MARY LATASSA

v. Docket No. 96-BOT-477

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY

D E C I S I O N

Grievant, Mary Latassa, filed a level one grievance on April 12, 1996, following the termination of her employment as an Administrative Secretary at West Virginia University (Respondent), in which she claimed that her dismissal was without sufficient, just, or proper cause, and in violation of the WVU Handbook, as well as "any other rules, statutes, policies, and regulations which might be applicable." Grievant requested reinstatement, and that she be made "whole in every respect including interest." Assignment to a similar position at the same paygrade was stated to be an acceptable alternative, so long as she was made whole. Following denials at levels one and two, the grievance was advanced to level four on November 4, 1996, in accordance with W.Va. Code §18-29-4(c). After a number of continuances for good cause shown, an evidentiary hearing was conducted on March 27, 1997, and the matter became mature for decision on April 18, 1997, the due date for submission of proposed findings of fact and conclusions of law. (See footnote 1)

The following facts are undisputed and may be set forth as formal findings of fact.

1. Grievant was initially employed at West Virginia University as an Administrative Secretary assigned to the Department of Orthodonics in the School of Dentistry, on or about March 26, 1991.

2. Grievant's employment with the Department of Orthodonics was terminated for cause on December 15, 1993. 3. Grievant subsequently filed a grievance, and pursuant to the level two decision, was reinstated and reassigned to the Office of Retention and Assessment, effective January 17, 1995.

4. Dr. Elizabeth Y. Doane, Associate Director, is the only regular, full-time employee, other than Grievant, at the Office of Retention and Assessment, although approximately a half-dozen graduate assistants are assigned there at any given time.

5. Dr. Doane evaluated Grievant's work in August 1995, noting four areas in which she found Grievant's performance deficient, and offered six goals with directions and timelines, to improve her work.

6. Dr. Doane issued letters dated September 15, October 18, November 8, November 9, and December 12, 1995, documenting Grievant's continued unsatisfactory performance.

7. Grievant did not respond to Dr. Doane and did not file a grievance regarding any of the letters.

8. Grievant was advised that her employment was terminated, effective immediately, in a letter from Dr. Doane, dated February 9, 1996.

In disciplinary matters, including dismissals, the employer bears the burden of establishing the charges by a preponderance of the evidence. W.Va. Code §18-29-6; Godfrey v. Bd. of Directors, W.Va. Institute of Technology, Docket No. 94-BOD-079 (July 15, 1994). As illustrated by the following narrative, Respondent has adequately met its burden of proof. To offer the matter in a more readable format, Grievant's written responses will be presented in sequence with the letters from Dr. Doane.

The record establishes that Grievant and Dr. Doane disagree in their accounts of nearly every event addressed in this matter. The record establishes that Dr. Doane found Grievant's performanceto be problematic practically from the time she began working in Retention and Assessment. Dr. Doane testified at level two that she had only held her position a matter of months prior to Grievant's assignment, and a great deal of work remained to be done in getting the office to function properly.

One of her first objectives was to have the support position upgraded from Secretary to Administrative Secretary. As the secretary would be the only full-time employee besides herself, Dr. Doane stated that she expected the individual would be given the responsibilities to warrant a higher classification. Because Grievant had previously been assigned and classified as an Administrative Secretary, she believed that with some initial period of adjustment, Grievant should be capable of satisfactorily performing the duties she would require.

Dr. Doane's assessment that Grievant was not able to “hit the ground running” is memorialized in the August 18, 1995 evaluation letter. In this correspondence Dr. Doane

commended Grievant for her dedication to students, parents, and visitors, and acknowledged that she had received many compliments from parents and co-workers regarding Grievant's cheerful telephone and office demeanor. She also expressed appreciation for Grievant's initiative in taking work home to prepare documents, in the absence of quality office equipment. After expressing these positive attributes, Dr. Doane noted that Grievant exhibited inappropriate judgment in setting priorities and would often only complete tasks which she chose.

Four specific concerns were listed. First, Dr. Doane had periodically requested over a six-month time span that Grievant learn how to adequately use the telephone features so that she could transfer calls. Finally, Dr. Doane called telecommunications and arranged an on-site training session for Grievant and herself. The second incomplete assignment involved Dr. Doane's ongoing requestthat Grievant make arrangements for the removal of obsolete equipment in the office. The only portion of the assignment Grievant had completed was the removal of one item which did not require the completion of a written request. Third, Dr. Doane stated that she had requested for approximately one and one-half months that Grievant complete the necessary forms for reimbursement of costs related to her attendance at a Faculty Development workshop. Fourth, Dr. Doane had to assist Grievant in prioritizing work by stating exactly what she expected her to complete that day.

Dr. Doane concluded that Grievant possessed neither the skills nor the experience to satisfactorily perform the duties of Administrative Secretary, and suggested that she obtain training in using the telephone, learning how to properly process the payroll, completing billing and buying, travel accounting, time management, and listening. Dr. Doane included the names of individuals Grievant was to contact for each type of training and a date for completion. She also requested that documents be completed for removal of the obsolete equipment by August 30, 1995, and that Grievant compose drafts for responses to more correspondence until she gained confidence to complete it on her own, and develop, refine, and implement office policies and procedures.

Following this evaluation, Dr. Doane issued Grievant the following letter, dated September 15, 1995:

I am disappointed with your obstinance over the past several months. When I ask you for

something that cannot be found, you become defensive and abrasive. On these occasions, I am immediately seeking a resolution to the situation, not accusing you. I know that lost items will generally show up later. However, when you sometimes later find a missing item, you never take responsibility for your outbursts or take the initiative to remedy the situation. In the future, I will expect you to respond to me as your supervisor in an appropriate way.

I will be pleased to discuss this matter further with you.

Dr. Doane issued a second letter dated October 18, 1995, in which she detailed her concerns with Grievant's performance and outlined her expectations. Dr. Doane advised Grievant that her duties included using good judgment and decorum in screening telephone calls, providing visitors with information, and scheduling. Several examples were given of unsatisfactory experiences, such as Grievant taking a message that an individual had called to make an appointment to install the new computers. She provided Dr. Doane with the message, but did not take the initiative to schedule the appointment. On other occasions, without announcement, she directed unscheduled visitors who were seeking information into Dr. Doane's office, rather than provide the information herself.

Dr. Doane advised Grievant that her conduct was "often intrusive and disruptive, particularly when I am meeting with staff and others in my office. Your practice of blatantly waling [sic] into my office while I am engaged in meetings or conversations with others needs to be discontinued." She also advised Grievant that she did not wish to be disturbed when her door was closed, except in situations which required her immediate attention. Grievant was advised that her conduct was perceived as being disrespectful. An example of the complained-of behavior involved Dr. Doane requesting a file and Grievant complaining that she had already given it to her, when it was later found on Grievant's desk. Dr. Doane stated that she would not tolerate such outbursts, and demanded more civil responses.

An example of insubordination was cited as having occurred on October 6, 1995, when Dr. Doane requested that Grievant attend to a task and Grievant refused, stating that she was weeks behind in paying the office bills. No evidence of paperwork completed for bill paying was foundby Dr. Doane several days later. She advised Grievant that as supervisor, she set the priorities and when she issued a directive, expected that it be carried out. Also noted was that Grievant had created an uncomfortable working relationship with several coworkers who

would no longer contact her but would proceed directly to Dr. Doane who stated "[t]o date I have been able to buffer you [sic] attitude with staff in our immediate office, but it is becoming unmanageable." She described their working relationship as requiring her to walk on eggshells to deal with Grievant's attitude and behavior. Several of the objectives from the August evaluation were reiterated as well as improvements in listening and attitude, as being necessary to improve Grievant's performance.

Grievant's recollection of events differs greatly from those of Dr. Doane, with only one significant exception. The record reflects that Grievant did not make a written response to the evaluation of August 18, or the letter of September 15, 1995. However, upon receipt of the October 18, 1995, letter, Grievant began producing letters of response addressed "To Whom It May Concern." These letters were apparently kept by Grievant, and not shared until the level two grievance hearing.

In the October 18, 1995, letter Grievant referred to her evaluation of August 18, noting that Dr. Doane had invited her out to lunch at a crowded restaurant to discuss her performance. Grievant stated that she found this choice of location inappropriate because patrons at nearby tables were listening and staring at her, causing her stress and discomfort when she should have been enjoying her meal. (See footnote 2) Grievant denied that she lacked the experience or skills necessary for the position because she had been previously assigned as an Administrative Secretary at the School of Dentistry. However, she noted that different criteria and skills had been required at her prior assignment and that no two departments function the same way. Grievant noted that Dr. Doane should have asked her more questions at the interview to determined what had previously been required of her, and provided her instructions to learn the requirements of the new position, rather than waiting to criticize her at the end of a seven month period.

Grievant cited apparent inconsistencies in Dr. Doane's statements, noting that she had been praised in her August evaluation for her work with parents and university co-workers, yet by October 18, she had been advised that she had created uncomfortable working relationships. Addressing the goals set forth by Dr. Doane for correcting her performance, Grievant stated that she had completed the list by September 30, with the exception of attending the workshop on "Time Management" which had been postponed until Spring.

Grievant did not deny that she had not made an appointment to have the new equipment installed, but explained that Dr. Doane had previously communicated directly with the employee in Telecommunications, and that she kept her own appointment calendar. Grievant stated that she had not been instructed to handle such calls, but would have done so had she been asked courteously. Grievant denied intruding upon Dr. Doane when her door was closed, and noted that initially she had indicated that Grievant should always ask for help when necessary. Entering Dr. Doane's office was unavoidable, Grievant notes, because she was required to retrieve work assignments from a tray located on her desk. Grievant did recall sending in one visitor, but opined that the action was legitimate, because the student had a question about an assigned class, and Dr. Doane had the only revised class schedule printout in her office. Grievant recollected that Dr. Doane initially had welcomed students into her office, but had become reluctant to meet with them after her work loadhad increased. Apparently, she believed that Grievant should assume some responsibility in answering student inquiries; however, Grievant stated that because her expertise was minimal, “students had to settle for half as much information.”

Grievant denies any recollection of ever being disrespectful to Dr. Doane regarding her request to locate a folder. She stated that files do sometimes get misplaced, but that she could generally locate one, even when it was buried on Dr. Doane's desk. Grievant opined that had Dr. Doane exhibited a sense of humor, Grievant's load would have been lightened tremendously. Grievant recounted that she had taken a great deal of work home to complete because she had access to a better quality printer and software, and could produce more professional looking documents. When she requested compensatory time off for this work she stated that Dr. Doane “belittled” her, but did not state that she should discontinue the after-hours work.

Grievant continued that in October she had to place her regular work on the back-burner to complete mid-term grade processing for the eighty-five students enrolled in the Retention and Assessment STEP program. She was further impeded by Dr. Doane's mistakes. She stated that she advised her supervisor several times that she needed time to catch up on her bookkeeping, and mused that “she must have thought I could do two jobs easily, and also work at home willingly!” Grievant indicated that she did not understand why clearing old

equipment out of a storage cabinet had became a priority during such a hectic time, and characterized Dr. Doane's comments regarding the matter as harassing. Grievant noted that the previous secretary could have completed the task “since she had worked there four years and watched it accumulate.” Dr. Doane provided no guidance on how to fill out the inventory forms, and after the equipment had been removed, Grievant noted that the “new storage space [remained] empty for several months before using it again”. Grievantsuggested that if Dr. Doane were to implement “a different and less stressful management style, she wouldn't have so many problems communicating with her employees.”

The next letter Dr. Doane sent to Grievant, dated November 8, 1995, began “[t]his letter addresses your continued obstinant behavior which has to be corrected immediately.” This letter recounted an incident on October 31, 1995, when Dr. Doane again could not locate a document and Grievant insisted it was in Dr. Doane's office. Dr. Doane directed Grievant call a third party, Dr. Chase, to confirm whether he had received the document in the mail. Grievant did so, but did not advise Dr. Doane that he had confirmed receipt (which Dr. Doane states indicated that Grievant had indeed mailed the document). When Dr. Doane called him the following day with the same inquiry she was embarrassed to learn that Grievant had already placed the call.

A second incident noted by Dr. Doane was that Grievant's spouse had telephoned the office on November 6, 1995, at 9:10 a.m. to report that she was ill. This was stated to be the second time that Dr. Doane had been notified of Grievant's absence well after the start of the work day, even though she had requested that Grievant notify her as soon after 8:15 a.m. as possible, or even the night before, so that she could ensure that the office would be open on time and covered throughout the day. Dr. Doane noted that in addition to the two incidents when Grievant's husband called later in the day to report her absence, she had been absent without announcement on other occasions. Dr. Doane concluded by warning Grievant that she would not tolerate her belligerent and insubordinate behavior every time Grievant made a mistake or she was required to discuss an unfavorable topic with Grievant.

On November 8, Grievant set forth her version of the October 31, incident. Grievant recalled telephoning Dr. Chase, Chair of the Psychology Department, to locate a report. She was pleased tolearn that Dr. Chase, an old friend from her hometown in Massachusetts, was

in West Virginia. He promised to mail the report to Assessment and Retention as soon as it was completed. Grievant stated that she advised Dr. Doane of this information, but that she either forgot or was not listening. Grievant concluded that had Dr. Doane asked her if she had called Dr. Chase, she could have saved herself the embarrassment of calling him again.

Addressing the issue of having her husband call in to report that she was ill, Grievant questioned why Dr. Doane needed to know precisely at 8:15 a.m. that she was going to be absent since classes do not begin until 9:00 a.m. and at least one of the graduate assistants arrives by 8:30 a.m. She opined that fifteen minutes was not a critical amount of time to worry about, and that she was not abusing her sick leave.

November 9, 1995, brought a fourth letter from Dr. Doane addressing two additional episodes of unacceptable behavior by Grievant. The first involved a missing document which she stated Grievant denied having ever possessed, yet it was found in a graduate assistant's mailbox. Dr. Doane opined that Grievant had mistakenly put it there. The second matter occurred when Grievant denied that Dr. Doane had earlier requested that she arrange a committee meeting, a request that Dr. Doane clearly recalled.

On November 9, 1995, Grievant wrote that on that morning she had retrieved her work from Dr. Doane's basket and had processed it as quickly as possible. Later in the day, when she was requested to return the dozen items, she collected as many as she could remember. When Dr. Doane told her that one was missing, Grievant asked why it had been placed in the basket if she was not to have it in the first place. Grievant then suggested that she reprint the document because she had filed so many things she could not recall where it was. Later that day, Dr. Doane located the letter in themailbox of a graduate assistant, where Grievant stated that she had correctly filed it. Grievant noted that she had to shoulder the blame for Dr. Doane's memory loss.

The same day, Grievant stated that Dr. Doane had tried to imply that she had not notified the members of the Orientation Overview Committee of a meeting in November. Grievant suggested that each member be mailed a six-month calendar, indicating their availability for future meetings. Grievant claimed that it was her suggestion, not Dr. Doane's that Dr. Doane should set priorities for her work, but that she be allowed to determine which were most important. Grievant noted errors made by Dr. Doane which required additional time and effort

for correction. Grievant stated that she had never said a word to Dr. Doane about her mistakes, but that Dr. Doane indicated it was Grievant's responsibility to correct them. She again stated that this responsibility required that her own work be put on the back burner so often that she could not get her assignments completed on time.

A letter dated December 12, 1995, memorialized a discussion between Dr. Doane and Grievant on the preceding day, after they had learned that a location had not been secured for a committee meeting scheduled for December 14. Dr. Doane stated that while she "sought an expedient resolution for the situation" Grievant provided "a lengthy, obstinate discourse" which included:

You think that this is my fault. I thought that when you gave me the meeting date and time that someone else was going to organize the location. It's too late to call people about the location of a meeting. It's too much work and too time consuming to telephone everyone on the committee to give them a location now. Everyone will think that I am not organized. I told you to let me organize these meetings. I told you to set the meetings up for the semester (or year) in the last meeting. I have served on many committees, and I know how to organize them. After I told you how to organize the meetings, youdid not credit me for the good idea. You are inept. I don't have time to make the calls today because I have the mailing to complete today.

The letter indicated that Grievant's comments had been made in the presence of a committee member who attempted to explain why it was not expedient to arrange meetings for an extended period of time. Dr. Doane indicated that Grievant did not hear this explanation because she continued with the "tirade". After Grievant insisted that she could not complete the mailing and call the committee members, a graduate assistant was assigned to complete the mailing. The assistant reported that she completed the task in fifteen minutes. Dr. Doane noted that Grievant did not begin placing the calls until 2:25 p.m. and had completed that assignment by 3:30 p.m. Grievant was advised that her failure to discontinue her tirade after she had been directed to stop was unacceptable and would no longer be tolerated.

In her letter of December 12, 1996, Grievant denies that she ever claimed that she could not complete her mailing and call the committee members, and states that she merely inquired of Dr. Doane which of the two chores should take priority. The graduate assistant completed the

mailings quickly, according to Grievant, because she had already completed the bulk of preparation. She opined that Dr. Doane's account of this event belittles the amount of work she had completed.

Grievant stated that she did suggest that a monthly schedule of meetings be prepared for an entire semester, but that Dr. Doane also “belittled” that suggestion when she said that it was not a standing committee. Grievant noted that her observation had been that members attend monthly meetings, but that Dr. Doane was not willing to improve the efficiency of the office “and would rather tie up her secretary's time making needless phone calls to voice mail machines!” Sheconcluded that because of her competence as a secretary, both jobs were completed in the same afternoon.

Dr. Doane began the letter of February 9, 1996, by stating that it would address Grievant's ongoing inappropriate behavior and insubordination. Those incidents listed were: 1. On Wednesday, January 10, 1996, Grievant telephoned the office and stated that she would not be reporting to work because of the snow, and “the Governor declared [the day] a state of emergency and that state employees would not have their insurance covered.”

2. On January 22, 1996, Dr. Doane requested that Grievant take notes at a meeting scheduled on January 30. Grievant refused, stating that note taking, dictation, and transcription were not part of her job description. After commenting that Dr. Doane should have gotten her in her “hay [sic] day” when she could take dictation by the hours, Dr. Doane explained that she did not require dictation, but only summarized notes of an important meeting. Grievant continued to refuse, even though Dr. Doane confirmed with Human Resources that the task was appropriate for an Administrative Secretary.

3. Grievant reported that she was ill on January 29, 1996, and was unsure of her attendance the following day. When she called to state that she would not be at work on January 30, Dr. Doane directed that she return with a physician's statement. Grievant did not appear for work on January 31, because it had snowed and her husband had driven the “good car” to work.

4. On February 1, 1996, Grievant presented Dr. Doane with her Employee Time Record. Diverted by a telephone call, Dr. Doane looked it over quickly and signed the document but twice advised Grievant that she was not ready to give it back to her until she had checked the

dates. Dr. Doane later advised Grievant that she had improperly claimed sick leave, rather than annual leave,for January 10, when she had stayed home due to the weather. Grievant responded that she had sick leave but no annual leave and that it had not made any difference which form of leave was claimed at most places she had worked. Grievant took the form, over Dr. Doane's objection, stating that she needed to fax it somewhere.

5. On February 2, Dr. Doane presented Grievant with three major tasks for the day, and a specific priority list for each task was set. Grievant completed the first priority, skipped number two, completed number three, and then worked on tasks which had not been designated as priority. When this was brought to her attention, Grievant stated in a condescending manner that it was fortunate that she had proceeded as she had because Dr. Dean did not have much time on his schedule. Dr. Doane noted that she had listed the priorities with the knowledge that Dr. Dean had asked that she arrange two of the three meetings, and that he would arrange his time accordingly.

6. On February 5, 1996, Grievant received flowers and balloons at the office for her birthday. As Grievant was preparing to leave for the day, Dr. Doane wished her a good celebration. In response, Grievant launched into a tirade that she had received no card, no cake, or no type of celebration at the office. Dr. Doane was involved with a telephone conversation and did not respond at that time.

7. Upon Grievant's arrival at work on February 6, Dr. Doane directed that she never again speak to her in a condescending manner, as she had the previous day. Grievant began a lengthy tirade which essentially made the point that her comments reflected how she felt and that she was going to stand up for herself. The same day, Dr. Doane learned that Grievant had not corrected her leave slip for January 10, 1996. After noting that she had issued disciplinary letters regarding Grievant's ongoing insubordinate behavior on September 15, October 18, November 8 and 9, and December 12, 1995, Dr. Doane concluded that Grievant's behavior would not improve and advised that her employment was terminated, effective immediately.

In response to the letter of dismissal, Grievant stated that January 8 and 9, 1996, West Virginia University was closed due to weather. She recalled that a local radio station reported that “the University would understand if employees found it difficult or dangerous to travel on

the highways or roads they could take an additional day off from work". Because the roads in her subdivision had not been cleared, she chose to stay home the additional day, and did not perceive Dr. Doane to be upset. Grievant noted that in her prior position at WVU, the office policy allowed employees to use sick leave for days missed during snowstorms. When questioned by Dr. Doane, she explained her position and suggested that she fax her Employee Time Record to the payroll office and let the appropriate individual make the decision on the snow day policy. Grievant recalls that Dr. Doane did not challenge that suggestion.

Regarding the request that she take notes during a committee meeting, Grievant advised that she had been told while taking the typing test for employment at WVU, that shorthand and/or stenography was generally a requirement for an executive secretary, not an administrative secretary. After reviewing her job description, she opined that there is no reference to note taking or dictation, and that both Dr. Doane and the staff member at Human Resources who advised her that it was Grievant's responsibility, are incorrect in stating that it was her responsibility.

Grievant stated that Dr. Doane appeared to be very irritated that she missed two days of work in January and "barked" at her to bring a doctor's note when she returned. She had no problemacquiring the note, but checked with Personnel to confirm that it is not required until the employee has missed five consecutive days of work. Grievant claimed that on February 2, 1996, Dr. Doane prioritized her assignments for the first time since she had worked there. Of the three assigned tasks, she perceived the third to be the most difficult because it involved calling six people to arrange three meetings. Knowing one of the individuals, Dr. Dean, usually finds it difficult to arrange such schedules, she called him first. She reported to Dr. Doane that she had called Dr. Dean, and he had limited time available, noting that Dr. Doane did not appear unhappy that she had not completed the priority one and two tasks first. Grievant stated that it would have been impossible to schedule the meetings involved with task three if she had not acted quickly that morning. She disputes Dr. Doane's statement that Dr. Dean would arrange his time around her schedule and states that the opposite is true, because as Provost and Vice President of WVU, he attends many more meetings. Grievant claims the remaining two tasks were completed by the end of that day, contrary to Dr. Doane's

allegation that the second task was not completed until the following day.

Despite the fact that her husband sent her flowers and balloons, Grievant stated that only one person wished her a “Happy Birthday.” Grievant stated that while she was not looking for any recognition, she had always made a point of personally sending a card or buying a cake for other birthdays, without being reimbursed, and admitted that she was a little “miffed” that her birthday was ignored. She admits that when Dr. Doane wished her a happy celebration at the end of the day she “retorted, '[t]hanks a lot for not remembering me today after all the things I have done for others in this department.'” Grievant concedes the statement was in poor taste, but that her feelings were hurt because she felt that Dr. Doane should have arranged “at least as much as the other employees hadreceived on their birthdays. [Grievant] did not feel this was too much to expect from her.” (See footnote 3) She recognized later that her feelings could have been more tactfully expressed.

When Dr. Doane approached her the following morning, Grievant characterized her as speaking in a loud, angry, and disrespectful voice, and told her to never speak in such a manner again. Grievant repeated that her feelings had been hurt, at which time Dr. Doane suggested that she could pack up her things and leave. Grievant stated that she had no grounds for dismissal and claimed that she had no idea Dr. Doane was planning to terminate her employment. (See footnote 4) She stated that receiving the February 9, 1996 letter at her home on February 13, was a complete surprise.

As evidenced by the foregoing documentation, substantiated by the testimony of Dr. Doane and Grievant at levels two and four, Dr. Doane found Grievant unable or unwilling to perform the duties assigned to her as well as acting insubordinate and disrespectful on numerous occasions. Grievant asserts that while she had generally performed in a satisfactory manner, any deficiencies were attributable to her lack of familiarity with a different procedure, and the failure of others to provide her with needed information, and Dr. Doane's own failings.

To some extent, because Grievant and Dr. Doane were the only two regular employees in the office, the credibility of these two individuals must be addressed. Simons v. Logan County Bd. of Educ., Docket No. 95-23-399 (June 27, 1996); Stamper v. Dept. of Health and Human Resources, Docket No.95-HHR-144 (March 20, 1996). Grievant's credibility was damaged when

she admittedto certain actions which were cited by Dr. Doane. Certainly, Grievant's recitation of the episode regarding her birthday illustrates the claim that she was prone to outbursts or tirades. More importantly, Grievant refused to acknowledge that she had never been requested to take dictation at a committee meeting, but rather was only to take notes, and her testimony indicates that she would have refused to take notes because it was beyond her ability to keep track of all the participants. By her own admission, Grievant did not complete the assignments of February 2 in the order of priority in which they were given. Her testimony, considered in its entirety, indicates continued denial that she was not performing satisfactorily, and insistence that any errors were caused by the failure of others to provide her information or to perform their own work precisely. She has also undeniably confronted Dr. Doane on more than one occasion to question her decisions or to tell her that she was incorrectly managing office procedures. Accepting that Dr. Doane's recollections are unavoidably tainted to some extent by her frustrations with Grievant over a period of a year, Grievant's own testimony establishes that she acted contrary to direction and with disrespect.

While Grievant's testimony alone is supportive of a finding that she engaged in insubordination, several other witnesses provided testimony which further supports Respondent's position. Tina Levelle, Assistant Dean of the Division of Arts and Sciences, testified that she continually found errors in transactions submitted by Grievant. Although she attempted to provide Grievant training, particularly for payroll which is a priority, she became frustrated because Grievant clearly resented being trained, and repeatedly asked the same questions. Ms. Levelle stated that in one instance Grievant advised her that Dean Evans had directed her not to complete certain documents. Because this did not make sense, she checked with Dean Evans who denied any such directive. Ms. Levelle stated that when confronted with a mistake, Grievant would indicate it to bethe fault of someone other than herself.

Munir Malik, a graduate assistant assigned to Assessment and Retention, testified that while he did not hear the content, he did overhear discussions between Grievant and Dr. Doane from time to time in which Grievant would speak in a raised tone of voice. He also opined that Grievant did not exhibit the same work ethic as Dr. Doane, and that she spent more time talking than working.

Elizabeth Demasi, a Senior Office Administrator in the Office of Academic Affairs and Research, stated that she found forms submitted by Grievant were not timely processed and frequently included errors. When advised of the mistakes Grievant would promise to be more careful, but the errors continued.

Generally, insubordination involves the "willful failure or refusal to obey reasonable orders of a superior entitled to give such an order." Riddle v. Bd. of Directors, So. W.Va. Community College, Docket No. 93-BOD-309 (May 31, 1994). However, it may also involve a flagrant or willful disregard for implied directions of the employer. Sexton v. Marshall Univ., Docket No. BOR2-88-029-4 (May 25, 1988). Grievant willfully refused to obey Dr. Doane on more than one occasion, and was given five letters warning her to amend her behavior. Grievant asserted that she did not perceive the letters to be warning letters which could lead to termination, but interpreted them to be in the nature of counseling letters. She also argued that the letters were not specifically identified as warning letters. This argument is entirely without merit because each letter concluded by advising that it would be placed in her personnel file for a period of twelve months should there be additional warnings. It is also noted that in addition to the five letters issued by Dr. Doane, one letter of warning remained in her file from her previous assignment. That letter, and the first termination proceeding, also charged Grievant with insubordination. The above findings of fact and discussion will be supplemented the following formal conclusions of law.

Conclusions of Law

1. In disciplinary matters, the burden of proof is upon the employer and the employer must meet that burden by proving the charges against the employee by a preponderance of the evidence. Stamper v. W.Va. Dept. of Health and Human Resources, Docket No. 95-HHR-114 (March 20, 1996).

2. Insubordination involves the "willful failure or refusal to obey reasonable orders of a superior entitled to give such order." Riddle v. Bd. of Directors, So. W.Va. Community College, Docket No. 93-BOD-309 (May 31, 1994).

3. Respondent proved by a preponderance of the evidence that Grievant engaged in insubordinate conduct on numerous occasions.

4. Having proven that Grievant engaged in acts of insubordination, and that she had been properly issued five letters of warning for these offenses, the termination of her employment was proper, and not in violation of any laws, policies or regulations.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither the West Virginia Education and State EmployeesGrievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

Date: July 24, 1997 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Grievant elected not to file any post-hearing submissions.

Footnote: 2

It is of interest to note that Dr. Doane's testimony was that Grievant had requested that the evaluation be conducted over lunch at a restaurant. Dr. Doane stated that she was surprised by the request but agreed, believing that Grievant would be less likely to create a scene in public.

Footnote: 3

Grievant explained that on one or two occasions she had brought in cakes for birthdays and gave celebrants cards. It appears that she did this on her own initiative and it was not any sort of office practice. She stated that she had done nothing to observe Dr. Doane's most recent birthday because they were not getting along at the time.

Footnote: 4

Grievant may have had some indication that all was not well because she had applied for transfer on February 1, 1996.