THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

NANCY JAMISON,

Grievant,

v. **Docket No. 06-30-408**

Sue Keller

Senior Administrative Law Judge

MONONGALIA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Nancy Jamison ("Grievant"), employed by the Monongalia County Board of Education ("MCBE") as a Secretary, filed a grievance directly to level two on July 19, 2006, in which she alleged a violation of *W. Va. Code* § 18A-4-8a(1) when she was not compensated for mileage between her two work locations. For relief, Grievant requested compensation with interest. The grievance was denied following a hearing at level two. Grievant elected to bypass consideration at level three, as is permitted by *W. Va. Code* § 18-29-4(c), and advanced her appeal to level four on November 6, 2006. Grievant, represented by John E. Roush, Esq., of the West Virginia School Service Personnel Association, and MCBE counsel Jennifer S. Caradine of Dinsmore & Shohl, LLP, agreed to submit the grievance based on the level two record. The grievance became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on or before February 23, 2007.

Synopsis

Grievant argues that she was denied travel expenses between her two positions in violation of *W. Va. Code* §18A-4-8a(1), and the MCBE travel policy. MCBE asserts thatbecause Grievant holds two, separate, part-time positions, she is not entitled to mileage between the morning and afternoon work locations. Although MCBE had compensated Grievant for the travel the previous six years, Grievant failed to prove that the decision to not pay for the travel beginning in the 2005-2006 school year was

contrary to statute or policy.

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

Findings of Fact

1. Grievant has been employed by MCBE for approximately eleven years, and has been classified as a Secretary at all times pertinent to this grievance. 2. During the 2005-2006 school year, Grievant bid on, and received, two half- time secretarial positions. She was assigned to the Gear-Up Program, located in the Central Annex Building in the morning, and at Cheat Lake Middle School in the afternoon.

3. In June 2006, Grievant submitted a request for travel expenses (mileage) between her two work locations, as she had been compensated for this travel the previous six years.

4. Grievant's request for mileage was denied by MCBE Treasurer Terry Hawkins, based upon a review of MCBE Policy.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). *See W. Va. Code* § 18-29-6. "The 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 & Human Res*., Docket No. 92-HHR-486 (May 17, 1993).

At issue is Monongalia County File 7-26 “Employee Travel”, which provides in pertinent part:

Travel within the County

Certain Board of Education employees are authorized an allowance for travel in their own private vehicles, when traveling from workstation to work station [sic] on official duty. It is the employee's responsibility to report to work on his/her own and he/she goes home on his/her own, but official travel during the between [sic] workstations is made on a reimbursable basis. From timeto time, there may be a special instructional program requiring home visits and/or other special travel. The approval of the program will also authorize the approval of reimbursable travel.

Grievant argues that her claim is supported by the language of the policy, which makes no exception for an employee who holds two, half-time positions as opposed to a full-time employee assigned to two locations. Grievant further argues that *W. Va. Code* § 18A-4-8a(1) does not refer to full and part-time employees, and under its definition, Grievant is, or is equivalent to, a full-time employee. (See footnote 1) Finally, Grievant relies on the decision of *Sexton v. Boone County Board of Education*, Docket No. 94-03-044 (June 22, 1994), in which a full-time employee assigned to two work locations was found entitled to mileage.

MCBE cites *W. Va. Code* § 18A-4-8h, which states that "no school service personnel shall be permitted to become employed in more than one regular full day position, nor more than two one-half day positions at the same time," to establish legislative authorization for two half-day positions, and support for the distinction between two, half- day positions and one regular full day position. MCBE distinguishes *Sexton, supra*, by noting that case involved a full-time custodian, employed under one contract, who was assigned to two work areas. MCBE also cites *Wheeler v. Lincoln County Board ofEducation*, Docket No. 96-22-535 (July 15, 1997), in which it was held that the grievant was not entitled to compensation for travel between two, separate part-time positions.

Because Grievant works a full day, her belief that she is entitled to mileage between locations is understandable. However, *W. Va. Code* § 18A-4-8a(1) establishes a salary allocation for employees who work more or less than three and one-half hours a day. Although Grievant is compensated for a full days work, this statute does not indicate that an employee with two, half-time positions shall be considered a regular, full-time employee. Neither does the "Employee Travel" policy support Grievant's claim. To the contrary, it specifically provides that it is the employee's responsibility to get to work on her own. Because Grievant's travel from one position to another is not connected by any employment contract, she is responsible for the expenses connected with travel to her employment site, the same as any other employee. Finally, the holding in *Sexton* is not instructive because Mr. Sexton was a full-time, itinerant employee, scheduled daily to work in two different areas, whereas Grievant holds two half-time positions. The facts of this case are virtually identical to those in *Workman v. Lincoln County Board of Education*, Docket No. 95-22-36 (Mar. 18, 1996), in which Ms. Workman applied for, and received, two separate part-time teaching positions. Her claim for daily travel expenses was denied by the Grievance Board which held that an employee is not entitled to compensation for travel between two separate part-time positions because the travel was not

required as part of her daily job duties. While MCBE could, and indeed did, compensate Grievant for the travel in the past, there is no basis in statute, policy or otherwise that would obligate an employer to reimburse a non-itinerant employee for expenses associated with travel to theemployment site of a second, part-time position. Therefore, Grievant has failed to meet her burden of proof in this case.

In addition to the foregoing findings of fact and discussion, it is appropriate to make the following formal conclusions of law in support of this decision.

Conclusions of Law

1. In a non-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 § 4.21 (2004); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). *See W. Va. Code* § 18-29-6. "The 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 & Human Res*., Docket No. 92-HHR-486 (May 17, 1993).

2. Because Grievant holds two separate part-time positions with MCBE, she is not entitled to compensation for travel from one work site to another. *Workman v. Lincoln County Board of Education*, Docket No. 95-22-36 (Mar. 18, 1996).

3. Grievant failed to prove any violation of any statute, rule, regulation, or policy, governing travel expense reimbursement.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County 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 isrequired 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: MARCH 20, 2007 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

. W. Va. Code § 18A-4-8a(1) provides that

[t]he minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade I and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade I set forth in this section.