SAMMY FIELDS,

Grievant,

v.

DOCKET NO. 99-HHR-283

WEST VIRGINIA DEPARTMENT OF HEALTH

AND HUMAN RESOURCES/LAKIN HOSPITAL,

Respondent.

D E C I S I O N

Grievant, Sammy Fields, filed this grievance on July 9, 1999, protesting his dismissal from the West Virginia Department of Health and Human Resources/Lakin Hospital ("Lakin"), by letter dated July 6, 1999. A level four hearing was held on August 18, 1999, and October 1, 1999, and this matter became mature for decision on October 29, 1999, the deadline for the parties' submission of proposed findings of fact and conclusions of law. Lakin was represented by Dennise Smith, Esq., Assistant Attorney General, and Grievant was represented by Marguarite Kyer, SEIU, District 1199.

SUMMARY OF EVIDENCE

Lakin's Exhibits

Ex. 1 -

July 6, 1999, dismissal letter from James W. Burke, Administrator, to Sammy Fields.

Ex. 2 -

West Virginia Department of Health Clinical Policy #3311: Verbal and Physical Abuse of Clients.

Ex. 3 -

Abuse Definitions.

Ex. 4 -

Bill of Rights for Skilled Nursing Facility and Nursing Facility Residents in West Virginia.Ex. 5 -

West Virginia Department of Health
Clinical Policy 8000 (Revised): Patient
Grievance Procedure.

Ex. 6 -

October 17, 1997 memorandum from Annette Hill, Resident Advocate, to James Burke, Administrator.

Ex. 7 -

October 15, 1997 letter from Mona Steele, Adult Protective Services, to James Burke, Administrator.

Ex. 8 -

October 22, 1997 memorandum from James Burke, Administrator, to Annette Hill, Resident Advocate.

Ex. 9 -

Resident Goal Sheets, May 1999.

Ex. 10 -

July 1, 1999 memorandum from Patient Grievance Investigating Committee to James Burke, Administrator.

Ex. 11 -

Follow-up Report for Allegations of Abuse, Neglect or Misappropriation of Patients'/Residents' Property.

Ex. 12 -

November 4, 1997, Plan of Improvement for Sammy Fields.

Ex. 13 -

September 13, 1999, letter from Timothy J. Hock, Chief, Elderly & Disabled Health Branch, to James Burke, Administrator.

Grievant's Exhibits

Ex. 1 -

West Virginia Bureau of Employment Programs Deputy's Decision, dated August 4, 1999.

Ex. 2 -

Board of Review, West Virginia Bureau of Employment Programs, Decision dated September 1, 1999.

Testimony

Lakin presented the testimony of James Burke, Keith Stouffer, Sommer Vanmeter, Shane Roush, Cheryl Carper, Rhonda Kearns, Kim Billups. Grievant testified in his own behalf, and presented the testimony of Leslie Waterson, Karren Lambert, Craig Hill, and Keith Stouffer.

FINDINGS OF FACT

1. On July 6, 1999, Lakin Administrator, James Burke, terminated Grievant from his position as a Health Service Assistant for alleged patient abuse. The specific charges were as follows: (1) knocking on the heads of patients and asking “is anybody home?”; (2) shoving patients and “pull[ing] their pants up their buttocks” or giving them what is referred to as a “wedgie”; (3) refusing snacks and drinks to patients without doctor's orders as aform of punishment; (4) calling patients “retarded”, “idiot”, “nut”, “retard,” and “crazy” or using such terms to refer to patients in their presence; (5) placing a patient unsupervised in the middle of the dining room with the doors shut and the lights turned off so Grievant could watch TV and be undisturbed by the patient's shouting; (6) using harsh and profane language to patients, saying “You shit yourself,” “You pissed the bed,” and “Why do you people lay in bed and piss all over yourself”, and “I ain't cleaning you when you can wipe your own ass”; (7) raising the head of a patient's bed in the morning without verbal direction and abruptly pulling the covers off to awaken the patient; (8) flicking a patient in the back of the head; (9) falsifying patient records; (10) pulling at the shirttails of a patient and pinching him on the buttocks; (11) making

degrading and insulting sexual comments to a patient regarding his family members, saying “I fucked your mother” and “I fucked your sister”, thereby causing the patient to become angry and upset; and (12) intimidating and threatening other employees not to report Grievant's abusive behaviors, thereby creating a hostile and degrading work environment. R. Ex. 1.

2. The letter of termination further stated:

> Your insidious pattern of intentional conduct towards Lakin Hospital patients not only constitutes verbal and physical patient abuse as defined in the West Virginia Department of Health Policy #3311 and the West Virginia Department of Health and Human Resources Protocol for Maintenance of the Nursing Assistant Abuse registry, but it is also gross misconduct.
>
> . . . After reviewing your responses, the investigatory testimony and the Policy 8000 Committee's Investigation Report dated 07/01/99, I have decided that this dismissal for gross misconduct is warranted.
>
> The preponderance of the evidence establishes that your conduct has violated the public trust of providing a safe environment for the therapeutic care of the residents at Lakin Hospital. Individuals of the facility need asense of security, as any other person, even though they have been institutionalized because of their mental/physical capability, which prevents them from caring for themselves. Your continued presence as a Health Service Assistant constitutes a threat to the clients' physical and emotional well-being.

R. Ex. 1.

3. Grievant has been employed by Lakin for approximately ten (10) years. During the time period pertaining to this grievance (1998-1999), he worked the midnight shift on B-Wing, a unit for patients with special needs. All of the patients on B-Wing have behavior and care plans that are developed by a team of medical professionals. Staff working with B-Wing patients must follow the behavior and care plans.

4. Lakin strictly prohibits verbal and physical abuse of its residents. Employees are trained annually on patient's rights, or the “Bill of Rights for Skilled Nursing Facility and Nursing Facility Residents in West Virginia”. R. Ex. 4. This policy is binding upon nursing facilities and states that “Lakin Hospital will protect and promote the rights of each resident in a manner that maintains or enhances dignity and respect with full recognition of the individuality of each resident.” R. Ex. 4.

5. The “Bill of Rights” further sets forth that “[e]ach resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, involuntary seclusion, mistreatment and neglect.” R. Ex. 4.

6. Grievant has been trained on the “Bill of Rights” policy a number of times.

7. Physical and verbal abuse is also prohibited by WVDHHR's Policy #3311. R. Ex. 2. The policy defines verbal and physical abuse and provides specific examples of behaviors that are considered abusive. 1.

> Verbal abuse is the use of language, tone or inflection of voice that would likely be construed by an impartial observer as a threat, harassment, derogation or humiliation of a client.
>
> Verbal abuse includes, but is not limited to:
>
> * Use of a threatening or abusive tone or manner in speaking to a client
>
> * Use of derogatory, vulgar, profane, abusive or threatening language
>
> * Verbal threats
>
> * Teasing, pestering, deriding, harassing, mimicking or humiliation a client
>
> * Derogatory remarks about the client, his/her family or associates
>
> * Sexual innuendo, sexually provocative language or verbal suggestion (See Chapter 27-12-3, West Virginia Code)

2.

Physical Abuse is the use of physical force, body posture/ gesture or body movement that inflicts or threatens to inflict pain on a client.

Physical Abuse includes, but is not limited to:

*

Unnecessary use of physical restraint

*

Use of unnecessary force in holding/restraining a client (See facility procedure on client management)

*

Improper use of physical or mechanical restraints

*

Use of seclusion without proper orders or cause (See Policy #3325, Emergency Control Measures and facility client management procedures)

*

Slapping, kicking, hitting, pushing, shoving, choking, hair pulling, biting, etc.

*

Inappropriate horseplay

*

Intentional inflicting of pain

*

Punitive measures of any kind: this includes corporal punishment, withholding of meals for punitive reasons, inappropriate removal from treatment programs, restricting of communications, withdraw of privileges (See also Patient Rights Policy #3050 and 8000.02) *

Sexual abuse, i.e. any physical or provocative advance such as caressing, fondling, sexual intercourse, etc. (See also Chapter 27.12.3 West Virginia Code)

8. On May 26, 1999, Health Service Assistant Rhonda Kearns, and Health Service Worker Cheryl Carper, who work on the midnight shift with Grievant, reported to Director of Nursing Sandy Reitmyer and Assistant Director of Nursing Kim Billups that Grievant had been abusing patients.

9. Rhonda Kearns had previously reported Grievant's behavior to her immediate nursing supervisor, Leslie Spurlock Waterson on four occasions. Cheryl Carper, a fellow Health Service Worker on midnight shift, was present on two occasions and witnessed Ms. Kearns reporting the abuse. Ms. Waterson did not follow Hospital procedure and report these complaints to the patient advocate or her immediate supervisor.

10. Ms. Billups notified Mr. Burke and Mr. Keith Stouffer, Assistant Hospital Administrator, of the patient abuse report by Ms. Kearns and Ms. Carper. After reviewing the nature of the allegations, and the statements taken by the Director of Nursing, Mr. Burke determined that a Policy 8000 Committee was warranted and appointed three employees to serve on the Committee, Martha Mynes, Samuel Legg, and Helen Turnbull.

11. Policy 8000 is the Patient Grievance Procedure for all of the West Virginia Department of Health and Human Resources's ("WVDHHR's") behavioral health facilities.See R. Ex. 5. Grievances may be initiated by the patient, the Patient Advocate or other complainant on the patient's behalf. If it is determined a formal investigation or hearing is necessary, the Administrator has 48 hours to appoint an investigating committee. The investigating committee meets, reviews documentation and takes testimony with all relevant parties and witnesses to ascertain the facts of the case.

12. Mr. Burke provided members of the Committee with the hospital's policies on patient abuse as well as the definitions of patient abuse.

13. The committee members notified Grievant of the allegations made against him and provided him with a list of persons who would be interviewed. The Policy 8000 Committee then interviewed or attempted to interview those individuals listed, who were Grievant's co-workers, one of the residents, and Grievant himself.

14. The Committee completed its investigation and submitted its final report on July 1, 1999. Out of the fourteen allegations of patient abuse, the Committee found ten to be substantiated. The Committee also noted that during its investigation, numerous employees reported that Grievant created a hostile and degrading work environment.

15. Mr. Burke reviewed the Committee's final report and the testimony of those who appeared

before the Committee. Mr. Burke also personally interviewed the mostcrucial witnesses to the verbal and physical abuse of the resident. Even though Grievant had already testified before the Policy 8000 Committee, Mr. Burke gave Grievant another opportunity to respond to the charges which the Committee found to be substantiated.

16. Given the number of witnesses who substantiated the charges and the history of prior patient complaints against Grievant, Mr. Burke believed Grievant had engaged in patient abuse. Given the nature and number of substantiated charges of abuse, Mr. Burke believed there was no other choice but to terminate Grievant's employment. Mr. Burke did not consider any other factor (i.e. Grievant's prior filing of grievances) when deciding to terminate Grievant's employment.

17. Mr. Burke did not believe Grievant was capable of rehabilitation. Grievant has been repeatedly trained on patient's rights, and the hospital's policies prohibited all forms of patient abuse. Moreover, Grievant received additional training on patient abuse
and proper interaction with patients at the request of an adult protective service (APS) worker. This APS worker investigated a resident's complaint that she had been physically abused by Grievant. While the complaint could not be substantiated, the APS worker was nonetheless concerned about the safety of patients given the circumstances of the case and prior history of complaints against Grievant. 18. Testimony at the level four hearing was consistent with and corroborated the findings of the Policy 8000 Committee that Grievant repeatedly engaged in conduct that constituted patient abuse, which is prohibited by WVDHHR Policy 8000.

19. Grievant knocked on the heads of residents M.R. and T.W. with his knuckles asking "is anybody home?" This was witnessed by Health Service Worker Sommer VanMeter and Rhonda Kearns.

20. Grievant flicked M.R. on the back of the head while redirecting her to her room. This was witnessed by Rhonda Kearns and Sommer VanMeter.

21. Grievant shoved residents T.W. and R.R. and pulled their pants up their buttocks, giving them "wedgies", while escorting them to the bathroom. This was witnessed by Sommer VanMeter, Rhonda Kearns, and Shane Roush, Health Service Worker-Trainee.

22. Grievant refused snacks and drinks to residents I.B., F.A., N.D., R.W. and M.D., without doctor's orders, and, with the exception of F.A., did so to punish patients for wetting the bed. Grievant would, furthermore, tell residents they were not getting any coffee or snacks because "you pissed the

bed." This was witnessed by Rhonda Kearns, Cheryl Carper, and Sommer VanMeter. 23. On a number of occasions, Grievant called residents "ignorant," "crazy" and "retarded" in their presence as witnessed by Rhonda Kearns, Cheryl Carper, and Sommer VanMeter.

24. Grievant repeatedly used profane language and made demeaning comments while performing care for the residents. Grievant talked harshly to the residents, stating "why do you people lay in bed and piss all over yourself," "I ain't cleaning you when you can wipe your own ass," and "you shit yourself." This was witnessed by Sommer VanMeter, Rhonda Kearns, and Cheryl Carper.

25. Grievant isolated resident R.R. by placing him alone in the middle of the dining room with the door shut and lights out when he became loud and interfered with Grievant watching television. This was witnessed by Sommer VanMeter and Cheryl Carper. Grievant continued to do this even after Ms. Carper confronted him and told him this was not permitted according to Kim Billups.

26. Grievant repeatedly woke resident J.V. without prompting or notice by raising the head of her bed up while she was asleep and ripping the covers off of her bed. This was witnessed by Rhonda Kearns and Sommer VanMeter. Understandably, this angered and distressed the resident.

27. Grievant pulled on the tail of R.M.'s shirt and pinched him on the buttocks as witnessed by Sommer VanMeter, Rhonda Kearns, and Cheryl Carper. This caused the resident to become angry and begin cursing and swinging his arms. Grievant would then laugh at the resident. On occasion, the resident became so angry that he hit the wall with his fists and injured himself.

28. When Ms. Carper saw Grievant aggravating R.M., she confronted him by saying "one of these days somebody is going to see you and we're all going to get in trouble." Grievant responded in an angry and threatening manner by getting "in [her] face", telling her "do you think I give a damn about what Sandy [Reitmyer] and Kim [Billups] say, do you think I give a damn what Jim Burke or Keith [Stoffer] say about me, they can all kiss my white ass."

29. Grievant verbally abused resident E.C. by telling him "Hey E., I fucked your mother, I fucked your sister," as witnessed by Rhonda Kearns and Shane Roush. This caused the resident to become extremely agitated and begin swinging his arms and snapping his fingers, behaviors he exhibits when he is distressed.

30. Grievant falsified the goal sheets of residents E.C. and R.M., as witnessed by Rhonda Kearns and Cheryl Carper. Goal sheets are kept on all residents at the B-Wing and document, in

part, the number of times a resident is rewarded for good behavior andthe number of times a resident engages in negative behaviors. These records are reviewed and relied upon by the resident's care plan team when developing the resident's behavior plan.

31. Grievant increased the number of times a patient engaged in bad behaviors and decreased the number of times a patient was rewarded for good behaviors on the residents' goal sheets. Grievant did not work on the days for which the goals were changed and, thus, had no knowledge of the resident's actions on the days in question. When Ms. Carper and Ms. Kearns questioned Grievant about his alteration of the document, he stated "I know better than this" and "somebody is not documenting."

32. Grievant was given a statement of the charges and a list of witnesses who would be called before the Policy 8000 Committee met. Grievant testified before the Committee and addressed the allegations made against him. Grievant was provided another opportunity to respond to the charges by Lakin Hospital Administrator Jim Burke prior to his termination.

DISCUSSION

In disciplinary proceedings involving state employees, W. Va. Code § 29-6A-6 places the burden of proof on the employer, and the standard of proof is by a preponderance of the evidence. Davis v. Dept. of Motor Vehicles, Docket No. 89-DMV-569(Jan. 20, 1990). State employees, such as Grievant, who are in the classified service (See footnote 1) can only be dismissed for “cause”, meaning “misconduct of a substantial nature directly affecting the rights and interest of the public, rather than upon trivial or inconsequential matters, or mere technical violations of statute or official duty without wrongful intention.” Syl. Pt. 1, Oakes v. W. Va. Dept. of Finance and Admin., 164 W. Va. 384, 264 S.E.2d 151 (1980); Guine v. Civil Service Comm'n, 149 W. Va. 461, 141 S.E.2d 364 (1965); W. Va. Code § 29-6A-6; Logan v. Regional Jail Auth., Docket No. 94-RJA-225 (Nov. 29, 1994); Davis v. W. Va. Dept. of Motor Vehicles, Docket No. 89-DMV-569 (Jan. 22, 1990); Section 12.02, Administrative Rule, W. Va. Div. of Personnel (Aug. 3, 1993).

Grievant agrees all of the charges made against him, if substantiated, would constitute verbal and physical abuse. Grievant admitted he understands and has been trained in the hospital's policies prohibiting patient abuse. However, he denies he has engaged in any verbally or physically abusive behavior, and claims (1) that all of the witnesses who testified against him are lying, and (2) that, if

such behavior had occurred, Ms. Kearns, Ms, Carper, Ms. VanMeter and Mr. Roush should be disciplined for failing toreport such abuse sooner. Grievant also claimed he was denied due process by the administration during the investigation into his conduct, and subsequent termination.

Grievant's testimony conflicts with the testimony of Ms. Kearns, Ms. Carper, Ms. VanMeter, and Mr. Roush, 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 Administrative Law Judge 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.; 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 has articulated no credible motives as to why Ms. Kearns, Ms. Carper, Ms. VanMeter or Mr. Roush would lie. Grievant claims Ms. Kearns has a grudge against him because he reported her to his immediate supervisor after he witnessed Ms. Kearnsoutside "real close and face to face" with her boyfriend. By Grievant's account, no disciplinary action ever resulted from his complaint. Grievant also maintains Ms. Kearns would lie because she is jealous that he received a merit raise in the past when she did not. It is implausible that Ms. Kearns could fabricate the details of so many incidents, which are corroborated by others, simply because she is jealous of his past merit increase or because he reported that she was outside with her boyfriend. In fact, Ms. Kearns denies she has any grudge against Grievant and testified she could still work with him "if all this with the patients never happened."

Grievant provided no evidence why the others who testified would lie, except to state generally that "they are all friends" and "don't like me because I won't go on smoke breaks with them." Even if these witnesses were close friends, a fact which was not established, Grievant produced no evidence or logic as to why someone would make up such lies about him and jeopardize his livelihood, simply because he refused to go smoke with him or her.

The witnesses' demeanor and attitude during their testimony did not support Grievant's theory of fabrication. Ms. Carper volunteered she had previously worked with Grievant several years ago and he had treated the residents well at that time. Someone who is "out to get" the Grievant would certainly not volunteer such information. UnlikeGrievant, Ms. Carper, Ms. Van Meter, and Mr. Roush have no stake in the outcome of this grievance. Not only has Grievant lost his job over the incidents in question, but his license is currently in jeopardy. (See footnote 2) Moreover, despite Grievant's claims that everyone is lying about him, and that he has never engaged in any of the behaviors for which he was fired, his statements indicate otherwise. Grievant repeatedly made comments such as, "I didn't know how things are done on B-Wing," "I was taught by the older employees," and even more disconcerting, "what looks to outsiders as abuse isn't always abuse." Such statements should be considered, in addition to his motives to lie, when determining credibility.

The fact the abuse was not immediately reported is a “red herring”. It is not a defense to the charges, and has no bearing in this dispute. Ms. Kearns testified she reported the abuse four times to her immediate supervisor, Leslie Waterson, and, when no action was taken, she and Ms. Carper reported the abuse to Ms. Reitmyer and Ms. Billups. Ms. Carper was present on two occasions when Ms. Kearns reported the abuse to Ms. Waterson.

Furthermore, Grievant made threatening comments to the witnesses such as "you didn't see anything," "if they fuck with me, I'll fuck them back," "cars can be sugared, tiresslashed, and worse." Comments such as these intimidated the witnesses and made them afraid to speak out. Ms. VanMeter testified she did not believe it would do any good, because no action had been taken when Ms. Kearns complained to Ms. Waterson, and did not think anyone would believe her because "it was my word against his."

While Leslie Waterson denies any abuse was reported to her, the credibility of her testimony must be considered in light of two very important factors. First, if Rhonda Kearns did report abuse to Leslie Waterson and she [Leslie] did nothing about it, her license would be in jeopardy. Ms. Waterson is a nurse, and nurses are required by law to forward all reports of abuse to the appropriate authorities. As Ms. Waterson testified, a nurse who refuses to further complaints of patient abuse would be investigated by the nurse licensing board and can possibly be cited or have her licensed revoked. Thus, Ms. Waterson has a significant motive to lie about this point. Second, Ms. Waterson resigned from Lakin Hospital shortly before the investigation commenced regarding the allegations against

Grievant. Ms. Waterson was openly hostile to Lakin Hospital when talking about her reasons for resigning. Although she claims her resignation had nothing to do with Grievant's investigation, Ms. Waterson did comment that her reason for leaving was "personal," and that she was "sick" of being called in her supervisor's office over what she considered trivial matters, such as her professionalism and appearance. Based upon the overwhelming evidence in this case, the undersigned finds that Grievant's testimony and version of events is simply not credible, and Lakin Hospital has proven he engaged in verbal and physical abuse of residents, and altered resident's goal sheets. Termination was not only appropriate in this case but necessary. Grievant's continued employment would pose a threat to the safety and welfare of Lakin's residents. Furthermore, not only does Grievant's conduct evidence an utter lack of respect for the residents' dignity and well-being, but it shows that he is unconcerned with and contemptuous of Lakin Hospital's policies, his fellow workers, and his supervisors.

CONCLUSIONS OF LAW

1. The burden of proof in disciplinary matters rests with the employer, and the employer must meet the burden by proving the charges against an employee by a preponderance of the evidence. W .Va. Code § 29-6A-6.

2. State employees who are in the classified service can only be dismissed for “good cause," meaning "misconduct of a substantial nature directly affecting the rights and interest of the public, rather than upon trivial or inconsequential matters, or mere technical violations of statute or official (duty without wrongful intention." Syl. Pt. 1 , Oakes v. W .Va. Dept. of Finance and Admin.,164 W. Va. 384, 264 S.E.2d 151 (1980); Guine v. Civil Service Comm'n,149 W. Va. 461,141 S.E.2d 364 (1965). 3. An employee who engages in conduct that is physically or verbally abusive to a patient of a state hospital is guilty of gross misconduct, Buskirk v. Civil Service Comm'n of W .Va. , 175 W. Va. 279, 332 S.E.2d 579 (1985), and as such can be terminated on the first offense.

4. Altering or forging records is misconduct of a substantial nature which may warrant dismissal on the first offense. Bolton v. W. Va. Dept. of Highways, Docket No. 90- DOH-122 (July 31, 1990).

5. Grievant was terminated for misconduct of a substantial nature directly affecting the rights and interests of the public. Respondent has shown by a preponderance of the evidence that Grievant

has engaged in behaviors which are verbally and physically abusive to the residents of Lakin Hospital.

6. Grievant bears the burden of proof on all affirmative defenses. Grievant has not shown that Respondent Lakin Hospital considered any other factor than Grievant's own acts of physical and verbal abuse.

7. The Grievance Board has held that an employee is entitled to a pre- termination due process, which may be minimal and consist only of being provided a statement of the charges and an opportunity to respond thereto, when prompt post- deprivation hearing procedures are available. Albright v. W .Va. Dept. of Health andHuman Resources, Docket No. 91-HHR-148 (Nov. 27, 1991). The Grievant was given a statement of the charges and a list of witnesses who would be called before the Policy 8000 Committee met. Grievant testified before the Committee and addressed the allegations made against him. Grievant was provided another opportunity to respond to the charges by Lakin Hospital Administrator Jim Burke prior to his termination. Therefore, no due process violations occurred.

Accordingly, this grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred. Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7 (1998). 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.

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MARY JO SWARTZ

Administrative Law Judge

Dated: December 13, 1999

Footnote: 1

"Classified service" is defined by W. Va. Code § 29-6-2(g) as "an employee whose job satisfies the definition for 'class' and 'classify' and who is covered under the civil service system[.]"

Footnote: 2

Since the level four hearing, Grievant has been placed on the Nurse Aide Abuse Registry by the Office of Health Facility Licensure and Certification ("OHFLAC"), as a result of these charges.