

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

RONALD SHAFFER,

Grievant,

v.

Docket No. 2021-2111-KanED

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

DISMISSAL ORDER

Grievant, Ronald Shaffer, filed this grievance against his employer, Respondent, Kanawha County Board of Education, at level one of the grievance procedure on February 13, 2021, stating as follows: "Favoritism, Discrimination, Retaliation, not been treated the same as other employees that are in the same class or similarly situated job. I have filed before because of similar treatment. Other employees belief (sic) I've been treated unfair. Also, 1-19-2021 Terry Hollandsworth told me I couldn't bid on or request a different job in class." As relief sought, Grievant asked, "to be moved off the tile trucks and be moved to another truck, as requested before. My medical problems have made this job very painful for me. Equally; According to my seniority; stop the retaliation."¹

By a decision dated February 8, 2021, the level one hearing examiner denied the grievance. Grievant appealed to level two on February 13, 2021. A level two mediation was conducted on June 8, 2021, as scheduled, at which Grievant appeared in person, pro se, and Respondent appeared by counsel, Lindsey McIntosh, Esquire, General Counsel, and represented by Bernard Balser, Grievant's supervisor. At that time,

¹ This is an attempt at a direct quotation from the Statement of Grievance. As

Grievant was on a medical leave of absence from employment, and his “fit-for-duty” evaluation for his return to work had not been completed.

Given that it was unknown when Grievant would be able to return to work, the parties requested that the Grievance Board hold this matter in abeyance pending the “fit-for-duty” evaluation, and asked that a second mediation be conducted at a later date. By Order entered June 24, 2021, this matter was placed in abeyance until August 3, 2021. By that same Order, this ALJ ordered the parties to immediately inform the Grievance Board in writing if they reached a resolution to the grievance. This ALJ further ordered that, “[i]f it is not resolved, a second mediation shall be conducted. Further, the parties are ORDERED to provide five mutually agreeable dates in July 2021. . . for a second level two mediation.” Those dates were to be submitted by June 30, 2021. The Order informed the parties that “[i]f dates are not received, the second mediation will be scheduled according to the Grievance Board’s calendar.

Grievant and Respondent did not inform the Grievance Board that the matter had been resolved, and they failed provided agreeable dates for the second level two mediation. Accordingly, the Grievance Board scheduled the second day of mediation to be held on January 4, 2022.

On January 4, 2022, Respondent, by counsel, Lindsey McIntosh, Esquire, General Counsel, appeared in person for the second day of mediation. However, Grievant failed to appear either in person, or by counsel or representative.

Synopsis

Grievant’s employment with Respondent ended effective December 16, 2021. Grievant did not appear for the second day of mediation despite receiving notice of the

same, and he has failed to communicate with the Grievance Board since June 24, 2021. Grievant has abandoned this grievance. Therefore, this 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. Grievant filed this grievance *pro se* on January 25, 2021.
2. The grievance was denied at level one by a decision dated February 8, 2021.
3. Grievant perfected his appeal to level two on February 13, 2021.
4. By Notice of Mediation Session entered March 29, 2021, the parties were informed that the mediation would be held at the Grievance Board on June 8, 2021, at 9:30 a.m.
5. On June 8, 2021, Grievant appeared in person, *pro se*. Respondent appeared by counsel, Lindsey McIntosh, Esquire, and was represented by Bernard Balser.
6. At the conclusion of the mediation, the parties asked this ALJ to hold the grievance in abeyance for forty days as Grievant was on a medical leave of absence and his fit-for-duty evaluation had not been completed at that time. The parties asked to have a second day of mediation to be held after Grievant completed his fit-for-duty examination and this ALJ granted the same.
7. By Order entered June 24, 2021, this matter was placed in abeyance for forty days, that being until August 3, 2021. The parties were ordered to immediately inform the Grievance Board if they reached a resolution. The parties were also ordered

to provide five mutually agreeable dates in July 2021 to the Grievance Board by June 20, 2021. The Order further provided that if the parties failed to submit dates, the Grievance Board would schedule the second day of mediation at its convenience.

8. The parties did not inform the Grievance Board that this matter had been resolved.

9. The parties failed to provide the Grievance Board mutually agreeable dates for the second day of mediation.

10. As the parties failed to submit their dates, the Grievance Board scheduled the second day of level two mediation at its convenience, that being on January 4, 2022, and informed the parties of the same by a Notice of Mediation Session entered November 3, 2021.

11. Neither party contacted the Grievance Board in response to the November 3, 2021, Notice of Mediation Session.

12. On January 4, 2022, Respondent, by counsel, Lindsey McIntosh appeared in person. Grievant made no appearance.

13. Grievant did not ask for a continuance of the January 4, 2022, mediation. The Notice of Mediation Session mailed to Grievant was not returned to the Grievance Board as undeliverable.

14. On January 4, 2022, after waiting a reasonable time for Grievant to appear, Respondent, by counsel, and this ALJ proceeded in Grievant's absence. At which time, Respondent's counsel proffered that pursuant to the agenda of a meeting of the Kanawha County Board of Education held on December 16, 2021, Grievant either resigned from his position, or he retired, effective that same date.

15. The Grievance Board has had no contact with Grievant from June 24, 2021, through the present date.

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 January 25, 2021. Grievant has taken no action in the grievance since June 24, 2021. Grievant either resigned from his employment with Respondent effective December 16, 2021, or he retired. Given these facts, it appears Grievant has abandoned this 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). As such, this grievance should be dismissed.

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 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: February 4, 2021.

Carrie H. LeFevre
Administrative Law Judge