THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

DELCIE CLONCH,
Grievant,

v. **Docket No. 2014-0316-DHHR**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
LAKIN HOSPITAL,
Respondent.

DISMISSAL ORDER

Grievant, Delcie Clonch, filed this grievance on September 11, 2013, against the Department of Health and Human Resources/Lakin Hospital, disputing her suspension on August 26, 2013. As relief, Grievant seeks "[b]ring me back with all my restored time, made whole in every way." The grievance was properly filed directly to level three pursuant to W. VA. CODE § 6C-2-4(a)(4).

On October 8, 2013, Respondent, by counsel, Steven R. Compton, Senior Assistant Attorney General, filed a Motion to Dismiss, alleging the grievance to be moot. On October 24, 2013, the Grievance Board sent a letter to Grievant and her representative, Gordon Simmons, UE Local 170, WV Public Workers Union, instructing that, if Grievant opposed the motion, she must file a response to the motion by November 7, 2013, or the grievance would be dismissed. The Grievance Board has received no response to the motion. This matter is now mature for decision.

Synopsis

Grievant filed this grievance disputing her suspension pending investigation by Respondent. Since the filing of the grievance, the investigation failed to substantiate the allegations against Grievant. This suspension was expunged and Grievant's pay and benefits were restored. As there is no continuing controversy between the parties

or any further relief that can be granted, this matter is now moot. Accordingly, Respondent's Motion to Dismiss should be granted, and this grievance, dismissed.

The undersigned makes the following Findings of Fact:

Findings of Fact

1. Grievant, Delcie Clonch, is employed as a Health Service Worker at Lakin Hospital by the Department of Health and Human Resources.

2. Grievant was suspended pending an investigation on August 26, 2013.

3. Since the filing of this grievance, the investigation has concluded and the allegations were determined to be unsubstantiated.

4. Grievant has since returned to work and has been paid back pay, credited with all applicable benefits, and her personnel records reflect no break in service.

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 Practice and Procedure of the West Virginia Public Employees Grievance, 156 C.S.R. 1 § 6.2 (2008).

Respondent asserts that the grievance is moot because Grievant was only suspended pending investigation, which investigation did not substantiate the allegations. The suspension has been expunged from Grievant's record, and Grievant was paid back pay and credited with all applicable benefits. Respondent asserts this has resolved the grievance, and there is no further relief that can be granted.

> When there is no case in controversy, the Grievance Board will not issue advisory opinions. *Brackman v. Div. of*

> *Corr./Anthony Corr. Center*, Docket No. 02-CORR-104 (Feb. 20, 2003); *Gibb v. W. Va. Div. of Corr.*, Docket No. 98-CORR-152 (Sept. 30, 1998). In addition, 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]." *Bragg v. Dep't of Health & Human Res.*, Docket No. 03-HHR-348 (May 28, 2004); *Burkhammer v. Dep't of Health & Human Res.*, Docket No. 03-HHR-073 (May 30, 2003); *Pridemore v. Dep't of Health & Human Res.*, Docket No. 95-HHR-561 (Sept. 30, 1996).

Pritt, et al., v. Dep't of Health & Human Res., Docket No. 2008-0812-CONS (May 30, 2008); *Spence v. Div. of Natural Res.*, Docket No. 2010-0149-CONS (Oct. 29, 2009). In situations where "it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the question raised by this grievance would merely be an advisory opinion. '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 Nos. 91-35-229/239 (Nov. 27, 1991).' *Priest v. Kanawha County Bd. of Educ.,* Docket No. 00-20-144 (Aug. 15, 2000)." *Smith v. Lewis County Bd. of Educ.,* Docket No. 02-21-028 (June 21, 2002).

As Grievant's suspension has been expunged and her pay and benefits restored, there does not appear to be any further relief that can be granted in this process and no live controversy exists between the parties. Therefore, the Respondent's Motion to Dismiss must be granted, and this grievance dismissed.

The following Conclusions of Law support the dismissal of this grievance:

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." Rules of Practice and Procedure of the West Virginia Public Employees Grievance, 156 C.S.R. 1 § 6.2 (2008).

2. "When there is no case in controversy, the Grievance Board will not issue advisory opinions. *Brackman v. Div. of Corr./Anthony Corr. Center*, Docket No. 02-CORR-104 (Feb. 20, 2003); *Gibb v. W. Va. Div. of Corr.*, Docket No.98-CORR-152 (Sept. 30, 1998).

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]." *Bragg v. Dep't of Health & Human Res.*, Docket No. 03-HHR-348 (May 28, 2004); *Burkhammer v. Dep't of Health & Human Res.*, Docket No. 03-HHR-073 (May 30, 2003); *Pridemore v. Dep't of Health & Human Res.*, Docket No. 95-HHR-561 (Sept. 30, 1996).

4. In situations where "it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the question raised by this grievance would merely be an advisory opinion. '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 Nos. 91-35-229/239 (Nov. 27, 1991).' *Priest v. Kanawha County Bd. of Educ.,* Docket No. 00-20-144 (Aug. 15, 2000)." *Smith v. Lewis County Bd. of Educ.,* Docket No. 02-21-028 (June 21, 2002).

5. Grievant's suspension has been expunged, and her pay and benefits restored, rendering this 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 (eff. July 7, 2008).

DATE: November 20, 2013

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Billie Thacker Catlett
Administrative Law Judge