HARLAN LOTT,

Grievant,

v.

DOCKET NO. 99-DJS-278

WEST VIRGINIA DIVISION OF

JUVENILE SERVICES,

Respondent.

D E C I S I O N

Grievant, Harlan Lott, filed this grievance at level four on July 2, 1999, protesting his dismissal from the West Virginia Division of Juvenile Services ("DJS"), and seeking reinstatement. Following several continuances for good cause, a level four hearing was held in the Grievance Board's Charleston, West Virginia, offices on December 6, 1999. DJS was represented by C. Scott McKinney, Assistant Attorney General, and Grievant appreared pro se. The parties declined to submit proposed findings of fact and conclusions of law, and this case became mature at the close of the December 6, 1999, hearing. (See footnote 1)

SUMMARY OF EVIDENCE

DJS' Exhibits

Ex. 1 -

June 22, 1999 dismissal letter from T. D. Melton, Deputy Director, to Harlan L. Lott.

Ex. 2 -

West Virginia Division of Juvenile Services Policy Number 4.01: Employee Standards of Conduct and Performance.

Ex. 3 -

Certificate of Understanding, Policy Directive 4.01, dated January 26, 1999.

Ex. 4 -

West Virginia Division of Juvenile Services Employee Handbook.

Ex. 5 -

West Virginia Division of Juvenile Services Incident Report, dated June 2, 1999.

Grievant's Exhibits

Ex. 1 -

May 7, 1999 memorandum from T. D. Melton to All Staff.

Ex. 2 -

Policy Directive 6.01: Sexual Harassment and Other Discrimination; Police Directive 4.03: Notice to Employee of Disciplinary Demotion or Transfer in Lieu of Suspension or Removal Action.

Ex. 3 -

Employee Handbook Section 2: General Policy Information; West Virginia Division of Personnel Sexual Harassment Policy.

Ex. 4 -

Statement of Harlan Lott, June 16, 1999.

Ex. 5 -

Statement of Lisa Grimes, May 13, 1999.

Ex. 6 -

Supplemental Statement of Lisa Grimes, May 28, 1999.

Ex. 7 -

Supplemental Statement of Lisa Grimes, June 3, 1999.

Ex. 8 -

Dictionary Definition of “sugar-tit”.

Ex. 9 -

West Virginia Division of Juvenile Services Incident Report, dated May 18, 1999.

Ex. 10 -

West Virginia Bureau of Employment Programs Deputy's Decision, dated August 10, 1999.

Ex. 11 -

June 24, 1999 letter from T. D. Melton, Deputy Director, to Harlan Lott.

Ex. 12 -

North Central Regional Juvenile Detention Center Time Sheets, March 1, 1999 through March 19,1999.

Ex. 13 -

North Central Regional Juvenile Detention Center Daily Log, March 16, 1999.

Ex. 14 -

West Virginia Division of Juvenile Services Training Information Forms for Harlan Lott.

Ex. 15 -

Single page of handwritten notes of Steven Blosser.

Testimony

DJS presented the testimony of Timothy D. Melton and Lisa Grimes. Grievant testified in his own behalf, and presented the testimony of Gary Vincent, Sherri Mullenix, John Ridenhour, Timothy D. Melton and Lisa Grimes.

FINDINGS OF FACT

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

1. Grievant had been employed at DJS since the Summer of 1998 as a temporary contract employee.

2. On February 1, 1999, Grievant was hired as a full-time Juvenile Detention Officer I for DJS. Grievant was placed on a six-month probationary period as a new full- time employee. R. Ex. 4.

3. In May 1999, an investigation was commenced by DJS into allegations made against the then-Director of the North Central Regional Jail Detention Center, John Ridenhour. Initially, all staff were asked to talk to the investigators on a voluntary basis about the matters involved in the Ridenhour investigation. G. Ex. 1.

4. On May 11 or 12, 1999, Grievant and another DJS-employee, Sherri Mullenix (then-Wolford) arrived at the Parkersburg Holiday Inn to talk to the investigators on a voluntary basis. Grievant and Ms. Mullenix were involved in a romantic relationship and wanted to be up front with the investigators about that relationship, as some of the allegations against Mr. Ridenhour involved a romantic relationship between him and another employee at DJS.

5. Subsequently, it became mandatory for certain employees to talk to the investigators about the Ridenhour investigation. Juvenile Detention Officer I Lisa Grimesgave an initial statement to the investigators on May 13, 1999. During that statement, Ms. Grimes was asked if she had been involved with Mr. Ridenhour, and she replied that it was just a rumour that she had gone out with him. G. Ex. 5.

6. Ms. Grimes was also asked if there had “been any inappropriate behavior at the facility that you feel is upsetting?” She replied, “I am 31 years old and I am above all that, I don't act like that.” She was then asked, “Have you seen any other inappropriate behavior from any other staff?” She replied, “No. I get along with everyone even though me and Stephanie don't but I get along with everyone.” G. Ex. 5.

7. Ms. Grimes gave a second statement to the investigators on May 28, 1999, in which she relayed some information she had remembered since the first statement. G. Ex. 6.

8. Finally, Ms. Grimes gave a third statement to the investigators on June 3,1999. In this statement she recalled several more incidents involving alleged inappropriate behavior by John Ridenhour. In addition, she relayed an incident involving herself and Grievant, as follows:

Q:

Could you explain a comment that was made when you wanted assistance on how to handle a juvenile who had suicidal ideation?

A:

There was something said to me in the way of putting sugar on my breast and let the Juveniles suck the sugar off but I don't remember what exactly was said. It was some time ago.

Q:

Do you remember who said that to you?

A:

Officer Lott.

Q:

Were there any witnesses to that comment?

A:

I don't remember. I remember getting upset and going back to the floor and saying something to another officer about what was just said to me.

Q:

Who was that officer?

A:

Blosser.

Q:

Did you report this comment being made to you to Director Ridenhour? A: No because he might have been there, I don't remember. You could not go to him and tell him anything because he would just laugh at you. . .".

Q:

The comment that was made to you about the sugar, do you recall where that conversation took place?

A:

I believe in the observation room.

Q:

Did any of the kids hear the comment being made?

A:

No.

Q:

How did that make you feel?

A:

It upset me but I let it go in one ear and out the other so they wouldn't know it bothered me and I went out on the floor and Officer Blosser asked me what was wrong and I told him what he said.

G. Ex. 7 (Emphasis added).

9. Following Ms. Grimes' statement, Grievant was summoned to talk again to the investigators. On June 16, 1999, Grievant was questioned about the remark he made to Ms. Grimes.

Q:

During the investigation it was alleged that you in response to a question from a female juvenile detention officer concerning dealing with depressed or suicidal children, how to handle them, it was alleged that you made a statement that the female juvenile detention officer should place her breast in the sugar bowl and take it out and give it to the kids to suck on. Are you familiar with a situation like this or did you make the statement?

A:

I did not make that statement, I remember making a statement concerning the sugar tit but I don't think it was to anyone who was depressed or suicidal. I remember it happened in the kitchen, whoever I was talking to, I said give them a sugar tit and as soon as I said it, I said put milk in a bowl and put sugar in it and then dip a towel in it and let them suck on that but I don't, I can't imagine me saying that with anyone who was depressed or suicidal.

Q:

Do you recall why you said that about dipping the towel in milk . . .?

A:

Yes, as soon as I said sugar tit, it did not sound right.

G. Ex. 4.

10. Unlike all of the other employees who gave statements to the investigators during the Ridenhour investigation, Grievant was not offered the opportunity to review his statement, make any corrections, and sign it. The statement remains unsigned. G. Ex. 4. 11. During the Ridenhour investigation, and after Mr. Ridenhour had been suspended, all employees at the North Central Regional Juvenile Detention Center were ordered by Deputy Director Timothy Melton to report any contact either Mr. Ridenhour or Stephanie Miller had with the facility.

12. Mr. Ridenhour called the facility on June 1, 1999, and Grievant was on phone duty and answered the telephone. Mr. Ridenhour wanted to know if he was to report back to work the next day. He and Grievant engaged in a short conversation involving profanity on Grievant's part, and Grievant relayed to Mr. Ridenhour that he would have to write an incident report about the telephone call. Grievant obeyed his superior's directives and wrote an incident report in which he relayed the conversation verbatim, including the profanity. R. Ex. 5.

13. Grievant wrote the incident report in this manner, because there was so much gossip and rumours going around at the facility at that time, that he wanted to be sure that nothing he had said to Mr. Ridenhour could be taken out of context or twisted around.

14. On June 22, 1999, Grievant was notified by letter of his dismissal from DJS by Deputy Director Melton. The dismissal letter states, in pertinent part:

> You were advised at the beginning of your employment that it would be necessary for you to successfully complete a probationary period. This 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/her position and to adjust himself/herself to the organization and programs of the agency. The probationary period is an integral part of the examination process and is utilized for the most effective adjustment of a new employee and for the elimination of those who do not meet the required standards of work. On 20 January 1999 you receivedtraining on the Division of Juvenile Services Employee Handbook and on 26 January 1999 you received training on Policy Directive 4.01, Employee Standards of Conduct and Performance. I have concluded that statements made by you to a female staff member are in direct violation of Policy Directive 4.01, Section 6.01, Sexual Harassment and Other Discrimination, and also a violation of the Division of Juvenile Services Sexual Harassment policy as stated in the Employee Handbook. This type of conduct can not and will not be tolerated by the Division of Juvenile Services. (Emphasis added).

R. Ex. 1.

15. Grievant was terminated according to the applicable provisions for terminating employees found in the Administrative Rule for the West Virginia Division of Personnel.

16. On June 24, 1999, Grievant received a supplemental dismissal letter from Deputy Director Melton, which set forth in more detail the allegations raised by Ms. Grimes regarding Grievant telling her to put “her tits in the sugar bowl so that the kids could have something sweet to suck on.” The letter indicates that the incident was described in sworn statements made by Officers Grimes and Steve Blosser, and that in his own statement, Grievant “remembered making a statement concerning a sugar tit but don't think it was to anyone who was depressed or suicidal.” G. Ex. 11. The letter indicates that the incident occurred “on or about 05 March, 1999.”

17. Deputy Director Melton, Supervisor Gary Vincent, and former Director John Ridenhour found Grievant's work performance to be satisfactory. None of these individuals had any complaints about Grievant's work performance, other than the incident involving the “sugar tit.” 18. Deputy Director Melton would have used some sort of lesser progressive discipline against Grievant for this incident had he been a permanent employee. Mr. Melton was most concerned with Grievant's apparent flippant attitude in response to information that a resident was exhibiting suicidal tendencies. No documentary evidence exists which supports his belief that the child was exhibiting suicidal tendencies. Ms. Grimes herself denied the child was suicidal, but that she merely felt sorry for her because she was depressed about being transferred to another juvenile detention facility.

19. Deputy Director Melton believes the incident report written by Grievant detailing his conversation with Mr. Ridenhour was unprofessional and flippant, and not of the standards expected for preparation of a legal document such as an incident report.

20. During the investigation of John Ridenhour, Grievant gave sworn testimony in favor of Mr. Ridenhour.

21. In or about September 1999, a full-time permanent position for a female juvenile detention officer became available at the facility. Ms. Grimes applied for the position, but did not receive it. Ms. Grimes had been a temporary employee at the facility since February 1999. The successful applicant had no experience at the facility, but apparently scored higher on the civil service test than Ms. Grimes. Both the successful applicant and Ms. Grimes were within the top 10 applicants on the civil service register.

22. In or about the latter part of September 1999, Ms. Grimes gave unfavorable testimony in

Mr. Ridenhour's level four grievance hearing. 23. In or about October 1999, another full-time permanent position for a female detention officer became available at the facility. Ms. Grimes applied for and received this position.

24. Officer Steve Blosser is openly hostile and unfriendly to Grievant and Mr. Ridenhour. Mr. Blosser kept copious handwritten notes about the goings-on in the facility, including notes regarding the “sugar-tit” incident. Mr. Blosser's notes include the term “suicidal ideation” in referring to the resident Ms. Grimes was concerned with that day. This is the exact terminology used in the investigator's questions to Ms. Grimes, as noted in Finding of Fact No. 8. G. Ex. 15. Mr. Blosser's notes also indicate that this incident took place on a Friday during Ms. Grimes' first week of work at the facility. As noted in Mr. Melton's supplemental dismissal letter to Grievant, he indicates the incident occurred on or about “05 March 1999", as noted in Finding of Fact No. 16.

25. Ms. Grimes began work at the facility as a full-time permanent employee on March 15, 1999.

26. The facility's time sheets and daily log indicate that the incident had to have occurred on Friday, March 19, 1999, as the resident involved was not admitted to the facility until March 15, 1999, and Friday, March 19, 1999, was the only day that week on which all of the individuals involved were working at the same time. G. Exs. 12, 13.

27. Sherri Mullenix, the cook for the facility, was present in the observation room/kitchen the day Ms. Grimes came in and mentioned her concern about one of the residents. Ms. Mullenix and Grievant discussed their interpretations of the term “sugar-tit” within Ms. Grimes' hearing. 28. A “sugar-tit” is defined in the dictionary as, “sugar tied up in a nipple-shaped cloth for a child to suck. . . called also *pacifier*.” G. Ex. 8.

DISCUSSION

West Virginia Division of Personnel Administrative Rule 10.5(a) provides that, “[i]f 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 Subsection 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." Subsection 12.2 of the Rule provides that, "[f]ifteen (15) calendar days after notice in writing to an employee stating specific reasons, the appointing authority may dismiss any employee for cause."

When a probationary employee is terminated on grounds of incompetency or unsatisfactory performance, the termination is not disciplinary, and the employer carries no burden of proof in a grievance proceeding. Rather, the employee has the burden of establishing that his services were satisfactory. Bonnell v. W. Va. Dept. of Corr., Docket No. 89-CORR-163 (Mar. 8, 1990). However, if the termination is for misconduct, it is disciplinary in nature, and the employer bears the burden of proving the charges by a preponderance of the evidence. McCoy v. W. Va. Dept. of Transp., Docket No. 98-DOH- 399 (June 18, 1999); Nicholson v. W. Va. Dept. of Health and Human Resources, Docket No. 99-HHR-299 (Aug. 31, 1999); Wolfe v. Dept. of Transp./Div. of Highways, Docket No.95-DOH-491 (July 31, 1996), citing Skinner v. W. Va. Dep't of Transp./Div. of Highways, Docket No. 91-DOH-339 (Apr. 28, 1992); Walker v. Public Serv. Comm'n, Docket No. 91- PSC-422 (March 11, 1992).

In this case, there is no dispute that the termination of Grievant was for "cause", i.e, "sexual harassment," as set forth in both of Grievant's dismissal letters. Therefore, DJS has the burden of proving Grievant is guilty of sexual harassment.

Grievant asserts his performance at DJS was at all times satisfactory, and denies he engaged in any sexual harassment. He further alleges that his dismissal from employment from DJS was in retaliation for his giving testimony favorable to John Ridenhour during Mr. Ridenhour's investigation. An employee asserting an affirmative defense has the burden of proving that defense by a preponderance of the evidence. Rodak v. W. Va. Dept. of Tax & Revenue, Docket No. 96-T&R-536 (June 23, 1997); smith v. W. Va. Bureau of Employment Programs, Docket No. 94-BEP-099 (Dec. 18, 1996).

West Virginia DJS Policy Number 4.01, Section 6.01, states as follows:

> Employees found to have engaged in discrimination on the basis of race, color, religion, national origin, political affiliation, handicap, age or sex, (including sexual harassment) shall be counseled and shall be disciplined for a Class B or C offense, depending on the specific facts and circumstances surrounding the incident.

R. Ex. 2; G. Ex. 2.

The DJS Employee Handbook provides, that "[i]t is the intent of the State to provide a work environment free from sexual harassment, where no employee is subject to unwelcome sexual overtures or conduct, either verbal or physical. Conduct of this nature will result in appropriate disciplinary action which may include dismissal." R. Ex. 4. The West Virginia Division of Personnel Sexual Harassment Policy defines sexual harassment as:

> Any unsolicited and unwelcome sexual advances, requests for sexual favors, or other verbal, written, or physical conduct of a sexual nature when:
>
> 1.
>
> Submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment,
>
> 2.
>
> Submission to or rejection of such conduct is used as the basis for personnel actions affecting an employee, or,
>
> 3.
>
> Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
>
> . . .
>
> A. Sexually-harassing behavior is verbal and/or physical conduct which includes, but is not limited to, the following: . . .
>
> 3. Sexually discriminatory ridicule, insults, jokes, or drawings. . .
>
> 5.
>
> Remarks directed against one's sex as a class or group; . . .

7.

Repeated sexually-explicit or implicit comments or obscene and suggestive remarks that are objectionable or discomforting to the employee; and . . .

B.

Other actionable forms of conduct have also been found to evolve from other types of situations which appear normal or harmless but may in fact, constitute sexual harassment.

G. Ex. 3.

DJS claims that Grievant's remark to Ms. Grimes about a “sugar-tit” constitutes sexual harassment, as defined in the above policies and rule. A determination of whether this comment falls within the sexual harassment definition depends on whose version of the incident is more credible.

Ms. Grimes testified that Grievant told her to dip her breast in a sugar bowl and give it to the kids to suck on, in response to her observation that one of the residents was depressed. Grievant denies he made any remarks about Ms. Grimes' anatomy, and in fact, was using a colloquialism he grew up with when he told her to give the child a “sugar- tit”. Ms. Mullenix was present during this conversation, and testified that, after Grievant told Ms. Grimes to give the child a “sugar-tit”, she asked him what his definition was of a “sugar-tit,” after which they engaged in a discussion within Ms. Grimes' hearing of how that term was used in their respective households when they were growing up.

While not everyone may have heard of the term “sugar-tit” growing up, it is evident by the dictionary's definition, that is a rather common term for a “pacifier”, or something given to coddle and comfort an infant, normally involving dipping a towel into milk or water and sugar and giving it to the child to suck. G. Ex. 8. There is nothing in the dictionary definition that suggests this term refers to a woman's anatomy, or has any sexually explicit or implicit meaning attached to it.

Ms. Grimes' statement given to the investigators on June 3, 1999, indicates that her memory was somewhat vague as to what exactly was said about the “sugar-tit” because “it was some time ago.” G. Ex. 7. However, Ms. Grimes' memory cleared up significantly when she testified against Mr. Ridenhour in his level four grievance hearing, as well as in her testimony against Grievant.

Coincidentally, Ms. Grimes' recitation of what was said in her level four testimony corresponds almost verbatim to what Officer Blosser wrote down in the notes that he kept on the facility. It is also clear that the investigators, and Mr. Melton, relied very heavily on Mr. Blosser's notes in making their allegations againstGrievant, as seen in the terminology used by the investigator when questioning Ms. Grimes, and by the dates used in Mr. Melton's dismissal letter, all of which comes directly from Mr. Blosser's notes.

It is also clear that Mr. Blosser did not keep his notes contemporaneously with events as they transpired, but would later sit down and recall events which had occurred in the past, and write an essay about them. Thus, Mr. Blosser's version of what Grievant said to Ms. Grimes is suspect, because it was not written contemporaneously with the occurrence, and also because of Mr. Blosser's known dislike of Grievant and Mr. Ridenhour. Therefore, if Ms. Grimes' recollection of the events of that day were in any way suggested by views given by Mr. Blosser, her newly-recovered memory is suspect itself.

Grievant appeared to be a forthright, honest man, who unfortunately has been caught up in the frenzy associated with the investigation of Mr. Ridenhour. Perhaps in their zeal to find damaging evidence against Mr. Ridenhour, the investigators relied a bit too heavily on information received from Mr. Blosser and Ms. Grimes in formulating their allegations against Grievant, who is openly friendly and supportive of Mr. Ridenhour. Based upon all of the evidence before me, I find it more likely than not that Grievant made a remark about a “sugar-tit”, referring the dictionary definition, rather than some explicit sexual reference to Ms. Grimes' anatomy. Grievant himself realized that the term may not have sounded “right”, and afterwards discussed the terminology with Ms. Mullinex within Ms. Grimes' hearing. Whether Ms. Grimes did not hear that conversation, or chose instead to believe it was personal is unclear, but the evidence does not establish thatGrievant's remark constituted sexual harassment as it relates to the facts and circumstances around the incident.

Therefore, the undersigned concludes that DJS has not proven by a preponderance of the evidence that Grievant engaged in sexual harassment as charged.

In addition, the evidence shows that Grievant's work performance was satisfactory. Indeed, Mr. Melton testified that, had Grievant been a permanent employee, rather than probationary, he would not have dismissed him over this matter. That testimony lends credence to Grievant's claim that his dismissal was arbitrary and capricious. Further, Grievant claims he was dismissed in retaliation for

supporting John Ridenhour. Again, Mr. Melton's statement, as well as all of the other evidence discussed in the Findings of Fact and above, serves to support Grievant's belief that his termination came upon the heels of the Ridenhour investigation, and Grievant's support of him. There has been no evidence in this matter to show that any of Grievant's testimony involving Mr. Ridenhour was untruthful. Therefore, simply retaliating against Grievant for supporting Mr. Ridenhour is an abuse of DJS' discretion, and arbitrary and capricious, and certainly creates a chilling effect to other employees at DJS who may wish to say something positive about Mr. Ridenhour in this matter.

Unfortunately for Grievant, the redress to which he is entitled is limited, due to his status as a probationary employee. If a probationer in the classified service cannot complete the probationary employment through no fault of his own, he must be permitted a reasonable time to complete the trial work period when the deficiencies were fabricated or exaggerated simply to facilitate a termination. See Major v. DeFrench, 169 W. Va. 241,286 S.E.2d 688 (1982); Collins v. W. Va. Div. of Rehabilitation Serv., Docket No. 98-RS- 479 (Mar. 31, 1999); Bonnell, supra.

CONCLUSIONS OF LAW

1. West Virginia Division of Personnel Administrative Rule 10.5(a) provides that, “[i]f 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 Subsection 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.”

2. Subsection 12.2 of the Rule provides that, “[f]ifteen (15) calendar days after notice in writing to an employee stating specific reasons, the appointing authority may dismiss any employee for cause.”

3. 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. Rather, the employee has the burden of establishing that his services were satisfactory. Bonnell v. W. Va. Dept. of Corrections, Docket No. 89-CORR-163 (Mar. 8, 1990).

4. However, if the termination is for misconduct, it is disciplinary in nature, and the employer bears the burden of proving the charges by a preponderance of the evidence. Further, while an employer has great discretion in terminating a probationaryemployee, that termination cannot be for unlawful reasons, or arbitrary or capricious. McCoy v. W. Va. Dept. of Transp., Docket No. 98-DOH-399 (June 18, 1999); Nicholson v. W. Va. Dept. of Health and Human Resources, Docket No. 99-HHR-299 (Aug. 31, 1999).

5. DJS has failed to prove by a preponderance of the evidence that Grievant engaged in sexual harassment.

6. Grievant has proven by a preponderance of the evidence that his work performance was satisfactory.

7. If a probationer in the classified service cannot complete the probationary employment through no fault of his own, he must be permitted a reasonable time to complete the trial work period when the deficiencies were fabricated or exaggerated simply to facilitate a termination. See Major v. DeFrench, 169 W. Va. 241, 286 S.E.2d 688 (1982); Collins v. W. Va. Div. of Rehabilitation Services, Docket No. 98-RS-479 (Mar. 31, 1999); Bonnell, supra.

Accordingly this grievance is **GRANTED** to the extent that Grievant shall be reinstated to his probationary employment, and given the opportunity to complete his probationary period, providing his work is satisfactory. Furthermore, DJS shall cease and desist from any retaliation against Grievant for his support of John Ridenhour.

Any party 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.

_____

MARY JO SWARTZ

Administrative Law Judge

Dated: December 16, 1999

Footnote: 1

Pursuant to Grievance Board policy, this dismissal case has been advanced on the Grievance Board docket for decision.