THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

TERESA BAKER,

Grievant,

v. **Docket No. 2013-1721-WayED**

WAYNE COUNTY BOARD OF EDUCATION,

Respondent.

DISMISSAL ORDER

Grievant, Teresa Baker, filed a level one grievance against her employer, Respondent, Wayne County Board of Education, on April 12, 2013, stating as follows: "WV § 6C-2-2 Discrimination, Favoritism. Grievant encountered hazardous situation at jobsite and was injured. Hazard remained for two years before injuring another employee. The hazard was then rectified. Wayne County Board of Education acted with deliberate intent in leaving this hazard unattended. There is lack of uniformity in the way the situation and claims were handled." As the relief sought, Grievant seeks, "[m]edical bill reimbursement of approximately $320.00 and reevaluation of previous claim for compensation."

A level one conference was conducted on May 2, 2013. This grievance was denied by decision dated May 7, 2013. Grievant appealed to level two on May 9, 2013. A level two mediation was conducted on July 15, 2013. Grievant perfected her level three appeal on July 24, 2013. Respondent filed a Motion to Dismiss the grievance on October 7, 2013, asserting that the relief sought is wholly unavailable. A telephonic hearing on the motion was conducted October 18, 2013, at which Grievant appeared with her representative, Jeremy Radabaugh, WVEA, and Respondent appeared by

counsel, David Lycan. Grievant filed her written response to Respondent's motion on November 4, 2013. This matter is now mature for decision. For the reasons stated below, Respondent's Motion to Dismiss is granted.

Synopsis

Grievant sustained a work-related injury in December 2010, after tripping on wires lying in the floor at the Respondent's central office. As a result, Grievant received workers' compensation benefits for medical treatment and expenses. After a co-worker was injured in a similar fashion two years later, Grievant filed this grievance alleging discrimination, favoritism, and that Respondent deliberately subjected her to harm. As her only relief, Grievant is seeking reimbursement for a medical bill incurred for treatment she received as a result of her compensable injury and "reevaluation of previous claim for compensation." The relief Grievant seeks is wholly unavailable to her through the grievance process, and a decision on the merits of her claim would only result in an advisory opinion. 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 is employed by Respondent as a Secretary.

2. Grievant sustained a work-related injury in December 2010. As a result of this injury, Grievant filed a workers' compensation claim which was processed through Brickstreet Mutual Insurance Company.

3. In January 2011, Grievant's workers' compensation claim was approved for necessary medical treatment and expenses.

4. It is unclear from the record whether Grievant's workers' compensation claim has been closed in its entirety.

5. Following a co-worker's workplace injury in 2013, Grievant filed her level one grievance on April 12, 2013, alleging discrimination, favoritism, and that Respondent acted with deliberate intent to subject her to a hazard in her workplace. The only relief Grievant seeks is "[m]edical bill reimbursement of approximately $320.00 and reevaluation of previous claim for compensation."

6. The medical bill for which Grievant seeks reimbursement was incurred as a result of her 2010 work-related injury.

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). The issue before the undersigned is Respondent's Motion to Dismiss. The burden of proof is on the Respondent, the moving party, to demonstrate that the motion should be granted by a preponderance of the evidence.

"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." Rules of Practice and Procedure of the West Virginia Public Employees Grievance, 156 C.S.R. 1 § 6.11 (2008).

> 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). "Because 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, et al., 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).

Although Grievant asserts claims such as discrimination and favoritism, Grievant has failed to request any relief that the Grievance Board has the authority to grant. The only relief requested in the statement of grievance is "[m]edical bill reimbursement of approximately $320.00 and reevaluation of previous claim for compensation." "The West Virginia Public Employees Grievance Board has no authority to grant Workers Compensation benefits nor to make Workers Compensation eligibility determinations." *Price v. Dept. of Health and Human Resources/Welch Community Hospital*, Docket No. 2011-0218-DHHR (Jul. 22, 2011). Therefore, the relief Grievant has requested is wholly unavailable to her in this forum. Further, any ruling on the merits of the case would

amount to an advisory opinion. Accordingly, the Respondent's Motion to Dismiss is granted, and this grievance, dismissed.

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 on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested." Rules of Practice and Procedure of the West Virginia Public Employees Grievance, 156 C.S.R. 1 § 6.11 (2008).

2. Grievant has failed to request any relief that the Grievance Board has the authority to grant. Therefore, the relief Grievant has requested is wholly unavailable to her in this forum.

3. "Because 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, et al., 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).

4. Any ruling issued by the undersigned on the merits of the grievance would amount to an advisory opinion.

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 21, 2013.

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Carrie H. LeFevre
Administrative Law Judge