PATRICIA PUGH,

Grievant,

v. **Docket No. 00-15-356**

HANCOCK COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Patricia Pugh, employed by the Hancock County Board of Education (HCBOE) as a bus operator, filed a level one grievance on August 9, 2000, in which she stated, “[c]ancellation of Ins. Bid out of bus run. Per letter sent 8/7/00. Workers['] Comp time order frame not met.” For relief, Grievant requested, “[e]verything should be life [sic]
as was.” Grievant's immediate supervisor lacked authority to resolve the grievance. Following an evidentiary hearing, HCBOE Superintendent Danny Kaser denied the claim at level two, and the matter was advanced to level four on November 6, 2000. A level four hearing was conducted in the Grievance Board's Wheeling office on December 18, 2000, at which time Grievant was represented by her spouse, Charles Pugh, and HCBOE was represented by William Fahey, Esq. Both parties declined the opportunity to submit proposed findings of fact and conclusions of law, and the matter became mature for decision at the close of the hearing.

The following findings of fact are derived from the record in its entirety.

Findings of Fact

1. Grievant, Patricia Pugh, has been employed by HCBOE for nearly twenty- eight years, holding the classification title of bus operator.

2. Suffering from hypertension and chest pain, Grievant has been diagnosedwith unstable angina and has had angioplasty on several occasions. She has also suffered from deep vein thrombophlebitis since 1986, a condition which is exacerbated by prolonged sitting while driving, and has experienced musculoskeletal problems relating to degenerative joint disease.

3. Due to her problems with hypertension, Grievant's last day of work was on March 12, 1998.

4. Grievant filed a claim with Workers' Compensation regarding the hypertension. The claim

was subsequently denied, and she is presently pursuing a review of that ruling, with the most recent hearing having been conducted in December 1999.

5. Since her absence in March 1998, Grievant exhausted all her accrued sick and personal leave. She has not requested either a medical or personal leave of absence.

6. In August 2000, HCBOE advertised the run previously held by Grievant. It was posted and filled as a regular, full-time position.

7. By letter dated August 1, 2000, Assistant Superintendent Mary Ann Bucci notified Grievant that her “former position” had been filled; however, should she be able to return to work, Grievant would be returned to her former position, if available, or to a comparable position. In the absence of a vacancy in a comparable position, Grievant would be given preferred recall rights for a period of one year.

8. Effective September 30, 2000, HCBOE discontinued insurance coverage for Grievant. The reason stated on the Public Employees Insurance Agency (PEIA) form for the action was, “not working and non-payment of premiums.”

Discussion

As this grievance does not involve 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); 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.

At hearing, Grievant argued that the discontinuance of her insurance benefits was in violation of W. Va. Code §23-5A-3, and that her run had been improperly filled as a regular position. She cited no violation of any statute, rule, regulation, or policy regarding HCBOE's decision to fill the position, but rather asserted there was no policy addressing her situation, and that it would be virtually impossible for her to be placed in a similar position. On behalf of HCBOE, Superintendent Kaser asserted that HCBOE had no legal obligation to continue Grievant's insurance benefits at a cost of approximately $5,000.00 per year. He further stated that due to Grievant's absence of more than two years, he believed a legitimate vacancy existed for the bus run, which needed to be filled.

Grievant's employment status is unclear. She has not been able to work for more than two years, yet HCBOE has taken no action to terminate her employment, and she has not resigned, retired, or

requested a leave of absence. Her representative stated that a leave of absence was not required while a Workers' Compensation claim is pending, but provided no authority for his position. Certainly, under the circumstances, it may be perceived that Grievant has abandoned her position. In any event, Grievant has not established that HCBOE acted improperly in filling the assignment she previously held. Grievant is not presently able to return to work, and indicated that she does not plan to return to work, but hopes to secure the Workers' Compensation to buy back her time withHCBOE for retirement purposes. Grievant has suffered no harm from the action, and will not, unless and until she is well enough to return to work. Due to the long-term inability of Grievant to perform her duties, and absent any violation of statute, rule, regulation, or policy by HCBOE, it cannot be determined that Grievant has any right to retain the assignment.

Neither is Grievant entitled to retain ongoing insurance coverage. W. Va. Code §23- 5A-2 states as follows:

Any employer who has provided any type of medical insurance for an employee or his dependents by paying premiums, in whole or in part, on an individual or group policy shall not cancel, decrease his participation of the employee or his dependents, or cause coverage provided to be decreased during the entire period for which that employee during the continuance of the employer-employee relationship is claiming or is receiving benefits under this chapter for a temporary disability. If the medical insurance policy requires a contribution by the employee, that employee must continue to make the contribution required, to the extent the insurance contract does not provide for a waiver of the premium.

Nothing in this section shall prevent an employer from changing insurance carriers or cancelling or reducing medical coverage if the temporarily disabled employee and his dependents are treated with respect to insurance in the same manner as other similarly classified employees and their dependents who are also covered by the medical insurance policy.

This section provides a private remedy for the employee which shall be enforceable in an action by the employee in a circuit court having jurisdiction over the employer.

Although not specifically stated in the record, it appears that Grievant is seeking permanent, not temporary, disability relief. Further, the statute does not address what, if any, continuing obligations the employer has after the claim is initially denied. Absent anyrequirement that coverage continue through the appeal process, it cannot be determined that HCBOE bears any responsibility to continue

Grievant's insurance coverage. (See footnote 1)

In addition to the foregoing findings of fact and discussion, it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. As this grievance does not involve 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); 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.

2. Grievant has failed to prove that HCBOE acted in violation of any statute, rule, regulation, or policy when it discontinued her insurance coverage after she had been absent from work for more than two years.

3. Grievant failed to prove that HCBOE acted in violation of any statute, regulation, rule, or policy when it filled the position previously held by Grievant, after she had been absent from work for more than two years, and had not requested a leave of absence.

Accordingly, the grievance is **DENIED**. Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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. 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.

Date: January 2, 2001 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

It should be noted that HCBOE has allowed Mr. Pugh, a retired employee who works as a substitute, to transfer Grievant to his insurance plan. With this accommodation, Grievant has suffered no actual harm from the decision to discontinue her primary insurance coverage.