**CAROLYN BROWN,**

**Grievant,**

**v.** **Docket No. 99-HHR-026**

**WEST VIRGINIA DEPARTMENT OF**

**HEALTH AND HUMAN RESOURCES,**

**Respondent.**

## D E C I S I O N

**Grievant, Carolyn Brown, grieves her termination from her position as a probationary Economic Service Worker by the West Virginia Department of Health and Human Resources ("HHR"). This grievance was filed on December 17, 1999, and was denied at all lower levels. She appealed to Level IV, and alleged Respondent was in default. A decision denying that portion of her grievance was rendered on June 6, 1999. Grievant also appealed on the merits on the case, and a Level IV hearing was held on August 20, 1999. This case became mature for decision on October 5, 1999, after receipt of Respondent's proposed findings of fact and conclusions of law.** (See footnote 1)

**After a detailed review of the record in its entirety, the undersigned Administrative Law Judge makes the following Findings of Fact.**

## Findings of Fact

**1. Grievant began employment with HHR as an Economic Service Worker on June 16, 1997. 2. An Economic Service Worker's primary duty is to determine if applicants are eligible for the various assistance programs offered by the Federal and State governments. They also periodically review the clients' status to**

**see if the needs or eligibility has changed.**

**3. When Grievant first began employment, she did clerical work until a training class began. This is the usual practice for new employees who do not yet know the duties of their position. Grievant was assigned to Ms. Carolyn Bays for supervision.**

**4. Grievant began training on or about July 22, 1997.**

**5. During training Grievant had difficulty processing the data she was required to learn for the Economic Service Worker position.**

**6. Frequently during the training classes, Grievant would ask irrelevant or personal questions. This behavior of Grievant caused the class to be extended beyond the normal length. Several classmates helped Grievant understand the class material.**

**7. The training received during the classes represents approximately half of the training necessary for a new employee to learn the job duties.** **(See footnote 2)** **The rest of the information is learned through on the job training.**

**8. Probationary employees are initially expected to observe experienced employees while they conduct application and review interviews. 9. After her in-class training, Grievant returned to Ms. Bays for supervision. Grievant had difficulty performing the primary duties expected of an Economic Service Worker.**

**10. Grievant also demonstrated inappropriate behavior during the interviews where she was to observe only. Several employees indicated they no longer wanted Grievant to observe them during interviews. One employee asked to be moved away from Grievant, as Grievant continually interrupted her to ask questions she had already answered several times before.**

**11. Grievant was very unhappy on Ms. Bays's unit and felt the co-workers did not like her. She believed they had a conspiracy against her, and were doing their best to get her fired.** **(See footnote 3)**

12. Grievant maintained Ms. Bays told her she hated her during one of her evaluations, Ms. Bays wanted a man in her position, and Ms. Bays wanted Grievant to find men for her to date. She felt Ms. Bays required her to make cakes, and intended to get her fired. 13. Ms. Bays talked to Grievant on numerous occasions about her unsatisfactory performance and inappropriate behavior. Some of the discussion were documented and some were not. (See footnote 4)

14. Probationary employees are to receive an evaluation every month. This did not happen in Grievant's case.

15. Ms. Bays discussed Grievant's performance with her on August 29, 1997, and gave her two evaluations at that time for her first and second month evaluations.

16. At this evaluation, Ms. Bays discussed Grievant's inappropriate comments with her. Grievant had asked an African- American worker how he could tell when he was dirty, had interrupted an intake interview to ask if a former supervisor was gay, and had interrupted another interview to ask a customer in a rude way why he had quit a well paying job. (See footnote 5) These evaluations clearly reflected Grievant's difficulty in interacting with co-workers and customers, and it noted co-workers were making fun of her because of her odd behavior.

17. Ms. Bays talked to Grievant on or about September 1997 about the length of her interviews as they were taking a very long time. For example, Grievant's shortest interviews were almost two hours, several were over three hours, and one interview lasted almost five hours. (See footnote 6) Resp. Exh. No. 6. 18. On September 25, 1997, Ms. Bays received complaints about Grievant's performance from a co-worker. This co-worker noted Grievant's inability to conduct an interview and reported Grievant took a long time to complete these types of tasks.

19. Shortly thereafter, Ms. Bays observed Grievant conduct an interview,

**and noted Grievant had multiple difficulties. Grievant did not review the computer information before seeing the customer, incorrectly assumed why the customer was there, did not ask income questions, on certain screens she again did not ask any of the questions, but reported the answers as no, left the computer on when she left the area, and did not interact with the customer. It was clear Grievant was unfamiliar with the computer system, and appeared to have "no interview skills." After this observation, Ms. Bays talked to Grievant about what she had noticed.**

**20. Grievant demonstrated difficulty in operating the computer system used to fill out the necessary forms for applications. An example given of her difficulty was her inability to remember where the Y (yes) and N (no) keys were on the keyboard so she could answer the questions listed on the forms. Workers described Grievant appearing to search the keyboard for these letters "as if they had moved."**

**21. During the first of October, Grievant was transferred to the supervision of Ms. Carol Halstead. Grievant was pleased with this transfer. Within three days of this transfer Ms. Halstead questioned whether Grievant would be able to perform the essential duties of the position in a satisfactory manner. 22. Problems Ms. Halstead saw with Grievant's performance were: 1) Grievant did not know the policies and procedures necessary to perform her essential duties; 2) Grievant hesitated to perform interviews and had to be asked by Ms. Halstead to go and help other employees;** (See footnote 7) **3) Grievant was unfamiliar with the keyboard and computer system; and 4) Grievant's interviews while very long were not thorough, and she did not ask all the appropriate questions. Grievant continued to have problems with her co-workers, and they were increasingly unwilling to help her because of her behavior and inability to retain information.**

**23. Ms. Halstead also had conferences with Grievant. Again some of these were documented and some were not.** (See footnote 8)

**24. Ms. Halstead directed Grievant to keep a notebook and write down the problems she was having with the computer system and the work in general. Grievant did not keep a notebook and never came to Ms. Halstead with any questions or problems.**

**25. Grievant received her third and fourth evaluations on November 17, 1997. Although the third evaluation was not given to Grievant in a timely manner, the notations identified problems Grievant was experiencing during that time period. Many of the problems noted were the same as noted above.**

**26. Grievant's fourth evaluation stated Grievant was unable to perform as expected. It was noted that when compared with her peers, she fell far short of the work they were performing, and her work was not up to standards. This evaluation noted Grievant continued to ask the same questions repeatedly, did not appear to retain information, could not apply policies, her output had not increased, co-workers were having to pick up Grievant's slack, and Grievant interrupted the work of others. She was told at this evaluation that she would not be recommended for permanent status.**

**27. Grievant's performance was compared to employees of the same tenure. Several of the witnesses at Level III were employees who had completed training with Grievant, and they discussed Grievant's difficulty in grasping the concepts in class and applying them in the work setting.**

**28. Grievant was verbally informed on December 2, 1997, that she was being dismissed as a probationary employee, and she would not be retained as a permanent employee due to her unsatisfactory performance. Her last day of employment was to be December 17, 1997.**

**29. Additional training that had been scheduled for Grievant was canceled.**

(See footnote 9)

**30. After Grievant was informed she would not be retained as a permanent**

**employee, her performance improved. 31. Grievant's dismissal letter dated December 2, 1997, stated Grievant was being discharged for failure to "[meet] the required standards of work". This letter also discussed her inability to perform her work in a timely manner, failure to see a sufficient number of clients, inability to understand the computer system, excessive reliance on other staff that disrupted their work, and inability to apply the policies and procedures she had learned in the classroom setting.**

**32. At the December 2, 1997 conference, Grievant was informed she would be terminated, and that a letter would be sent that day informing her of the decision. This letter was sent Grievant by certified mail, and although she was aware of this letter, she did not call the post office to make arrangements for its delivery. Ms. Halstead hand delivered a copy of this letter to Grievant on December 6, 1997.**

**33. Grievant's last day of employment was December 17, 1997.**

## Issues and Arguments

**Respondent maintains Grievant was discharged for unsatisfactory performance during the probationary period. Respondent did not believe Grievant could carry out the prescribed and essential duties of the position.**

**Grievant alleges she did not receive proper notice of her discharge as she was not given a copy of her discharge letter until December 6, 1997. Grievant alleges her performance improved significantly during her last month of work, and this improvement should have been taken into consideration. Additionally, although not clearly pled in the Level IV hearing, Grievant also appears to argue she had been discriminated against because of her age. Further, Grievant argues Respondent failed to train herproperly for the position; thus, her failure to meet expected standards was not her fault but the fault of the agency, and she should**

**be retrained. Grievant did not testify that her performance prior to the November 17, 1997 evaluation conference was satisfactory, and instead focused her presentation on her performance after that time.**

**Discussion**

**When a probationary employee is terminated on grounds of incompetency or unsatisfactory performance, rather than misconduct, the termination is not disciplinary, and the employer carries no burden of proof in a grievance proceeding. The employee has the burden of establishing that her services were satisfactory. Bonnell v. W. Va. Dep't of Corrections, Docket No. 89-CORR-163 (Mar. 8, 1990). See Bowman v. W. Va. Educ. Broadcasting Auth., Docket No. 96-EBA-464 (July 3, 1997); Walker v. W. Va. Public Serv. Comm'n, Docket No. 91-PSC-422 (Mar. 11, 1992);. See also, Simmons v. Bureau of Employment Programs, Docket No. 97-BEP-531 (Nov. 25, 1998). Grievant was clearly dismissed for unsatisfactory performance, not for any disciplinary reasons; and thus, has the burden of proof in this grievance.**

**A preponderance of the evidence is defined as "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." Black's Law Dictionary (6th ed. 1991); Leichliter v. W. Va. Dep't of Health & Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. Id.**

**Classified employees are subject to the provisions of the Division of Personnel's Administrative Rules (June 1998). Numerous Rules and Sections are applicable to the issues raised by Grievant, and they will be listed below.**

**Section 10. Probationary Period**

**10.1. Nature, Purpose, and Duration**

**(a) The probationary period is a trial work period designed to allow the appointing authority an opportunity to evaluate the ability of the employee to effectively perform the work of his or her position and to adjust himself or herself to the organization and program of the agency. It is an integral part of the examination process and the appointing authority shall use the probationary period for the most effective adjustment of a new employee and the elimination of those employees who do not meet the required standards of work.**

**(b) Appointing authorities shall make all original appointments to permanent positions from officially promulgated registers for a probationary period of not more than one year. The Board shall fix the length of the probationary period for each class of position. The appointing authority shall notify the Director of Personnel when a probationary period has been completed and permanent status has been granted. This subdivision shall not be construed to prohibit application of time served in a provisional status to completion of a probationary period. The period of provisional appointment may apply toward completion of the probationary period only for that part served continuously, in the same class, and immediately prior to an original appointment. However, it is the responsibility of the appointing authority to state in writing at the time permanent status is being granted that the time served in a provisional status has been applied toward completion of a probationary period. Permanent appointment of a probationary employee begins with the date ending the probationary period.**

**10.2. Conditions Preliminary to Permanent Appointment**

**(a) Four weeks prior to the end of the probationary period, the appointing authority shall obtain from the probationary employees supervisor a statement in writing recommending that the employee be continued or not be continued in service. This statement shall include an appraisal of the employees services and should include a service rating in conformity withthe system of performance evaluation prescribed by the Director. If the appointing authority determines that the services of the employee shall be retained, the appointing authority shall notify the employee and the Director of Personnel of the action no later than the last day of the probationary period.**

**(b) In the event the appointing authority takes no action on the status of a probationary employee before the expiration of the probationary**

**period, either to retain or terminate, the employee shall be considered as having attained permanent status.**

**Section 10.5 Dismissal during Probation**

**If at any time during the probationary period, the appointing authority determines that the services of the employee are unsatisfactory, the appointing authority may dismiss the employee in accordance with Section 12.2 of this rule. If the appointing authority gives the fifteen calendar days notice on or before the last day of the probationary period, but less than fifteen calendar days in advance of that date, the probationary period shall be extended fifteen days from the date of the notice and the employee shall not attain permanent status. This extension shall not apply to employees serving a twelve month probationary period.**

**Section 12.2 Dismissals**

**Fifteen (15) calendar days after notice in writing to an employee stating specific reasons, the appointing authority may dismiss any employee for cause. The appointing authority shall allow the employee a reasonable time to reply to the dismissal in writing, or upon request to appear personally and reply to the appointing authority or his or her designee. The appointing authority shall file the reasons for dismissal and the reply, if any, with the Director of Personnel. Fifteen days notice is not required for employees in certain cases when the public interests are best served by withholding the notice or when the cause of dismissal is gross misconduct. An appointing authority may dismiss an employee after oral notice, confirmed in writing, when the dismissed employee's action(s) constitute a threat to the safety or welfare of persons or property.**

**As stated above, the first issue to discuss is whether Grievant has proven her services were satisfactory; and thus, her dismissal was arbitrary and capricious. Theterm "unsatisfactory," as used in the Administrative Rule, is not defined, but the American Heritage Dictionary defines satisfactory as "giving satisfaction sufficient to meet a demand or regulation; adequate." (2d college ed. at 1092).**

**Generally, an action is considered arbitrary and capricious if the agency did**

**not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996). While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of DOP. See generally, Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276, 283 ( 1982). An action may also be arbitrary and capricious if it is willful and unreasonable without consideration of facts. Black's Law Dictionary, at 55 (3d Ed 1985). Arbitrary is further defined as being "synonymous with bad faith or failure to exercise honest judgment." Id. The arbitrary and capricious standard is a high one, requiring willful and unreasonable action and disregard of known facts.**

**The undersigned finds Grievant has not proven her performance was satisfactory. Grievant was employed by HHR, for a six month probationary period, as an Economic Service Worker. HHR presented four performance evaluations whichdemonstrated Grievant's multiple difficulties. Grievant was unable or unwilling to apply the information she had gained in the classroom setting to the work setting. Grievant's work was not thorough, was unorganized, and below standards in amount and quality. She did not understand the policies she needed to apply to the interview situations, and she did not understand the computer system she was required to utilize to input information.**

**Ms. Bays and Ms. Halstead recommended Grievant's termination because she was unable to perform the essential duties of the position, and Grievant did not appear to be learning or improving with repetition. It is also noted that Grievant's performance did not improve after her first performance evaluations and**

**numerous conferences brought her shortcomings to her attention. She was dismissed because she had not met the required performance standards or shown the proficiency and ability to meet the required standards. HHR has documented specific, relevant reasons for not continuing Grievant's probationary employment, which is all it is required to do.**

**Section 10 of DOP's Administrative Rule states the probationary period is a trial work period designed to allow the employer an opportunity to evaluate the ability of the employee to perform the required work effectively. Although "unsatisfactory performance" is a phrase subject to broad interpretation, HHR in this case has provided ample evidence that Grievant did not meet the agency's standards for performance as an Economic Service Worker, and it acted within its authority under the regulations in terminating her probationary employment. Dixon v. Div. of Corrections, Docket No. 98- CORR-243 (Aug. 24, 1998). Grievant has failed to prove, by a preponderance of theevidence, that her performance was satisfactory, and that she should not have been dismissed. Similarly, the evidence of record will not support a finding or conclusion that HHR acted arbitrarily and capriciously or lacked a rational basis for dismissing Grievant from her probationary employment. Goard v. W. Va. Div. of Corrections, Docket No. 95-CORR-068 (Mar. 20, 1995).**

**Grievant's argument that HHR's failure to consider her improvement after she was notified of her termination is also without merit. HHR is allowed to dismiss a probationary employee pursuant to Section 10.05 "at any time during the probationary period." (Emphasis added). Accordingly, an agency does not have to wait until the end of the probationary period to dismiss a probationary employee. HHR does not have to reconsider its decision to dismiss Grievant. Grievant's improvement the last fifteen days of her employment was too little, too late.**

**Grievant's argument about HHR's failure to give her proper notice of her**

**dismissal will be discussed next. Section 10.5 of DOP's Administrative Rules allows the appointing authority to dismiss an unsatisfactory employee in accordance with Section 12.2. Pursuant to Section 10.5, if the employees is dismissed "less than fifteen calendar days in advance of that date, the probationary period shall be extended fifteen days from the date of the notice and the employee shall not attain permanent status."**

**Section 12.2 requires written notice. Since Grievant's letter was mailed on December 2, 1997, she would not be able to pick it up until approximately December 3 or 4, 1997. Accordingly, Grievant is correct in her assertion that HHR did not complyexactly with Sections 10.2 and 12.2. However, there is no provision or implication in the Administrative Rule that failure to comply with Section 10.2(a) entitles the employee to permanent employment. Rather, as provided in Section 10.2(b), the employee attains permanent status only if the employer takes no action regarding his employment status prior to the expiration of the probationary period. Giberson v. Div. of Corrections, Docket No. 98-CORR-002 (May 29, 1999). Thus, Grievant's notice of dismissal would run from December 4, 1997, instead of December 2, 1997, and the required relief in this situation is to allow Grievant two more days of compensation. Her failure to pick up the letter should not extend the time further than these additional two days.**

**Grievant's argument she was not properly trained, or that HHR had a duty to retain her is without merit. Grievant's training was the same as her peers, and Grievant did not identify any rule, statute, regulation, or policy that required retraining of a probationary employee. Indeed, Mr. Boyd indicated he had only seen one employee retrained, and that decision was within the discretion of the agency. While it may be true that co-workers were not especially pleasant to Grievant, and they were not as helpful as they might have been, it also appears that much of this reaction was created by Grievant's own inability to retain**

**information, and her lack of understanding of how to interact in the work place environment.**

**Grievant's unclear argument of age discrimination will be addressed next. Grievant's age was never stated in the record, but during the lower levels she indicatedshe was over forty. Employers are prohibited from discriminating in terms and conditions of employment because of age under the West Virginia Human Rights Act, W. Va. Code § 5-11-2. Additionally, W. Va. Code § 29-6A-2(d) prohibits discrimination on any basis which is unrelated to an employee's job responsibilities. See Vest v. Bd. of Educ., 193 W. Va. 222, 455 S.E.2d 781 (1995).** (See footnote 10) **See Hendricks v. Dep't of Tax and Revenue, Docket No. 96-T&R-215, (Sept. 24, 1996).**

**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." An employee seeking to establish that her termination was motivated by unlawful discrimination must first establish a prima facie case of discrimination under W. Va. Code § 29-6A-2(d), by demonstrating the following:**

**(a) that she is similarly situated, in a pertinent way, to one or more other employee(s);**

**(b) that she has, to his detriment, been treated by her 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 the other employee(s) and were not agreed to by the grievant in writing.**

**Hindman v. W. Va. Div. of Corr., Docket No. 94-CORR-262 (Feb. 27, 1997); Smith v. W. Va. Bureau of Employment Programs, Docket No. 94-BEP-099 (Dec. 18, 1996).**

**See Parsons v. W. Va. Div. of Highways, Docket No. 91-DOH-246 (Apr. 30, 1992). Once the grievant establishes a prima facie case of discrimination, the burden shifts to the employer to demonstrate a legitimate, non-discriminatory reason for the dismissal. See Tex. Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981).**

**Grievant bases her discrimination argument on the fact that both Ms. Halstead and Ms. Bays thought part of Grievant's difficulty in performing the duties of the position was her lack of prior work experience. This speculation was proven through the evidence, but this opinion was not related to age, but to a lack of experience. It was clear from the evidence that Grievant did not understand how to interact in the work place and frequently misinterpreted the actions and statements of others.**

**Testimony also revealed there were people employed as Economic Service Workers at HHR that were Grievant's age and older. Applicants were picked from a register, and interviewed. HHR clearly knew Grievant's age when it employed her. Further, Grievant presented no evidence of a younger employee who performed as poorly as Grievant and was still retained. Grievant did not meet her burden of proof and failed to demonstrate she was the victim of discrimination due to her age.**

**Consistent with the foregoing discussion, the following Conclusions of Law are made in this matter.**

## Conclusions of Law

**1. In a grievance not involving a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 § 4.19 (1996); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29-6A-6.**

**2. Where a probationary employee is terminated on grounds of unsatisfactory performance, rather than misconduct, the termination is not disciplinary, and the burden of proof is upon the employee to establish that his services were satisfactory. Bonnell v. W. Va. Dep't of Corrections, Docket No. 89-CORR-163 (Mar. 8, 1990).**

**3. Grievant has failed to prove, by a preponderance of the evidence, that her performance was satisfactory, and that she should not have been dismissed. Bowman v. W. Va. Educ. Broadcasting Auth., Docket No. 96-EBA-464 (July 3, 1997); Smith v. W. Va. Div. of Labor, Docket No. 93-LABOR-347 (Oct. 29, 1993); Walker v. W. Va. Public Service Comm'n, Docket No. 91-PSC-422 (Mar. 11, 1992); Bonnell, supra.**

**4. Grievant failed to prove HHR violated any statute, policy, rule, or regulation in dismissing her from employment, or that HHR acted arbitrarily and capriciously in terminating Grievant's probationary employment. Goard v. W. Va. Div. of Corrections, Docket No. 95-CORR-068 (Mar. 20, 1995).**

**5. HHR has no duty to retrain probationary employees.**

**6. Grievant did not meet her burden of proof and demonstrate HHR engaged in age discrimination. 7. Although HHR did give Grievant fifteen days verbal notice of her termination, HHR did not give Grievant fifteen days written notice as required by DOP's Administrative Rule 12.2. This failure results in the necessity of extending Grievant's work compensation two extra days.**

**Accordingly, this grievance is DENIED, in part, and GRANTED, in part. Respondent is directed to compensate Grievant for two additional work days to correct the failure to provide fifteen days of written notice of her termination.**

**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.**

**JANIS I. REYNOLDS**

**ADMINISTRATIVE LAW JUDGE**

**Dated: October 28, 1999**

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***Footnote: 1***

***Grievant was represented by Attorney J. Randolph Query, and Respondent was represented by Assistant Attorney General B. Allen Campbell. Mr. Campbell mailed his proposed Findings of Fact and Conclusions of Law according to the agreement of the parties. Mr. Query declined to submit these proposals.***

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***Footnote: 2***

***Grievant testified she was given only two days of training on Medicare. This claim was not supported by any other witnesses, including the trainer who taught the classes.***

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***Footnote: 3***

***Grievant testified at length about a social group on Ms. Bays's unit, who did not like her, and wanted her to be fired. This group of women were in a "Secret Sister" group and had exchanged names earlier in the year. They anonymously gave each gifts during the year, and revealed their identities at a yearly party. Neither Grievant nor Ms. Bays were members of this group. Not all of Ms. Bays's staff were members.***

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***Footnote: 4***

***Grievant testified Ms. Bays had never indicated to her that she had problems or what areas she needed to improve.***

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***Footnote: 5***

***The client was mentally ill and had difficulty maintaining employment. Also, the position was not well***

***compensated.***

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***Footnote: 6***

***Respondent had noted for the record some of the times of Grievant's interviews from September 18, 1997, to October 20, 1997. Respondent did not indicate a standard time for the length of an interview, but testimony indicated the time appeared to be aroundan hour or so, and many were much shorter.***

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***Footnote: 7***

***Ms. Halstead related that on one very busy day she received a request from one of Grievant's co-workers to ask Grievant to help out as they were swamped with interviews. Ms. Halstead went to Grievant, asked her to go and help, and Grievant finally went to assist 45 minutes later. All workers are expected to help interview clients during the agency's busy period, whether any of their clients are on the list or not.***

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***Footnote: 8***

***Again, Grievant maintains these conferences were not held.***

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***Footnote: 9***

***Grievant stated that at least one of these training sessions was canceled before she was notified of her termination. This belief was incorrect.***

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***Footnote: 10***

***Due to the broader definition of "discrimination" contained in W. Va. Code § 29- 6A-2(d), it is not necessary to analyze Grievant's claim of age discrimination under the Human Rights Act, as such claims are subsumed by the W. Va. Code § 29-6A-2(d) claim. See Vest, supra. However, it is noted these are statutes under which Grievant works as defined in the grievance procedure for state employees. W. Va. Code § 29-6A-2(i). See generally Belcher v. W. Va. Dep't of Transp., Docket No. 94-DOH-341 (Apr. 27, 1995).***