# THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES

# GRIEVANCE BOARD

**HEATHER HOLLEN,**

**Grievant,**

**v.** **Docket No. 06-HHR-264**

**Janis I. Reynolds**

**Senior Administrative Law Judge**

**DEPARTMENT OF HEALTH AND HUMAN**

**RESOURCES/BUREAU FOR CHILDREN**

**AND FAMILIES,**

**Respondent.**

## DISMISSAL ORDER

Grievant, Heather Hollen, filed this grievance against her employer, the Department of Health and Human Resources ("HHR") on March 6, 2006, claiming she had been "stalked, harassed, and retaliated against" by an employee of the Office of the Inspector General ("OIG"). Relief sought was for the harassment, retaliation, discrimination, and unfair treatment to stop, and she requested copies of all reports.

This grievance was dismissed at Level III as moot, and Grievant appealed this Decision to Level IV on July 14, 2006. (See footnote 1) A pre-hearing conference was held on August 3, 2006, and Grievant's representative indicated Grievant wished to pursue

this grievance. The parties agreed to submit this case on the record developed below. Grievant was represented by Norman Henry, and HHR was represented by Jennifer Akers, Assistant Attorney General. This case became mature for decision on August 24, 2006, the date the parties' proposed Findings of Fact and Conclusions of Law were received.

## Synopsis

Grievant asserted this case should not have been dismissed and alleged she had been so mistreated during an investigation of her activities that medical treatment was required. She did not request compensation for this treatment.

Respondent noted Grievant voluntarily quit her employment, and the relief sought was now moot as there are no outstanding monetary issues.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

## Findings of Fact

1. At the time of the events surrounding this grievance, Grievant was employed as a supervisor by HHR. Grievant quit her job shortly after filing this grievance.

2. On September 9, 2004, Sharon O'Dell, then Director of Investigations and Fraud Management, in the Office of the Inspector General ("OIG"), received an anonymous complaint stating Grievant was abusing her work time, and was unavailable when needed for work related activities. The complainant also stated Grievant was sending and receiving inappropriate e-mail on her work computer. (See footnote 2)

3. OIG investigated the possible abuse of work time first, in October and November 2004.

4. To check on Grievant's use of time during the work day, several investigators were assigned to follow Grievant and see if her actions matched her sign out sheets.

5. The investigators did not find any wrongdoing in this area, and a report was not submitted.

6. Grievant asserted this investigation should never have been conducted, the investigation was not cost-effective, and caused her such stress she required medical attention.

## Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); Howell v. W. Va. Dep't of Health & Human Res., Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health & Human Res., Docket No. 92-HHR-486 (May 17, 1993).

The first question to answer is whether this grievance is moot. W. Va. Code § 29-6A-1 states the purpose of the grievance procedure as follows:

> The purpose of this article is to provide a procedure for the equitable and consistent resolution of employment grievances raised by nonelected state employees who are classified under the state civil service system, or employed in any department, other governmental agencies, or by independent boards or commissions created by the Legislature, with the exception of employees of the board of regents [abolished], state institutions of higher education, the Legislature, any employees of any constitutional officer unless they are covered under the civil service system, and members of the department of public safety.

(Emphasis added).

Grievant is no longer a state employee, the relief sought does contain any monetary issues, and the alleged harassment has ceased. What Grievant is actually requesting is an advisory opinion. This Grievance Board does not issue advisory opinions on moot issues. Collins v. Dep't of Transp./Div. of Highways, Docket Nos. 02-DOH-227/248 (Jan. 3, 2003); Priest v. Kanawha County Bd. of Educ., Docket No. 00-20-144 (Aug. 15, 2000); Dooley v. Dep't of Transp., Docket No. 94-DOH-255 (Nov. 30, 1994); Pascoli & Kriner v. Ohio County Bd. of Educ., Docket Nos. 91-35-229/239 (Nov. 27, 1991); Procedural Rules of the West Virginia Education & State Employees Grievance Bd. 156 C.S.R. §§ 4.12 & 4.22. "Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the [Grievance Board]. Miraglia v. Ohio County Bd. of Educ., Docket No. 92-35-270 (Feb. 19, 1993). De minimus relief is also unavailable. Carney v. W. Va. Div. of Rehab. Services, Docket No. VR-88-055 (Mar. 28, 1989)." Baker v. Bd. of Directors, Docket No. 97-BOE-265 (Oct. 8, 1997). Under the facts of this grievance, the issue has become moot, and any ruling on the merits of this issue would constitute an inappropriate advisory opinion.

The above-discussion will be supplemented by the following Conclusions of Law.

## Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); Howell v. W. Va. Dep't of Health & Human Res., Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). "The preponderance standard generally requires

proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health & Human Res., Docket No. 92-HHR-486 (May 17, 1993).

2. Since Grievant is no longer a state employee, and the relief sought does not contain any monetary issues, Grievant is requesting is an advisory opinion on a moot issue. This Grievance Board does not issue, or respond to moot issues and does issue advisory opinions. Collins v. Dep't of Transp./Div. of Highways, Docket Nos. 02-DOH-227/248 (Jan. 3, 2003); Priest v. Kanawha County Bd. of Educ., Docket No. 00-20-144 (Aug. 15, 2000); Dooley v. Dep't of Transp., Docket No. 94-DOH-255 (Nov. 30, 1994); Pascoli & Kriner v. Ohio County Bd. of Educ., Docket Nos. 91-35-229/239 (Nov. 27, 1991); Procedural Rules of the West Virginia Education & State Employees Grievance Bd. 156 C.S.R. §§ 4.12 & 4.22.

3. "Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the [Grievance Board]. Miraglia v. Ohio County Bd. of Educ., Docket No.92-35-270 (Feb. 19, 1993). De minimus relief is also unavailable. Carney v. W. Va. Div. of Rehab. Services, Docket No. VR-88-055 (Mar. 28, 1989)." Baker v. Bd. of Directors, Docket No. 97-BOE-265 (Oct. 8, 1997).

Accordingly, this grievance is **DISMISSED**.

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." Any 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.

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**Janis I. Reynolds**

**Senior Administrative Law Judge**

**Date: September 29, 2006**

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*Footnote: 1*

*Although Grievant had originally filed her suspension and harassment grievance on the same grievance form, these issues were separated at Level III and separate decisions were issued. The Level III suspension decision was issued before the Dismissal Order, and the suspension decision was appealed to the Grievance Board on July 3, 2006.*

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*Footnote: 2*

*This complaint was found to have merit, and Grievant received a three-day suspension. See Docket No. 06-HHR-217 and note 1 supra.*