

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**MARY J. STROUD,**

**Grievant,**

**v.**

**Docket No. 2016-0015-DVA**

**DEPARTMENT OF VETERANS ASSISTANCE,**

**Respondent.**

**DISMISSAL ORDER**

Grievant, Mary J. Stroud, filed the instant grievance against her employer, Respondent, Department of Veterans Assistance, dated July 9, 2015, alleging she was falsely accused of breaking the chain of command. As relief, Grievant sought: "Remove verbal reprimand from employee file and follow policies and procedures set forth by Dept. of Veterans Assistance and Supervisors Guide to Progressive Corrective + Disciplinary Action."

A level one hearing was held on July 24, 2015, and a decision denying the grievance was rendered on July 29, 2015. Grievant appealed to level two on August 4, 2015. Following unsuccessful mediation, Grievant appealed to level three on September 3, 2015. A level three hearing was conducted by the undersigned on October 20, 2015. At the level three hearing, it was discovered that Respondent had failed to submit the level one record, so the undersigned instructed Respondent to submit the level one record. In response, Respondent submitted only a recording of the level one hearing. By letter dated January 8, 2016, the undersigned instructed Respondent to immediately submit the level one record, including a transcript with all exhibits. On January 12, 2016, Respondent filed Department of Veterans Assistance's Motion to Dismiss Grievance

alleging the grievance to be moot due to Grievant's resignation from employment. Respondent served its motion upon both Grievant and her representative by first class mail. By email dated January 20, 2016, the Grievance Board emailed a copy of Respondent's motion to Grievant and her representative at the email addresses on file with the Grievance Board, instructing that any response to the motion must be filed by February 4, 2016, and that a decision on the motion would be based on the submissions of the parties, with no further hearing. The Grievance Board has received no response from Grievant or her representative to Respondent's motion to Dismiss. Grievant appears by representative, Patricia Ramey. Respondent appears by counsel, Mark S. Weiler, Assistant Attorney General.

### **Synopsis**

Grievant grieved both conditions of her employment and a verbal reprimand. Grievant has now resigned from employment. Respondent moved to dismiss asserting mootness. As Grievant is no longer an employee, and a decision on her grievance would have no practical effect, the grievance is moot. Accordingly, Respondent's motion to dismiss should be granted, and this grievance, DISMISSED.

The undersigned makes the following Findings of Fact:

### **Findings of Fact**

1. Grievant was employed by Respondent at the West Virginia Veterans Home as a licensed practical nurse.
2. Grievant filed the instant grievance protesting a verbal reprimand. As relief, Grievant requested that the verbal reprimand be removed from her file and for policies and procedures to be followed in the future.

3. Grievant resigned from employment with Respondent effective December 29, 2015.

4. A verbal reprimand is not made part of an employee's official personal file. It is retained only in the supervisor's administrative file for use only if deficiencies continue. The reprimand is to be removed from the administrative file after either six or twelve months, depending on the agency's policy.<sup>1</sup>

### **Discussion**

"Each administrative law judge has the authority and discretion to control the processing of each grievance assigned such judge and to take any action considered appropriate consistent with the provisions of W. VA. CODE § 6C-2-1 *et seq.*" Rules of Practice and Procedure of the West Virginia Public Employees Grievance, 156 C.S.R. 1 § 6.2 (2008). This issue before the undersigned is Respondent's Motion to Dismiss. The burden of proof is on the Respondent to demonstrate that the motion should be granted by a preponderance of the evidence.

Respondent asserts that the grievance is moot because Grievant is no longer employed by Respondent and no relief can be granted.

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). In addition, 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. Dep't of Health & Human Res.*, Docket No. 03-HHR-348 (May 28, 2004); *Burkhammer v. Dep't of Health & Human Res.*, Docket No.

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<sup>1</sup> Grievant's Exhibit 1, Division of Personnel's Supervisor's Guide to Progressive Corrective and Disciplinary Action.

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); *Spence v. Div. of Natural Res.*, Docket No. 2010-0149-CONS (Oct. 29, 2009).

Grievant is no longer employed by Respondent. Grievant's request that Respondent follow policies and procedures is clearly moot as Grievant is no longer employed by Respondent and subject to the application of policies and procedures. As to the verbal reprimand, there was no monetary consequence for Grievant, so the only remedy available should Grievant prevail would be to order the verbal reprimand null. As a verbal reprimand is to be used only for purposes of further discipline, is not part of the official personnel file of the Grievant, and is to be removed from the supervisor's administrative file after a period of time, ordering its removal would have no practical consequences for Grievant as she is no longer an employee. The Grievance Board has previously found that the resignation of an employee renders moot a pending grievance on a verbal reprimand. *Wilkins v. Dep't of Env'tl. Prot.*, Docket No. 2011-1793-DEP (Aug. 22, 2013).

Therefore, the Respondent's motion to dismiss is granted, and this grievance, dismissed.

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

### **Conclusions of Law**

1. "Each administrative law judge has the authority and discretion to control the processing of each grievance assigned such judge and to take any action considered appropriate consistent with the provisions of W. VA. CODE § 6C-2-1 *et seq.*" Rules of

Practice and Procedure of the West Virginia Public Employees Grievance, 156 C.S.R. 1 § 6.2 (2008).

2. “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).

3. 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. 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).

4. The resignation of an employee renders moot a pending grievance on a verbal reprimand. *Wilkins v. Dep’t of Env’tl. Prot.*, Docket No. 2011-1793-DEP (Aug. 22, 2013).

5. Grievant’s resignation from employment has rendered her grievance moot. 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 (eff. July 7, 2008).

**DATE: March 11, 2016**

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**Billie Thacker Catlett**  
**Chief Administrative Law Judge**