JOSEPH L. JEFFERSON,

Grievant,

v. **Docket No. 05-HE-443**

SHEPHERD UNIVERSITY,

Respondent.

D E C I S I O N

Joseph L. Jefferson ("Grievant"), employed by Shepherd University ("Shepherd") as the Director of Cooperative Education, filed a level one grievance on October 27, 2005, in which he alleged that a second disciplinary letter had been improperly placed in his personnel file. For relief, Grievant requests the letter be removed. The grievance was denied at all lower levels. Upon appeal to level four on December 9, 2005, an evidentiary hearing was conducted in the Grievance Board's Westover office on March 7, 2006. Grievant appeared *pro se,* and Shepherd was represented by counsel, Alan Perdue. The grievance became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on April 17, 2006.

The following facts have been derived from a preponderance of the credible evidence made part of the record.

Findings of Fact

1. Grievant has been employed by Shepherd for approximately five years, and has held the position of Director of Cooperative Education at all times pertinent to this grievance. 2. Dr. John E. Adams, Assistant Vice President, placed a progressive disciplinary letter dated June 7, 2005, in Grievant's personnel file concerning incidents in which Grievant had initiated action without proper authorization, and conducted himself in an unprofessional manner. That letter stated in pertinent part:

The first incident occurred sometime on the [sic] May 5, 2005. You elected on your own (without prior authorization from the Search Committee Chair, an Assistant Vice President, or Vice President of Student Affairs) to contact by phone and question the eligibility of a candidate who was planning to interview for the Director of Career Services' position on Friday, May 6. Even though you were a member of the Search Committee, you were not authorized to make contact with the candidate prior

to the interview. Your call to this candidate disrupted her interview preparation, interfered with an already scheduled interview approved by the Search Committee, and created an embarrassing situation for the University and the candidate.

The second incident occurred sometime near 8:30 AM on May 24 when we were discussing your actions of May 5. During our discussion, you became very agitated and raised your voice to a level that other employees could hear you word-for-word in other offices. After leaving my office, you slammed your door so loud that it was heard by several employees on the Gardiner Hall Ground Floor.

In the future, you need to demonstrate better judgment when initiating action without your supervisor's approval. Should you be involved in a similar situation, you need to check with an appropriate supervisor before taking action. As an employee of Shepherd University, you are required to conduct yourself at all times in a civil manner when dealing with others. Raising your voice and slamming doors is not considered to be a civil or professional way to conduct business.

3. Upon receipt of this letter, Grievant filed a grievance at level one on June 8, 2005, regarding the charge that he had improperly contacted the candidate. A second grievance was filed on June 15, 2005, addressing the issue of whether Grievant had acted in an unprofessional manner. 4. On June 24, 2005, Grievant advised Mr. Perdue that Shepherd was in default, having not scheduled a level one conference within the statutory time frames. He also requested the grievances be consolidated at that time.

5. Pursuant to a default hearing, the Grievance Board found Shepherd did not timely respond at level one, and a default had occurred. As a result, Shepherd agreed to withdraw the letter, but indicated that another letter would be issued.

6. Although Grievant requested that the grievances be consolidated prior to the hearing on the default, the consolidation was never accomplished. Shepherd did agree to hold the second grievance in abeyance pending a ruling on the default claim.

7. The default applied only to the first grievance; however, removal of the letter rendered the June 15, 2005, grievance moot.

8. The second letter issued by Dr. Adams on October 25, 2005, stated a follows:

This is a progressive disciplinary letter concerning workplace conduct.

Near 8:30 am on May 24, 2005, when we were discussing the details of the search for the Director of Career Services and other matters, you became very agitated and raised your voice to a level that other employees could hear you in other offices. After leaving my office, you slammed your door so loud that it was heard by several employees on the Gardiner Hall Ground Floor.

As an employee of Shepherd University, you are required to conduct yourself at all times in a civil manner when dealing with others. Raising your voice and slamming doors is not considered to be a civil or a professional way to conduct business.

9. Grievant filed the present grievance upon receipt of the October letter.

Discussion

In disciplinary matters, the employer bears the burden of establishing the charges by a preponderance of the evidence. *W. Va. Code* § 29-6A-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). A preponderance of the evidence is evidence 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. It may not be determined by the number of the witnesses, but by the greater weight of the evidence, which is determined by their opportunity for knowledge, information possessed, and manner of testifying. *See Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). *Black's Law Dictionary*, 5th ed. at 1064. In other words, "[t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant argues that Shepherd's default prohibited the issuance of a second letter in his file, and that his behavior did not warrant a disciplinary letter. Shepherd asserts that the default affected only the first grievance filed, therefore, it was not prohibited from issuing a letter addressing the alleged unprofessional behavior. Shepherd further asserts that Grievant's behavior fully justified the disciplinary letter being placed in his file.

The procedural history of this case is unusual in that Grievant filed two separate grievances involving the same letter. While consolidation would have ordinarily been granted at level two, the

default claim interrupted the process. The default claim was limited to the grievance addressing Grievant's allegedly improper contact of a candidate. The withdrawal of the letter satisfied the default claim, and, in effect, left the second grievance moot. When Shepherd issued the October 2005 letter, a new grievable event occurred, and Grievant properly exercised his right to file a grievance.

Addressing the merits of the grievance, it must be determined whether Shepherd established good cause for issuing the disciplinary letter. Dr. Adams testified at level four that on May 8, 2005, he was meeting with Grievant to discuss several matters upon which they disagreed. During the meeting, Grievant raised his voice to a level clearly audible to other employees on the floor, and then retreated to his office, closing the door with unnecessary force.

Carol Boyd, Program Assistant for the Career Development Center, is assigned to an office on the same floor as Dr. Adams and Grievant. Ms. Boyd substantiated Dr. Adams' account of events, testifying that she heard Grievant's voice grow increasingly louder and with a tone indicating anger. She also heard Grievant's door slam when he returned to his office.

Grievant stated that he has had many heated discussions with Dr. Adams, but that he was not yelling, and that the door slamming was not purposeful as the wind was blowing through his office. Shepherd offered photographs taken outside the building, showing the window below ground level with an airway of approximately three feet between the building and the support wall.

The evidence establishes that Grievant disagreed too loudly during a conversation with Dr. Adams, and closed his door too forcefully upon returning to his office. Given the nature of the discussion, and the dissension between the two individuals, Grievant'sactions toward his supervisor were inappropriate and unprofessional. Shepherd has established good cause existed for the disciplinary letter.

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. In disciplinary matters, the employer bears the burden of establishing the charges by a preponderance of the evidence. *W. Va. Code* § 29-6A-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. Shepherd established good cause for placing a disciplinary letter in Grievant's personnel file

by establishing the charges by a preponderance of the evidence.

Accordingly, the grievance is **DENIED**.

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." Any 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: MAY 31, 2006

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE