

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

JAMES KARP,
Grievant,

v.

Docket No. 2017-1125-DHHR

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

DISMISSAL ORDER

Grievant, James Karp, filed this action on or about October 25, 2016, against his employer, the William R. Sharpe, Jr. Hospital, in which he claims he was charged holiday leave for sick leave. Grievant requests to be made whole in every way including correction of leave. This grievance was denied at Level One by decision dated December 5, 2016. A Level Two mediation session was conducted on April 14, 2017. Subsequently, the case was submitted on the lower level record for decision at the request of the parties. Grievant appeared by his representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent appeared by its counsel, Michael E. Bevers, Assistant Attorney General. This matter became mature for consideration upon receipt of the last of the parties' fact/law proposals on February 12, 2018.

Synopsis

This is the same grievance filed by Grievant on February 11, 2016. A Level Three Decision was issued by the undersigned addressing that grievance on February 16, 2017,

and Grievant did not appeal that decision. This grievance is barred by the doctrine of *res judicata*.

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

Findings of Fact

1. Grievant, a Health Service Worker at Sharpe Hospital, worked the Columbus Day holiday on October 10, 2016, and earned eight hours of holiday leave.

2. Grievant asked to take Wednesday, October 12, 2016, off from work to take his father to a medical appointment. Grievant asked for sick leave to be used for the hours of work he missed on October 12, 2016, but Sharpe Hospital used the holiday leave that Grievant had earned earlier in the week on October 10, 2016.

3. The Division of Personnel Administrative Rule § 14.7 provides, “sick and/or annual leave requested in the same workweek in which [overtime] hours are worked shall be reduced and credited back to the employee’s accrued balances to reduce or avoid payment for hours in excess of the agency work schedule.”

4. Rule § 14.7 allows Sharpe Hospital to credit and return leave to employees in cases where an employee claims over forty hours, but did not actually work 40 hours.

5. Pursuant to this rule, Sharpe Hospital requires that the hours of sick leave Grievant requested for October 12, 2016, be refunded with the holiday leave earned on October 10, 2016. This gave Grievant forty total hours for the workweek. Grievant’s sick leave balance was not reduced because the holiday hours were substituted for sick leave.

6. Grievant worked 32.25 actual hours during the workweek that began on Sunday, October 9, 2016. When Grievant requested time off due to his father’s illness, Sharpe Hospital paid Grievant 7.75 hours of holiday leave, rather than sick leave. The

remaining 0.25 hours of holiday was placed in Grievant's holiday leave bank. Grievant received the same amount of pay for the leave used on October 12, 2016, whether it was called holiday leave or sick leave.

7. Grievant wants to be able to bank holiday leave to be used at a later date, or to be cashed in at a later date. Sharpe Hospital employees may keep up to 24 hours of holiday leave in their bank at any given time.

8. If an employee earns more than 24 hours of holiday leave, the employee has the option of receiving a check for the holiday leave in excess of 24 hours rather than losing the additional holiday leave hours.

9. A Decision was issued by the undersigned addressing the grievance described above on February 16, 2017; neither party appealed that Decision.

Discussion

Respondent correctly points out that in Mr. Karp's previous grievance, he argued that Sharpe Hospital could not interpret Division of Personnel Administrative Rule § 14.7 to require employees to substitute holiday leave for sick leave because they wanted to use sick leave and bank holiday time for a later date. The undersigned ruled that "Respondent's interpretation of Division of Personnel Rule § 14.7 is reasonable and allows Grievants' requested sick leave to be credited back to their leave balances in the same holiday workweek in which overtime hours are claimed. This ensures the total number of hours, including work time and leave, does not exceed forty hours and avoids overtime

payments when forty hours was not actually worked. Nothing about Respondent's application of the rule can be viewed as unreasonable or arbitrary and capricious."¹

The doctrine of *res judicata* may be applied by an administrative law judge to prevent the "relitigation of matters about which the parties have already had a full and fair opportunity to litigate and which were in fact litigated." *Vance v. Jefferson County Bd. of Educ.*, Docket No. 03-19-018 (May 27, 2003); *Liller v. W. Va. Human Rights Comm'n*, 376 S.E.2d 639, 646 (W. Va. 1988); *Hunting v. Lincoln County Bd. of Educ.*, Docket No. 01-22-629 (Apr. 16, 2002). See *Boyer v. Wood County Bd. of Educ.*, Docket No. 95-54-309 (Sept. 29, 1995); *Peters v. Raleigh County Bd. of Educ.*, Docket No. 95-41-035 (Mar. 15, 1995).

Before the prosecution of a lawsuit may be barred on the basis of *res judicata*, three elements must be satisfied:

First, there must have been a final adjudication on the merits in the prior action by a court having jurisdiction of the proceedings.

Second, the two actions must involve either the same parties or persons in privity with those same parties.

Third, the cause of action identified for resolution in the subsequent proceeding either must be identical to the cause of action determined in the prior action or must be such that it could have been resolved, had it been presented, in the prior action. Syl. Pt. 4, *Blake v. Charleston Area Med. Ctr., Inc.*, 201 W. Va. 469, 498 S.E.2d 41 (1997).

¹*Ina Goff, et al. v. W. Va. Dep't of Health & Human Res.*, Docket No. 2016-1018-CONS (Feb. 16, 2017).

Mr. Karp's previous grievance was fully litigated, the undersigned issued a decision on the merits, and that grievance is now final. In the prior grievance and in the current grievance, the issues are the same, the parties are the same, the evidence is the same, and the relief sought is the same. Sharpe Hospital's policy has not changed since the prior grievance became final. Division of Personnel Administrative Rule § 14.7 has not changed since the prior grievance became final. The applicable standards for proving whether Sharpe Hospital's policy complies with the Division of Personnel Administrative Rule § 14.7 have not changed since the prior grievance became final. The issue of whether Sharpe Hospital's holiday leave policy complies with the Division of Personnel Administrative Rule § 14.7 has been fully litigated, and should not now be re-litigated.

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

Conclusions of Law

1. The doctrine of *res judicata* may be applied by an administrative law judge to prevent the "relitigation of matters about which the parties have already had a full and fair opportunity to litigate and which were in fact litigated." *Vance v. Jefferson County Bd. of Educ.*, Docket No. 03-19-018 (May 27, 2003); *Liller v. W. Va. Human Rights Comm'n*, 376 S.E.2d 639, 646 (W. Va. 1988); *Hunting v. Lincoln County Bd. of Educ.*, Docket No. 01-22-629 (Apr. 16, 2002). See *Boyer v. Wood County Bd. of Educ.*, Docket No. 95-54-309 (Sept. 29, 1995); *Peters v. Raleigh County Bd. of Educ.*, Docket No. 95-41-035 (Mar. 15, 1995).

2. This is the same grievance as filed by the same grievant against the same respondent on February 11, 2016. A Decision was issued by the Grievance Board on that

grievance, and that Decision became final on the parties when it was not appealed by either party.

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 § 6.20 (2008).

Date: March 2, 2018

Ronald L. Reece
Administrative Law Judge