

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

ALISA SISLEY,
Grievant,

v.

Docket No. 2017-2041-CONS

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
WILLIAM R. SHARPE, JR. HOSPITAL,**
Respondent.

DISMISSAL ORDER

On March 14, 2017, Grievant filed a grievance, assigned docket number 2017-1957-DHHR, stating, "Coaching & verbal without good cause or predetermination. Discrimination." On March 30, 2017, Grievant filed a second grievance, assigned docket number 2017-2010-DHHR, stating, "Grievant's EPA improperly stated needs improvement and improperly listed a coaching." The grievances were consolidated into the above-styled grievance at level one. Grievant appealed to level two of the grievance process on June 21, 2017. A level two mediation was scheduled to be held on October 27, 2017. On October 16, 2017, Respondent, by counsel, by electronic mail, moved to dismiss the grievance and cancel the scheduled mediation, alleging the grievance to be moot due to Grievant's resignation from employment¹. On October 16, 2017, the Grievance Board notified Grievant, by representative, by electronic mail, that any response to the motion to dismiss must be made as soon as possible, in writing, but no later than October 23, 2017, and that "[f]ailure to respond may result in the grievance being dismissed." On the same date, Grievant's representative answered by electronic mail confirming that Grievant had resigned. Grievant's representative did not object to

¹ Respondent also alleged Grievant lacked standing to pursue the grievance, which will not be addressed as the grievance is moot.

the dismissal of the grievance. Grievant is represented by Jamie J. Beaton. Respondent is represented by Michael E. Bevers, Assistant Attorney General.

Synopsis

Grievant grieved a coaching and “verbal” and an employee performance appraisal she received while she was employed by Respondent. Grievant did not assert she had lost any pay due to these issues. Following the filing of her grievances, Grievant resigned from employment with Respondent. Respondent moved to dismiss the grievance asserting mootness due to Grievant’s resignation. Grievant did not object to the dismissal of the grievance. Respondent proved the grievance is now 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 William R. Sharpe, Jr. Hospital. Grievant did not indicate her job title or classification on her grievance form as required.
2. Grievant grieved a coaching and “verbal” and an employee performance appraisal she received while she was employed by Respondent. Grievant did not assert she had lost any pay due to these issues.
3. Grievant resigned from employment with Respondent effective May 30, 2017, by letter of the same date.
4. Grievant did not object to the dismissal of her grievance.

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 Board, 156 C.S.R. 1 § 6.2 (2008). “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. “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 (2008).

Respondent asserts that the grievance is moot because Grievant has now resigned and she did not suffer any loss of pay or benefits. Grievant admits she resigned and did not object to the dismissal of the grievance.

“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); *Pritt, et al., v. Dep't of Health & Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008). When it is not possible for any actual relief to be granted, any ruling issued by the Grievance Board would merely be an advisory opinion. *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002); *Spence v. Div. of Natural Res.*, Docket No. 2010-0149-CONS (Oct. 29, 2009). "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). "Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the [Grievance Board]." *Baker v. Bd. of Directors*, Docket No. 97-BOD-265 (Oct. 8, 1997) (citing *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993)).

Grievant's claims relate only to her employment with Respondent. She does not allege any loss of pay or benefits. As Grievant is no longer employed by Respondent, any decision in this matter would merely be a declaration that one party is right or wrong, would have no substantive consequence, and would merely be advisory in nature. The grievance is moot.

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 Board, 156 C.S.R. 1 § 6.2 (2008).

2. “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.

3. “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 (2008).

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].” *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); *Pritt, et al., v. Dep't of Health & Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008).

5. When it is not possible for any actual relief to be granted, any ruling issued by the Grievance Board would merely be an advisory opinion. *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002); *Spence v. Div. of Natural Res.*, Docket No. 2010-0149-CONS (Oct. 29, 2009). “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).

6. “Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the [Grievance Board].” *Baker v. Bd. of Directors*, Docket No. 97-BOD-265 (Oct. 8, 1997) (citing *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993)).

7. Respondent proved the grievance is now moot due to Grievant’s resignation from employment.

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: October 31, 2017

Billie Thacker Catlett
Chief Administrative Law Judge