EVA JOAN HATFIELD PERRY,

Grievant,

v v.

DOCKET NO. 01-23-145

LOGAN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Eva Joan Hatfield Perry, filed this grievance against her employer, the Logan County Board of Education ("Board"), protesting her dismissal from employment for unsatisfactory performance as a substitute cook. Grievant filed her grievance directly at level four on April 26, 2001. A level four hearing was held on June 6, 2001, and as the parties declined to submit proposed findings of fact and conclusions of law, this matter became mature for decision at the conclusion of the hearing. Grievant appeared pro se, and the Board was represented by Brian Abraham, Esq.

SUMMARY OF EVIDENCE

Board Exhibits

Ex. 1 -

March 14, 2001 letter from Ray Woolsey to Eva Joan Perry; March 8, 2001 memorandum from Ray Albright and Pam Robison to Brenda Skibo; March 8, 2001 Substitute Service Personnel Evaluation; May 16, 2000 Substitute Service Personnel Evaluation; May 8, 2000 Substitute Service Personnel Evaluation; September 9, 1999 Substitute Service Personnel Evaluation; January 25, 2001 Substitute Service Personnel Evaluation.

Grievant's Exhibits

None.

Testimony

The Board presented the testimony of Brenda Skibo, Terry Elkins. Grievant testified in her own behalf.

FINDINGS OF FACT

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

1. Grievant was, at all times pertinent herein, employed as a substitute cook with the Board.

2. Between September 1999 and March 2001, then Personnel Director Brenda Skibo received four unsatisfactory performance evaluations and two telephone complaints from Principal James Guy, Principal Terry Elkins, Principal Michael White, and Principal Ray Albright, regarding Grievant's performance as a substitute cook. R. Ex. 1. Ms. Skibo discussed the evaluations and complaints with Grievant at least three times.

3. Terry Elkins, Principal of West Chapmanville counseled Grievant about her performance, specifically her body odor on May 15, 2000. On May 16, 2000, Mr. Elkins completed a performance evaluation for Grievant after personally observing her work in the kitchen, and on May 17, 2000, he placed Grievant on an Improvement Plan. Mr. Elkins discussed the Improvement Plan with Grievant in a meeting with Ms. Skibo and Brenda Williamson, Director of Child Nutrition. 4. Grievant worked at West Chapmanville on May 18, 2000, and Principal Elkins noticed no improvement. On May 22, 2000, Mr. Elkins sent Grievant to Ms. Skibo, and asked Ms. Skibo not to send Grievant back to his school.

5. Most of the complaints about Grievant's performance had to do with her body odor, and concerns that Grievant was not safe in the kitchen.

6. All of the Principals informed Ms. Skibo they did not want Grievant back in their schools.

7. On March 14, 2001, then-Superintendent Ray Woolsey, informed Grievant in writing that he would recommend to the Board that she be removed from the substitute cook list, and advised her of her right to a hearing before the Board.

8. On April 12, 2001, the Board voted to remove Grievant from the substitute cook list.

DISCUSSION

The parties agree that the instant case involves a termination for disciplinary reasons; in such cases, the burden of proof is upon the employer to prove the charges against the employee by a preponderance of the evidence. W. Va. Code §18-29-6; Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994); Landy v. Raleigh County Bd. of Educ., Docket No. 89-41-232 (Dec. 14, 1989).

The authority of a county board of education to discipline an employee must be based upon one or more of the causes listed in W. Va. Code § 18A-2-8, as amended, and must be exercised reasonably, not arbitrarily or capriciously. Bell v. Kanawha County Bd. of Educ., Docket No. 91-20-005 (Apr. 16, 1991). See Beverlin v. Bd. of Educ., 158 W. Va.1067, 216 S.E.2d 554 (1975). Pursuant to W. Va. Code § 18A-2-8, the superintendent shall make a recommendation to the board of education that the employee be removed from employment as a substitute in the affected classification of employment. W. Va. Code § 18A-2-8 provides, in pertinent part:

> Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance , the conviction of a felony or a guilty plea of nolo contendere to a felony charge. A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to section twelve of this article.

In the instant case, Grievant was dismissed for unsatisfactory performance. Following numerous complaints and poor performance evaluations, for which Grievant was counseled by both her Principals and Ms. Skibo, Grievant was placed on an Improvement Plan on May 17, 2000. The Improvement Plan was discussed with Grievant by Principal Elkins, Ms. Skibo, and Ms. Williamson, Director of Child Nutrition. Grievant refused to sign the Improvement Plan. Grievant contends her Principals did not observe her enough to make a determination regarding her work, and that she was not given time to successfully complete her Improvement Plan.

The Improvement Plan noted the following areas for improvement: Work Habits; Performance; Compliance with Rules. The specific actions to be taken by Grievant were as follows: "1. Personal Hygiene must be addressed - odor must be eliminated. 2. Work efficiency must be upgraded & time must be used more effectively. 3. Production and service must be improved." R. Ex. 1. The time line given on the Improvement Plan stated that "[h]ygiene must be taken care of immediately; Production

must be taken careof immediately." It is clear from the evidence and testimony that Grievant's personal hygiene was the area of most concern for all of the Principals.

As a substitute, it would only be possible for Principal Elkins to observe Grievant's performance the next time she was called out for substitute work at his school. The next time Grievant reported to work at Principal Elkins' school was May 18, 2000, the very next day after receiving the Improvement Plan. On that day, Principal Elkins observed Grievant, and reported to Ms. Skibo that her performance was again unsatisfactory, specifically, her personal hygiene had not improved.

Thereafter, Ms. Skibo met with Grievant to discuss these matters, and informed her that the Superintendent would be recommending her removal from the substitute cook list.
The Board subsequently approved that recommendation. Despite Grievant's defenses, the fact remained that at least four Principals told Ms. Skibo not to send Grievant back to their schools. At that point, Grievant's effectiveness as a substitute ceased to exist, and Ms. Skibo had no real option but to recommend her removal from the substitute list.

CONCLUSIONS OF LAW

1. This grievance involves a termination for disciplinary reasons; in such cases, the burden of proof is upon the employer to prove the charges against the employee by a preponderance of the evidence. W. Va. Code §18-29-6; Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994); Landy v. Raleigh County Bd. of Educ., Docket No. 89-41-232 (Dec. 14, 1989).

2. The authority of a county board of education to discipline an employee must be based upon one or more of the causes listed in W. Va. Code § 18A-2-8, as amended,and must be exercised reasonably, not arbitrarily or capriciously. Bell v. Kanawha County Bd. of Educ., Docket No. 91-20-005 (Apr. 16, 1991). See Beverlin v. Bd. of Educ., 158 W. Va. 1067, 216 S.E.2d 554 (1975).

3. Pursuant to W. Va. Code § 18A-2-8, the superintendent shall make a recommendation to the board of education that the employee be removed from employment as a substitute in the affected classification of employment. W. Va. Code § 18A-2-8 provides, in pertinent part:

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4. The Board has proven by a preponderance of the evidence that Grievant's performance as a substitute cook was unsatisfactory, that she had been counseled many times regarding her performance, that she had been placed on an Improvement Plan prior to removal from the substitute list, and that she did not successfully complete the Improvement Plan.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Logan 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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MARY JO SWARTZ

Administrative Law Judge

Dated: July 13, 2001