JUDITH HARRAH,

Grievant,

v. DOCKET NO. 00-41-386

RALEIGH COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Judith Harrah (Grievant) alleges that Raleigh County Board of Education (RCBE) improperly required her to take a day of sick leave. This grievance was denied at Level I by Janet W. Lilly on November 3, 2000. A Level II hearing was held on November 30, 2000. Grievant was represented at this hearing by Sidney Fragale of the West Virginia Federation of Teachers, and RCBE was represented by its Director of Personnel, Dr. Emily Meadows. This grievance was apparently denied at Level II on December 8, 2000. Proceedings at Level III were apparently bypassed pursuant to W. Va. Code § 18-29-4(c). A Level IV hearing was held on January 31, 2001, before the undersigned Administrative Law Judge, at the Grievance Board's Beckley office. Grievant was represented at this hearing by Steve Angel, and RCBE was represented by Erwin L. Conrad, Esq. The parties were given until February 13, 2001, to submit proposed findingsof fact and conclusions of law, both did so, and this grievance became mature for decision on that date. The following Findings of Fact pertinent to resolution of this matter have been determined based upon a preponderance of the credible evidence of record.

FINDINGS OF FACT

1. Grievant is employed by RCBE as a Teacher at Bradley Elementary School (BES).
2. On October 12, 2000, Grievant's class was scheduled to take a field trip to Charleston.
3. Grievant, whose feet had been seriously injured in an automobile accident, felt that she could not participate in the extensive standing and walking required on the field trip.
4. Early October 12, 2000, Grievant telephoned BES Principal Janet Lilly and informed her that

she could not participate in the field trip.

5. Principal Lilly told Grievant to stay at home and take a day of sick leave.

6. Grievant intentionally disobeyed Principal Lilly's direction and reported to work at BES.

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 § 4.21 (2000); 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. Apreponderance 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.

Grievant alleges that RCBE improperly required her to take a day of sick leave, and requests that her sick leave balance be credited with one day of sick leave. RCBE responds that, although Grievant was not disciplined, she was insubordinate for reporting to BES after Principal Lilly told her not to. There is no disagreement about the facts in this grievance, and a preponderance of the evidence demonstrates that Grievant was insubordinate.

Insubordination is the "willful failure or refusal to obey reasonable orders of a superior entitled to give such order." Riddle v. Bd. of Directors, So. W. Va. Community College, Docket No. 93-BOD-309 (May 31, 1994); Webb v. Mason County Bd. of Educ., Docket No. 26-89-004 (May 1, 1989). Insubordination may also be found when an employee shows a willful disregard for the implied directions of an employer. Sexton v. Marshall Univ., Docket No. BOR2-88-029-4 (May 25, 1988), citing Weber v. Buncombe County Bd. of Educ., 266 S.E.2d 42 (N.C. 1980).

To prove insubordination, an employer must demonstrate that a policy or directive that applied to the employee was in existence at the time of the violation, and the employee's failure to comply was sufficiently knowing and intentional to constitute thedefiance of authority inherent in a charge of insubordination. Conner v. Barbour County Bd. of Educ., Docket No. 94-01-394 (Jan. 31, 1995). An

employer also has the right to expect subordinate personnel "to not manifest disrespect toward supervisory personnel which undermines their status, prestige, and authority . . ." McKinney v. Wyoming County Bd. of Educ., Docket No. 92-55-112 (Aug. 3, 1992)(citing In re Burton Mfg. Co., 82 L.A. 1228 (Feb. 2, 1984)).

Principal Lilly credibly testified that BES is the largest elementary school in Raleigh County, with 56 employees; that Grievant told her on the telephone that she could not participate in the field trip due to her health; that she then told Grievant to stay at home and take a day of sick leave; that she arranged for a substitute teacher to replace Grievant; that Grievant came to BES anyway; and that she can't let each of BES's 56 employees decide what to do.

A principal has “administrative and instructional supervisory responsibility for the planning, management, operation and evaluation of the total educational program of the school or schools to which [s]he is assigned.” W. Va. Code § 18A-2-9.

Grievant does not deny that she came to BES after being told not to by Principal Lilly, but argues that she could have taught that day. However, the record reflects that Principal Lilly did not need Grievant to teach that day, and so directed her to stay home. Accordingly, Grievant was guilty of the sort of “willful failure or refusal to obey reasonable orders of a superior entitled to give such order" inherent in a charge of insubordination. Riddle, supra. Although it is understandable that an employee with serious health problems needs to husband her sick days carefully, Grievant cited no authority for herbelief that she should be credited with a day of sick leave, and the undersigned is aware of none.

Accordingly, Grievant failed to prove, by a preponderance of the evidence, that she should be credited with a day of sick leave. Consistent with the foregoing discussion, the following Conclusions of Law are made in this matter.

CONCLUSIONS OF LAW

1. Grievant bears 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 § 4.21 (2000); 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. 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).

2. A principal has “administrative and instructional supervisory responsibility for the planning, management, operation and evaluation of the total educational program of the school or schools to which [s]he is assigned.” W. Va. Code § 18A-2-9.

3. Insubordination is the "willful failure or refusal to obey reasonable orders of a superior entitled to give such order." Riddle v. Bd. of Directors, So. W. Va. Community College, Docket No. 93-BOD-309 (May 31, 1994); Webb v. Mason County Bd. of Educ., Docket No. 26-89-004 (May 1, 1989). Insubordination may also be found when anemployee shows a willful disregard for the implied directions of an employer. Sexton v. Marshall Univ., Docket No. BOR2-88-029-4 (May 25, 1988), citing Weber v. Buncombe County Bd. of Educ., 266 S.E.2d 42 (N.C. 1980).

4. Grievant failed to prove, by a preponderance of the evidence, that she should be credited with a day of sick leave.

Accordingly, the grievance is **DENIED**.

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

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ANDREW MAIER

Administrative Law Judge

Dated: February 26, 2001