

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**JADA THOMPSON,
Grievant,**

v.

Docket No. 2017-2065-BBC

**WEST VIRGINIA BOARD OF SOCIAL WORK,
Respondent.**

DISMISSAL ORDER

Grievant, Jada Thompson, is employed by Respondent, West Virginia Board of Social Work. On April 14, 2017, Grievant filed this grievance against Respondent stating, "Grievant informed that she will be demoted or dismissed without good cause." For relief, Grievant seeks "[t]o be made whole in every way including back pay with interest and all benefits restored." Grievant filed her grievance directly to level three of the grievance process.

On May 1, 2017, Respondent, by counsel, filed its *Motion to Dismiss* asserting the grievance must be dismissed as Grievant is an at-will employee who has not alleged a violation of substantial public policy and that Grievant had not been suspended or dismissed from employment. Grievant, by representative, filed her *Response to Respondent's Motion to Dismiss* on May 4, 2017, alleging Grievant's supervisor had made racial remarks, which would constitute discrimination, a substantial public policy. Grievant did not address Respondent's assertion that she had not been disciplined. A telephone conference was held on the motion on May 11, 2017, before the undersigned. Grievant was represented by Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent was represented by counsel, Katherine A. Campbell, Assistant Attorney General.

Synopsis

Grievant is employed by Respondent as an administrative assistant. Grievant asserts she was told by her supervisor that her position required she have a working automobile, and that she would be fired if she did not immediately arrange to obtain an automobile. Grievant has not been demoted, dismissed from employment, or otherwise disciplined. Respondent moved to dismiss the grievance. Respondent's motion must be granted as the grievance is speculative and premature and the relief sought is unavailable. Accordingly, the grievance is dismissed.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

Findings of Fact

1. Grievant is employed by Respondent as an administrative assistant.
2. Grievant filed the instant grievance asserting that she was told she would be demoted or dismissed from employment and requested payment of back pay and restoration of benefits.
3. Grievant asserts she was told by her supervisor that her position required she have a working automobile, and that she would be fired if she did not immediately arrange to obtain an automobile.
4. Grievant has not been demoted, dismissed from employment, or otherwise disciplined.

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.

Respondent asserts the grievance must be dismissed as Grievant is an at-will employee who has not alleged a violation of substantial public policy and that Grievant had not been suspended or dismissed from employment.¹ During the telephone conference on May 11, 2017, Grievant, by representative, admitted that she had not been disciplined for her lack of automobile. Respondent, by counsel, asserted that no disciplinary action was currently in progress against Grievant for her lack of automobile.

This Grievance Board has continuously refused to deal with issues when the relief sought is "speculative or premature, or otherwise legally insufficient." *Dooley v. Dept. of Trans./Div. of Highways*, 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). Typically, a

¹ As the grievance is speculative and the relief sought is unavailable, it is not necessary to address whether Grievant has standing to grieve as an at-will employee.

Grievant must show "an injury-in-fact, economic or otherwise" to have what "constitutes a matter cognizable under the grievance statute." *Lyons v. Wood County Bd. of Educ.*, Docket No. 89-54-601 (Feb. 28, 1990); *Dunleavy v. Kanawha County Bd. of Educ.*, Docket No. 20-87-102-1 (June 30, 1987). This Grievance Board does not issue advisory opinions. *Biggerstaff v. Mingo County Bd. of Educ.*, Docket No. 02-29-384D (Mar. 24, 2003); *Priest v. Kanawha County Bd. of Educ.*, Docket No. 00-20-144 (Aug. 15, 2000); *Dooley v. Dept. 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).

Grievant has not been disciplined, nor is discipline in progress at this time. Grievant filed the instant grievance because she asserts her supervisor threatened her with discipline. However, that discipline has not occurred, nor is it in progress. The grievance is speculative and premature. The relief Grievant seeks, back pay and reinstatement of benefits, is unavailable because Grievant has not lost pay or benefits. Issuing a decision determining whether Respondent would be permitted to discipline Grievant for her lack of automobile would be advisory. Therefore, this matter must be dismissed.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. "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.

2. This Grievance Board has continuously refused to deal with issues when the relief sought is "speculative or premature, or otherwise legally insufficient." *Dooley v. Dept. of Trans./Div. of Highways*, 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). Typically, a Grievant must show "an injury-in-fact, economic or otherwise" to have what "constitutes a matter cognizable under the grievance statute." *Lyons v. Wood County Bd. of Educ.*, Docket No. 89-54-601 (Feb. 28, 1990); *Dunleavy v. Kanawha County Bd. of Educ.*, Docket No. 20-87-102-1 (June 30, 1987).

3. This Grievance Board does not issue advisory opinions. *Biggerstaff v. Mingo County Bd. of Educ.*, Docket No. 02-29-384D (Mar. 24, 2003); *Priest v. Kanawha County Bd. of Educ.*, Docket No. 00-20-144 (Aug. 15, 2000); *Dooley v. Dept. 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).

4. Respondent's motion to dismiss must be granted as the grievance is speculative and premature and the relief sought is unavailable.

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* W. VA. CODE ST. R. § 156-1-6.20 (2008).

DATE: June 23, 2017

Billie Thacker Catlett
Chief Administrative Law Judge