NANCY L. PAULEY,

Grievant,

v.

DOCKET NO. 98-22-495

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Nancy L. Pauley, filed the following grievance against her employer, the Lincoln County Board of Education ("Board") on October 21, 1998:

> Violation of WV Code 18-29-2(a)(n). An incident of harassment constituted a detriment of job performance and safety. Mr. McCann verbally attacked grievant with no cause in front of other employees causing grievant emotional trauma and embarrassment. (9/22/98).
>
> Relief sought: Reinstatement of sick leave taken due to emotional upheaval, apology, develop a direct line of communication between Grievant and Mr. McCann.

The grievance was denied at level one by Superintendent R. P. Powell. A level two hearing was held on November 17, 1998, and the grievance was denied by Hearing Examiner Donna Martin on December 4, 1998. Level three was by-passed and the grievance appealed to level four on December 9, 1998. The parties agreed to submit the matter on the record developed at level two, and this case became mature for decision on January 15, 1999, the deadline for the parties' submission of proposed findings of fact andconclusions of law. Grievant was represented by Anita Mitter, West Virginia Education Association, and the Board was represented by James W. Gabehart, Esq.

SUMMARY OF EVIDENCE

Grievant's Exhibits

None.

Board Exhibits

Ex. 1 -

Lincoln County Schools Applications for Personal Leave-All Employees, dated October 2, 1998.

Ex. 2 -

Written Statement of Trina Burns.

Ex. 3 -

October 14, 1998 letter from Tina M. Black to Superintendent Powell.

Ex. 4 -

December 7, 1998 letter from Anita Mitter to Superintendent Powell.

Testimony

Grievant testified in her own behalf, and presented the testimony of Trina Burns, Tina Black, and Ollie Hunting. The Board presented the testimony of Charles McCann.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Grievant is employed by the Board as an Executive Secretary and Personnel Coordinator.

2. Charles McCann is employed by the Board as Director of Personnel, and is Grievant's immediate supervisor.

3. On September 21, 1998, Mr. McCann conveyed instructions on a couple of personnel matters to Tina Black, another Board employee, which were to be conveyed to Grievant. On both of the personnel issues, Grievant expressed disagreement with the way Mr. McCann was handling the matters, which disagreement she expressed to Tina Blackin the presence of another Board

employee, Trina Burns. Bd. Exs. 2, 3; Tr., pp. 2-3; 20-21; 29; 35-36; 39.

4. In addition to expressing disagreement with the manner in which Mr. McCann was handling the personnel issues, Grievant made an additional comment to the effect that she frequently disagreed with a lot of things he did. Tina Black conveyed Grievant's comments to Mr. McCann. He became upset because he believed Grievant should not be criticizing her supervisor in front of other people. Bd. Exs. 2, 3.

5. Mr. McCann went immediately to Grievant's office. In a conversation that lasted perhaps one minute, he expressed his displeasure at Grievant's actions and stated that he would not “put up with this shit”, and told her they would discuss the matter later. Mr. McCann was upset and spoke with a raised voice, but was not yelling. He was standing in the doorway to Grievant's office when he made the remarks, and he did not threaten her in any way.

6. Grievant became very upset after this encounter, and stayed in her office the rest of the day. She called in sick the next day, without giving a reason for her absence. She missed the next three days as well, returning to work on Monday, September 28, 1998.

7. Grievant submitted an application for personal leave listing the four days she missed, but again, offering no explanation for her absence. Bd. Ex. 1. Grievant was not denied personal leave.

8. Grievant did not see a physician, either during her absence or after returning to work, for any problem, complaint, or condition Grievant might contend was related to Mr.McCann's verbal reprimand of her on September 21, 1998. No medical report or testimony was submitted by Grievant.

9. At the level one conference concerning this grievance, Mr. McCann apologized to Grievant for raising his voice and stated that he would avoid conveying instructions to Grievant through a third party in the future, both of which were part of the relief requested. The only issue remaining concerns Grievant's request for compensation for the four days she missed from September 22 through 25, 1998.

DISCUSSION

Grievant has the burden of proving each element of 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); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88- 130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

Grievant alleges she is entitled to compensation for the four days she missed in September, 1998, because her absence was caused by Mr. McCann's reprimand of her, which constituted harassment.

"Harassment" is defined under W. Va. Code § 18-29-2(n) as "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy, and professionalism." Grievant admitted that nothing similar had ever occurred between her and Mr. McCann as the September 21, 1998 incident, and that they had "always gotten along fine." Tr., p. 11. Harassment has been found in cases in which a supervisor has constantly criticized an employee's work and created unreasonable performance expectations, to a degree where the employee cannot perform her duties without considerable difficulty. See Moreland v. Bd. of Trustees, DocketNo. 96-BOT-462 (Aug. 29, 1997). Similarly, repeated comments of a sexual nature by a supervisor have been found to constitute harassment. Hall v. W. Va. Dept. of Transp., Docket No. 96-DOH-433 (Sept. 12, 1997). An isolated incident such as this does not rise to this level. See Tibbs v. Hancock County Bd. of Educ., Docket No. 98-15-016 (June 16, 1998).

Grievant contends that she was emotionally distraught and was unable to perform her duties for four days following the September 21, 1998 incident. Grievant has offered no evidence, except her own testimony, to corroborate this statement. Grievant testified that she did personal errands and visited friends during her time off. She testified that she was afraid to return to work because Mr. McCann had told her they would discuss the matter further at a later time, and that he had embarrassed her in front of her co-workers. Further, when Grievant called in absent for those four days, she did not relate that the cause of her illness was due to Mr. McCann's reprimand, nor did she state that as her reason for absence on her application for personal leave. Bd. Ex. 1.

While I do not doubt that Grievant was embarrassed and afraid to face Mr. McCann, she has presented no evidence to support her contention that she was unable to perform her duties for four days following the September 21, 1998 incident. Grievant simply chose to stay away of her own accord, and the Board is not required to compensate her for that choice.

CONCLUSIONS OF LAW

1. Grievant has the burden of proving each element of 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); Holly v. Logan County Bd. of Educ., Docket No.96-23-174 (Apr. 30, 1997); Hanshaw

v. McDowell County Bd. of Educ., Docket No. 33-88- 130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. Grievant alleges she is entitled to compensation for the four days she missed in September, 1998, because her absence was caused by Mr. McCann's reprimand of her, which constituted harassment.

2. "Harassment" is defined under W. Va. Code § 18-29-2(n) as "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy, and professionalism." Grievant admitted that nothing similar had ever occurred between her and Mr. McCann as the September 21, 1998 incident, and that they had "always gotten along fine." Tr., p. 11.

3. An isolated incident such as this does not constitute harassment under the W. Va. Code § 18-29-2(n). See Tibbs v. Hancock County Bd. of Educ., Docket No. 98-15- 016 (June 16, 1998); Moreland v. Bd. of Trustees, Docket No. 96-BOT-462 (Aug. 29, 1997); Hall v. W. Va. Dept. of Transp., Docket No. 96-DOH-433 (Sept. 12, 1997).

4. Grievant has failed to prove by a preponderance of the evidence that Mr. McCann harassed her on September 21, 1998, or that she was unable to perform her duties for from September 22-25, 1998, as a result of his reprimand.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln County and 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. 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.

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MARY JO SWARTZ

Administrative Law Judge

Dated: January 29, 1999