

# THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

LINDA MEALEY,  
Grievant,

v.

Docket No. 2017-1956-DHHR

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/  
WILLIAM R. SHARPE, JR. HOSPITAL,  
Respondent.

## DISMISSAL ORDER

Grievant, Linda Mealey, filed a level one grievance against her employer, Respondent, Department of Health and Human Resources/William R. Sharpe, Jr. Hospital, on March 14, 2017. The grievance stated “Indefinite suspension for not being able to wear mask due to COPD, made to use AL, denial of reasonable accommodation. Discrimination”. The relief sought provided; “To be made whole in every way including restoration of all lost leave and pay”.

On December 5, 2017, Grievant, by representative, Jamie Beaton, provided that this grievance is now moot. On December 7, 2017, Grievance Board staff sent an email to parties stating that the level three hearing has been cancelled.

## **Synopsis**

Grievant, Linda Mealey, was employed by Respondent, Department of Health and Human Resources, at William R. Sharpe, Jr. Hospital. Grievant’s representative stated that this grievance is moot since Grievant is no longer employed by Respondent. Grievant’s resignation from her employment with Respondent rendered this grievance moot. Accordingly, this Grievance must be **DISMISSED**.

The following Findings of Fact are made based on the documentation submitted by both parties.

### **Findings of Fact**

1. Grievant, Linda Mealey, was employed by Respondent, Department of Health and Human Resources, at William R. Sharpe, Jr. Hospital.

2. On March 14, 2017, Grievant filed a level one grievance against Respondent. The grievance stated “Indefinite suspension for not being able to wear mask due to COPD, made to use AL, denial of reasonable accommodation. Discrimination”. The relief sought provided; “To be made whole in every way including restoration of all lost leave and pay”.

3. By e-mail dated December 5, 2017, Grievant’s representative provided that this grievance is moot since Grievant is no longer employed by Respondent.

### **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.*” W.VA. CODE ST. R. § 156-1-6.2 (2008). When the employer asserts an affirmative defense, it must be established by a preponderance of the evidence. *See, Lewis v. Kanawha County Bd. of Educ.*, Docket No. 97-20-554 (May 27, 1998); *Lowry v. W. Va. Dep’t of Educ.*, Docket No. 96-DOE-130 (Dec. 26, 1996); *Hale v. Mingo County Bd. of Educ.*, Docket No. 95-29-315 (Jan. 25, 1996). *See generally, Payne v. Mason County Bd. of Educ.*, Docket No. 96-26-047 (Nov. 27, 1996); *Trickett v. Preston County Bd. of Educ.*, Docket No. 95-

39-413 (May 8, 1996). “The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not.” *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

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).

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).

Grievant is no longer employed by Respondent thus, there is no remedy to grant Grievant. Therefore, the grievance is moot. Accordingly, this grievance must be **DISMISSED**.

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].” *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).

2. 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).

3. Since Grievant is no longer an employee of Respondent, the issues raised in this grievance are moot.

Accordingly, this 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 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 (2008).

**DATE: March 29, 2018**

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**Ronald L. Reece**  
**ADMINISTRATIVE LAW JUDGE**