THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

KAREN L. BOND,
Grievant,

v. **DOCKET NO. 2013-0108-MidCH**

MID-OHIO VALLEY HEALTH DEPARTMENT,
Respondent.

DISMISSAL ORDER

Grievant, Karen L. Bond, filed a grievance against her former employer, the Mid-Ohio Valley Health Department, on July 23, 2012. The statement of grievance is five pages in length, but basically provides Grievant's version of various events, and states that the grounds for her dismissal are unsubstantiated. As relief Grievant seeks, "[t]hree month's severance pay."

On October 10, 2012, Respondent filed a Motion to Dismiss this grievance, on the grounds that the remedy sought by Grievant is unavailable. On October 23, 2012, Grievant was notified by the Grievance Board that if she wished to respond to the Motion to Dismiss, she should do so by November 9, 2012. Grievant did not submit a response to the Motion to Dismiss. Grievant is *pro se*, and Respondent is represented by Vanessa L. Goddard, Esquire, Steptoe & Johnson, PLLC. This matter is mature for consideration.

Synopsis

Grievant, a probationary employee, was dismissed from her employment for unsatisfactory performance. Grievant is not seeking reinstatement, but only three month's

severance pay as relief. This relief is not available as a matter of law through the grievance procedure.

The following Findings of Fact are made based on the documentation submitted with the Grievance Form and the Motion to Dismiss.

Findings of Fact

1. Grievant was dismissed from her employment as a probationary employee by the Mid-Ohio Valley Health Department ("MOVHD") by letter dated July 10, 2012, for unsatisfactory performance. Grievant was provided with this letter by Sandra Ellenwood, Administrative Services Manager 1, on July 10, 2012. Although the dismissal was not effective until July 25, 2012, MOVHD required Grievant's immediate separation from the workplace, and she was paid 15 calendar days severance pay.

2. Grievant is not seeking to be reinstated to her former position with MOVHD.

Discussion

Grievant is not seeking to be returned to her former position, but is seeking only three month's severance pay. Respondent, in its Motion to Dismiss, correctly points out that this relief is not available to Grievant through the grievance procedure as a matter of law.

The Division of Personnel's Administrative Rule discusses the probationary period of employment, describing it as "a trial work period designed to allow the appointing authority an opportunity to evaluate the ability of the employee to effectively perform the work of his or her position and to adjust himself or herself to the organization and program of the agency." The same provision goes on to state that the employer "shall use the

probationary period for the most effective adjustment of a new employee and the elimination of those employees who do not meet the required standards of work." 143 C.S.R. 1 § 10.1(a). A probationary employee may be dismissed *at any point during the probationary period* that the employer determines his services are unsatisfactory. 143 C.S.R. 1 § 10.5(a). The Division of Personnel's Administrative Rules establish a low threshold to justify termination of a probationary employee. *Livingston v. Dep't of Health and Human Res.*, Docket No. 2008-0770-DHHR (Mar. 21, 2008). A probationary employee is

> not entitled to the usual protections enjoyed by a state employee. The probationary period is used by the employer to ensure that the employee will provide satisfactory service. An employer may decide to either dismiss the employee or simply not to retain the employee after the probationary period expires.

Hackman v. W. Va. Dep't of Transp., Docket No. 01-DMV-582 (Feb. 20, 2002).

The Division of Personnel's Rule 12.2 provides with regard to severance pay and the 15-day notice period, as follows:

> (b) An appointing authority may require that an employee dismissed for cause immediately vacate the workplace, or an employee dismissed for cause may elect to do so. If the appointing authority requires a dismissed employee to immediately vacate the workplace in lieu of working during the notice period, or if an employee who receives notice of dismissal for cause elects to immediately vacate the workplace, the employee is entitled to receive severance pay attributable to the time he or she otherwise would have worked, *up to a maximum of fifteen calendar days after vacating the workplace.* Receipt of severance pay does not affect any other right to which the employee is entitled with respect to the dismissal.

(Emphasis added.)

Grievant was provided timely notification of her dismissal, and paid the maximum 15 days of severance pay. Grievant cannot, by law, be awarded three months of

severance pay. Grievant received the severance pay to which she was entitled under the facts of this case.

The Procedural Rules of the W. Va. Public Employees Grievance Board provide that, "[a] grievance may be dismissed, in the discretion of the administrative law judge, if no claim upon which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested." 156 C.S.R. 1 § 156-1-6 6.11(2007). The remedy requested by Grievant is wholly unavailable, and this grievance should be dismissed.

The following Conclusions of Law support the Dismissal of this grievance.

Conclusions of Law

1. The Procedural Rules of the W. Va. Public Employees Grievance Board provide that, "[a] grievance may be dismissed, in the discretion of the administrative law judge, if no claim upon which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested." 156 C.S.R. 1 § 156-1-6 6.11(2007).

2. A probationary employee may be dismissed at any point during the probationary period that the employer determines his services are unsatisfactory. 143 C.S.R. 1 § 10.5(a).

3. The Division of Personnel's Rule 12.2 provides with regard to severance pay that the employee is entitled to receive severance pay "up to a maximum of fifteen calendar days after vacating the workplace."

4. The relief requested by Grievant is unavailable as a matter of law.

5. The Procedural Rules of the W. Va. Public Employees Grievance Board provide that, "[a] grievance may be dismissed, in the discretion of the administrative law

judge, if no claim upon which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested." 156 C.S.R. 1 § 156-1-6 6.11(2007).

Accordingly, this grievance is **DISMISSED** from the docket of the Grievance Board.

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 appealing party must also provide the Board with the civil action number so that the certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

BRENDA L. GOULD
Administrative Law Judge

Date: December 18, 2012