BRENDA SAYRE,

Grievant,

v.

DOCKET NO. 99-15-273

HANCOCK COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Brenda Sayre, a bus operator, filed this grievance directly at level four on July 6, 1999, protesting her dismissal for cause from the Hancock County Board of Education ("Board"). On June 29, 1999, the Board took action to dismiss Grievant based upon the charge that she refused to submit to a controlled substance test as required by federal and state regulations, as well as the Board drug testing policy, and was, therefore, insubordinate such as to justify dismissal under W. Va. Code § 18A-2-8. A pre-termination hearing was conducted before the Board on June 29, 1999, the transcript of which was incorporated into the record at the level four hearing. The level four hearing was held in the Grievance Board's Wheeling, West Virginia, office on September 23, 1999. The Board was represented by William Fahey, Esq., Office of the Prosecuting Attorney, and Grievant was represented by Wray V. Voegelin, Esq., Cassidy, Myers, Cogan, Voegelin & Tennant.This matter became mature for decision on October 15, 1999, the deadline for the parties' submission of proposed findings of fact and conclusions of law.

SUMMARY OF EVIDENCE

Joint Exhibits

Ex. 1 -

Transportation Employees Alcohol and Controlled Substance Policy.

Ex. 2 -

June 2, 1999, dismissal letter from Charles Chandler, Jr., Superintendent, to Brenda Sayre.

Ex. 3 -

49 C.F.R. Section 382.211 - Refusal to submit to a required alcohol or controlled substances test.

Grievant's Exhibits

Ex. 1 -

Notice of Drug and Alcohol Testing, dated May 27, 1999.

Ex. 2 -

Verification of notification of test assignment, signed June 2, 1999.

Testimony (pre-termination and level four)

The Board presented the testimony of David White, Robert Pantuso, Elbert Allison, Mary Ann Bucci, and Charles Chandler. Grievant testified in her own behalf, and presented the testimony of Judy Teller.

FINDINGS OF FACT

1. On May 27, 1999, Elbert Allison, Director of Transportation, prepared two notices of random drug testing, including one for Grievant.

2. Grievant's notice specified that the date of the random drug test was Thursday, May 27, 1999, beginning at 9:00 a.m., and instructed Grievant she must report by at least 9:30 a.m. to complete the testing procedures. G. Ex. 1.

3. Mr. Allison directed his assistant, Robert Pantuso, to deliver the notices to the two employees in the Weirton garage. The testing would be done that same day. 4. Upon arrival at

the Weirton garage, Mr. Pantuso learned that Grievant had an extra-duty run scheduled that morning. He called Mr. Allison and asked him what to do.

5. Mr. Allison told him not to give Grievant her notice of drug testing, and that she would be rescheduled at a later date. Mr. Pantuso did not give Grievant the notice of random drug testing scheduled for May 27, 1999.

6. Grievant was completely unaware that Mr. Allison had prepared a notice for random drug testing for May 27, 1999.

7. On a prior occasion, a driver who had been given notice of random drug testing had an extra-duty run scheduled, but was required to go to the testing. She was later compensated for the amount of the missed extra-duty run.

8. The day after May 27, 1999, was a Friday, and a scheduled faculty senate day. The following Monday was Memorial Day, a holiday. Tuesday, June 1, 1999, was a full day of work.

9. The following Wednesday, June 2, 1999, Mr. Pantuso was dispatched again by Mr. Allison to pick up a driver at the Vo-tech station, and to pick up Grievant at the Weirton bus garage, and transport them to the Corporate Health Center at Wheeling Hospital for a random drug test.

10. Mr. Allison had notified the Vo-tech driver at approximately 6:00 a.m. on June 2, 1999, that she would have to report for drug testing that day. Mr. Allison told Mr. Pantuso he would also notify Grievant at the end of her morning run of the drug test.

11. Mr. Allison called Grievant after her morning run on June 2, 1999, and advised her that Mr. Pantuso would be picking her up to take her for random drug testing. He told her that he had originally scheduled her for May 27, 1999, but after realizing she had an extra-duty trip scheduled, withheld the notice and scheduled her for another day.

12. Mr. Pantuso drove to the Weirton garage at approximately 9:15 a.m. to pick up Grievant, and gave her the original notice of drug testing, which had the May 27, 1999 date on it.

12. Following her conversation with Mr. Allison, Grievant contacted Judy Teller, another bus operator, and a WVEA representative, to advise her with regard to the notice.

13. Ms. Teller told Grievant, and Mr. Pantuso, that it was illegal for Mr. Allison to reschedule Grievant's drug testing, and that she should have been required to go on May 27, 1999. She said past practice had been to call in a substitute, and then compensate the employee for the missed extra-duty trip, referring to the Zirkle decision noted in Finding of Fact No. 7.

14. At first, Grievant told Mr. Pantuso she would go with him for testing.

15. In the meantime, Ms. Teller called Mr. Allison and told him it was illegal to reschedule Grievant's testing date, and reiterated her opinion as noted in Finding of Fact No. 13.

16. After Ms. Teller talked to Mr. Allison, she handed the phone to Mr. Pantuso. Mr. Allison told him to take the drivers to the Corporate Health Center, and if Grievant refused to go, to take the other driver anyway.

17. Mr. Pantuso asked Grievant to sign a verification of notice form, which verifies that an employee has received the notice for random drug testing. She pointed out to him that the date on the form was May 27, 1999, not June 2, 1999. Grievant refusedto sign the verification form until she was able to talk with Bill McGinley, an attorney for WVEA.

18. Mr. Pantuso noted on the verification form that Grievant refused to sign it. G. Ex. 2.

19. Grievant did not go with Mr. Pantuso for drug testing on June 2, 1999, on the advice of Ms. Teller.

21.

Mr. Allison did not excuse Grievant from reporting for drug testing.

22. Ms. Teller told Grievance that Mr. Allison had excused her from reporting to drug testing.

23. Mr. Pantuso left the bus garage and took the other employee to the Corporate Health Center in Wheeling.

24. When Mr. Pantuso returned from Wheeling late that afternoon, he reported to Superintendent Charles Chandler, Mary Ann Bucci, Assistant Superintendent, Mr. Allison and Mr. Barnabei, a member of the Board, exactly what happened with Grievant.

25. At that meeting, the administrators called the Federal representative for the Department of Highways and told him of the events which had transpired that day. They were assured by the representative that it was perfectly legal to reschedule an employee for drug testing, as long as they had not yet received the actual notice. Once an employee receives the actual notice of drug testing, he or she is required to go for testing.

26. The next day, June 3, 1999, Superintendent Chandler advised Grievant that he would recommend her dismissal to the Board for refusing to go for random drug testing. 27. The Board approved the Superintendent's recommendation, and Grievant was dismissed on June 29, 1999, for insubordination for refusing to go for random drug testing.

DISCUSSION

In a disciplinary matter, the employer bears the burden of establishing the charges by a preponderance of the evidence. W. Va. Code § 18-29-6; Hoover v. Lewis County Bd. of Educ., Docket No. 93-29-427 (Feb. 24, 1994). W. Va. Code § 18A-2-8 provides county boards of education with authority to dismiss employees based upon one or more of the causes set forth therein and such authority to dismiss employees must be exercised reasonably and not arbitrarily or capriciously. See Beverlin v. Bd. of Educ., 158 W. Va. 1067, 216 S.E.2d 554 (1975). That Section provides that a board of education may suspend or dismiss any person in its employment at any time for immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea of nolo contendre to a felony charge.

Insubordination involves the “willful failure or refusal to obey 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); Webb v. Mason County Bd. of Educ., Docket NO. 26-89-004 (May 1, 1989). Insubordination may also be found when an employee shows a willful disregard for the implied directions of an employer. Sexton v. Marshall Univ., Docket No. BOR2-88-029-4 (May 25, 1988).

In order to establish insubordination, an employer must demonstrate that a policy or directive that applied to the employee was in existence at the time of the violation, thatthe employee's failure to comply was sufficiently knowing and intentional to constitute the defiance of authority inherent in a charge of insubordination. Conner v. Barbour County Bd. of Educ., Docket No. 94-01-394 (Jan. 31, 1995). An employee's refusal to comply with an employer's reasonable request will generally constitute misconduct which justifies discharge for cause; however, the reasonableness of the employer's request and the employee's reason for noncompliance must be evaluated. Mickens v. Southland Exchange-Joint Venture, 406 S.E.2d 363 (S.C. 1991). Defiance of authority is an inherent element of insubordinate conduct. See Conner, supra; Sexton, supra. In the past, this Grievance Board has found, in cases where the evidence established the employee justifiably misunderstood or misinterpreted a superior's instruction, that insubordination did not occur. See Conner, supra; Ramey v. W. Va. Div. of Veterans Affairs, Docket No. 91- VA-115 (Aug. 2, 1991). In fact, it has even been found that an employee who intentionally disobeyed instructions, but pursuant to advice of an attorney, did not possess the intent to “thwart the orders of the employer” essential to an

insubordination charge. Rymer v. W. Va. Dept. of Tax and Revenue, Alcohol Beverage Control Adm., Docket No. 90-ABCC-204 (March 14, 1991).

A preponderance of the evidence is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. It may not be determined by the number of witnesses, but by the greater weight of all evidence, which does not necessarily mean the greater number of witnesses, but opportunity for knowledge, information possessed, and manner of testifying determines the weight oftestimony. Black's Law Dictionary, 5th Ed., p. 1064. “If the evidence is evenly balanced between the parties, there can be no recovery” by the party bearing the burden of proof. Adkins v. Smith, 142 W. Va. 772 (1957).

Under 49 C.F.R. Section 382.211, a driver may not refuse to submit to a random drug test. Employees selected for random drug testing may be tested at different times. The only requirement under 49 C.F.R. Section 382.305(k) regarding the timing of such tests is that they be spread reasonably throughout the calendar year. 49 C.F.R. Section 382.305(l) requires the employee to proceed to the test site immediately upon notification of selection. The employee may not schedule his or her own drug testing.

The State of West Virginia School Transportation Regulations 1994 Revised Edition provide, at Section IX(B)(4)(6), as follows:

> All school bus operators will be subject to preemployment, random, post accident, and reasonable suspicion testing for the use of certain controlled substances and alcohol under the regulations established by the United States Department of Transportation, Federal Highway Administration's implementation of the Omnibus Transportation Employee Testing Act of 1991 (OTETA), as published in the Federal Register February 15, 1994, including subsequent revisions or additions.

The Board had in force and effect a county board policy which comported with the federal and state regulations requiring random drug and alcohol testing for those individuals whose employment requires a commercial driver's license. The Board's Transportation Employees Alcohol and Controlled Substances Policy provides at Section 4.3 that:

> No affected employee shall refuse to submit to any alcohol or controlled substances test required by Section 5.1 through 5.6 of his policy. Affected employees who refuse to submit to such tests shall be prohibitedfrom performing safety sensitive functions and shall be subject to Section 4.4 of this policy.

Section 4.4. of the Policy provides that:

> Compliance with this policy is a condition of employment with the Board. Any affected employee who violates any provision of this policy or whose required alcohol or controlled substances test precludes them from meeting the requirements of this policy shall be removed from the performance of safety-sensitive functions. In addition, the Superintendent shall initiate proceedings to terminate the employment of any driver who violates any provision of this policy or whose required alcohol or controlled substances test precludes them from meeting the requirements of this policy.

A bus operator's “refusal” to submit to a controlled substances test as required by paragraph 5.3 of the Board's Policy and applicable federal regulations can be found to constitute insubordination such as to give rise to a dismissal under W. Va. Code § 18A-2- 8.

Grievant denies that she refused to go for random drug testing. She contends that her employer's request to go for testing in this instance was unreasonable, and that she relied upon the representations and advice of her WVEA representative, who informed her she did not have to go for drug testing on June 2, 1999.

The Board contends that Grievant did not go for drug testing upon receipt of her notice, that the request to go was reasonable and lawful, and that Grievant's refusal to go constitutes insubordination justifying dismissal under W. Va. Code § 18A-2-8.

Grievant and Ms. Teller testified at both the pre-termination hearing and the level four hearing that Mr. Allison told Ms. Teller on the telephone on the morning of June 2, 1999, that Grievant did not have to go for drug testing. Ms. Teller testified that when she informed Mr. Allison on the phone that his action in rescheduling Grievant for drug testingwas illegal he said to her, “she does not have to go.” Ms. Teller testified she confirmed that comment from Mr. Allison at least three times and repeated it aloud to Grievant and Mr. Pantuso.

Mr. Pantuso testified he did not hear Ms. Teller say to Grievant or himself, that Grievant did not have to go for drug testing. Mr. Allison denies telling Ms. Teller that Grievant did not have to go, but rather said just the opposite: that once she received her notice of testing, she had to go.

There is no dispute Grievant did not go for drug testing after receiving notice from Mr. Allison and Mr. Pantuso on June 2, 1999. Grievant testified she did not refuse to report for drug testing on June 2, 1999, but rather, she did not go with Mr. Pantuso for drug testing based on her understanding that “Mr. Allison said I did not have to go and I thought everything was okay” (pre-termination hearing, p.

98). Grievant did not go with Mr. Pantuso based upon her understanding and reliance upon her employee representative's indication that her supervisor had excused her from the testing procedure.

Grievant and Ms. Teller's testimony that Mr. Allison excused Grievant from going to drug testing on June 2, 1999, conflicts with the testimony of Mr. Allison and Mr. Pantuso, requiring a determination as to which testimony is truthful. In assessing the credibility of witnesses, some factors to be considered . . . 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 absenceof 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., Rosenau v. Tucker County Bd. of Educ., Docket No. 99-47-192 (Nov. 1, 1999); Jarvis v. W. Va. Dept. of Health and Human Services, Docket No. 97-HHR-318 (July 22, 1999); Burchell v. Bd. of Trustees, Marshall Univ., Docket No. 97-BOT-011 (Aug. 29, 1997).

Grievant testified she had talked to Mr. Allison early on the morning of June 2, 1999, and he told her she was scheduled for drug testing. She informed him her little boy had a function that day that she wanted to attend. Mr. Allison agreed to give Grievant the afternoon off without penalty, because she did not have enough leave accumulated.

Mr. Allison testified he did not excuse Grievant from reporting for drug testing on June 2, 1999, and did not communicate that fact to Ms. Teller on the telephone. Ms. Teller testified Mr. Allison told her on the telephone that Grievant did not have to go for testing, and she made him repeat that several times.

Superintendent Chandler and Assistant Superintendent Bucci testified at the pre- termination hearing that Mr. Allison never told them in their meeting on June 2, 1999, that he had excused Grievant from going to drug testing.

Mr. Pantuso testified he was standing near Ms. Teller while she was on the telephone with Mr. Allison, but admitted he did not pay close attention to the conversation. Nevertheless, he testified he did not hear Ms. Teller telling Grievant she did not have to go, nor did he hear her confirm that with Mr. Allison. When Mr. Pantuso spoke with Mr. Allison, nothing was said about excusing Grievant from the drug testing. Mr. Pantuso andMr. Allison testified that Mr. Allison told him to take Grievant and

the other employee to the test center, and if Grievant refused to go, to go ahead and take the other employee. Mr. Pantuso asked Mr. Allison if Grievant still needed to fill out the verification form if she did not go, and he replied yes.

David White, a maintenance employee, walked into the middle of the conversation between Grievant, Ms. Teller and Mr. Pantuso. Grievant told Mr. White she was up for drug testing, but that her little boy had a function that day, and would be upset if she was not there. Mr. White heard Ms. Teller telling Mr. Allison over the telephone that he was breaking the law. Mr. White left the area, and has no knowledge of what transpired after that.

Subsequent to the telephone conversation, and after Mr. Pantuso left the Weirton garage, Mr. Allison's secretary called Grievant and asked her whether she still was going to take the afternoon off, since she was not going to drug testing. The purpose of the secretary's call was to determine whether she needed to call a substitute in for Grievant's afternoon run.

Mr. Pantuso testified he did not notify Mr. Allison that Grievant had not gone to the drug testing until he returned to the school later that afternoon. Grievant contends, however, that Mr. Allison must have been aware Grievant did not go, or he would not have had his secretary call to ask whether she still wanted the afternoon off, as she was not going to the drug testing. Grievant argues the only way Mr. Allison would have known she had not gone to drug testing was if he had excused her himself. Unfortunately, Mr. Allison's secretary did not testify at either the pre-termination hearing or the level fourhearing, so it is unknown whether Mr. Allison directed her to make the call to Grievant, or whether she did it on her own, and whether she had actual notice that, as Grievant contends, Mr. Allison excused Grievant from going to drug testing.

This is not a case of miscommunication. There hardly can be a misunderstanding between Mr. Allison saying Grievant did not have to go for drug testing, or that Grievant did have to go for drug testing. So the question is who is telling truth and who is not: Mr. Allison or Ms. Teller.

Both individuals have an interest in maintaining the veracity of their story. Ms. Teller testified that, as a WVEA representative, she would never tell an employee to “go against their supervisor”, and that in this case, she did not tell Grievant to go against the direction of Mr. Allison. Ms. Teller informed Mr. Allison that, in her opinion, he was breaking the law by rescheduling Grievant's drug testing, rather than calling in a substitute for her extra-duty trip, as had been done in Zirkle. Ms. Teller refers to this event as the “past practice” of Mr. Allison, however, it is undisputed that the Zirkle case

is the only occurrence of this situation. Ms. Teller also has an interest in the outcome of this grievance, because she had filed a previous grievance claiming compensation for attending random drug testing, again in reliance on her interpretation of Zirkle. See Teller v. Hancock County Bd. of Educ., Docket No. 97-15-457 (May 27, 1998).

Mr. Allison also has an interest in maintaining the veracity of his testimony. As Director of Transportation, he knows he cannot excuse an employee from random drug testing once the employee has been given notice of the testing. Thus, to admit that he did excuse Grievant would cast a cloud over his managerial credibility in the eyes of hissuperiors. The fact that Mr. Allison did not later inform Superintendent Chandler and Assistant Superintendent Bucci that he had excused Grievant from drug testing only serves to affirm this interest. On the other hand, the testimony of the Superintendent and Assistant Superintendent is informative in this regard. They testified that when Mr. Allison brought the matter to their attention on June 2, 1999, they called the federal representative for the Department of Transportation for advice. The advice they sought was not whether an employee could be excused from testing once receiving notice, but whether it was legal for Mr. Allison to hold back the notice dated May 27, 1999, and give it to Grievant later, on June 2, 1999. Having determined that this was legal, they then proceeded to take action against Grievant.

The undisputed testimony of all parties is that, once an employee is notified of her selection for random drug testing, she is required to report for testing immediately thereafter. Grievant had gone for drug testing before and was well aware of this requirement. Mr. Allison, as Director of Transportation, was also well aware of the regulations, and also knew that he had no authority to excuse an employee for drug testing once she was notified. Thus, despite Ms. Teller's interpretation of the law regarding drug testing, and her contention that Mr. Allison excused Grievant from reporting, I find it more plausible that Mr. Allison did not excuse Grievant, because he knew that federal and state regulations did not permit him to do so. I believe Ms. Teller strongly believed Mr. Allison was violating the law, and had an interest in pursuing this matter, as she had filed a grievance over drug testing herself. Because of her strong beliefs, she relayed to Grievant that, in Ms. Teller's opinion, Grievant did not have to report for drug testing. The onlyperson heard to communicate to Grievant not to go for testing was Ms. Teller. Mr. Allison testified that he did not excuse her. Mr. Pantuso testified that Mr. Allison never told him that Grievant was excused. And finally, Mr. White, the mechanic who was present during part of the telephone conversation, testified that he heard Ms.

Teller telling Grievant that, “What he is doing is wrong. What he is doing is wrong. He knows he is wrong.” This does not indicate that Grievant was excused from reporting, but merely that Ms. Teller believed Mr. Allison was wrong. Moreover, this statement by Ms. Teller demonstrates that she was challenging Mr. Allison's authority to compel the drug testing under the circumstances.

Unfortunately for Grievant, she relied, erroneously, on Ms. Teller, and decided not to report for drug testing. Under federal and state regulations, there is no exception that, once an employee is notified of drug testing, he or she must report. The policy behind these regulations, of course, is to deter employees from engaging in drug and/or alcohol use by subjecting them to random testing. To allow employees to get out of their scheduled testing merely by relying on the advice of another co-worker, or representative, only serves to thwart the purpose behind the policy.

However, in this instance, Grievant truly believed she had been excused due to Ms. Teller's representations to her that Mr. Allison told her she did not have to go to drug testing. Grievant did not possess the requisite knowing and intent to constitute the defiance of authority inherent in a charge of insubordination. See Connor, supra. Therefore, I conclude that the Board has not proven by a preponderance of the evidence that Grievant was guilty of insubordination in not reporting for drug testing.

CONCLUSIONS OF LAW

1. Under 49 C.F.R Section 382.211, a driver may not refuse to submit to a random drug test.

2. Employees selected for random drug testing may be tested at different times. The only requirement regarding the timing of such tests is that they be spread reasonably throughout the calendar year under 49 C.F.R. Section 382.305(k).

3. 49 C.F.R. Section 382.305(l) requires the employee to proceed to the test site immediately upon notification of selection. The employee may not schedule his or her own drug testing.

4. The Federal regulations do not specify the form of notification, and it is undisputed that Grievant received notification of her selection for random drug testing on June 2, 1999.

5. Insubordination involves the “willful failure or refusal to obey 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); Webb v. Mason County Bd. of Educ., Docket NO. 26-89-004 (May 1, 1989). Insubordination may also be found when an employee shows a willful disregard for the implied

directions of an employer. Sexton v. Marshall Univ., Docket No. BOR2-88-029-4 (May 25, 1988).

6. In order to establish insubordination, an employer must demonstrate that a policy or directive that applied to the employee was in existence at the time of the violation, that the employee's failure to comply was sufficiently knowing and intentional to constitute the defiance of authority inherent in a charge of insubordination. Conner v. BarbourCounty Bd. of Educ., Docket No. 94-01-394 (Jan. 31, 1995). An employee's refusal to comply with an employer's reasonable request will generally constitute misconduct which justifies discharge for cause; however, the reasonableness of the employer's request and the employee's reason for noncompliance must be evaluated. Mickens v. Southland Exchange-Joint Venture, 406 S.E.2d 363 (S.C. 1991).

7. Defiance of authority is an inherent element of insubordinate conduct. See Conner, supra; Sexton, supra. In the past, this Grievance Board has found, in cases where the evidence established the employee justifiably misunderstood or misinterpreted a superior's instruction, that insubordination did not occur. See Conner, supra; Ramey v. W. Va. Div. of Veterans Affairs, Docket No. 91-VA-115 (Aug. 2, 1991).

8. An employee who intentionally disobeyed instructions, but pursuant to advice of an attorney, did not possess the intent to “thwart the orders of the employer” essential to an insubordination charge. Rymer v. W. Va. Dept. of Tax and Revenue, Alcohol Beverage Control Adm., Docket No. 90-ABCC-204 (March 14, 1991).

9. The Board has not met its burden of proof in this matter that Grievant had sufficient knowledge and intent to constitute defiance of authority in not reporting for drug testing.

Accordingly, this grievance is **GRANTED** and the Board is hereby **ORDERED** to reinstate Grievant to her position as bus operator, with all back pay, benefits, and interest to which she is entitled.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of the Hancock County. Any 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 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 appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the

appropriate circuit court.

MARY JO SWARTZ

Administrative Law Judge

Dated: November 30, 1999