

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**KARI HAMRICK,**

**Grievant,**

**v.**

**Docket No. 2021-2540-CONS**

**CALHOUN-GILMER CAREER CENTER,**

**Respondent.**

**DISMISSAL ORDER**

Grievant, Kari Hamrick, filed a level one grievance against her employer, Respondent, Calhoun-Gilmer Career Center, dated October 5, 2020, stating as follows: "WV Code § 18A-4-10; WV Code § 6C-2-2 Grievance, US FFCRA (COVID Leave); US ADA. Administrator mishandled leave request. Both requests were improperly denied by governing board. Request for accommodation denied with no alternative offered or discussion regarding feasibility." As relief sought, Grievant stated, "[a]ccommodation made or feasible alternatives offered. FCRA leave approved and paid for days and parts of that the school in which her son is enrolled is not available for him to attend. Payment for COVID leave." This grievance was assigned Docket No. 2021-0900-CGCC. Grievant appealed to level two of the grievance process on November 20, 2020. A level two mediation was held on February 24, 2021. Grievant appealed to level three on March 9, 2021. On April 26, 2021, Grievant filed an expediated level three grievance challenging her suspension and the termination of her employment contract. This grievance was assigned Docket No. 2021-2375-CGCC. The two grievances were consolidated by order entered October 5, 2021. Before consolidation, Docket No. 2021-0900-CGCC had been

scheduled for a level three hearing a number of times and continued. On October 6, 2021, came Respondent, by counsel, Richard S. Boothby, Bowles Rice LLP, and came Grievant, by counsel Andrew J. Katz, General Counsel, West Virginia Education Association (WVEA), for a hearing before the undersigned administrative law judge at the Grievance Board's Charleston, West Virginia, office. Grievant did not otherwise appear.

### **Synopsis**

After filing the grievance, Grievant failed to pursue further action in the grievance and failed to respond to communications from her counsel. Grievant has abandoned the grievance. Therefore, the grievance is DISMISSED.

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

### **Findings of Fact**

1. The grievance initially docketed as No. 2021-0900-CGCC was filed at level one of the grievance procedure on October 5, 2020. The grievance initially docketed as No. 2021-2375-CGCC was filed at level three on April 22, 2021. The two grievances were consolidated at level three by Order entered October 5, 2021.

2. The level three hearing was scheduled to be held on October 6, 2021. On that date, Grievant's counsel, Respondent's counsel, and Respondent's representative, Brian Sterns, appeared in person. Grievant did not appear. At that time, counsel for Grievant informed this ALJ and opposing counsel that he had lost contact with Grievant, and that he believed she had abandoned her claim; however, he had no way to verify her contact information as none appeared in his client's records. Counsel for Grievant then expressed his concern about Grievant's due process rights as he had no way to confirm

her contact information and she did not appear for the level three hearing. As such Grievant's counsel orally moved for a continuance of the level three hearing to allow him additional time to try to locate Grievant. Over the objection of Respondent, this ALJ granted the motion to continue, and directed Grievant's counsel to take certain steps in attempting to contact Grievant. This ALJ further set a timeline by which counsel for Grievant would follow in his efforts to contact Grievant so that this matter could be rescheduled for hearing in a timely manner. Both the timeline and the directions regarding contacting Grievant were set forth in detail in the Order entered October 15, 2021.

3. Pursuant to the Order entered October 15, 2021, counsel for Grievant was granted ten business days to attempt to contact Grievant by certified mail, return receipt requested, restricted delivery. Counsel for Grievant was ordered to inform the Grievance Board and counsel for Respondent of the status of his attempts to contact Grievant on October 21, 2021.

4. Counsel for Grievant did not advise the Grievance Board on his attempts to contact Grievant on or before October 21, 2021, as ordered.

5. On November 1, 2021, Respondent, by counsel, submitted by email a motion to dismiss this grievance for abandonment. The October 15, 2021, Order already provided that, "[s]hould counsel for Grievant be unsuccessful in his attempts to contact Grievant and should Grievant otherwise fail or refuse to contact the Grievance Board about this pending grievance by close of business October 21, 2021, this grievance may be dismissed for abandonment without further notice or hearing." Meaning, this ALJ *sua sponte* had the authority to dismiss this grievance if counsel for Grievant was

unsuccessful in his efforts to contact Grievant or if Grievant failed or refused to contact the Grievance Board.

6. This ALJ had this matter set for a hearing via Zoom on November 22, 2021, to address the Respondent's motion to dismiss for abandonment, and review the status of counsel for Grievant's attempts to contact Grievant.

7. At the November 22, 2021, Zoom hearing, counsel for Grievant proffered to this ALJ that following the last hearing on October 6, 2021, he sent letters to Grievant at the address on file at the time of the last hearing and at a new out-of-state address obtained from Respondent by certified mail, return receipt requested and that the someone signed for the letter. However, he did not send the letters restricted delivery. See, Continuance Order entered December 8, 2021.

8. Counsel for Grievant proffered that he did not have the documents handy at the time of the November 22, 2021, hearing, but he stated that someone had signed for the letter at the out-of-state address.

9. The letters sent by counsel for Grievant following the October 6, 2021, hearing were not returned to him as undeliverable. At the time of the November 22, 2021, hearing, as counsel for Grievant did not send the letters to Grievant by certified mail, return receipt requested, restricted delivery, there was no way for this ALJ to determine whether Grievant had received the letters and whether the out-of-state address has not been verified as Grievant's.

10. The Grievance Board sent both the October 15, 2021, Order and the December 8, 2021, Order to Grievant at the only address it had on file that was at one

time verified by Grievant. None of the correspondence sent by the Grievance Board to this address was returned as undeliverable, and the postal service has not notified it of any forwarding address for Grievant.

11. Given counsel for Grievant's concern about Grievant's due process rights, and as counsel for Grievant failed to follow the directions detailed at the October 6, 2021, hearing and recited in the Order entered October 21, 2021, this ALJ ordered the matter continued so that he could again send the letters to Grievant with restricted delivery in an effort to verify her receipt of the same.

12. By Order entered December 8, 2021, counsel for Grievant was again ordered to send the correspondence to the out-of-state address he had for Grievant by certified mail, return receipt requested, restricted delivery, and to "inform the Grievance Board and counsel for Respondent by email as to whether he [had] successfully contacted Grievant, and if so, whether she [wished] to proceed with this grievance." Further, counsel for Grievant was ordered to attach to his email, copies of the certified mail receipt and copies of the front and back of the green return receipt card to show proof of his attempts to contact Grievant. If Grievant signed for the certified mail, such would establish that she received notice of this hearing.

13. Again, the Order provided that, "[s]hould counsel for Grievant be unsuccessful in his attempts to contact Grievant or should Grievant otherwise fail or refuse to contact her counsel of the Grievance Board about this pending grievance by close of business December 13, 2021, this grievance shall be dismissed for abandonment without further notice or hearing."

14. Counsel for Grievant again failed to contact the Grievance Board and counsel for Respondent by close of business December 13, 2021, as he had been ordered.

15. On January 6, 2022, Grievance Board staff emailed counsel for Grievant, copying counsel for Respondent, stating “[a]s of this date, the Grievance Board has received none of the communications from you that were required by the attached order. Accordingly, per ALJ LeFevre, you have until 12:00 p.m. tomorrow, January 7, 2022, to explain in writing why you have failed to do so and to provide the information required by the order to the Grievance Board by email, copying counsel for Respondent on the same. If you again fail to respond, the matter will be rescheduled for a level three hearing at the Grievance Board’s convenience.”

16. On January 7, 2022, at 1:25 p.m., counsel for Grievant replied as follows, copying counsel for Respondent: “. . . I wrote to Ms. Hamric (sic) by letter dated November 22, 2021. I sent this letter certified mail, return receipt requested. I also checked the part of the certified mail which indicated that only Ms. Hamric (sic) can sign for this document. I have not received the return receipt.”

17. Counsel for Grievant did not attach any of the required documents to his email.

18. As of this date, the Grievance Board has not received any additional emails or documents from counsel for Grievant pertaining to his efforts to contact Grievant, or his concern about her due process.

19. As of this date, the Grievance Board has received no communications from Grievant, herself, since the October 6, 2021, hearing at which her contact information and

due process rights were raised by her counsel. The Grievance Board has sent all correspondence to Grievant at the only address of record in this matter, and none have been returned as undeliverable.

### **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.

Grievant filed a grievance on October 5, 2020, and a second grievance on April 22, 2021, which were later consolidated. The first concerned a leave issue, and the second, challenged Respondent's decision to terminate Grievant's two employment contracts. Grievant is no longer an employee of Respondent and has not been since on or about April 21, 2021. On October 6, 2021, the date of the level three hearing, counsel for Respondent and counsel for Grievant appeared. However, Grievant did not appear.

At the commencement of the hearing, Grievant's counsel proffered that he had lost contact with Grievant and that the WVEA had no contact information for her in its system. Further, he proffered that he believed that Grievant had abandoned her claim, but he was not sure. Grievant's counsel orally moved for a continuance of the hearing explaining that he was concerned that Grievant may not have received notice of the hearing; therefore, he was concerned about Grievant's due process rights. Counsel for Grievant confirmed that he had sent correspondence to Grievant at the address on file with the Grievance Board, and nothing had been returned to him as undeliverable.

As detailed previously herein, in an effort to make sure Grievant received notice of the hearing and the opportunity to be heard, this ALJ granted the motion to continue and ordered counsel for Grievant to take certain actions in his efforts to contact Grievant, all of which were detailed on the record at the hearings and in the Continuance Orders. Despite the efforts to communicate with Grievant, she did not respond to her counsel's letters and she did not notify him or the Grievance Board of any changes in her contact information. Grievant has not independently communicated with the Grievance Board at any time since her counsel informed the ALJ that he had lost contact with her.

Given these facts, counsel for Grievant and the Grievance Board have taken all reasonable measures to contact Grievant to give her notice of the hearing and the opportunity for her grievance to be heard. Accordingly, 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. Dep't 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. Dep’t of Health & Human Res.*, Docket No. 2018-0133-DHHR (Jan. 16, 2018).

6. Based upon her loss of contact with her counsel and the Grievance Board, her failure to appear at the level three hearing on October 6, 2021, and her failure respond to the correspondence sent to her, Grievant has abandoned this grievance.

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: March 8, 2022.**

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Carrie H. LeFevre  
Administrative Law Judge