

**THE WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD**

**TARAYN SEARS, et al.,  
Grievants,**

**v.**

**Docket No. 2017-0503-CONS**

**DIVISION OF MOTOR VEHICLES,  
Respondent.**

**DISMISSAL ORDER**

On or about July 20, 2016, six Grievants filed this action asserting that Respondent's recent Dress Code Policy issued that month was unreasonable in that all employees, whether working with the public or not, were required to cover their tattoos during working hours. Grievants seek a return to the previous policy which did not have such a requirement. Three Grievants, Holli Burford, Jennifer Preble and Kelli Hays are no longer part of this grievance as they are no longer employed by Respondent. This case was reassigned on August 1, 2017, due to administrative reasons. This matter is now mature for consideration on Respondent's Motion to Dismiss filed and served on the remaining parties on May 11, 2017. Grievants Tarayn Sears, Deanna Smailes and Cameron Carr appeared *pro se*. Respondent appeared by its counsel, Gretchen A. Murphy, Assistant Attorney General.

**Synopsis**

The issue of the requirement that Grievants conceal their tattoos at all times regardless if they do not work with the public is moot. Some Grievants are no longer employed with Respondent, and Respondent revised the policy to eliminate this

requirement. Accordingly, this grievance is dismissed.

.The following Findings of Fact are based upon the undisputed record of this grievance.

### **Findings of Fact**

1. Grievants filed this action alleging that Respondent's recent Dress Code Policy was unreasonable in that everyone, whether working with the public or not, was required to cover their tattoos during working hours.

2. Holli Burford, Jennifer Preble and Kelli Hays are no longer part of the grievance as they are no longer employed by Respondent.

3. Grievants Tarayn Sears, Deanna Smailes and Cameron Carr challenge the requirement that employees conceal all tattoos at all times during work hours.

4. Effective February 13, 2017, Respondent changed the tattoo policy to limit covering tattoos when meeting or working directly with the public. See Attachment "B" to the Motion to Dismiss.

5. None of these three Grievants work with the public.

6. Grievant Tarayn Sears resigned from employment with the Division of Motor Vehicles effective January 13, 2017.

7. Grievant Deanna Smailes was dismissed from employment with the Division of Motor Vehicles effective May 9, 2017, for job abandonment. Ms. Smailes did not respond to the dismissal letter, file any action contesting the termination of her employment, or contact Respondent in any way.

8. Grievant Smailes was sent the revised Dress Code Policy by certified mail. She signed for the policy, but did not otherwise respond to it.

9. Grievant Cameron Carr was advised on December 6, 2016, that he had failed

to file an appeal to Level Three, and that he would be dismissed from the group if he did not submit a Grievance Form by December 20, 2016. The record does not reflect that Mr. Carr filed the necessary appeal.

10. Respondent filed its Motion to Dismiss on or about May 11, 2017, requesting the Grievance Board rule on its motion due to the remedy being provided in this case. The remaining Grievants were notified by email of this filing by the Grievance Board on May 17, 2017. Grievants were given the opportunity to respond to this motion and advised that the failure to respond may result in the grievance being dismissed. Grievants failed to respond in any way to the motion.

### **Discussion**

The Respondent has moved that this grievance be dismissed because the relief requested by Grievants is moot. The burden of proof is on the Respondent to demonstrate that the motion should be granted by a preponderance of the evidence. "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).

This Board has found that where a grievant is no longer an employee, "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). "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).

This grievance is now moot. All Grievants, except Cameron Carr, no longer work for the Division of Motor Vehicles. Grievant Carr failed to appeal from the Level Two mediation session. In any event, Respondent revised and reissued the Dress Code Policy, which gave all the relief sought by this grievance. Respondent filed its Motion to Dismiss on or about May 11, 2017, requesting the Grievance Board rule on its motion due to the remedy being provided in this case. The remaining Grievants were notified by email of this filing by the Grievance Board on May 17, 2017. Grievants were given the opportunity to respond to this motion and advised that the failure to respond may result in the grievance being dismissed. Grievants failed to respond in any way to the motion.

The Procedural Rules for the West Virginia Public Employees Grievance Board state in part that:

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.<sup>1</sup>

The only issue raised in this case was the allegation that the tattoo policy is unreasonable. It is clear to the undersigned that Grievants have been provided complete

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<sup>1</sup>156 C.S.R. 1 § 6.11.

relief when Respondent revised and reissued the Dress Code Policy. Accordingly, this grievance is now moot.

The following Conclusions of Law support the decision reached in this Order.

### **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].” *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).

2. “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. When it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the questions raised by this grievance would merely be an advisory opinion.

4. Because Grievants have been provided complete relief when Respondent revised and reissued the Dress Code Policy, this grievance is now moot.

Accordingly, the 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: August 11, 2017**

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**Ronald L. Reece**  
**Administrative Law Judge**