SANDRA PARKER,

Grievant,

v. Docket No. 97-HHR-042B

WEST VIRGINIA DEPARTMENT

OF HEALTH AND HUMAN RESOURCES/

WELCH EMERGENCY HOSPITAL,

Respondents.

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D E C I S I O N

Grievant, Sandra Parker, filed these grievances on December 15, 1995, and March 30, 1996, respectively. As the two grievances relate to each other, they were heard at Level III and Level IV together. (See footnote 1) The first grievance relates to two separate written warnings issued on December 8, 1995, one of which stated Grievant had abused sick leave and required Grievant to bring in a doctor's excuse each day she called in sick, and the second one stated Grievant had been guilty of insubordination. This grievance states, "[t]he administrator at Welch Emergency Hosp is allowing D. Harmon and R. Mullens to racially discriminate against me and myrights as a state employee." (See footnote 2) The requested relief was "to be made whole in everyway with full monetary rewards for pain and suffering and humiliation." The second grievance relates to Grievant's failure to bring in a doctor's excuse, and Respondent's subsequent docking of her salary for the day she did not. This grievance states, "[a]dministration is allowing me to be discriminated against because of mandate Dec. 8, 1995 - U. A.(unauthorized) leave status." Relief sought in this grievance is "to be made whole in every way - I want sick leave for March 20, 1996." (See footnote 3)

These grievances were denied at all lower levels. Grievant appealed to Level IV, and a hearing was held on March 23, 1997. This case became mature for decision on April 25, 1997, the date ofthe parties' final submissions. Grievant did not submit any final written arguments.

After a review of the complete record, the Undersigned makes the following Findings of

Fact.

Findings of Fact

1. Grievant has been employed as a switchboard operator by Welch Emergency Hospital ("WEH") for many years. At her request, she is allowed to work one 32 hour weekend shift a month instead of working every other weekend like the majority of the employees in the Admissions Department. (See footnote 4)

2. In 1991, WEH combined its switchboard and admissions employees into one department to help alleviate staffing problems. At that time, Grievant, who had been Switchboard Supervisor, received a nondisciplinary demotion to the classification of Telephone Operator without a decrease in pay. This issue, as well as many others, was grieved and resolved in Parker v. West Virginia Department of Health and Human Resources/Division of Health/Welch Emergency Hospital, Docket No. 91-HHR-282 (Apr. 4, 1992)(Parker I). 3. Ms. Donna Harmon has been Grievant's supervisor since August 1995. Prior to that time, Ms. Ruth Mullens was the Admissions Supervisor.

4. On October 20, 1995, Ms. Harmon gave Grievant, as well as several other employees in the Admissions Department, an oral warning about a developing pattern of leave abuse. Ms. Harmon hadreviewed the leave pattern of her admissions employees for the past year. Ms. Harmon thought Grievant had developed a pattern of calling in sick a day or two before or after her 32 hour weekend. (See footnote 5) **Ms. Harmon questioned whether Grievant should continue to work the 32 hour weekends as they appeared to be affecting her health. Grievant was told if her pattern of leave abuse continued she would be required to submit a doctor's excuse for every sick day. Grievant questioned Ms. Harmon's right to require these excuses and to change the 32 hour weekend as she obtained this schedule as the result of a grievance.** (See footnote 6) **Grievant was shown the Division of Personnel's regulations governing the doctor's excuse issue, and was assured that doctor's slips could be required. Resp. Exh. 4, Level III Hrg.**

5. After reviewing the posting of the November schedule and realizing she would be required to work Thanksgiving and Christmas, Grievant, on November 8, 1995, filed a grievance alleging discrimination and favoritism in the scheduling of holidays. (See footnote 7)

6. The year before, 1994, Ms. Mullens had issued a memo directing employees who were unable to work their scheduled holidays during Thanksgiving and Christmas to find coverage fortheir absence, and if they could not find coverage they were expected to work. This memo had been written because of coverage problems during the holidays when all employees wanted off.

7. Ms. Harmon reissued this memo on November 6, 1995, and Grievant was aware of its contents. (See footnote 8) **Gr. Exh. 2, Level III Hrg.**

8. Grievant was scheduled to work the day shift both the day before and the day of Thanksgiving, November 22 and 23, 1995. She had asked for and received the day after Thanksgiving, the 24th, off for her sister's scheduled surgery, and she was scheduled off on November 25, and 26, 1995.

9. Grievant called in sick at 5:59 a.m. on November 22, 1995, and stated she was sick and would not be able to work that day. She made no attempt to find someone to cover her work area. 10. Grievant called back later that same day, at 5:25 p.m., and reported she would be unable to work on Thanksgiving, November 23, 1995. She did not attempt to find anyone to cover her shift.

11. On Monday, after the holiday weekend, Ms. Ruth Ann Bishop, an admissions employee, told Ms. Harmon that Grievant had called at 1:30 a.m. on Thanksgiving Day laughing and wanting to know what Ms. Harmon's reaction had been to her calling in sick. (See footnote 9) **When informed that someone else was covering for Ms. Harmon, Grievant's response was "you can bet someone called her and I don't care." Resp. Exh. 18, Level III Hrg.**

12. Upon her return to work, Grievant submitted a Chiropractor's excuse for the two days she was absent. This excuse was written on November 22, 1995, and stated Grievant was "totally incapacitated" for November 22 and 23, 1995. No other information was given as to the type of illness or problem. It is noted that Grievant had been going to this Chiropractor for several months for a back problem. Resp. Exh. 23, Level III Hrg.

13. Grievant's stated reason for not attempting to find anyone to cover her shifts was she was not the supervisor, it was not her job, and she did not have the authority to require someone to come in to cover her shift.

14. No one else has either failed to come in when scheduled for these holidays or to find

coverage if they were absent.

15. On November 28, 1995, Mr. Roger Topping, Hospital Administrator, wrote Grievant in response to a conversation he had with her about her belief that the November and December schedules were unfair to her. He indicated he had been told she had filed a grievance on the Thanksgiving issue, thus he would not comment on it. He informed Grievant that he saw no problem with the Christmas schedule. He noted Grievant had not worked the Thanksgiving holiday as she had been scheduled, and indicated that she shouldcome to work on Christmas day, as a failure to do so would be considered a serious situation, and proper disciplinary action would be taken. Grievant took this letter as a threat. Gr. Exh. 7, Level IV Hrg.; Test. Level IV Hrg.

16. On December 8, 1995, Grievant was issued two written warnings for the Thanksgiving incident. Grievant was charged with insubordination for failure to attempt to find coverage for her Thanksgiving absence. She was also charged with sick leave abuse, and it was noted on this warning that Grievant had received an oral warning on this subject October 20, 1995. Ms. Harmon stated Grievant had called in sick three times since that warning; November 2, **(See footnote 10)** **22, and 23, 1995. The Thanksgiving absences were in conjunction with her scheduled days off. Ms. Harmon noted Grievant had also called in sick on the New Year holiday, January 2, 1995. As part of this written warning, Grievant was informed she would be required to submit a doctor's excuse for every sick day.**

Grievant's response to this written warning was, "I was off sick the 23 and 24 of Nov. I had a Dr. excuse from Willis Chiropratic [sic]. I was under a Dr. [sic] care and thought that what sick leave was for. And that is the Supervisors [sic] job. I don't agree." The issuing of these written warnings resulted inGrievant filing the first grievance. Resp. Exhs. 6, 7, 25, and 26, Level III Hrg.

17. Grievant called in sick on January 31, 1996, without giving a reason, and again called in sick on February 2, 1996, stating she was in the hospital and would not be reporting to work on February 3 and 4, a Saturday and Sunday, respectively. Grievant provided Doctor's excuses for these days. Gr. Exh. 5, Level III Hrg.

18. On February 23, 1996, Ms. Cathy Addair, the Director of Personnel at WEH, sent a memo to Mr. Roger Topping, Hospital Administrator, identifying employees who appeared to

be abusing sick leave because they demonstrated a pattern of using sick days in conjunction with days off. The dates of this review were from July 1, 1995 to January 31, 1996. Grievant's name was not on this memo. Gr. Exh. 1, Level III Hrg.

19. Grievant again called in sick on March 20, 1996, but upon her return to work did not provide a doctor's excuse for that day. Ms. Harmon reported this incident to Ms. Addair, and Ms. Addair decided that Grievant's pay would be docked for the day she called in sick without a doctor's excuse. This incident resulted in Grievant filing the second grievance.

Discussion

In cases dealing with disciplinary matters, the burden of proof rests with the employer to prove the charges by a preponderance of the evidence. Schmidt v. W. Va. Dept. of Highways, Docket No. DOH-88-063 (Mar. 31 1989). Thus, the WestVirginia Department of Health and Human Resources ("HHR") must prove that the written reprimands received by Grievant, and the subsequent docking of her pay were warranted.

On February 28, 1992, HHR adopted a Leave Abuse Policy. Resp. Exh. 20, Level III Hearing. Because HHR provides services which are essential to the general public, HHR must effectively allocate its limited resources. Unexpected absences can cause delay of services, additional expense, personnel inconvenience, and additional work for the remaining staff. Id. The Leave Abuse Policy defined Absenteeism as "[r]epeated failure to be present to work as scheduled" and Leave Abuse as "[i]mproper use of annual or sick leave." Progressive discipline is to be used to correct these type of employee problems. The first step is a verbal or oral warning. If a pattern of leave abuse continues, a written warning should be issued on the second occasion. Id.

> When a pattern of abuse of sick leave has been recognized, the employer may require substantiation of claims of illness through a physician's verification for each use of sick leave, including periods of less than 3 consecutive days. If an employee fails to produce verification as requested, the employee shall be subject to discipline, the absence shall be considered unauthorized leave, and the employee's pay shall be docked accordingly.

Id. The right of an employer to request verification of illness is also spoken to in the W. Va. Division of Personnel Rules at § 15.05. When leave abuse is suspected an employer may request verification. Id.

Grievant has argued she cannot be guilty of leave abuse if she has a doctor's certificate stating she is ill. Although in aperfect world this assertion would be true, in this instance, whether Grievant abused sick leave must be decided based on all the facts in evidence. Unfortunately, it is possible to obtain an excuse from work without being sick or without being sick enough to stay home from work, as much of the data upon which a doctor or other health care professional makes his/her assessment is based on patient report or subjective data.

At no time during the proceedings did Grievant discuss her Thanksgiving illness other than to say she was not abusing her sick leave if she had a doctor's excuse. June 6, 1996, Level III Trans. at 15; Test., Level IV Hrg. Grievant also stated that calling in for sick leave only eight times during a year was not an abuse of sick leave. See, Runyon v. W. Va. Div. of Corrections, Docket No. 95-CORR-414 (Jan. 31, 1996). It must be noted that sick leave that was asked for ahead of time, such as doctor's appointments and scheduled hospitalizations, was not considered by Ms. Harmon when she examined all the employees' records for sick leave abuse.

This issue is a close call and requires an assessment of Grievant's credibility. It is an administrative law judge's responsibility to assess the credibility of the witnesses. Some factors to be considered in assessing a witness's testimony are the witness's: 1) demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and 5) admission of untruthfulness. Harold J. Asher and William C. Jackson, Representing the Agency before the United States Merit Systems Protection Board 152-153 (1984). Additionally, the ALJ should consider: 1) the presence or absence of bias, interest, or motive; 2) the consistency of prior statements; 3) the existence or nonexistence of any fact testified to by the witness; and 4) the plausibility of the witness's information. Id.

The facts surrounding this situation are as stated below. At the time of the November 22, and 23, 1995 incidents, Grievant had received an oral warning about her pattern of abuse, but was not required to submit doctor's excuses. (See footnote 11) **Although not required to do so, Grievant submitted an excuse for the two days at Thanksgiving, and these two days were taken before three scheduled days off. This incident happened within one month of Grievant being warned of a pattern of sick leave abuse that must stop or further action would be necessary. Grievant called in at 1:30 a.m. on Thanksgiving, laughing, to find out Ms. Harmon's**

response to her taking off the very day she had complained about being required to work, and the scheduling which had upset her enough to file a grievance. She stated she did not care what Ms. Harmon's response was to her not reporting to work.

Throughout this grievance, Grievant has not described or discussed the illness which the chiropractor stated "totallyincapacitated" her for only the two days in question. It could be assumed that the illness was related to the injuries she had received in an automobile accident in May 1995, and for which she had been seeing the Chiropractor on a regular basis since that time. Indeed, Grievant at that time was seeing the chiropractor approximately every other day, and November 22 would appear to have been a regularly scheduled appointment, if the schedule remained true to form. According to the excuse, Grievant would only be incapacitated for the two days she was expected to work. This excuse was written on the day before Thanksgiving, and Grievant did not state she returned for any follow-up visits or treatment. However, one of the exhibits stated she saw the chiropractor again on November 24, 1995, and for a final time on December 1, 1995. Grievant never clearly testified that she was ill enough to stay home from work on November 22, or 23, 1995. Grievant also did not rebut the written statement of Ms. Bishop, and did not say she did not call, or that she did not laugh during the conversation. This lack of response could be because Grievant had a tendency to ramble in her testimony, would talk during the testimony of others until reminded she must ask questions, and then when reminded she had wished to say something earlier, would state she had nothing else to say. The Undersigned Administrative Law Judge, at one point in the Level IV proceedings, encouraged Grievant to say what she had wanted to say earlier as it had appeared, at that time, the information was important to her. Her response was she had nothing further to say. Additionally, Grievant, frequently, throughout thehearings, did not appear to listen to the questions of others and did not respond to the questions asked. She perceived all the things that had happened to her as racial discrimination and harassment, and accepted no responsibility for any of the events that had occurred.

On the other side of the coin, Respondent did not call Grievant's chiropractor to testify, which they clearly could have done as the burden of proof on whether Grievant abused sick leave was on it.

After a review of the factors listed above, the Undersigned finds Grievant did abuse her sick leave after she had received an oral warning. This assessment is based on Grievant's demeanor and statements, or lack thereof (she did not state she was so ill as to be unable to come to work and did not state she did not call and laugh about her taking off on Thanksgiving), her attitude toward the action (sick leave was hers, and she could be not be found guilty of abuse if she had a doctor's excuse), her difficulty in perceiving her leave situation (she did not think she had done anything wrong to deserve an oral warning and she did not think she had received an oral warning), and the plausibility of the situation (Grievant called in sick for the very holiday she had filed a grievance over and believed she should not have to work). See, Smith v. W. Va. Dept. of Public Safety/Div. of Corrections, Docket No. 93-CORR-538 (May 17, 1994)(Proper inferences, drawn from testimony, can lead to the conjecture that a grievant was able to work, even if a doctor's excuse has been submitted.). As for Grievant's written warning for insubordination, Grievant admits she made no attempt to find coverage even though she was aware of the memo. She disagreed with her supervisor's requirement and decided not to follow it. A grievant's belief that her supervisor's management decisions are incorrect is not grievable unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to or interference with the employee's effective job performance or health and safety. W. Va Code § 29-6A-2(i). See, Ball v. Dept. of Highways, Docket No. 96-DOH-141 (July 31, 1997). Grievant did not demonstrate any violation of any rule, regulation, or statute, and did not show the decision had any effect on either her health or safety. Additionally, no other employee has acted in such a manner. Thus, HHR has proven Grievant's written warning for insubordination was warranted as she failed to follow a direct order of her supervisor. "Employees are expected to respect authority and do not have the unfettered discretion to disobey or ignore clear instructions." Reynolds v. Kanawha-Charleston Health Dept., Docket No. 90-H-128 (Aug. 8, 1990)(citing Meads v. Veteran Admin., 36 M.S.P.R. 374 (1988)).

HHR's requirement that Grievant obtain a doctor's excuse every time she was ill, after the she continued her pattern of leave abuse was well within its policies, as stated above. Likewise, Respondent has proven that docking Grievant's pay for failure to follow its directive to provide a doctor's excuse, when she callsin ill, is appropriate and within the specifics of its

Leave Abuse Policy.

Grievant has alleged the treatment she received was the result of discrimination and favoritism, and states she was treated differently than other similarly situated admissions and hospital employees. (See footnote 12) W. Va. Code § 29-6A-2(d) defines discrimination as "any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing." W. Va. Code § 29-6A-2(h) defines favoritism as "unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees."

To prove discrimination or favoritism a grievant must establish a prima facie case which consists of demonstrating:

> **(a) that he is similarly situated, in a pertinent way, to one or more other employee(s);**
>
> **(b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;**

and,

> **(c) that such differences were unrelated [to] actual job responsibilities of the grievant and/or other employee(s), and were not agreed to by the grievant in writing.**

If a grievant establishes a prima facie case, a presumption of discrimination or favoritism exists, which the respondent can rebutby presenting a legitimate, nondiscriminatory reason for the action. However, a grievant may still prevail if he can demonstrate the reason given by the respondent was pretextual. Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

Grievant has failed to prove she had been treated differently than other admission employees. By the time this grievance reached Level IV, Ms. Harmon had recently issued a written warning to another employee who was white and had also been given an oral warning back on October 20, 1995. She had not yet required this employee to submit doctor's excuses for each absence as she did not think that requirement was necessary yet. In comparing the

treatment of Grievant vis-a-vis the treatment of this other employee, it does not appear arbitrary and capricious to require a doctor's excuse from Grievant. Grievant's actions, resulting in a written warning, followed her oral warning by a month, and the second employee received her written warning a year and one half after her oral warning.

Grievant also attempted to demonstrate that other employees throughout WEH had been treated differently, and had abused their sick leave but had not been required to present a doctor's certificate. Ms. Addair testified that each supervisor deals with these problems in his or her own way, and she did not know what action had been taken by these supervisors, unless they choose to discuss the matter with her. She did state that Grievant was not the only individual who had been disciplined for leave abuse, andthat others had been required to submit a doctor's verification and another individual had received a suspension for leave abuse. Thus, the evidence presented does not demonstrate that Grievant has been treated differently than the employees to whom she is substantially similar, the employees in the Admissions Department, or treated differently from other hospital employees, in general. Thus, Grievant has failed to prove her case with regard to these issues.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. In cases dealing with disciplinary matters, the burden of proof rests with the employer to prove the charges by a preponderance of the evidence. Schmidt v. W. Va. Dept. of Highways, Docket No. DOH-88-063 (Mar. 31 1898). See, Sisley v. W. Va. Dept of Health and Human Resources/William R. Sharpe Hosp., Docket No. 96-HHR-237 (Jan. 16, 1997).

2. Respondent, with this very specific set of facts, has met its burden of proof and demonstrated Grievant abused sick leave when she reported off work on November 22, and 23, 1995.

3. "Employees are expected to respect authority and do not have the unfettered discretion to disobey or ignore clear instructions." Reynolds v. Kanawha-Charleston Health Dept., Docket No. 90-H-128 (Aug. 8, 1990)(citing Meads v. Veteran Admin., 36 M.S.P.R. 374 (1988)). 4. Respondent has also proven Grievant was insubordinate when she failed to attempt to find coverage for her absence over the Thanksgiving holidays.

5. Grievant's actions warranted the two, separate written warnings she received.

6. Respondent has met its burden of proof and demonstrated requiring Grievant to provide a doctor's excuse with each absence is appropriate, given Grievant's proven pattern of sick leave abuse.

7. Respondent has met its burden of proof and shown its action of docking Grievant's pay when she called in sick and did not provide a doctor's excuse as required by the written warning, was the appropriate action and dictated by the Respondent's Leave Abuse Policy.

8. Grievant failed to establish a prima facie case of discrimination or favoritism in the disciplinary actions taken by Respondent in response to Grievant's sick leave abuse.

9. A grievant's belief that her supervisor's management decisions are incorrect is not grievable unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to or interference with the employee's effective job performance or health and safety. W. Va Code § 29- 6A-2(i). See, Ball v. Dept. of Highways, Docket No. 96-DOH-141 (July 31, 1997). See also Parker v. W. Va. Dept. of Health and Human Resources/Div. of Health/Welch Emergency Hosp., Docket No. 91-HHR-282 (Apr. 4, 1992)(Parker I). 10. Grievant did not demonstrate Ms. Harmon's management decision to require employees to attempt to find coverage on the Thanksgiving and Christmas holidays violated any rule, regulation, or statute, or constituted a substantial detriment to or interference with his effective job performance or health and safety.

Accordingly, this 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.

JANIS I. REYNOLDS

Administrative Law Judge

Dated: September 30, 1997

Footnote: 1

Another grievance was also heard on that same day, but as it relates to a different set of facts and a nondisciplinary issue, the decision was issued separately to decrease confusion. See Parker v. Welch Emergency Hosp./W. Va. Dept. of Health and Human Resources, Docket No. 97-HHR-042A (Sept. 15, 1997)(Parker II).

Footnote: 2

During the Level II conference and at the Level III hearing, Grievant also complained she was required to serve on jury duty, but WEH would not pay her for these days. On December 13, 1995, Grievant wrote Mr. Robert Stephens, the then Director of the Division of Personnel, to complain. Grievant was not paid by WEH for one of the days she served on jury duty because she was not scheduled to work that day. Although this issue was mentioned at Level II, it was not considered as part of these grievances as this event occurred after the filing of the December 8, 1995 grievance, and several months before the filing of the March 21, 1996 grievance. Additionally, there is no mention of this event on either of the grievance forms.

Footnote: 3

During the presentation of the grievance at Level IV, Grievant indicated that she thought the treatment she had received was "a black thing." The West Virginia Supreme Court indicated in Vest v. Bd. of Educ. of Nicholas County, 193 W. Va. 227, 455 S.E.2d 781 (1995), that if a grievant chooses to bring a racial allegation to the Grievance Board in the context of her employment, the issue may be ruled on by this Board.

Grievant also attempted to discuss examples of discrimination after the date of filing this grievance. Respondent objected to this additional evidence as outside the scope of the grievance. These additional incidents are not addressed in this Decision, as they were not within the time frame identified by Grievant in her Statements of Grievance.

Footnote: 4

Grievant works a sixteen hour shift on Saturday and returns the following Sunday and works another sixteen hours to obtain the 32 hours.

Footnote: 5

A review of the record also indicated Grievant had called in sick four times in conjunction with her days off during 1995. Apparently, this issue was not discussed with Grievant.

Footnote: 6

No record of this grievance was found in a review of the Grievance Board's files. Of course, this grievance could

have been filed and resolved at a lower level.

Footnote: 7

No discrimination was found in the scheduling of holidays. Grievant was found to work the same or fewer holidays than her fellow workers. See, Parker II.

Footnote: 8

At Level II, Ms. Harmon was directed to modify this memo to indicate that if an employee could not find coverage they were to call her.

Footnote: 9

Grievant protested the admission of Ms. Bishop's written statement as hearsay, and Ms. Harmon's testimony about these events. Ms. Bishop no longer works at WEH, had moved out of state, and was not called as a witness. Since Ms. Bishop's statement was written at Ms. Harmon's direction after Ms. Bishop had orally told Ms. Harmon about the incident, and Ms. Harmon was able, at hearing, to confirm that Ms. Bishop had stated these things to her, thewritten statement was admitted. Additionally, hearsay testimony is admitted in administrative hearings.

Footnote: 10

Although Ms. Harmon stated Grievant had called in sick on November 2, 1995, and Grievant did not disagree, the records submitted at Level IV hearing demonstrate Grievant asked for and received annual leave for November 2, 1995. This request was granted, with Grievant returning to work on the following day.

Footnote: 11

Grievant denies she received an oral warning on October 20, 1995. She stated that Ms. Harmon told her she demonstrated a pattern of sick leave abuse, and was told this should not continue. Ms. Harmon wrote her notes of the October 20, 1995 discussion shortly after this evaluation meeting. These notes state Grievant was given an oral warning. Whether Grievant chose to understand she was given an oral warning at the October 20, 1995 meeting, it is clear she was.

Footnote: 12

At the Level III hearing, Grievant mentioned she had also been harassed, even though this allegation was not identified on her grievances. Grievant did not ask, at Level IV, to add this issue to her grievance, and only mentioned this issue in passing. Accordingly, this issue has not been examined in this Decision.