THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

SAMANTHA JANE MEEKS,

Grievant ,

v. **Docket No. 2013-0219-MAPS**

REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY/TYGART VALLEY REGIONAL JAIL,

Respondent.

DISMISSAL ORDER

This grievance was filed by Grievant, Samantha Jane Meeks, against her employer, the Regional Jail and Correctional Facility Authority/Tygart Valley Regional Jail, on August 16, 2012. The statement of grievance is quite lengthy and indicates that Grievant has submitted her resignation and is seeking payment for her accumulated sick leave accrued as of August 17, 2012.

A hearing was scheduled to be held at level one on August 28, 2012. Grievant did not appear for the hearing, and the grievance was denied at that level on August 28, 2012. Grievant appealed to level two on September 12, 2012, and a mediation session was held on January 14, 2013. Grievant appealed to level three on February 8, 2013. By letter dated February 25, 2013, the undersigned Administrative Law Judge advised Grievant that the Division of Personnel's Rules do not provide for the relief requested. Grievant was given until March 15, 2013, to respond to this letter, but did not file a response. This matter became mature for consideration on that date.

Synopsis

Grievant had worked for Respondent since May 29, 2007, and had earned 255 hours of sick leave at the time she resigned her employment. The Division of Personnel's Rules do not provide for payment for accumulated sick leave when an employee resigns her employment.

The following facts are accepted as true, based on the filings made by Grievant.

Findings of Fact

1. Grievant was employed by the Regional Jail and Correctional Facility Authority ("RJA"), at the Tygart Valley Regional Jail from May 29, 2007, until she resigned her employment effective approximately August 17, 2012, to work for the federal government.

2. Grievant had accumulated 255 hours of sick leave at the time of her resignation.

3. Grievant did not retire from her employment.

Discussion

Pursuant to the Procedural Rules of the West Virginia Public Employees Grievance Board, 156 C.S.R. 1 § 6.11 (2008), "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." The West Virginia Division of Personnel's Legislative Rules govern the treatment of accumulated sick leave when a state employee voluntarily separates from her employment, providing as follows:

> 14.4.e. Separation from Employment. -- Sick leave shall not accrue after the date and time of separation as defined in subsection 3.26. of this rule. As of the date and time of separation, all accrued and/or scheduled sick leave shall be cancelled, and payment shall not be made for sick leave subsequent to the date and time of separation, except as provided under paragraph 14.4.e.1. of this rule. Recovery of payment for sick leave made subsequent to the date and time of separation shall be made, by civil action if necessary.
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> 14.4.e.1. Retirement. -- An employee eligible to retire at the time of separation from employment may use unused sick leave to purchase extended insurance coverage upon retirement under guidelines established by the Public Employees Insurance Agency or upon retirement to acquire additional credited service in the state retirement system under guidelines established by the Consolidated Public Retirement Board.
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> 14.4.e.2. All Other Separations. -- All accumulated sick leave shall be cancelled as of the date and time of separation. If an employee returns to eligible employment, as provided in subdivision b. of this subsection, within one year of the date and time of separation, including the first working day the reinstatement could be accomplished, all cancelled sick leave shall be restored. However, if the employee returns to eligible employment after more than one year from the date and time of separation from employment, no more than thirty (30) days of cancelled sick leave shall be restored. If an employee who has been laid off is re-employed in eligible employment, all cancelled sick leave shall be restored.

143 C.S.R. 1 § 14.4.

As a state employee, these Rules govern the accrual and use of Grievant's sick leave. These Rules do not provide for payment for sick leave.

WEST VIRGINIA CODE § 5-5-6 does provide for payment for some portion of unused sick leave for eligible employees who are entitled on retirement to use their accumulated sick leave to buy extended insurance coverage, and who have accumulated at least 65 days of unused sick leave. This provision is not applicable as Grievant had not accumulated 65 days of sick leave. Accordingly, Grievant has failed to state a claim upon which relief can be granted, and this matter will be dismissed from the Grievance Board's docket.

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

Conclusions of Law

1. "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." Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 6.11 (2008).

2. The West Virginia Division of Personnel's Legislative Rules govern the treatment of an accumulated sick leave balance when a state employee separates from her employment. These Rules do not provide for payment for sick leave. 143 C.S.R. 1 § 14.4.

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

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *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: April 24, 2013