

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**MARCIA L. BOOKER,
GRIEVANT,**

V.

DOCKET NO. 2024-0552-DOA

**DEPARTMENT OF ADMINISTRATION/
PUBLIC EMPLOYEES INSURANCE AGENCY,
RESPONDENT.**

DISMISSAL ORDER

Grievant, Marcia L. Booker, is employed by Respondent, Public Employees Insurance Agency. On February 15, 2024, Grievant filed this grievance against Respondent stating,¹

Statement by the Director of Operation - Charlotte Stover. - My supervisor, lead and co-worker were discussing attending church. Charlotte walk[ed] by the office and asked what was the discussion about. Someone said church and then someone else said Jesus. Then our Director back tracked and said don't talk about the because someone will file a [a grievance]. This happen[ed] on Jan. 22, 2024, I have been (1). Publicly humiliated, once again. There is a history of Charlotte not being held accountable for her misuse of her position when it comes to me.

For relief, Grievant sought

Charlotte removed from the director of operation, Charlotte has used her position to distroy and prevent those of us who will not allow her to mismanage me as a part of PEIA. I have been personally attacked by Charlotte white commended for my excellance by the policyholders but never by the Director of Operation but I've been made fun of by her. Charlotee has made it impossible for me to excel because I will never be a part of her loyalty program.

¹ The statement of grievance and relief requested are reproduced as written by Grievant on the grievance form.

Following the February 29, 2024, level one conference, a level one decision was rendered on May 20, 2024, denying the grievance. Grievant appealed to level two on June 5, 2024. On the grievance form, Grievant left the “Statement of Grievance” and “Relief Sought” portions blank. Following mediation, Grievant appealed to level three of the grievance process on August 2, 2024, stating only “Charlotte Stover’s verbal attack” with the “Relief Sought” section left blank.

On August 15, 2024, Respondent, by counsel, filed *Public Employees Insurance Agency’s Motion to Dismiss* asserting the grievance must be dismissed for failure to state a claim on which relief can be granted. Grievant responded to the motion by email on August 20, 2024, requesting to “amend the complaint” for a hearing and witness testimony and “to have Mrs. Stover disciplined for her misconduct.” On August 26, 2024, Grievant filed a second response stating that the chief administrator had failed to issue the level one decision in a timely manner and also alleging “unfair treatment” during mediation. On August 29, 2024, Respondent, by counsel filed *Public Employees Insurance Agency’s Motion to Strike Grievant’s Miscellaneous Pleading and Renewed Motion to Dismiss* alleging that Grievant had violated the confidentiality of the mediation process.

A hearing on the motion was held on September 30, 2024, before the undersigned at the Grievance Board’s Charleston, West Virginia office. Grievant appeared in person and was self-represented. Respondent appeared by counsel, William B. Hicks. During the hearing, Respondent further argued that the grievance must be dismissed as there is no remedy available to Grievant. This matter became mature for decision on the day of the hearing as the parties elected not to submit written Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant is employed by Respondent as a Customer Service Insurance Agent II. Grievant protests alleged statements made by Respondent's Director of Operations and requests the Director of Operations be removed from her position or disciplined. Respondent moved to dismiss the grievance for failure to state a claim upon which relief may be granted and for wholly unavailable remedy. Respondent proved the remedies requested by Grievant are wholly unavailable. Accordingly, the 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 is employed by Respondent as a Customer Service Insurance Agent II.
2. Charlotte Stover is Respondent's Director of Operations.
3. Grievant's immediate supervisor is Trina Sweeney, who reported to Ms. Stover.
4. Following the filing of the grievance, as part of an organizational realignment, Ms. Sweeny was promoted to the management team and now reports directly to Respondent's Director, Brian A. Cunningham.
5. Ms. Stover is no longer in Grievant's direct management chain.
6. Grievant previously raised claims regarding her Employee Performance Appraisal, denial of training, and leave in *Booker v. Pub. Emp. Ins. Agency*, Docket No. 2022-0701-DOA (Dec. 8, 2022).

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 argues the grievance must be dismissed for failure to state a claim upon which relief can be granted and because the remedy requested is unavailable. In her original grievance filing, the only relief Grievant requested was to remove Ms. Stover as the Director of Operations. Grievant left the “Relief Requested” portion of the form blank for her appeals to level two and level three. On August 20, 2024, Grievant requested to amend her requested relief to request Ms. Stover be disciplined for misconduct. As Grievant is self-represented, during the motion hearing the undersigned allowed Grievant to explain what relief Grievant was seeking. Grievant clarified that she also sought the restoration of leave, to be provided training, and for her performance appraisal to be revised.

The remedies Grievant requested to discipline Ms. Stover or remove her from her position are unavailable. "The Grievance Board is without authority, statutory or otherwise, to order that disciplinary action be taken against another employee. *Goff v. Dep't of Transp./Div. of Highways*, Docket No. 03-DOH-048 (Apr. 7, 2003); *Coster v. W. Va. Div. of Corrections*, Docket No. 98-CORR-506 (Feb. 24, 1999); *Daugherty v. Bd. of Directors*, Docket No. 93-BOD-295 (Apr. 27, 1994). See *Daggett v. Wood County Bd. of Educ.*, Docket No. 91-54-497 (May 14, 1992).¹ *Emrick v. Wood County Bd. of Educ.*, Docket No. 03-54-300 (March 9, 2004)." *Frost v. Bluefield State College*, Docket No. 2017-0472-BSC (Dec. 7, 2017) (quoting *Shaffer v. Kanawha County Bd. of Educ. & Pauley*, Docket No. 2013-0161-KanED (Sept. 19, 2013)) *aff'd*, Circuit Court of Kanawha County, No. 18-AA-7 (Apr. 24, 2018).

As to the other remedies requested by Grievant during the hearing, it does not appear appropriate to allow Grievant to amend the grievance to request these additional remedies. This grievance involves a discreet event: the alleged statements Ms. Stover made on January 22, 2024. The additional remedies requested by Grievant do not appear to relate to the specific incident grieved, but rather to her previous complaints regarding Ms. Stover, some of which have already been the subject of her prior grievance.

The remedy for proven harassment when there is no specific allowable remedy requested is to order an employer to take action to stop the harassment. See *Frost v. Bluefield State College*, Docket No. 2017-0472-BSC (Dec. 7, 2017); *Shaffer v. Kanawha County Bd. of Educ.*, Docket No. 2013-0161-KanED (Sept. 19, 2013); *Grant v. Cabell County Bd. of Educ.*, Docket No. 04-06-345 (Feb. 28, 2006); *Moreland v Bd. of Trustees*, Docket No. 96-BOT-462 (April 29, 1997). In this case, although Respondent's chief

administrator did not find that harassment took place, as part of a reorganization Grievant has been removed from the supervision of Ms. Stover. Therefore, the only other possible remedy that could be granted has already been accomplished by Respondent's removal of Grievant from Ms. Stover's supervision.

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), *aff'd*, Kanawha Cnty. Cir. Ct. Civil Action No. 02-AA-87 (Aug. 14, 2003); *Spence v. Div. of Natural Res.*, Docket No. 2010-0149-CONS (Oct. 29, 2009). The Grievance Board does not issue advisory opinions. *Priest v. Kanawha Cnty. Bd. of Educ.*, Docket No. 00-20-144 (Aug. 15, 2000); *Biggerstaff v. Mingo Cnty. Bd. of Educ.*, Docket No. 02-29-384D (Mar. 24, 2003), *aff'd*, Kanawha Cnty. Cir. Ct. Civil Action No. 03-AA-55 (Feb. 10, 2005); *Mitias v. Pub. Serv. Comm'n*, Docket No. 05-PSC-107R (Sept. 22, 2010), *aff'd*, Kanawha Cnty. Cir. Ct. Civil Action No. 10-AA-185 (Sept. 11, 2012). "Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the [Grievance Board]. *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993). Respondent proved the relief requested is wholly unavailable, which requires the grievance be dismissed.

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 Grievance Board is without authority, statutory or otherwise, to order that disciplinary action be taken against another employee. *Goff v. Dep't of Transp./Div. of Highways*, Docket No. 03-DOH-048 (Apr. 7, 2003); *Coster v. W. Va. Div. of Corrections*, Docket No. 98-CORR-506 (Feb. 24, 1999); *Daugherty v. Bd. of Directors*, Docket No. 93-BOD-295 (Apr. 27, 1994). See *Daggett v. Wood County Bd. of Educ.*, Docket No. 91-54-497 (May 14, 1992).¹ *Emrick v. Wood County Bd. of Educ.*, Docket No. 03-54-300 (March 9, 2004)." *Frost v. Bluefield State College*, Docket No. 2017-0472-BSC (Dec. 7, 2017) (quoting *Shaffer v. Kanawha County Bd. of Educ. & Pauley*, Docket No. 2013-0161-KanED (Sept. 19, 2013)) *aff'd*, Circuit Court of Kanawha County, No. 18-AA-7 (Apr. 24, 2018).

3. The remedy for proven harassment when there is no specific allowable remedy requested is to order an employer to take action to stop the harassment. See *Frost v. Bluefield State College*, Docket No. 2017-0472-BSC (Dec. 7, 2017); *Shaffer v. Kanawha County Bd. of Educ.*, Docket No. 2013-0161-KanED (Sept. 19, 2013); *Grant v.*

Cabell County Bd. of Educ., Docket No. 04-06-345 (Feb. 28, 2006); *Moreland v Bd. of Trustees*, Docket No. 96-BOT-462 (April 29, 1997).

4. When an employer seeks to have a grievance dismissed on the basis that it was not timely filed, the employer has the burden of demonstrating such untimely filing by a preponderance of the evidence. Once the employer has demonstrated a grievance has not been timely filed, the employee has the burden of demonstrating a proper basis to excuse his failure to file in a timely manner. *Higginbotham v. W. Va. Dep't of Pub. Safety*, Docket No. 97-DPS-018 (Mar. 31, 1997); *Sayre v. Mason County Health Dep't*, Docket No. 95-MCHD-435 (Dec. 29, 1995), *aff'd*, Circuit Court of Mason County, No. 96-C-02 (June 17, 1996). See *Ball v. Kanawha County Bd. of Educ.*, Docket No. 94-20-384 (Mar. 13, 1995); *Woods v. Fairmont State College*, Docket No. 93-BOD-157 (Jan. 31, 1994); *Jack v. W. Va. Div. of Human Serv.*, Docket No. 90-DHS-524 (May 14, 1991).

5. 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), *aff'd*, Kanawha Cnty. Cir. Ct. Civil Action No. 02-AA-87 (Aug. 14, 2003); *Spence v. Div. of Natural Res.*, Docket No. 2010-0149-CONS (Oct. 29, 2009).

6. The Grievance Board does not issue advisory opinions. *Priest v. Kanawha Cnty. Bd. of Educ.*, Docket No. 00-20-144 (Aug. 15, 2000); *Biggerstaff v. Mingo Cnty. Bd. of Educ.*, Docket No. 02-29-384D (Mar. 24, 2003), *aff'd*, Kanawha Cnty. Cir. Ct. Civil Action No. 03-AA-55 (Feb. 10, 2005); *Mitias v. Pub. Serv. Comm'n*, Docket No. 05-PSC-107R (Sept. 22, 2010), *aff'd*, Kanawha Cnty. Cir. Ct. Civil Action No. 10-AA-185 (Sept. 11, 2012).

7. "Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the [Grievance Board]. *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993).

8. Respondent proved the relief requested is wholly unavailable.

Accordingly, the grievance is **DISMISSED**.

"An appeal of the decision of the administrative law judge shall be to the Intermediate Court of Appeals in accordance with §51-11-4(b)(4) of this code and the Rules of Appellate Procedure." W. VA. CODE § 6C-2-5(b). Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such an appeal and should not be named as a party to the appeal. However, the appealing party must serve a copy of the petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b) (2024).

DATE: November 14, 2024

Billie Thacker Catlett
Chief Administrative Law Judge