

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

DEBBIE BRITTON,
Grievant,

v.

Docket No. 2017-2321-DHHR

DEPARTMENT OF HEALTH AND HUMAN
RESOURCES/HOPEMONT HOSPITAL,
Respondent.

DISMISSAL ORDER

Grievant, Debbie Britton, filed an expedited level three grievance against her employer, Respondent, Department of Health and Human Resources/Hopemont Hospital, on June 3, 2017. The grievance stated "Suspension without good cause." The relief sought provided "To be made whole in every way including back pay with interest and benefits restored".

On June 29, 2017, Respondent, by counsel, Michael E. Bevers, Assistant Attorney General, filed a Motion to Dismiss alleging that this grievance is moot, and for failure to state a claim on which relief can be granted. The Grievance Board sent an e-mail to Grievant's representative, Gordon Simmons, UE Local 170, WV Public Workers Union, on June 30, 2017, requesting a response to the pending Motion to Dismiss. Grievant had until July 21, 2017, to respond. As of this date, Grievant has not responded.

Synopsis

Grievant, Debbie Britton, is employed by Respondent, Department of Health and Human Resources, at Hopemont Hospital. Respondent proved in its June 29, 2017, Motion to Dismiss that this grievance is moot, and Grievant has not offered any response to the Motion. Accordingly, this Grievance must be **DISMISSED**.

The following Findings of Fact are made based on the documentation submitted by both parties.

Findings of Fact

1. Grievant, Debbie Britton, is employed by Respondent, Department of Health and Human Resources, at Hopemont Hospital.

2. On or about May 25, 2017, Grievant was suspended pending an investigation into allegations of resident abuse and/or neglect. On June 2, 2017, Respondent completed its investigation and determined that Grievant had not committed abuse or neglect. The allegations were not substantiated and Respondent had Grievant return to work on June 5, 2017.

3. By letter dated June 6, 2017, Respondent verified that Grievant would be reimbursed for the 46 hours she had not worked between May 25, 2017 and June 2, 2017. Respondent also verified that any tenure, leave and/or benefits Grievant lost during the suspension would be restored and all documentation of the suspension would be removed from Grievant's personnel file.

4. On June 29, 2017, Respondent filed a Motion to Dismiss this grievance stating that Grievant failed to state a claim upon which relief can be granted, and since she did not lose any pay or benefits, this grievance is now moot.

5. The Grievance Board sent an e-mail to Grievant on June 30, 2017, requesting a response to the pending Motion to Dismiss. Grievant had until July 21, 2017, to respond. As of this date, Grievant has not responded.

Discussion

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).

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).

The allegations against Grievant were not substantiated and Respondent had Grievant return to work on June 5, 2017. Respondent verified that Grievant would be reimbursed for the time she was suspended during the investigation Respondent also verified that any tenure, leave and/or benefits Grievant lost during the suspension would be restored and all documentation of the suspension would be removed from Grievant's personnel file. Thus, there is no remedy to grant Grievant related to the suspension and any decision that would be rendered would be purely advisory. Therefore, the grievance is moot. Accordingly, this grievance must be **DISMISSED**.

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

Conclusions of Law

1. "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).

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).

3. Since Grievant did not lose any salary or benefits during the time of her suspension, the issues raised in this grievance are moot.

Accordingly, this grievance is **DISMISSED**. Additionally, the Level Three hearing previously scheduled for September 26, 2017, has been cancelled.

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 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 (2008).

DATE: September 13, 2017

**Ronald L. Reece
ADMINISTRATIVE LAW JUDGE**