RICHARD HERTGES,

Grievant,

v. DOCKET NO. 06-BECHD-125

BERKELEY COUNTY HEALTH DEPARTMENT,

Respondent.

DECISION

Richard Hertges ("Grievant") initiated this proceeding in December of 2005, claiming entitlement to reimbursement for approximately two years of travel expenses. (See footnote 1) In addition, Grievant is requesting compensation for approximately two weeks of pay, which he claims he is entitled to as a result of his alleged "forced" resignation from employment with Respondent, prior to the beginning of his new position with another state agency. A decision regarding Grievant's request for reimbursement was rendered by the Berkeley County Health Department ("BCHD") on February 27, 2006, and Grievant appealed his grievances to level four on April 6, 2006. A hearing was held in Westover, West Virginia, on May 12, 2006, at which Grievant represented himself, and Respondent appeared by Bill Kearns, BCHD Administrator, and Dr. Diana Gaviria, Health Officer. This matter became
mature for consideration upon receipt of the parties' fact/law proposals on May 31, 2006.

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

Findings of Fact

1. Grievant was employed by the BCHD as a Registered Sanitarian beginning in October of 2002. He was eventually promoted to Sanitarian Supervisor, the position he was last serving in when he left his employment with BCHD.

2. Grievant's position with the BCHD required extensive, regular travel to various public sanitation facilities and sites around the county.

3. Bill Kearns, BCHD Administrator, went around to the offices of all sanitarians approximately

every two weeks, advising employees that they should submit their travel reimbursement vouchers in order to receive payment.

4. Grievant did not request reimbursement for any of his travel expenses at the time they occurred between August of 2003 and April of 2005.

5. Grievant also made occasional trips to Flatwoods as part of his service on the Sewage Advisory Board, and also sometimes traveled to Morgantown to provide training to other sanitarians. On these occasions, Grievant was not providing services to BCHD, but was performing services to benefit other agencies.

6. Because the previous BCHD administrator had not required advance approval of his Flatwoods and Morgantown trips, Grievant never requested such approval from Mr. Kearns or Dr. Gaviria, the current Health Officer. Grievant had apparently received reimbursement for these expenses under a prior administration.

7. In the fall of 2005, Grievant obtained a new position with the West Virginia Department of Health and Human Resources ("DHHR"). Arrangements were made between Respondent, DHHR, and the Division of Personnel ("DOP") so that Grievant's employment would transfer from BCHD to DHHR, allowing him to keep his benefits and have no break in employment. 8. After many weeks had gone by and Grievant had still not indicated the exact date he would be leaving his position at BCHD, officials at DOP contacted Mr. Kearns, explaining that a date certain had to be given in order to process the paperwork for Grievant's transfer.

9. During a meeting with Mr. Kearns and Dr. Gaviria on October 31, 2005, a separate grievance regarding Grievant's demotion was discussed. Also during that meeting, Grievant was advised that, in order to process his transfer, he had to provide a specific date when his resignation from BCHD would take effect.

10. By letter dated October 31, 2005, Grievant informed Dr. Gaviria that his resignation would take effect on November 15, 2005.

11. Due to problems at either DHHR or DOP, Grievant's new position at DHHR did not take effect until December 1, 2005.

12. After his resignation, Grievant submitted to BCHD travel reimbursement requests dating back to August of 2003, totaling several thousand dollars.

13. At a Board meeting on December 19, 2005, BCHD voted only to approve payment for

Grievant's travel expenses which had occurred during the current fiscal year, and all others were refused.

14. BCHD also refused payment for Grievant's trips to Flatwoods and Morgantown.

Discussion

Since this grievance is not about discipline, Grievant must prove all of his claims by a preponderance of the evidence, which means he must provide enough evidence for the undersigned Administrative Law Judge to decide that his claim is more likely valid than not.*See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). If the evidence supports both sides equally, then Grievant has not met his burden. *Id.*

Grievant contends that he was never informed of any requirement that travel expense forms be submitted within a particular time period. He also argues that he should be reimbursed for his out-of-county trips for training and board meetings, because the prior BCHD administration paid him for this travel. He believes it is unfair for the current administration to now require that such travel be pre-approved, without informing him of this requirement.

The West Virginia State Travel Rules, promulgated by the Purchasing Division, govern travel reimbursement for all state agencies and their employees. (See footnote 2) Pursuant to those Rules, all travel is to be approved in advance, or in compliance with specific rules of the agency. Travel Rules, § 3.1.1 (July 1, 1998). Moreover, § 2.5 of those Rules provides that the agency must submit a completed travel expense form “to the Auditor's Office within 15 days after completion of travel.”

Grievant used the example of another Sanitarian Supervisor who habitually submitted his travel reimbursement requests in large “bunches,” totaling several hundred dollars at a time, as further justification for his delayed reimbursement request. Indeed, Mr. Kearns admitted that this particular employee did have a practice of submitting his reimbursement requests in groups, but never requested payment for expenses whichoccurred in a previous fiscal year. While it is not difficult to believe that BCHD, like many state agencies, does not necessarily always submit reimbursement forms within the rule's 15-day time period, the undersigned agrees that Grievant's delay has taken the situation to its most extreme. BCHD is obviously a publicly-funded agency which operates within a specific budget each year, and it is perfectly understandable that it would be quite impossible for it

to find several thousand dollars in funds to reimburse an employee's expenses from 2 or 3 years ago. Moreover, Grievant should be grateful that Respondent did see fit to reimburse him for expenses which occurred during the current fiscal year, despite the untimeliness of his request.

Grievant's position is perplexing, also, in light of his own testimony that he knew Mr. Kearns went around the office twice each month to remind everyone to submit their expense forms, in order to get paid. Grievant has provided no explanation as to why he apparently believed that the recommendation applied to all employees but himself.

As to Grievant's travel to Flatwoods and Morgantown, he does not dispute that he was not performing services for his employer when making these trips, despite any indirect benefit BCHD may have received from his participation in these activities. While it was generous of the previous BCHD administration to compensate Grievant for his travel in this regard, there simply was no obligation for BCHD to do so. Moreover, when new administrators came to the agency, it would have behooved Grievant to discuss these meetings with them in order to obtain approval to travel and seek reimbursement for it. While Grievant contends that Dr. Gaviria knew of his attendance at one of the sanitarian training sessions and complimented him for his participation in it, there is no evidence that she knew he expected to have his expenses reimbursed. Accordingly, the undersignedcannot find that BCHD's refusal to reimburse Grievant for these expenses was unreasonable.

The following conclusions of law support this decision.

Conclusions of Law

1. Grievant must prove all of his claims by a preponderance of the evidence, which means he must provide enough evidence for the undersigned Administrative Law Judge to decide that his claim is more likely valid than not. *See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. Pursuant to the West Virginia Travel Rules, work-related travel must be approved in advance, and an expense reimbursement form must be submitted to the State Auditor's Office within fifteen days after completion of the travel.

3. Grievant's request for two years of travel expenses was untimely, and Respondent's refusal to pay him for travel which occurred during previous fiscal years was not unreasonable.

4. Grievant has failed to prove entitlement to reimbursement for travel which was unrelated to his job duties for Respondent and which was not approved in advance.

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: June 23, 2006

_____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievant had also filed a grievance regarding a demotion which occurred in October of 2005, but that demotion was later rescinded by Respondent, and is consequently no longer an issue at level four.

Footnote: 2

Although they function independently in many respects, county health departments utilize policies of the state Department of Health and Human Resources, and their employees receive the benefits of state employees.