1997); *Wright v. Div. Motor Vehicles & Div. of Pers.*, Docket No. 2013-0714-DOT (Jul. 14, 2014).” *Samuel v. DHHR*, Docket No. 2017-2008-DHHR (Aug. 2, 2017).

4. “Abandoning a grievance is a valid reason for dismissal pursuant to W. Va. Code St. R. § 156-1-6.19.3.” *Katona v. Dept. of Health & Human Res.*, Docket No. 2018-0133-DHHR (Jan. 16, 2018).

5. Grievant’s resignation and abandonment has rendered this grievance moot. Accordingly, this grievance is **DISMISSED**.

Any party may appeal this decision to the Intermediate Court of Appeals.² Any such appeal must be filed within thirty (30) days of receipt of this decision. 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 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: November 1, 2023

JOSHUA S. FRAENKEL
Administrative Law Judge

²On 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 West Virginia 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.