BARBARA STRICKLER,

Grievant,

v. **Docket No. 04-14-133**

HAMPSHIRE COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Barbara Strickler ("Grievant") filed this grievance at level four on April 12, 2004, challenging her termination from employment for willful neglect of duty and job abandonment. She seeks instatement to a regular position, with retroactive wages and benefits, plus interest. A level four hearing was held in Westover, West Virginia, on September 17, 2004, and November 3, 2004. Grievant was represented by counsel, John E. Roush, and Respondent was represented by counsel, Norwood Bentley. This matter became mature for consideration upon receipt of the parties' fact/law proposals on December 13, 2004.

The following facts have been proven by a preponderance of the evidence of record.

Findings of Fact

1. Grievant was a substitute custodian for Respondent for approximately three years. She bid upon and was awarded a regular position as cafeteria manager at Hampshire High School ("HHS") beginning on February 20, 2004. She had no previous experience as a cook or cafeteria worker.

2. Grievant received training from Carol Eversole, Food Service Director, at the board office on February 20, 2004. Ms. Eversole also worked with Grievant at HHS all dayon February 23, 2004. They reviewed recordkeeping requirements, equipment use, keeping track of amounts of food used and estimates of what to order, and inventory procedures.

3. Jeannie Ault was the previous cafeteria manager at HHS, from approximately mid-December 2003 until Grievant took the position. She returned to her previous position at HHS as a

Cook I. Ms. Ault showed Grievant how and where records were kept and assisted her with ordering food and supplies. At the end of each day, Ms. Ault checked with Grievant to see if she had questions or needed any assistance.

4. On February 25, 2004, there was a conflict between Grievant and one of the cooks, Ms. Spring, who had prepared a schedule for the cooks covering several months. Grievant prepared a new schedule when she took the manager's position, pairing experienced cooks with less experienced cooks for certain jobs, so that the inexperienced cooks could obtain on-the-job training. Ms. Spring ripped up Grievant's schedule in front of the other cooks, and Grievant sent her to the principal's office. (See footnote 1)

5. Also in the beginning of Grievant's employment as cafeteria manager, the cooks refused to help her when food deliveries arrived and needed to be inventoried.

6. Shortly after Grievant began her new position, she met with Superintendent David Friend regarding the lack of cooperation from the cooks, and she advised him that she had difficulty getting along with Ms. Eversole, whom she described as “abrupt.” After this meeting, Superintendent Friend sent Ms. Eversole to check on Grievant and assist her on a daily basis. 7. On Friday, March 5, 2004, Grievant called the principal of HHS, Tammy Moreland, at approximately 5:57 a.m., to report that she would not be at work that day. Grievant's work day normally begins at 6:00 a.m.

8. Cafeteria employees are supposed to report absences to their supervisor, Ms. Eversole, who obtains substitutes for them. When Grievant did not report to work on March 5, 2004, it was too late to call a substitute, and Grievant had the only keys to get into the storage and freezer areas to obtain the food and supplies for the cooks to begin preparing breakfast for the day. Attempts to contact Grievant were unsuccessful, including Ms. Moreland's call to a custodian who lived near Grievant, who went to her house and knocked on the door, receiving no response. Maintenance employees had to drill the locks off the doors so that the cooks could perform their duties. Grievant's brother came to the school later that day to drop off her keys.

9. Ms. Moreland called Grievant at home on Sunday, March 7, 2004, to discuss her absence the previous Friday. They discussed Grievant's concerns regarding her difficulties with some of her job duties and her perception that the cooks were being uncooperative. Ms. Moreland advised her that training issues would have to be discussed with Ms. Eversole and/or the superintendent. She also explained the call-off procedure to Grievant, advising her to call Ms. Eversole in advance of the

beginning of her usual work day.

10. Ms. Moreland memorialized her discussion with Grievant in a memorandum to Grievant on March 8, 2004.

11. On March 9, 2004, Ms. Eversole conducted a meeting with Grievant and the cooks at HHS to discuss Grievant's difficulties and the need for cooperation amongcafeteria employees. During that meeting, Grievant mentioned that the cooks were not helping when food was delivered and inventoried, and they were advised by Ms. Eversole that they needed to assist Grievant in this regard. Also during the meeting, it was agreed that they would follow the schedule which Grievant had compiled for the cooks.

12. Grievant did not report to work on March 10, 2004, because she was upset about the meeting with the cooks and the negative atmosphere among the cafeteria employees. Grievant had Robert Haynes, a local School Service Personnel representative, contact Ms. Eversole to report her absence that day.

13. By correspondence dated March 11, 2004, Superintendent Friend advised Grievant that, due to her failure to properly report her absence, he was placing her on a three-day suspension without pay, beginning March 15 and continuing through March 17, 2004. He also stated that further instances of improper reporting of absences could result in dismissal.

14. Grievant did not report to work on March 11 and 12, and she did not report her absence to anyone. Following her suspension period, she did not report to work or call on Thursday, March 18, Friday, March 19, or Monday, March 22, 2004.

15. By correspondence dated March 22, 2004, Superintendent Friend informed Grievant that he would recommend the termination of her employment for willful neglect of duty and job abandonment.

16. At the termination hearing before the board of education on April 5, 2004, Grievant provided a statement from her physician. It was dated March 24, 2004, and stated that she was “under our care for a major mental disorder exacerbated by the stress of the breakup of her relationship with a significant other, financial [difficulties] and otherfactors.” The statement further advised that Grievant was undergoing medication and psychotherapy treatment.

17. Grievant's employment was terminated at the conclusion of the April 5, 2004, hearing.

Discussion

Grievant is challenging her termination, a disciplinary action in which the employer bears the burden of establishing the charges 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 grounds upon which a Board may dismiss any person in its employment are immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance substantiated by an employee performance evaluation, or conviction on a felony charge. W. Va. Code § 18A-2-8.

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, and must be exercised reasonably, not arbitrarily and capriciously. Bell v. Kanawha County Bd. of Educ., Docket No. 91-20-005 (Apr. 16, 1991). Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. Trimboli v. Dep't of Health and Human Resources, Docket No. 93-HHR-322 (June 27, 1997). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." State exrel. Eads v. Duncil, 196 W. Va. 604, 474 S.E.2d 534 (1996). "While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of a board of education." Blake v. Kanawha County Bd. of Educ., Docket No. 01-20-470 (Oct. 29, 2001).

To prove willful neglect of duty, the employer must establish that the employee's conduct constituted a knowing and intentional act, rather than a negligent act. Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994). See Bd. of Educ. v. Chaddock, 183 W. Va. 638, 398 S.E.2d 120 (1990). Although the West Virginia Supreme Court has not formulated a precise definition of "willful neglect of duty," it does encompass something more serious than incompetence and imports "a knowing and intentional act, as distinguished from a negligent act." Chaddock, supra.

Although Grievant concedes that she did not follow proper procedures to report her absences from work, she argues that surrounding circumstances should excuse her actions. She points to the inadequate training she received, her difficulties working with Ms. Eversole, and the lack of

cooperation she received from the cafeteria staff. She also contends that she felt overwhelmed by her job duties, which was exacerbated by both her professional and personal problems.

Under similar circumstances, this Grievance Board has held that termination for willful neglect of duty was appropriate. See Rice v. Mason County Bd. of Educ., Docket No. 94-26-608 (March 31, 1995). As in Rice, supra, even after being made aware of call- off requirements and procedures, Grievant failed to report to work for several days and made no effort to explain or report her absences. “Failure of [an employee] to report towork and to report the absence to the school as previously directed amounts to insubordination and willful neglect of duty justifying disciplinary action.” Carrell v. Kanawha County Bd. of Educ., Docket No. 20-87-036-1 (Apr. 8, 1987), citing Kidd v. Kanawha County Bd. of Educ., Docket No. 20-86-096 (Apr. 23, 1986).

Also as occurred in Rice, supra, Grievant has attempted to claim that her absences may have been related to a medical condition. However, she has failed to provide any explanation of how this condition affected her ability to work, and the only doctor's statement she provided was dated March 24, 2004, after she had been advised termination was being recommended. Moreover, this statement does not state the duration of her illness or make any other attempt to relate it to her absences from work earlier that month. If Grievant was under a physician's care and having difficulties which prevented her from working, she could have (and should have) notified her employer of this problem at the time of her initial absence in early March and followed the appropriate procedures for taking leave.

While the undersigned is not unsympathetic to Grievant's plight, it is of the utmost importance to an employer that employees properly follow leave policies. In this case, Grievant's absence as cafeteria manager created numerous difficulties for the operation of the cafeteria at HHS. Moreover, Grievant was advised of call-off procedures after her first absence on March 5, 2004, yet continued to fail to report to work and properly report her absences, and several of them not at all. Although it is obvious that Grievant was suffering under the pressure and stress of her new position, exacerbated by her personal problems, this does not excuse her poor handling of the situation. Simply not showing upfor work and not calling her employer is unacceptable conduct from any employee. Under these circumstances, Respondent was justified in terminating Grievant's employment.

The following conclusions of law support this decision.

Conclusions of Law

1. In a disciplinary case, the employer bears the burden of establishing the charges 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 grounds upon which a Board may dismiss any person in its employment are immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance substantiated by an employee performance evaluation, or conviction on a felony charge. W. Va. Code § 18A-2-8.

3. 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, and must be exercised reasonably, not arbitrarily and capriciously. Bell v. Kanawha County Bd. of Educ., Docket No. 91-20-005 (Apr. 16, 1991).

4. To prove willful neglect of duty, the employer must establish that the employee's conduct constituted a knowing and intentional act, rather than a negligent act. Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994). See Bd. of Educ. v. Chaddock, 183 W. Va. 638, 398 S.E.2d 120 (1990).

5. "Failure of [an employee] to report to work and to report the absence to the school as previously directed amounts to insubordination and willful neglect of duty justifying disciplinary action." Carrell v. Kanawha County Bd. of Educ., Docket No. 20-87-036-1 (Apr. 8, 1987), citing Kidd v. Kanawha County Bd. of Educ., Docket No. 20-86-096 (Apr. 23, 1986); See Rice v. Mason County Bd. of Educ., Docket No. 94-26-608 (March 31, 1995).

6. Grievant's failure to report to work and to follow proper call-off procedures constituted willful neglect of duty, and Respondent's termination of her employment was not arbitrary and capricious under the circumstances.

Accordingly, this grievance is **DENIED**.

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

Date: January 24, 2005 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

The record does not indicate what, if any, discipline was imposed upon Ms. Spring for her conduct.