PATRICIA BENNETT

v. Docket No. 96-HHR-149

WEST VIRGINIA DEPARTMENT OF HEALTH
and HUMAN RESOURCES

DECISION

The grievant, Patricia Bennett, is employed by the West Virginia Department of Health and Human Resources (HHR) as an Income Maintenance Worker assigned to its Hinton area office. She filed a grievance at Level I, on May 10, 1996, charging her supervisor, Linda Cobb, with harassment. The complaint was denied at the lower levels, and appeal to Level IV was made April 1, 1996. A hearing was held November 12, 1996, and the parties submitted proposed findings of fact and conclusions of law by December 13, 1996.

BACKGROUND

Not unexpectedly, the grievant and Ms. Cobb provide significantly different accounts of the incidents which gave rise to the complaint. According to the grievant, on the morning of May 5, 1996, she was having a conversation about HHR's newly-enacted policy regarding weapons in the workplace with other Income Maintenance Workers in a “bay” area outside Ms. Cobb's office when Ms. Cobb ordered her into the office, and threatened her with dismissal if she did not sign a statement saying that she had read and understood the weapons policy. The grievant related that Ms. Cobb was “screaming in the bay area” in the presence of other employees. Ms. Cobb denies that she screamed or made any threats, and asserts that she called the grievant into her office because she wascomplaining loudly that she had not received instruction on the policy.

On the morning of May 9, 1996, the grievant and Ms. Cobb had a discussion in which Ms. Cobb advised that the grievant had a poor attitude, was intimidating to other employees and clients, and was using foul language in the presence of co-workers in an area where she might be overheard by

clients. Ms. Cobb informed the grievant that she should consider her comments a verbal warning, and that more severe disciplinary measures might be taken if her behavior continued. The grievant made it clear that she disagreed with Ms. Cobb's assessment. According to the grievant, these two incidents caused her great mental anguish and loss of sleep.

HHR personnel policy provides that "[e]mployees are expected to conduct themselves professionally in the presence of residents/patients/clients, fellow employees and the public and be ethical, alert, polite, sober, and attentive to the responsibilities associated with their jobs." The policy directs employees to "refrain from profane, threatening or abusive language toward others." Other Hinton area office Income Maintenance Workers have used profane language in the presence of other employees, and have been cautioned and/or reprimanded by Ms. Cobb or other administrators. The grievant admits to cursing in the presence of other employees.

ARGUMENT

The grievant contends that Ms. Cobb's statements and/or actions on the dates in question constituted harassment as that term is defined in W.Va. Code §29-6A-2(1). As relief, she asks for rulings that the reprimand was unwarranted, and Ms. Cobb deserves some form of admonishment. HHR asserts that the reprimand was commensurate with the grievant's conduct and Ms. Cobb's actions were otherwise in accordance with agency policy.

FINDINGS AND CONCLUSIONS

While Ms. Cobb tended to be the more credible witness at the Level IV hearing, it is not necessary to recount or resolve the many conflicts in the testimony regarding what transpired during the two discussions between her and the grievant. A careful review of the evidence reflects that the grievant and Ms. Cobb simply had the type of disagreement which is to be expected in any employer-employee relationship. Even if it were accepted that Ms. Cobb made the statements attributed to her in the manner described by the grievant, her words and actions would not constitute harassment. Code §29-6A-1(1) defines the term as "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession."

A preponderance of the evidence in the case establishes that Ms. Cobb considers the grievant a

good employee, but disapproves of her use of foul language, and is of the opinion that the grievant is occasionally confrontational and intimidating toward other employees. Given the grievant's concession that she did, at times, use profane language, and since the record reflects that others have been admonished for the same behavior, it is readily concluded that Ms. Cobb's comments on that issue were intended to rehabilitate and not disturb, irritate, or annoy. To the extent that the evidence supports that she made statements regarding the grievant's continued employment with the agency, those statements may have been inappropriate, but not so egregious as to constitute harassment.

The evidence is less clear on whether the grievant has acted in a confrontational manner with other workers, but it sufficiently establishes that on at least one occasion, she placed herself unnecessarily close to another employee and used a loud, and perhaps intimidating tone of voice, during a discussion of a client's need for emergency financial assistance. To the extent that HHRhas a burden in the case, see, W.Va. Code §29-6A-6, it has proven that the verbal reprimand was warranted and consistent with its personnel policies. The grievant has not shown that the reprimand was part of a pattern of harassment, or that Ms. Cobb had a motive other than to correct her behavior.

Accordingly, the grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance 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.

JERRY WRIGHT

Administrative Law Judge

JULY 31, 1997