THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

ALEX STUMP, JR.,

Grievant,

v. **Docket No. 2011-0157-CONS**

DIVISION OF VETERANS AFFAIRS,

Respondent.

DISMISSAL ORDER

Grievant, Alex Stump, Jr., was employed by Respondent, Division of Veterans Affairs. On July 13, 2010, Grievant filed a grievance challenging a verbal counseling he had received, seeking its removal from his personnel file. This grievance was assigned the docket number 2011-0067-MAPS. This grievance was denied at level one. Grievant appealed to level two on August 5, 2010. On August 2, 2010, Grievant filed a second grievance directly to level three of the grievance procedure, challenging his termination from his employment. This grievance was assigned docket number 2011-0127-MAPS.

By Order dated August 12, 2010, the two grievances were consolidated at level three. Prior to the level three hearing, the consolidated grievance was severed, and only the termination grievance, Docket No. 2011-0127-MAPS, proceeded to hearing. The instant grievance contesting the verbal counseling was placed in abeyance by Order entered February 27, 2012, until a ruling was issued in Grievant's termination grievance. Administrative Law Judge, Ronald L. Reece, issued a decision denying Grievant's termination grievance on March 8, 2013. The appeal period for challenging

Grievant's termination grievance, has now passed, and no appeal has been filed. Grievant appeared by his representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent appeared by counsel, Mary M. Downey, Assistant Attorney General.

Findings of Fact

1. Grievant, Alex Stump, Jr., was employed by Respondent as a Health Service Worker at the West Virginia Veterans Nursing Facility until July 2010.

2. Grievant filed the instant grievance on July 13, 2010, requesting a verbal counseling statement be removed from his personnel file.

3. Respondent's decision to terminate Grievant's employment was upheld by a Decision issued March 8, 2013, in the grievance styled *Alexander A. Stump, Jr. v. Division of Veterans Affairs*, Docket No. 2011-0127-MAPS.

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."

> 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. Dept. 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 and Human Res., Docket No. 2008-0812-CONS (May 30, 2008). 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 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). "This Board has found that where a grievant is no longer an employee, 'a decision on the merits of her grievance would be a meaningless exercise, and would merely constitute an advisory opinion.' *Muncy v. Mingo County Bd. of Educ.,* Docket No. 96-29-211 (Mar. 28, 1997)." *Nestor v. Dep't of Health and Human Res./Hopemont Hospital*, Docket No. 2012-0149-CONS (Dec. 4, 2012).

As Grievant is no longer an employee of Respondent, and as his termination grievance has been fully litigated, the issue of the verbal counseling is now moot and any ruling thereon would amount to an advisory opinion. Further, this grievance fails to raise any claim on which relief can be granted. Accordingly, this grievance is dismissed.

Conclusions of Law

1. "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. Dept. 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 and Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008).

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. "This Board has found that where a grievant is no longer an employee, 'a decision on the merits of her grievance would be a meaningless exercise, and would merely constitute an advisory opinion.' *Muncy v. Mingo County Bd. of Educ.,* Docket No. 96-29-211 (Mar. 28, 1997)." *Nestor v. Dep't of Health and Human Res./Hopemont Hospital*, Docket No. 2012-0149-CONS (Dec. 4, 2012).

4. Because Grievant is no longer employed by Respondent, any ruling issued by the undersigned regarding the questions raised by this grievance would be an

advisory opinion. Further, any prospective relief that might normally be available is moot.

Accordingly, the grievance is **DISMISSED.**

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).

DATE: August 30, 2013.

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Carrie H. LeFevre
Administrative Law Judge