

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**TARA ANN PATRICK,
Grievant,**

v.

Docket No. 2020-1075-DHHR

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
BUREAU FOR CHILDREN AND FAMILIES,
Respondent.**

DISMISSAL ORDER

Grievant filed this grievance on March 23, 2020, protesting her suspension without pay. Grievant resigned employment on May 20, 2020. The Grievance Board has had no contact with Grievant since she filed her grievance. A hearing was scheduled to be held in this matter on June 10, 2021, which was continued at the request of Grievant's representative for loss of contact with Grievant, who requested dismissal of the grievance based on Grievant's failure to pursue.

Synopsis

After filing the grievance, Grievant failed to pursue further action in the grievance and failed to respond to contact by her representative. Grievant has abandoned the grievance. Therefore, the grievance must be dismissed.

The undersigned makes the following Findings of Fact based upon the records of the Grievance Board in this matter:

Findings of Fact

1. This grievance was filed on March 23, 2020.
2. The Grievance Board has had no contact with Grievant since she filed her grievance.
3. Grievant resigned employment on May 20, 2020.

4. This matter was scheduled for hearing on June 10, 2021.
5. Grievant failed to respond to contact from her representative to prepare for the hearing.

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.*" W.VA. CODE ST. R. § 156-1-6.2 (2018). "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.

In this case, Grievant filed a grievance on March 23, 2020. Grievant has taken no action in the grievance since that time. Grievant resigned employment on May 20, 2020. The matter was scheduled for hearing and Grievant failed to respond to her representative's contact to prepare for the hearing. Grievant's representative has now requested dismissal of the grievance based on Grievant's failure to pursue. Given these facts, it appears Grievant has abandoned the grievance. "Abandoning a grievance is a

valid reason for dismissal pursuant to W. VA. CODE ST. R. § 156-1-6.19.3 (2008).” *Katona v. Dept. of Health & Human Res.*, Docket No. 2018-0133-DHHR (Jan. 16, 2018).

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.*” W.VA. CODE ST. R. § 156-1-6.2 (2018).

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.

3. “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.

4. “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.

5. “Abandoning a grievance is a valid reason for dismissal pursuant to W. VA. CODE ST. R. § 156-1-6.19.3 (2008).” *Katona v. Dept. of Health & Human Res.*, Docket No. 2018-0133-DHHR (Jan. 16, 2018).

6. Grievant has abandoned the grievance based on loss of contact with the Grievance Board and failure to respond to contact by her representative.

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 (2018).

DATE: June 30, 2021



Billie Thacker Catlett
Chief Administrative Law Judge