

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**MEGHAN EVELYN HUTCHINSON,
Grievant,**

v.

Docket No. 2018-0804-DOT

**DIVISION OF HIGHWAYS,
Respondent.**

DISMISSAL ORDER

Grievant, Meghan Evelyn Hutchinson, filed the instant grievance on December 19, 2017¹, alleging violation of the prohibited workplace harassment policy by her former supervisor, which had continued after Grievant had been removed from the supervision of the supervisor. As relief, Grievant requested for the former supervisor “to attend a harassment course, a formal letter of apology. Written documentation in Mrs. Bundy’s file regarding incident, and restraining order.” By Dismissal Order entered December 26, 2017, the level one grievance evaluator dismissed the grievance, finding the matter moot as Grievant was no longer an employee. On January 3, 2018, Grievant filed an appeal to level two. Grievant did not address in her appeal the finding of the level one grievance evaluator that she was no longer an employee. On January 23, 2018, Respondent, by counsel, Jason Workman, filed a *Motion to Dismiss* alleging the grievance to be moot as Grievant was no longer an employee. On January 24, 2018, the Grievance Board notified Grievant by electronic mail that any response to the motion to dismiss must be made in writing by February 7, 2018, and that “[f]ailure to respond may result in the grievance being dismissed.” Grievant filed no response to the motion to dismiss.

¹ Grievant incorrectly listed the date as “2018.”

Synopsis

Grievant grieved the alleged violation of the prohibited workplace harassment policy by her former supervisor. Respondent moved to dismiss the grievance asserting mootness as Grievant was no longer an employee. Grievant failed to respond to the motion to dismiss despite notice and opportunity to be heard. As the grievance only involves conditions of employment, 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, Division of Highways.
2. Grievant filed this grievance alleging violation of the prohibited workplace harassment policy by her former supervisor, which had continued after Grievant had been removed from the supervision of the supervisor. As relief, Grievant requested for the former supervisor "to attend a harassment course, a formal letter of apology. Written documentation in Mrs. Bundy's file regarding incident, and restraining order."
3. Grievant is no longer employed by Respondent.
4. On January 23, 2018, Respondent, by counsel, Jason Workman, filed a *Motion to Dismiss* alleging the grievance to be moot as Grievant was no longer an employee.
5. Grievant failed to respond to the motion to dismiss despite notice and opportunity to be heard.

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, 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.

Respondent asserts that the grievance is moot because Grievant is no longer employed by Respondent. Grievant failed to respond to the motion to dismiss despite notice and opportunity to be heard.

“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 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. [of] Motor Vehicles & Div. of Pers.*, Docket No. 2013-0714-DOT (Jul. 14, 2014); *Komorowski [v. Marshall County Bd. of Educ.*, No. 11-1659 and 11-1767 (W. Va. Supreme Court, February 22, 2013) (memorandum decision).]" *Beckett v. Dep't of Health & Human Res., & Div. of Pers.*, Docket No. 2013-0078-DHHR (Aug. 20, 2013). "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).

Grievant filed the instant grievance alleging violation of the prohibited workplace harassment policy by her former supervisor, which had continued after Grievant had been removed from the supervision of the supervisor. Grievant is no longer employed by Respondent and is, therefore, no longer subject to the alleged harassment in the workplace. Therefore, any decision by the Grievance Board on this issue would now be advisory and have no practical effect, rendering the grievance 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, 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.

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 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. [of] Motor Vehicles & Div. of Pers.*, Docket No. 2013-0714-DOT (Jul. 14, 2014); *Komorowski [v. Marshall County Bd. of Educ.*, No. 11-1659 and 11-1767 (W. Va. Supreme Court, February 22, 2013) (memorandum decision).]” *Beckett v. Dep't of Health & Human Res., & Div. of Pers.*, Docket No. 2013-0078-DHHR (Aug. 20, 2013).

“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. Respondent proved the grievance is now moot as Grievant is no longer an employee.

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: March 14, 2018

Billie Thacker Catlett
Chief Administrative Law Judge