THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

SPIRO MITIAS,

Grievant,

v. **Docket No. 05-PSC-107**

Sue Keller

Senior Administrative Law Judge

PUBLIC SERVICE COMMISSION,

Respondent.

D E C I S I O N

Spiro Mitias ("Grievant"), filed a grievance in the form of a letter from his attorney, James A Dodrill, Esq., dated March 3, 2006, following his receipt of a written reprimand from his supervisor, with Franklin Crabtree, Director of the Transportation Division of the Public Service Commission ("PSC"). Grievant denies that he engaged in any act of insubordination, and asserts that the PSC has engaged in discrimination. (See footnote 1) For relief, he requested the reprimand be rescinded. Mr. Dodrill advised Mr. Crabtree that Grievant wished to waive level one of the grievance procedure, and later agreed with PSC counsel Belinda Jackson that level two should also be waived, and the matter should proceed to hearing at level three. An evidentiary hearing was conducted on March 22, 2005, at which time Grievant declined to present any evidence. The grievance was denied, and appeal to level four was made on April 5, 2005.

Following numerous delays, a level four hearing was convened on February 28, 2007. Neither Grievant nor Mr. Dodrill appeared. PSC declined to submit additional proposed findings of fact and conclusions of law. The grievance was reassigned to theundersigned ALJ on March 12, 2007, for a decision based on the level three record which consists of a transcript with exhibits, proposed findings and conclusions filed by both parties, and the level three decision. The record additionally includes audio recordings of prehearing conferences and the level four proceeding.

Synopsis

___Grievant challenged a written reprimand for insubordination. PSC argued that Grievant had been directed three times to put plates on the front of his state-issued vehicle, but had not done so, thereby acting in an insubordinate manner. PSC established that Grievant had been told to put plates on the car numerous times, and had not done so. Grievant was aware the plates were not on the vehicle, and his failure to comply with the statutory requirement constituted insubordination.

The following facts are derived from a preponderance of the credible evidence made part of the record at level three.

Findings of Fact

1. Grievant has been employed by the PSC as Manager of the Coal Reporting Department in the Weight Enforcement Section of the Transportation Division at all times pertinent to this grievance.

2. Mr. Crabtree notified Jeff Davis, Deputy Director of the Transportation Division, by e-mail on February 14, 2005, that two state cars in the parking lot did not have the required state plate on the front, and ask him to inform the employees who were assigned the vehicles of the requirement. Mr. Davis responded on the same date that one of the cars had been assigned to coal reporting.

3. On February 15, 2005, Mr. Davis advised Grievant that his vehicle needed a state plate on the front. Grievant responded that he would “take care of it.”

4. Joseph Sangid, Administrative Manager, had notified Grievant months earlier that a plate needed to be placed on the front of the car to which Grievant responded, “OK.”

5. On February 22, 2005, Mr. Davis personally delivered a plate to Grievant who assured him that he “would take care of it.”

6. Also on February 22, 2005, Mr. Davis advised Mr. Crabtree that he had instructed Grievant three times to put the plate on the front of his assigned state vehicle, and had even provided the plate to him. Mr. Crabtree responded that the car was to remain at the office site until it was in compliance with the law.

7. Mr. Crabtree did not speak with Grievant the remainder of that day, and Grievant drove the car home without the front plate.

8. On February 23, 2005, Mr. Crabtree summoned Grievant to his office and directed that the plate be placed on the vehicle. Grievant did not offer an explanation as to why he had been unable to comply with the earlier directives. Grievant and Mr. Davis proceeded to the parking lot and secured the plate to the vehicle.

9. That same date, Mr. Crabtree issued Grievant a written reprimand stating:

You have been instructed on two or more occasions to put a state license plate on the front of the state vehicle assigned to you. Each of these times you have failed to comply with that instruction. Today I spoke with you in my office and advised you that your failure to display the state license plate was a violation of state law and insubordination on your part.

This writing is to confirm my direction to you. I have directed that your state vehicle is not to be driven again until this violation is corrected. If you choose not to correct this violation you are to retrieve your personal belongings from the vehicle, and give the keys to the Deputy Director Davis. Please advise me or Deputy Director Davis if you have any questions concerning this matter.

Discussion

In disciplinary matters, 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). "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 moreprobable than not. *See 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).

PSC argues that Grievant's failure to put the plates on the vehicle after being told to three times constitutes insubordination. Insubordination "includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued . . . [by] an administrative superior." *Butts v. Higher Educ. Interim Governing Bd.*, 212 W. Va. 209, 569 S.E.2d 456 (2002)(*per curiam*). *See Riddle v. Bd. of Directors, So. W. Va. Community College*, Docket No. 93-BOD-309 (May 31, 1994); *Webb v. Mason County Bd. of Educ*., Docket No. 26-89-004 (May 1, 1989). "Employees are expected to respect authority and do not have the unfettered discretion to disobey or ignore clear instructions." *Reynolds v. Kanawha-Charleston Health Dep't*, Docket No. 90-H-128 (Aug. 8, 1990). Grievant responded to both Mr. Sangid and Mr. Davis on the three occasions he was told to put plates on his vehicle, indicating that he understood and would comply. His failure to follow

through with the direction can be considered wilful refusal, absent any explanation to the contrary. It appears that Grievant simply was not going to put the plates on the vehicle. Even after his meeting with Mr. Crabtree, it was Mr. Davis who actually affixed the plates. Additionally, the reprimand was properly issued because Grievant's inaction was contrary to *W. Va. Code* § 17A-3-23 which states: (a) Any motor vehicle designed to carry passengers, owned or leased by the State of West Virginia, or any of its departments, bureaus, commissions or institutions, except vehicles used by the Governor, Treasurer, three vehicles per elected office of the Board of Public Works, vehicles operated by the State Police, not to exceed five vehicles operated by the office of the Secretary of Military Affairs and Public Safety, not to exceed five vehicles operated by the Division of Homeland Security and Emergency Management, vehicles operated by conservation officers of the Division of Natural Resources, not to exceed ten vehicles operated by the arson investigators of the office of State Fire Marshal, not to exceed two vehicles operated by the Division of Protective Services and not to exceed sixteen vehicles operated by inspectors of the office of the Alcohol Beverage Control Commissioner, may not be operated or driven by any person unless it has displayed and attached to the front thereof, in the same manner as regular motor vehicle registration plates are attached, a plate of the same size as the regular registration plate, with white lettering on a green background bearing the words "West Virginia" in one line and the words "State Car" in another line and the lettering for the words "State Car" shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight.

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* §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). "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 moreprobable than not.. *See 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).

2. Insubordination "includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued . . . [by] an administrative superior." *Butts v. Higher Educ. Interim Governing Bd.*, 212 W. Va. 209, 569 S.E.2d 456 (2002)(*per curiam*). *See Riddle v. Bd. of Directors, So. W. Va. Community College*, Docket No. 93-BOD-309 (May 31, 1994); *Webb v. Mason County Bd. of Educ*., Docket No. 26-89-004 (May 1, 1989).

3. "Employees are expected to respect authority and do not have the unfettered discretion to disobey or ignore clear instructions." *Reynolds v. Kanawha-Charleston Health Dep't*, Docket No. 90-H-128 (Aug. 8, 1990).

4. Respondent has proven that Grievant was insubordinate when he failed to place a plate on the state-owned vehicle after being so directed three times.

5. The failure to have a front plate on the state-owned vehicle was in violation of *W. Va. Code* § 17A-3-23.

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: APRIL 10, 2007

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

.The claim of discrimination was based on Grievant's country of birth, Syria. However, Grievant presented no evidence on this issue, and it is deemed abandoned.