

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

MAURICE T. SAMUEL,
Grievant,

v.

Docket No. 2017-2008-DHHR

**DEPARTMENT OF HEALTH AND
HUMAN RESOURCES/BUREAU
FOR CHILDREN AND FAMILIES,**
Respondent.

DISMISSAL ORDER

Grievant, Maurice Samuel, was employed by the Respondent, Department of Health and Human Resources ("DHHR"), as a Social Service Supervisor. By form dated March 28, 2017, Mr. Samuel filed an expedited grievance to level three,¹ contesting a demotion from a Social Service Supervisor at pay grade 14 to a Social Service Worker 3 at pay grade 12. Grievant denies that he violated agency policy which was the basis of the demotion. As relief, Grievant seeks to be reinstated to his previous position and pay grade with back pay and benefits as well as the removal of all document related to the demotion from all his employment files.

This matter was set for a level three hearing to occur on August 7, 2017. Respondent filed a *Motion to Dismiss* on July 28, 2017, and served a copy on Mr. Samuel. A telephonic hearing was held on the motion on July 31, 2017, originating from the Charleston office of the West Virginia Public Employees Grievance Board. Grievant Samuel participated in the conference *pro se*.² Respondent DHHR was represented by

¹ See, W. VA. CODE § 6C-2-4(a) (4).

² Representing himself, *Black's Law Dictionary*, 8th Edition, 2004. page 1258.

James “Jake” Wegman, Assistant Attorney General. All parties presented their positions on the *Motion to Dismiss* and the issue is now mature for a decision on the motion.

Synopsis

Respondent notes that Grievant resigned his position with the DHHR prior to the effective date of the demotion. Respondent argues that since Grievant is no longer a State employee and he suffered no loss of pay prior to his resignation, the matter is now moot. Grievant indicated that he wished to go forward with the grievance after his resignation to clear his name. There is no remaining remedy which can be granted by the Grievance Board after Grievant’s resignation which renders this matter moot.

The following facts are found to be proven by a preponderance of the evidence based upon an examination of the entire record developed in this matter.

Findings of Fact

1. Grievant, Maurice Samuel, was employed in the Region II, office of the DHHR Bureau for Children and Families as a Social Service Supervisor at pay grade 14.

2. By letter dated March 20, 2017, Grievant was notified that he would be demoted from the Social Service Supervisor position at pay grade 14 to a Social Service Worker 3, position at pay grade 12, effective May 1, 2017. Grievant’s pay was to be reduced by more than \$5000 annually as a result of the demotion.

3. Grievant denies the allegations which are the basis for the demotion and filed a grievance contesting those allegations on March 28, 2017. Also on that date, Mr. Samuel turned in his resignation effective April 11, 2017.³ DHHR accepted Grievant’s resignation and Grievant made no effort to rescind it.

³ Grievant gave the Bureau two weeks’ notice of his resignation.

4. Grievant's resignation took place prior to the effective date of the demotion and he suffered no loss of pay from the demotion prior to terminating his employment with Respondent. Grievant is not seeking reinstatement. As relief, he seeks to clear his name.

Discussion

Respondent assert that this matter is now moot since Grievant is no longer employed by Respondent DHHR. When the employer asserts an affirmative defense, it must be established by a preponderance of the evidence. *See, Lewis v. Kanawha County Bd. of Educ.*, Docket No. 97-20-554 (May 27, 1998); *Lowry v. W. Va. Dep't of Educ.*, Docket No. 96-DOE-130 (Dec. 26, 1996); *Hale v. Mingo County Bd. of Educ.*, Docket No. 95-29-315 (Jan. 25, 1996). *See generally, Payne v. Mason County Bd. of Educ.*, Docket No. 96-26-047 (Nov. 27, 1996); *Trickett v. Preston County Bd. of Educ.*, Docket No. 95-39-413 (May 8, 1996).

Grievant was demoted by Respondent. The demotion was to take effect on May 1, 2017. Mr. Samuel filed a grievance contesting that demotion on March 28, 2017. Also on March 28, 2017, Grievant submitted his resignation from employment with the DHHR to be effective, April 11, 2017. It is undisputed that Grievant's resignation was voluntary and was accepted by Respondent. Because Grievant resigned before the demotion became effective he did not suffer a pay reduction or any lost wages due to the pending demotion.

Grievant seeks to prove that his demotion was not supported by the facts to clear his name. No substantive relief is available. While it is understandable that Grievant wants

to maintain a good reputation what he is seeking amounts to an advisory opinion.⁴ The Grievance Board does not issue advisory opinions. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 156-1-6 6.21(2008); *Bragg v. Dep't of Health & Human Res.*, Docket No. 03-HHR-348 (May 28, 2004); *Komorowski v. Marshall County Bd. of Educ.*, W.Va. Sup. Ct. Memorandum Opinion No. 11-1659 and 11-1767 (Feb. 22, 2013).

The Grievance Board has consistently held that it will not render a decision on the merits of an issue when it would be a meaningless exercise and not result in a substantive remedy. See, *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). “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].” *Harrison v. Cabell County Bd. of Educ.*, 351 S.E. 2d 604 W. Va. 1985); *Burkhammer v. Dep't of Health & Human Res.*, Docket No. 03-HHR-073 (May 30, 2003). Grievant’s resignation from employment before this matter was resolved renders the grievance moot.

Accordingly, the grievance is DISMISSED.

Conclusions of Law

1. When the employer asserts an affirmative defense, it must be established by a preponderance of the evidence. See, *Lewis v. Kanawha County Bd. of Educ.*, Docket No. 97-20-554 (May 27, 1998); *Lowry v. W. Va. Dep't of Educ.*, Docket No. 96-DOE-130

⁴ See for example, *Locke v. Insurance Commission and Div. of Personnel*, Docket No. 20140686-DOR (Oct. 8, 2014).

(Dec. 26, 1996); *Hale v. Mingo County Bd. of Educ.*, Docket No. 95-29-315 (Jan. 25, 1996). See generally, *Payne v. Mason County Bd. of Educ.*, Docket No. 96-26-047 (Nov. 27, 1996); *Trickett v. Preston County Bd. of Educ.*, Docket No. 95-39-413 (May 8, 1996).

2. The Grievance Board will not issue advisory opinions. *Bragg v. Dep't of Health & Human Res.*, Docket No. 03-HHR-348 (May 28, 2004); Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 156-1-6 6.21(2008); *Komorowski v. Marshall County Bd. of Educ.*, W.Va. Sup. Ct. Memorandum Opinion No. 11-1659 and 11-1767 (Feb. 22, 2013).

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); *Komorowski, supra*.

4. “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].” *Harrison v. Cabell County Bd. of Educ.*, 351 S.E. 2d 604 W. Va. 1985); *Burkhammer v. Dep't of Health & Human Res.*, Docket No. 03-HHR-073 (May 30, 2003).

5. Grievant’s voluntary resignation from employment with the DHHR before this matter was resolved renders the grievance moot.

Accordingly, the grievance is DISMISSED.

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: August 2, 2017.

**WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE**