THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

DEBRA E. BRITTON,
Grievant,

v. **Docket No. 2011-1179-DHHR**

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES/HOPEMONT HOSPITAL,
Respondent.

DISMISSAL ORDER

Grievant, Debra Britton, filed this grievance against her employer, Hopemont Hospital, on February 15, 2011, alleging that she had received a verbal warning for sick leave abuse. She seeks the removal of this warning from her personnel file and her supervisor's file. This grievance was denied at level one by decision dated October 18, 2011. A level two mediation session was conducted on February 13, 2012. Grievant perfected her appeal to level three on February 14, 2012. Respondent filed a Motion to Dismiss this grievance on December 21, 2012, through its counsel, James "Jake" Wegman. Grievant was given until January 21, 2103, to file any response to this motion. No response was filed on behalf of the Grievant. Grievant appears by her representative, Jamie Beaton. The matter is now mature for a ruling on the motion.

Synopsis

Respondent asserts that Grievant received her relief requested in this matter, and the grievance is now moot. Grievant received a non-disciplinary verbal counseling, not a

verbal warning. The verbal counseling document was removed from the employee's files. Grievant has received complete relief in this grievance, and the case is now moot.

The following findings of fact are undisputed.

Findings of Fact

1. Grievant filed this grievance on February 15, 2011. She alleges that she was issued a verbal warning for sick leave abuse. She seeks to remove any reference to this disciplinary action removed from her personnel files.

2. Grievant received a non-disciplinary verbal counseling on February 11, 2011.

3. A copy of the verbal counseling document was not placed in Grievant's personnel file. The document was placed in her administrative file.

4. Respondent removed the verbal counseling document from the administrative file.

Discussion

Pursuant to the Procedural Rules of the 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 on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested."

Respondent moves that the undersigned dismiss this grievance because the relief that Grievant sought has been provided and no additional relief can be granted. In addition, the grievance is now 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]." *Pritt, et al., v. Dep't of Health*

& Human Res., Docket No. 2008-0812-CONS (May 30, 2008). The Grievance Board will not hear issues that are moot. *Cobb, et al. v. Div. of Highways*, Docket No. 2009-1017-CONS (Dec. 31, 2009).

It is undisputed that Grievant received a counseling session which is used by employers to discuss a potential problem before the situation requires the use of discipline. It is undisputed that Respondent engaged in the use of verbal counseling, which does not involve discipline. In addition, any memorialization of this session has been removed from Grievant's files. As such, Grievant has received her relief requested since this was not a disciplinary action and the verbal counseling document was removed from her files. Accordingly, this grievance is now moot.

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]." *Pritt, et al., v. Dep't of Health & Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008). The Grievance Board will not hear issues that are moot. *Cobb, et al. v. Div. of Highways*, Docket No. 2009-1017-CONS (Dec. 31, 2009).

2. "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 No. 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).

3. When it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the questions raised by this grievance would merely be an advisory opinion.

4. Because Grievant has been provided complete relief, this grievance is now moot.

Accordingly, the 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 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 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: January 29, 2013

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Ronald L. Reece
Administrative Law Judge