PATRICIA BRAGG,

Grievant,

v. **DOCKET NO. 03-HHR-348**

DEPARTMENT OF HEALTH AND HUMAN

RESOURCES/BUREAU FOR CHILDREN

AND FAMILIES,

Respondent.

DECISION

On August 25, 2003, Grievant filed a grievance against, the Department of Health and Human Resources (DHHR), Respondent, claiming: "On July 30, 2003 I submitted a letter of intent to transfer to the Tax Dept[.] Since that time I have been harassed daily by the CSM. I have been reassigned to filing/recpt. position, my office moved, demand for a drs [sic] excuse for a one day absence, and now my pay check withheld." As relief, Grievant seeks, "I would like my pay check released, my transfer complete to the tax dept., written reprimand for the CSM as applicable by State Policy for harassment by a manager, and mandated training in managerial, people skills, and leadership for the CSM."

Having been denied at all lower levels, a level four hearing was held in the Grievance Board's Charleston office on April 13, 2004. Grievant appeared *pro se*. Respondent was represented by Landon Brown, Assistant Attorney General. The matterbecame mature for decision May 13, 2004, the deadline for filing Grievant's proposed findings of fact and conclusions of law. (See footnote 1)

Based on a preponderance of the evidence contained in the record and adduced at the level four hearing, I find the following material facts have been proven:

FINDINGS OF FACT

1. At the time this grievance was filed, Grievant was employed by Respondent at its Boone County office as an Economic Service Worker (ESW).

2. Grievant had previously been employed by the Division of Tax and Revenue, but on May 16,

2003, accepted a position with Respondent in order to work closer to home.

3. On July 30, 2003, Grievant submitted her resignation from her DHHR position in order to return to a position at the Division of Tax and Revenue.

4. At that time, Grievant had just begun her ESW training, and her Community Services Manager (CSM), Lynn Lorentz, saw no reason for Grievant to continue the training if she would soon be leaving, and assigned Grievant to temporary work in the file room, without any change in classification or pay.

5. Because she apparently did not like her new assignment, Grievant began to use her sick leave in a way Ms. Lorentz suspected was abusive, and required Grievant to submit a doctor's verification of illness.

6. Grievant requested time off that would exceed her remaining leave balance and when Ms. Lorentz, pursuant to procedure, reported this to payroll, Grievant's paycheck was delayed until it was determined she would be present at work enough to receive a full paycheck. Grievant did not verify this until it was too late to issue her paycheck, and it was subsequently issued on a later date. 7. Grievant left the employ of Respondent during the pendency of the Grievance.

DISCUSSION

Since this grievance is not about discipline, Grievant must prove all of her claims by a preponderance of the evidence, which means she must provide enough evidence for the undersigned Administrative Law Judge to decide that her claim is more likely valid than not. *See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Resources*, Docket No. 92-HHR-486 (May 17, 1993).

However, before looking at the merits of the claims, it is necessary to decide whether Grievant still has standing to pursue the claims now that she is no longer employed by Respondent. Some of the relief Grievant requested has been effected: her paycheck was released, and her transfer to the Division of Tax and Revenue has been completed. The remaining relief she requests _ a reprimand for the CSM and training for the CSM appear to be moot.

Grievant claims the changes in her job and the issues over her leave use were retaliatory actions by Ms. Lorentz following Grievant's decision to quit her job. Grievant offered no explanation of why Ms. Lorentz would retaliate for that reason and offered no other motivation for her to harass Grievant.

The remaining issues of relief all stem from Grievant's desire to avoid future “harassment” or retaliation. (See footnote 2) However, Grievant herself has ensured she will no longer be subjected to Ms. Lorentz's influence by leaving the agency. This action made it unnecessary for the Grievance Board to act on her behalf even if she had proven the actions Ms. Lorentz took were improper. See *Collins v. Dep'tof Transp./Div. of Highways* Docket No. 02-DOH-227/248 (Jan. 20, 2003). In essence, all Grievant seeks now is a declaration that she was right and Ms. Lorentz was wrong -- an advisory opinion. “This Grievance Board does not issue advisory opinions.” *Collins, supra*.

Likewise, the Grievance Board will not hear issues that are moot. "Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not properly cognizable [issues]." *Burkhammer v. Dep't of Health and Human Resources,* Docket No. 03-HHR-073 (May 30, 2003). A decision on this grievance either granting or denying the relief sought would have no effect on Grievant's employment, hence the grievance is now moot.

Because the remaining issues are moot and decision would amount to an advisory opinion, this grievance must be denied.

The following Conclusions of Law support this decision:

CONCLUSIONS OF LAW

1. Since this grievance is not about discipline, Grievant must prove all of her claims by a preponderance of the evidence, which means she must provide enough evidence for the undersigned Administrative Law Judge to decide that her claim is more likely valid than not. *See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Resources*, Docket No. 92-HHR- 486 (May 17, 1993). If the evidence supports both sides equally, then Grievant has not met his burden. *Id.*

2. “This Grievance Board does not issue advisory opinions. *Dooley v. Dep't of Transp.*, Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.*, Docket No. 91-35-229/239 (Nov. 27, 1991).” *Collins v. Dep't of Transp./Div. of Highways* Docket No. 02-DOH-227/248 (Jan. 20, 2003); *Priest v. Kanawha County Bd. ofEduc.*, Docket No. 00-20-144 (Aug. 15, 2000). Procedural Rules of the West Virginia Education & State Employees Grievance Bd. § 4.22.

3. The Grievance Board will not hear issues that are moot. "Moot questions or abstract

propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not properly cognizable [issues]." *Burkhammer v. Dep't of Health and Human Resources,* Docket No. 03-HHR-073 (May 30, 2003); *Pridemore v. W. Va. Dep't of Health and Human Resources*, Docket No. 95-HHR- 561 (Sept. 30, 1996).

4. The only remaining relief requested by Grievant would be an advisory opinion on moot issues.

For the foregoing reasons, this grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred, and such appeal must be filed within thirty (30) days of receipt of this Decision. W. Va. Code § 29-6A-7 (1998). Neither the West Virginia Education and State 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 appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: May 28, 2004 _____

M. Paul Marteney

Administrative Law Judge

Footnote: 1

Respondent waived filing fact/law proposals.

Footnote: 2

Grievant also claimed she had trouble dealing with Ms. Lorentz as a client of the agency but, as that is not an employment issue, it is not cognizable by the Grievance Board and will not be discussed.