

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**HEIMO RIEDEL,
Grievant,**

v.

Docket No. 2015-1774-CONS

**WEST VIRGINIA UNIVERSITY,
Respondent.**

DISMISSAL ORDER

Grievant, Dr. Heimo Riedel, was employed by Respondent, West Virginia University. On or about March 30, 2015, Grievant filed this action challenging his ratings by the chairman of the Department of Biochemistry in his most recent annual review. Grievant disagrees with the good rating provided by his Chair in the areas of teaching and service. Thereafter, Grievant filed multiple actions alleging retaliation, harassment and discrimination. In addition, he filed grievances in which he continued to allege retaliation against the Chair of his department. An Order Denying Default was entered by the undersigned on October 13, 2016. All grievances were Ordered consolidated and to be set at Level Three of the grievance process.

Prior to the Level Three hearing scheduled for September 28, 2017, Respondent filed a Motion to Dismiss due to Grievant's retirement effective June 30, 2017. Grievant provided a response to this motion on September 18, 2017. Notwithstanding Respondent's submission of Grievant's retirement paperwork, Dr. Reidel did not concede that he had retired, but indicated that he was in "the process of setting up a legal response to the termination to result in his full reinstatement and compensation for any resulting

losses and damages which would make the sought relief available again.” No such response was provided by Dr. Riedel or his representative. The record of this case established that Dr. Riedel retired from employment with West Virginia University and was not terminated from employment. On the request of Grievant, the Level Three hearing was cancelled and the parties were notified that the undersigned would issue a ruling on the motion. Grievant appeared *pro se*. Respondent appeared by its counsel, Samuel R. Spatafore, Assistant Attorney General.

Synopsis

Grievant was a Professor in the Department of Biochemistry of West Virginia University's School of Medicine. Grievant disagrees with the good rating provided by the Chair of his department in the areas of teaching and service. Subsequently, Grievant filed numerous grievances disputing the actions of his Department Chair. After filing his grievance, Dr. Riedel retired. Respondent asserts the grievance is now moot because Grievant retired and failed to state a claim upon which relief can be granted. Respondent proved Grievant's claims are either moot due to his retirement or a remedy that is unavailable is requested from the Grievance Board. Accordingly, the grievance is dismissed.

The following Findings of Fact are based upon the record created in this case.

Findings of Fact

1. Grievant was a Professor in the Department of Biochemistry of West Virginia University's School of Medicine.

2. On March 30, 2015, Grievant filed an action challenging the ratings given to him by the chairman of the Department of Biochemistry in his most recent annual review. Grievant disagrees with the good ratings provided by his chairman in the areas of teaching and service.

3. On April 24, 2015, Grievant filed his second grievance assigned Docket No. 2015-1194-WVU which alleged retaliation, harassment and discrimination. A Level One hearing was scheduled for May 13, 2015.

4. On May 7, 2015, Grievant filed his third grievance assigned Docket No. 2015-1246-WVU which alleged retaliation and denial of academic freedom.

5. On August 7, 2015, Grievant filed his fourth grievance assigned Docket No. 2016-0124-WVU which alleged retaliation when his Department Chair required that he follow directives related to teaching.

6. On August 10, 2015, Grievant filed his fifth grievance assigned Docket No. 2016-0115-WVU which alleged retaliation when Grievant was questioned about the contents of his leave form.

7. On November 10, 2015, Grievant filed his sixth grievance assigned Docket No. 2016-0838-WVU which alleged retaliation related to teaching issues.

8. On November 11, 2015, Grievant filed his seventh grievance assigned Docket No. 2016-0839-WVU which alleged retaliation related to a photography assignment.

9. On December 16, 2015, Grievant filed his eighth grievance assigned Docket No. 2016-1031-WVU which alleged retaliation pursuant to the request for him to limit repetitive use of exam questions.

10. On February 16, 2016, the parties and the hearing examiner met for a pre-hearing conference on the above grievances. During the conference, Grievant's request that he be allowed to conduct extensive discovery prior to scheduling a hearing was denied. Grievant's refusal to accept the ruling made further progress in the procedure unattainable. Grievant was advised on February 16, 2016, that the grievances would be waived to the Grievance Board. Grievant stated no objection to the waiver at that time.

11. At the conclusion of the pre-hearing conference, grievances one through eight were waived to Level Three on February 24, 2016.

12. On March 17, 2016, Grievant filed his ninth grievance assigned Docket No. 2016-1440-WVU which alleged retaliation and harassment pursuant to an issue regarding his teaching.

13. On March 21, 2016, Grievant filed his tenth grievance assigned Docket No. 2016-1455-WVU which alleged retaliation in relation to an evaluation received by his Department Chair.

14. On March 23, 2016, grievances nine and ten were waived to Level Three.

15. On March 25, 2016, grievances one through ten were consolidated at Level Three by the Grievance Board with the above docket number.

16. On April 12, 2016, Grievant filed his eleventh grievance assigned Docket No. 2016-1530-WVU which again alleged retaliation pursuant to teaching issues. A hearing was scheduled for May 3rd and was continued on Grievant's request, dated April 26th.

17. On April 19, 2016, Grievant filed his twelfth grievance assigned Docket No. 2016-1568-WVU which alleged Respondent failed to notify his Department Chair that Grievant had filed another grievance against him.

18. Both the April 12th and April 19th grievances were consolidated into the current grievance.

19. A Level Three hearing was scheduled before the undersigned on September 28, 2017, on all the above-referenced issues consolidated in the current grievance.

20. On June 23, 2017, Grievant submitted paperwork to retire from employment. Grievant is now retired.

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 upon 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.

All the issues in the instant matter relate to Grievant’s allegations against his chair and requests as relief that the actions cease. Grievant retired on June 30, 2017.

Therefore, all the issues are moot and any decision rendered by the undersigned would merely be an advisory opinion. "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]." *Pritt, et al., v. Dep't of Health & Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008). The Grievance Board will not hear issues that are moot. *Cobb, et al., v. Div. of Highways*, Docket No. 2009-1017-CONS (Dec. 31, 2009).

Based upon the above, no claim upon which relief can be granted is stated and the remedy requested is wholly unavailable to the Grievant; these facts present no case in controversy. 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).

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

Conclusions of Law

1. "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." Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 6.11 (2008).

2. As defined by statute, a grievance must allege "a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee." W. VA. CODE § 6C-2-2(g)(1).

3. The scope of the authority of the Grievance Board is limited to that set forth in the Grievance statutes. *Skaff v. Pridemore*, 200 W. Va. 700, 490 S.E.2d 787 (1997).

4. “Because 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).

5. This grievance presents no claim upon which relief can be granted and a remedy wholly unavailable is requested.

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 (2008).

Date: October 31, 2017

Ronald L. Reece
Administrative Law Judge