THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

NATALIE B. HALE,

Grievant,

v. **Docket No. 2012-1167-CabCH**

CABELL-HUNTINGTON HEALTH DEPARTMENT,

Respondent,

and

STANLEY BRUCE MILLS,

Intervenor.

DISMISSAL ORDER

Grievant, Natalie B. Hale, filed a grievance against her employer, Cabell-Huntington Health Department, on April 19, 2012. Thereafter, the parties agreed to waive the grievance to level three of the grievance process. A level three hearing was convened on October 1, 2013, before the undersigned administrative law judge. Respondent appeared by counsel Kent Bryson, Esq., Assistant Prosecuting Attorney. Dr. Harry Tweel appeared as Respondent's representative. Also appearing, was the Intervenor, Stanley Bruce Mills, in person and by counsel, Raymond Nolan, Esq., who appeared telephonically. Grievant made no appearance at this hearing. At the commencement of the hearing, Respondent, by counsel, orally moved for the grievance to be dismissed as moot. As the Grievance Board was unable to reach Grievant at the telephone number provided, by Order entered October 1, 2013, the undersigned granted Grievant the opportunity to respond to the Motion to Dismiss by October 7, 2013. This matter is now mature for decision.

Synopsis

Grievant filed this grievance on April 19, 2012, alleging hostile work environment sexual harassment and nondiscriminatory hostile workplace harassment. Grievant resigned her position with Respondent effective June 21, 2013, while this matter was pending at level three of the grievance process. Grievant's resignation from her employment with Respondent rendered her grievance moot. Accordingly, this grievance is DISMISSED.

Findings of Fact

1. Grievant was employed by Respondent as an Office Assistant II. *See*, Statement of Grievance.

2. On April 19, 2012, Grievant filed this grievance alleging hostile work environment sexual harassment and nondiscriminatory hostile workplace harassment.[1] As relief, Grievant asks that "management address the issue immediately and to permanently prohibit interaction with the offending employee." *See,* Statement of Grievance and attachments.

3. A level three hearing was convened on October 1, 2013.[2] Respondent appeared by counsel, as did the Intervenor and his counsel. However, Grievant made no appearance at this hearing.[3]

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[1] Grievant filed her grievance at level one of the grievance process seeking a hearing. However, before a level one hearing was conducted, the parties agreed to waive the matter to level three. *See,* Order Granting Intervenor Status entered July 31, 2012. Thereafter, the matter was scheduled for a level three hearing.

[2] Grievant was provided notice of the October 1, 2013, hearing. A Notice of Hearing was sent to each of the parties at the addresses they provided the Grievance Board. Further, Grievant's former counsel advised her of the October 1, 2013, hearing as stated in his Motion to Withdraw.

4. The Grievance Board made efforts to contact Grievant by phone at the time of the hearing to no avail. The Grievance Board left a message for Grievant asking her to contact the office about the hearing scheduled for that day; however, Grievant did not return the Grievance Board's call.[4]

5. At the commencement of the level three hearing, Respondent orally moved for this matter to be dismissed as moot because Grievant had resigned her position effective June 21, 2013. Respondent presented as exhibits Grievant's resignation letter, and the letter sent to Grievant indicating that Respondent had accepted the same. *See*, Respondent's Exhibit 1.

6. By Order entered October 1, 2013, Grievant was provided the opportunity to submit a Response to the Respondent's Motion to Dismiss by October 7, 2013.

7. Grievant has not filed a response to Respondent's Motion to Dismiss, and has not otherwise contested the claims that she resigned her position effective June 21, 2013. Further, Grievant has not informed the Grievance Board of any opposition the Motion to Dismiss.

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." Rules of

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[3] Grievant was previously represented by counsel in this matter. However, at the time of the level three hearing, her counsel had withdrawn, and no substitution of counsel had been made. Therefore, it can only be assumed that Grievant was proceeding *pro se.*

[4] It is noted that the Grievance Board attempted to contact Grievant by telephone on Friday, September 27, 2013, also to no avail. The Grievance Board left a message for Grievant, but she did not return the call.

Practice and Procedure of the West Virginia Public Employees Grievance, 156 C.S.R. 1 § 6.2 (2008). This issue before the undersigned is Respondent's Motion to Dismiss. Respondent asserts that this matter is now moot because Grievant is no longer employed by Respondent. When the employer asserts an affirmative defense, it must be established by a preponderance of the evidence. *See, Lewis v. Kanawha County Bd. of Educ.,* Docket No. 97-20-554 (May 27, 1998); *Lowry v. W. Va. Dep't of Educ.,* Docket No. 96-DOE-130 (Dec. 26, 1996); *Hale v. Mingo County Bd. of Educ.,* Docket No. 95-29-315 (Jan. 25, 1996). *See generally, Payne v. Mason County Bd. of Educ.,* Docket No. 96-26-047 (Nov. 27, 1996); *Trickett v. Preston County Bd. of Educ.,* Docket No. 95-39-413 (May 8, 1996).

The Public Employees Grievance Procedure was established to allow public employees and their employers to reach solutions to problems which arise within the scope of their respective employment relationships. W. VA. CODE § 6C-2-1(a); *See, Wilson v. Dep't of Health and Human Res.*, Docket No. 2011-1769-DHHR (Oct. 31, 2011). WEST VIRGINIA CODE § 6C-2-2(e)(1) defines "employee" for the purposes of the grievance procedure, as follows: "'Employee' means any person hired for permanent employment by an employer for a probationary, full- or part-time position." W. VA. CODE § 6C-2-2(e)(1). WEST VIRGINIA CODE § 6C-2-2(g) defines "employer" for the purposes of the grievance procedure, as follows:

> [A] state agency, department, board, commission, college, university, institution, State Board of Education, Department of Education, county board of education, regional educational service agency or multicounty vocational center, or agent thereof, **using the services of an employee** as defined in this section. (Emphasis added.)

A “grievance” is “a claim by an employee.” *See,* W. VA. CODE § 6C-2-2(i). Only an employee may file a grievance. *See,* W. VA. CODE § 6C-2-2(a)(1).

This Board has dismissed grievances once the Grievant is no longer employed by the Respondent. *See, Fizer v. Dep't of Health and Human Res*., Docket No. 2008-1698-DHHR (Mar. 4, 2009); *Bragg v. Dep't of Health and Human Res.*, Docket No. 03-HHR-348 (May 28, 2004). It is apparently undisputed that Grievant ended her employment effective June 21, 2013. This action makes it unnecessary for the Grievance Board to act in this matter even if she had proven the action of Respondent was improper. *See, Collins v. Dep't of Transp./Div. of Highways*, Docket No. 02-DOH-227/248 (Jan. 30, 2003).

Grievant's resignation from her employment has rendered the issues raised in her grievance moot. A decision on this grievance either granting or denying the relief sought would have no effect on Grievant's employment. There are no issues of back pay or benefits that have been raised or argued by Grievant that need to be addressed. 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].” *Fizer*, *supra*, *Bragg*, *supra*; *Burkhammer v. Dep't of Health & Human Res.*, Docket No. 03-HHR-073 (May 30, 2003). Any remaining issues are now moot. Accordingly, this grievance must be DISMISSED.

The following conclusions of law support the dismissal of this grievance.

Conclusions of Law

1. "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]." *Fizer*, *supra*; *Bragg*, *supra*; *Burkhammer v. Dep't of Health & Human Res.*, Docket No. 03-HHR-073 (May 30, 2003).

2. Grievant's resignation from her employment with Respondent rendered her grievance moot.

Accordingly, this grievance is **DISMISSED**.

Any party may appeal this Order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this 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* 156 C.S.R. 1 § 6.20 (2008).

DATE: October 29, 2013.

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Carrie H. LeFevre
Administrative Law Judge