

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

CHERLY L. PAYNE,

Grievant,

v.

Docket No. 2020-0686-DOT

WEST VIRGINIA DIVISION OF MOTOR VEHICLES,

Respondent.

DISMISSAL ORDER

Grievant, Cheryl Payne, filed this grievance on or about December 9, 2019, against the Division of Motor Vehicles, disputing her dismissal from employment. The grievance was properly filed directly to level three pursuant to WEST VIRGINIA CODE § 6C-2-4(a)(4).

On June 3, 2022, Respondent, by counsel, Susan G. Ringer, Assistant Attorney General, filed a Motion to Dismiss, alleging that the grievance be dismissed for failure of Ms. Payne to prosecute this matter. Grievant made no response to the Motion to Dismiss after the Grievance Board's many attempts to contact her. This matter is now mature for a ruling.

Synopsis

Grievant was employed by the Division of Motor Vehicles as a Customer Service Representative. Grievant filed this grievance disputing her dismissal from employment. After several continuances of the scheduled level three hearing and an abeyance period granted at the request of Grievant, Respondent moved to dismiss this matter. Grievant has failed to respond to Respondent's motion or otherwise communicate with the Grievance Board. The record supports a finding that a preponderance of evidence exists

that leads to the conclusion that the grievance should be dismissed for abandonment. Accordingly, the grievance should be dismissed.

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

Findings of Fact

1. Grievant, Cheryl Payne, was employed by the Division of Motor Vehicles as a Customer Service Representative, in Moorefield, West Virginia.

2. Grievant was dismissed from her employment for job abandonment in the fall of 2019, after the failure to provide Respondent doctors' excuses.

3. Grievant filed this action directly to level three pursuant to WEST VIRGINIA CODE § 6C-2-4(a)(4) on or about December 9, 2019.

4. Level three hearings were subsequently scheduled but continued at the request of both Grievant and Respondent.

5. On July 28, 2021, the undersigned granted an abeyance requested by Grievant.

6. On November 23, 2021, the undersigned granted an extension of the abeyance requested by Grievant. The abeyance period was extended until January 14, 2022. The Grievance Board requested that an update be provided by that time.

7. The Grievance Board received no response to the Respondent's Motion to Dismiss. In addition, the Grievance Board has had no contact with Grievant and has received no response to the Grievance Board's multiple attempts to contact her.

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). It is within an administrative law judge’s discretion as to whether a hearing needs to be held before a decision is made on a motion to dismiss. See *Armstrong v. W. Va. Div. of Culture & History*, 229 W. Va. 538, 729 S.E.2d 860 (2012).

“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); *Patrick v. Dep’t of Health and Human Res.*, Docket No. 2020-1075-DHHR (June 30, 2021).

The record supports a finding that Grievant has abandoned this grievance. As of the filing of Respondent’s Motion to Dismiss, one-hundred and twelve days have passed since Grievant took any action in this matter. Grievant’s last action was to email Respondent’s counsel on February 11, 2022, asking for a status update. The last action taken by anyone in this matter was an email from the Grievance Board on February 16, 2022, asking Grievant for a status update. It has been months since Grievant took any action in this matter. Abandoning a grievance is a valid reason for the undersigned to dismiss this grievance. Accordingly, pursuant to Rule 6.19.3, this grievance is 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.*” W. VA. CODE ST. R. § 156-1-6.2 (2018). It is within an administrative law judge’s discretion as to

whether a hearing needs to be held before a decision is made on a motion to dismiss. See *Armstrong v. W. Va. Div. of Culture & History*, 229 W. Va. 538, 729 S.E.2d 860 (2012).

2. Abandoning a grievance is a valid reason for dismissal pursuant to W. VA. CODE ST. R. § 156-1-6.19.3 (2018).

3. The record supports a finding that a preponderance of the evidence establishes that Grievant has abandoned her grievance.

Accordingly, this grievance is **DISMISSED**.

Any party may appeal this Dismissal Order to the Intermediate Court of Appeals.¹ Any such appeal must be filed within thirty (30) days of receipt of this Dismissal Order. 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 named as a party to the appeal. However, the appealing party is required to serve a copy of the appeal petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

Date: August 10, 2022

Ronald L. Reece
Administrative Law Judge

¹On April 8, 2021, Senate Bill 275 was enacted, creating the Intermediate Court of Appeals. The act conferred jurisdiction to the Intermediate Court of Appeals over “[f]inal judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to §29A-5-4 or any other provision of this code[.]” W. VA. CODE § 51-11-4(b)(4). The West Virginia Public Employees Grievance Procedure provides that an appeal of a Grievance Board decision be made to the Circuit Court of Kanawha County. W. VA. CODE § 6C-2-5. Although Senate Bill 275 did not specifically amend W. VA. CODE § 6C-2-5, it appears an appeal of a decision of the Public Employees Grievance Board now lies with the Intermediate Court of Appeals.