

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

PATSY BLAKE,
Grievant,

v.

Docket No. 2018-0243-DHHR

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
WILLIAM R. SHARPE, JR. HOSPITAL and DIVISION OF PERSONNEL,**
Respondents.

DISMISSAL ORDER

Grievant, Patsy Blake, filed this action on August 15, 2017, claiming that she was working out of class as a Health Service Assistant, that her schedule was changed without notice, discrimination, harassment, and a denial of annual leave. Grievant seeks to be made whole in every way including back pay with interest, a monthly schedule and an end to discrimination. This matter was waived to Level Two by agreement of the parties on August 23, 2017. A Level Two mediation session was conducted on November 29, 2017.

A Level Three hearing was held on June 1, 2018, before the undersigned at the Grievance Board's Westover, West Virginia, office. Grievant did not appear in person, but was represented by Gordon Simmons, UE Local 170, West Virginia Public Workers Union. The Department of Health and Human Resources appeared by its counsel, Katherine Campbell, Assistant Attorney General. The Division of Personnel appeared by its counsel, Karen O'Sullivan Thornton, Assistant Attorney General, and Wendy Campbell, Assistant Director. Respondents moved to dismiss the case during the Level Three hearing due to Grievant's failure to appear and failure to make herself available telephonically. Grievant

was given until July 16, 2018, to respond to the motion. Grievant filed no response to this motion. The matter is now mature for decision.

Synopsis

Grievant was employed by the Department of Health and Human Resources as a Health Service Assistant. Grievant was demoted to a Health Service Worker without prejudice. Grievant is challenging what her job duties were as a Health Service Assistant before the demotion. Grievant failed to situate herself in a private area of the hospital in order to testify at the Level Three hearing, and failed to make herself available to testify telephonically. Thereafter, counsel for Respondents moved to dismiss the case. Grievant's representative did not oppose the motion at the Level Three hearing. Respondents and the record of the case established by a preponderance of the evidence that the grievance should be dismissed.

The following Findings of Fact are based upon the limited record of the case.

Findings of Fact

1. Grievant was employed by the Department of Health and Human Resources as a Health Service Assistant.
2. Grievant was demoted to a Health Service Worker without prejudice.
3. Grievant filed this action challenging what her job duties were as a Health Service Assistant before the demotion.
4. This matter was scheduled for hearing on June 1, 2018. Grievant did not appear in person, but appeared by her representative with an assurance that she would testify by phone. Respondents moved to dismiss the case due to the Grievant's failure to

appear. This motion was denied and the matter proceeded.

5. While attempting to reach Grievant by phone, it became apparent to the undersigned that Grievant was situated in a common area of Sharpe Hospital with patients and co-workers being heard over the phone.

6. The undersigned asked Grievant why she was not present at the hearing, and she responded that she knew she had a responsibility to appear, but had elected to work on the day of the hearing.

7. The undersigned instructed Grievant to place herself in a private setting in order to testify in her grievance. Thereafter, it was reported to the undersigned by Grievant's representative that she was unavailable by phone.

8. At the time Grievant made herself unavailable, Grievant had not even began presenting her case-in-chief.

9. Respondents once again moved for dismissal of this grievance asserting that Grievant had failed to appear for her grievance, and failed to abide by an order of the administrative law judge. Grievant's representative did not oppose this motion.

Discussion

Rules of Practice and Procedure of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 156-1-6 6.2 provides that an, "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.*" The issue before the undersigned Administrative Law Judge is Respondents' Motion to Dismiss. The burden of proof is on Respondent to demonstrate the motion should be affirmed by a preponderance of the evidence.

The Grievance Board has a long history in which cases have been dismissed because a grievant failed to respond to several letters, failed to attend a scheduled hearing without proper request, and/or the Grievance Board received undelivered mail because of an unreported change of address. As with the prior cases, this case will be decided only on the undisputed facts.

Rule 6.19.3 offers some insight into whether this grievance can be dismissed by the undersigned. "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 (2008).

Grievant's behavior at the June 1, 2018, hearing was unprofessional, disrespectful to all present, and entirely inappropriate. Grievant's behavior clearly indicates that she failed to abide by an appropriate order of the undersigned by failing to situate herself in a private area to provide testimony. The undersigned made repeated requests to Grievant's representative to provide some update on whether or not Grievant wished to respond to Respondents' Motion to Dismiss. No response was provided to the Motion to Dismiss.

Accordingly, the undersigned finds that Respondents' Motion to Dismiss is well-founded, and it is hereby **GRANTED**. The grievance is **ORDERED** dismissed from the docket of the Grievance Board.

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

Conclusions of Law

1. Rules of Practice and Procedure of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 156-1-6 6.2 provides that an “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.*”

2. Grievant failed to abide by an appropriate order of the undersigned at the Level Three hearing, avoided the hearing in this matter, and has failed to respond to Respondents’ Motion to Dismiss.

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 *a/so* 156 C.S.R. 1 § 6.19 (eff. Dec. 27, 2007).

Date: August 9, 2018

Ronald L. Reece
Administrative Law Judge