JAMES M. DENNISON,

Grievant,

v. **Docket No. 00-HHR-123**

WEST VIRGINIA DEPARTMENT
OF HEALTH & HUMAN RESOURCES/
SHARPE HOSPITAL,

Respondent.

DECISION

James Dennison ("Grievant") initiated this proceeding on January 4, 2000, alleging entitlement to a $72.25 book stipend. The grievance was denied at level one on January 6, 2000, and at level two on January 13, 2000. A level three hearing was held on March 21, 2000, followed by a written decision, denying the grievance, dated March 28, 2000. Grievant appealed to level four on April 7, 2000. After several continuances granted for good cause shown, a level four hearing was held in the Grievance Board's office in Elkins, West Virginia, on October 27, 2000. Grievant was represented by Ron Grogg, union representative, and Respondent was represented by counsel, Anthony D. Eates II. This matter became mature for consideration upon receipt of Respondent's fact/law proposals on December 11, 2000. (See footnote 1)

The following findings of fact are made from a preponderance of the credible evidence of record.

Findings of Fact

1. Grievant is currently employed by Respondent Sharpe Hospital as a Driver. (See footnote 2)

2. On August 20, 1999, Grievant requested tuition reimbursement from his employer for a three-hour course entitled "Crime Scene Management" at Glenville State College. This course was required as part of an Associate of Science degree in Criminal Justice which Grievant was pursuing.

3. Pursuant to policies of the Division of Personnel ("DOP") and the Department of Health & Human Resources ("DHHR"), Grievant's request for tuition reimbursement was approved by Jack

Clohan, Administrator of Sharpe Hospital.

4. Grievant also requested a book stipend in the amount of $72.25 for the required textbook for the Crime Scene Management class.

5. Grievant's request for a book stipend was refused by Mr. Clohan in a memorandum dated December 22, 1999, which stated, in part:

> I have received your $72.25 addendum request for additional stipend reimbursement for the purchase of your required textbook. . . . However, reimbursement for the purchase of your textbook conflicts with the Division of Personnel Policy--P16. Therefore, I must disapprove your additional request of $72.25.

6. Effective August 1, 1996, DOP, which promulgates rules and regulations regarding employees of state agencies, adopted a policy entitled “Educational Expense Reimbursement/Leave Program,” which provides, in pertinent part:

> When sufficient funds are available and when in the best interest of the agency, an agency may reimburse employees for employment-related educational expenses and/or grant educational leaves with pay subject to the terms and conditions of this policy. Such funds shall be expended and such leaves shall be granted in a fair and equitable manner consistent with themission of the agency and the agency's present and future staffing needs.
>
> The following stipulations and restrictions shall apply to [reimbursement/leave] programs:
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> * * * *
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> Expense reimbursement shall be limited to the routine costs normally associated with enrollment in a traditional course of instruction such as tuition and related fees and supplies.
>
> * * * *
>
> **Such funds shall not be used to pay for books. . . .**

(Emphasis added).

7. Pursuant to an Order from the West Virginia Supreme Court of Appeals in the decision entitled E.H. v. Matin, 168 W. Va. 248, 284 S.E.2d 232 (1981), the Kanawha County Circuit Court issued the "Hartley Plan", Civil Action No. 81-585 (1986), which provided specific directives regarding the reorganization of West Virginia's mental health care facilities in order to provide proper care to their patients. As part of the Hartley Plan, the facilities were directed to provide educational opportunities for staff, including leave and stipends, so that proper staffing levels of qualified personnel could be achieved.

8. With regard to reimbursement of educational expenses, the Hartley Plan reads, in pertinent part:

> § 7.07.04 By July 1, 1984, [DHHR] will establish a $50,000 educational stipend fund from which it **may** advance such funds as necessary to provide full or partial assistance in paying the costs (i.e. for tuition, **textbooks**, travel, etc.) associated with the full-time or part-time enrollment of an employee in an education or training program that will be of benefit to/or be designated by the department. . . .

(Emphasis added.)

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden ofproving his 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); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29-6A-6. A preponderance of the evidence is generally recognized as evidence of greater weight, or which is more convincing than the evidence which is offered in opposition to it. Miller v. W. Va. Dep't of Health & Human Resources, Docket No. 96-HHR-501 (Sept. 30, 1997); Petry v. Kanawha County Bd. of Educ., Docket No. 96-20-380 (Mar. 18, 1997). Where the evidence equally supports both sides, the employee has not met her burden of persuasion. Dixon v. W. Va. Div. of Corrections, Docket No. 98-CORR-243 (Aug. 24, 1998). See Leichliter v. W. Va. Dep't of Health & Human Resources, Docket No. 92-HHR-486 (May 17, 1993).

Grievant contends that, pursuant to the provisions of the Hartley Plan, Sharpe administrators have the discretionary authority to grant tuition and textbook reimbursement. Therefore, the DOP policy, which places a mandatory prohibition on textbook reimbursement, removes that discretion.

Grievant argues that, because it does not comport with the Hartley Plan, the DOP policy is invalid and should not have been the basis for the denial of his book stipend.

At the level four hearing in this matter, David Sudbeck, who has served as monitor of the Hartley Plan for Kanawha County Circuit Court for the past thirteen years, explained the background of the Hartley Plan. With regard to the specific issue of book stipends, Mr. Sudbeck testified that it is clearly within the discretion of each mental health facility's administrators whether or not to pay for particular courses and associated expenses, including textbooks. He further stated that, because the Plan does give the facilitiesdiscretion in this regard, the DOP policy contradicts its provisions. While the Hartley Plan authorizes the state to promulgate policies in order to carry out the objectives of the Plan, DOP's policy clearly conflicts with the objective, in this instance, of granting discretion to administrators regarding all educational expenses, including textbooks.

While Respondent admits that DOP's policy contradicts the provisions of the Hartley Plan, it argues that the book stipend in this case should, nevertheless, still be refused. Respondent offered evidence from various Sharpe Hospital officials, who testified that Grievant's coursework was not pertinent to his present job. Therefore, pursuant to both Hartley and DOP's policies, it was not required to reimburse Grievant for the course, let alone the associated textbook. Respondent also contends that, because Hartley gives administrators such as Mr. Clohan discretion in these matters, it was appropriate for Mr. Clohan to turn to DOP's policy as a guide in exercising that discretion.

Respondent's arguments are well taken, and it may very well be that, despite the DOP policy, Mr. Clohan would not have reimbursed Grievant for the textbook under any circumstances. However, the fact remains that, whether or not the Crime Scene Management course was related to Grievant's job duties, his employer chose to reimburse him for the expense of taking that course, under DOP's policy and the Hartley Plan. Moreover, Mr. Clohan's denial of the book stipend was unequivocally based upon the DOP policy alone, and no other reasoning was given for the refusal. Therefore, because the denial was based only upon DOP's policy, which clearly exceeds the Hartley Plan's authority, it should not have been used as the basis for denial of Grievant's book stipend.

Accordingly, the undersigned finds that Grievant should not have been denied the book stipend based upon the DOP policy. However, Sharpe Hospital and DHHR clearlyhave discretion to grant or deny such reimbursements, so Grievant's request should be reviewed in light of the discretion granted by the Hartley Plan.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his 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); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29-6A-6.

2. The Department of Health and Human Resources is authorized to provide funding to employees for educational costs for programs that will be of benefit to/or are designated by the Department. Such costs include tuition and textbooks. “The Hartley Plan”, Civil Action No. 81-585, § 7.07.04 (1986).

3. The Division of Personnel's Policy on educational reimbursement conflicts with the discretionary authority given to mental health facility administrators under the Hartley Plan with regard to textbook reimbursement.

4. The Division of Personnel's Policy is invalid with regard to textbook reimbursement for employees of state mental health facilities and should not have been used as the basis for denial of Grievant's book stipend request.

Accordingly, this grievance is **GRANTED**, and Respondent is **ORDERED** to review Grievant's stipend request as set forth in this Decision.

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred, and 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.

Date: January 11, 2001 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievant did not file a post-hearing submission.

Footnote: 2

Grievant's job duties entail transporting the hospital's patients to and from various locations.