BILLIE JANE BOEHM,

Grievant,

v. **Docket No. 05-HHR-441**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/BUREAU FOR CHILDREN AND FAMILIES,

Respondent.

DECISION

Billie Jane Boehm ("Grievant") filed this grievance directly at level four on December 8, 2005, challenging an indefinite suspension from her position as an office assistant for the Bureau for Children and Families ("BCF"), resulting from a felony indictment. A hearing was held in Westover, West Virginia, on March 17, 2006. Grievant represented herself, and Respondent was represented by Jennifer K. Akers, Assistant Attorney General. This matter became mature for consideration upon receipt of Respondent's fact/law proposals on April 18, 2006.

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

Findings of Fact

1. Grievant has been employed by Respondent for approximately 20 years, most recently as an Office Assistant 2 at BCF's Region 3 office in Philippi, West Virginia.

2. At the Philippi office, Grievant works as the receptionist, receiving both phone calls and in-person visits from clients and others dealing with child abuse and neglectcases. Grievant also has contact with customers seeking financial assistance and other social services.

3. As part of her normal job duties, Grievant receives reports of drug-related activities as they relate to the safety and well-being of children.

4. In October of 2005, the Barbour County grand jury indicted Grievant for the felony charges of

"attempt to operate a clandestine drug lab, illegal storage of anhydrous ammonia, and conspiracy." The indictment alleged that Grievant and another individual possessed chemicals and equipment for the purpose of manufacturing methamphetamine.

5. A report of Grievant's indictment appeared in a local newspaper, the Exponent Telegram, on October 26, 2005.

6. Due to a severe snowstorm and resulting power outages, Grievant was unable to report to work on October 26 and 27, 2005. Larry Kelley, Community Services Manager contacted Grievant by phone on October 27, 2005, informing her that she was being placed on indefinite suspension until the criminal charges were concluded.

7. Grievant's indefinite suspension as a result of felony indictment was documented in correspondence to her from Ronald Anderson, Regional Director, dated October 28, 2005.

Discussion

The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. W. Va. Code § 29-6A-6; *Ramey v. W. Va. Dep't of Health*,Docket No. H-88-005 (Dec. 6, 1988). Respondent justifies Grievant's suspension on the basis of the following portion of the Division of Personnel's Administrative Rule:

> An appointing authority may suspend any employee without pay for cause or to conduct an investigation regarding an employee's conduct which has a reasonable connection to the employee's performance of his or her job. The suspension shall be for a specific period of time, except where an employee is the subject of an indictment or other criminal proceeding.

143 CSR 1 § 12.3.

This Grievance Board has ruled an employer "may conditionally suspend an employee based upon an indictment alone, if it can establish a rational nexus between the indictment and the employee's ability to perform the duties of [his] position." *Kitzmiller v. Harrison County Bd. of Educ.*, Docket No. 13-88-189 (Mar. 31, 1989). *See John C. v. Dep't of Pub. Safety*, Docket No. 95-DPS-497 (Jan. 31, 1996); *Lemery v. Monongalia County Bd. of Educ.*, Docket Nos. 91-30-477/494 (Apr. 30, 1992); *Susser v. Kanawha County Bd. of Educ*., Docket No. 20-85-002 (Jan. 8, 1986). *See also*

Golden v. Bd. of Educ., 169 W. Va. 63, 285 S.E.2d 665 (1981). Although these cases were decided under the education grievance statute, similar reasoning applies here.

In the instant case, the evidence has established that Grievant is the first contact with BCF for many people who are reporting or are involved in potential and ongoing cases of child abuse and neglect. Unfortunately, so-called “meth labs” are becoming increasingly common, so much so that child protective service workers receive specific training regarding the removal of children from homes where such activities are taking place. Under the circumstances presented, Respondent has shown that Grievant's potential involvement in felony drug activities seriously impacts upon the appearance of the agencyfor which she works, especially since she is the first person to receive many of these complaints and reports. Accordingly, Respondent has established a reasonable connection between Grievant's indictment on drug charges and its impact upon the performance of her duties as the receptionist in a BCF office. Therefore, pursuant to DOP's provisions, an indefinite suspension is warranted.

The following conclusions of law support this Decision.

Conclusions of Law

1. The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. W. Va. Code § 29-6A-6; *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988).

2. “An appointing authority may suspend any employee without pay for cause or to conduct an investigation regarding an employee's conduct which has a reasonable connection to the employee's performance of his or her job. The suspension shall be for a specific period of time, except where an employee is the subject of an indictment or other criminal proceeding.” DOP Administrative Rule, 143 CSR 1 § 12.3.

3. Respondent has proven by a preponderance of the evidence that there is a reasonable connection between Grievant's indictment for felony drug charges and her duties as a receptionist for a BCF office.

Accordingly, this 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 18, 2006

_____

DENISE M. SPATAFORE

Administrative Law Judge