THE WEST VIRGINIA PUBLIC EMPLOYEES

GRIEVANCE BOARD

CECILIA SCARBERRY,

Grievant,

v.

DOCKET NO. 2008-0303-MU

MARSHALL UNIVERSITY,

Respondent.

DECISION

This grievance was filed by Grievant, Cecilia Scarberry, at level three of the grievance procedure, on August 27, 2007, contesting the termination of her employment by Marshall University ("Marshall"). The relief sought by Grievant is:

> to be reinstated into her position with no loss of benefits; to be compensated retroactive to August 14, 2007; to be made whole; and any other relief that the hearing examiner deems appropriate.

A level three hearing was held before Acting Chief Administrative Law Judge Janis I. Reynolds, on January 10, 2008, in the Grievance Board's Charleston office. Grievant was represented at level three by Christine Barr, Staff Representative, AFT-WV/AFL-CIO, and Respondent was represented

by Jendonnae L. Houdyschell, Senior Assistant Attorney General. This matter became mature for decision upon receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law on February 12, 2008. Due to the retirement of ALJ Reynolds, this matter was transferred to the undersigned on April 8, 2008.

Synopsis

Grievant was dismissed from her employment with Marshall on August 14, 2007, for several acts of insubordination on August 8, 2007, and for deliberately hitting her supervisor, Gus Young, with the side of a dump truck that same day. Mr. Young was not injured in any way. He was able to step back from the moving vehicle quickly enough that only his shirt suffered any damage. Grievant denied hitting Mr. Young with the vehicle. Grievant clearly was insubordinate on more than one occasion on August 8, 2007, she used profanity in the Marshall Student Center on that date, in the presence of students and parents, and she operated the dump truck with reckless disregard for the safety of her supervisor, clipping him with the dump truck. Respondent has proven the charges against Grievant.

The following Findings of Fact are made based upon the record developed at level three.

Findings of Fact

1. Grievant was employed by Marshall in the Physical Plant Department as a Landscape Worker. She had been a Marshall employee for about seven years, and had been a Landscape Worker for the last five years.

2. Grievant reported to work on August 8, 2007, and was given an assignment by the Landscape Worker Lead, Mike Farley. She and a co-worker, Terry Thacker, were told to take a dump truck to the Omega House, and put the gravel that had been loaded on the truck over some landscaping fabric around the chiller unit. 3. Grievant initially questioned the assignment, asking her supervisor, Charles “Gus” Young, why they could not use the backhoe to move and spread the gravel.

4. Grievant drove the dump truck to the Omega House, and Ms. Thacker rode with her. Grievant backed the truck into position, raised the truck bed, and started to dump the gravel onto the parking area. Ms. Thacker was to the rear and side of the truck. David Finney, Manager of Alterations Support, was observing some construction at the Omega House, and was watching Grievant operate

the dump truck. He told her not to dump the load, and she stopped. Mr. Finney told Grievant the pins were missing that hold the tailgate in place at the top, and if she dumped the load, the tailgate would fall.

5. Grievant had not been trained on operation of the dump truck. She did not tell Mr. Farley this when he gave her the assignment, nor did she relay this information to anyone else at Marshall. She had watched other employees drive the dump truck, and dump materials. She did not know that the tailgate could also be opened by adjusting the chains, so that it would open from the bottom like a pick-up truck tailgate, and she did not know how to do this. She did not tell anyone she did not know how to lower the tailgate by the chains.

6. Grievant called Mr. Young and told him she could not do the job because the pins were missing on the dump truck. He told her he would call Mr. Farley, and they would find the pins.

7. Mr. Finney found a piece of pipe and what he thought was one of the pins in the dump truck, and he used them as pins to hold the tailgate in place. Grievant began to dump the gravel, and dumped most of it on the ground. At some point while she was dumping the gravel, she remembered she had been told she was to use only originalequipment, and she did not finish dumping the gravel. Neither Grievant nor Ms. Thacker placed the gravel over the landscaping fabric as they had been instructed to do.

8. Grievant then drove the dump truck to the Marshall Student Center for her morning break, and Ms. Thacker accompanied her. There was some construction activity in the Student Center, and there were some students and parents in the Student Center. Mr. Farley was also in the Student Center on break, and told Grievant he would look for the pins and take them to the job site. Grievant responded to Mr. Farley's statement in a raised voice. Her response included the words “fucking morons.” Mr. Farley believed this was directed at him, but Grievant was actually venting generally. Anyone near Grievant in the Student Center would have heard her use profanity.

9. After break time, Grievant drove the dump truck to the Marshall Physical Plant offices on 20th Street. She and Ms. Thacker attempted to report their concern about the missing pins to the safety officer, but he was not in the office.

10. Grievant and Ms. Thacker walked by Mr. Young's office. Grievant stopped and again told Mr. Young she could not do the job because the pins were missing. Mr. Young asked her what the problem was, and she told him it was the pins. He told Grievant she did not need the pins to lower the

tailgate, and then asked her if it was something physical or mental that was preventing her from lowering the tailgate. Rather than telling Mr. Young she did not know how to lower the tailgate by the chains, Grievant told him she could not do it, and he was the one with the mental problem. She then left, while Mr. Young was still talking to her. Grievant walked to the parking lot and got into the dump truck. Mr. Young followed Grievant, and held the passenger side door open to continue to talk with her. Mr. Young explained that she still needed to attend a particular meeting,and then told her to get out of the truck and show him the problem. After he asked her to get out of the truck two or three more times, Grievant finally got out of the truck, walked to the rear, threw up her hands, said “the pins,” and got back in the truck.

11. Mr. Young followed Grievant around the side of the truck and told her to move the dump truck to a parking space, park it, and go home. He thought she should go home because she was emotional and irate, and she would not do what he told her to do. Grievant questioned whether Mr. Young could send her home, and he repeated the directive.

12. Grievant put the dump truck in gear, and started moving forward. She did not check her mirrors, or take any other action to assure that Mr. Young was no longer in the path of the dump truck. Mr. Young's shirt was caught by the truck bed, and buttons were torn from it. Mr. Young was not injured.

13. Mr. Young called the campus police department and reported he had been hit by the dump truck.

14. Grievant parked the truck and went to gather her things to go home. Mr. Young walked over to where she was, and tried to hand her a letter he needed to give to her about a meeting which had been scheduled on another issue. Grievant would not take the letter, and told Mr. Young to put it in her mailbox. Mr. Young told Grievant she might want to stay, because she had hit him with the dump truck, and he had called the campus police, and they were on their way. Grievant told him she did not hit him with the truck, and left.

15. Grievant provided the campus police with a written statement shortly after the incident. Grievant did not say in the written statement that she had checked her mirrorsbefore moving the dump truck, or that she had otherwise looked to make sure that Mr. Young had moved away from the dump truck before she put her foot on the gas.

16. Grievant was dismissed from her employment with Marshall on August 14, 2007, for

several acts of insubordination during the course of the day on August 8, 2007, and for deliberately hitting Mr. Young with a dump truck, which was characterized as striking, and physical abuse of, a supervisor.

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. *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988). "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 and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. *Id*.

Grievant was dismissed from her employment by memorandum dated August 14, 2007. The memorandum relates the events which resulted in her dismissal as follows:

> Your conduct and actions on Wednesday, August 8, 2007, are unacceptable and violate provisions of Board of Governors policy. Accordingly you are terminated from employment at Marshall University effective Tuesday, August 14, 2007.
>
> On August 8, 2007, your assigned lead worker, Mr. Mike Farley, gave you an assignment that involved three central tasks: shoveling and smoothing dirt, spreading and anchoring weed barrier over the smoothed area, and then spreading gravel on top of this at a location adjacent to the Omega house. The issue raised by you at various times during the day had to do with theoperation of the tailgate on the white dump truck. In my opinion this concern should not have been pursued in the manner which you did.
>
> . . .
>
> I am displeased at what was reported to me by your assigned lead with regard to your conduct in the Memorial Student Center on the morning break on August 8, 2007. It is alleged that you uttered profanities at your assigned lead worker. It is possible that the alleged profanities could be heard by other persons present possibly including students, parents, or other stakeholders. This is unacceptable and will not be tolerated.

It is alleged that you serially berated two persons - another Physical Plant employee present in the Student Center on break and then your assigned lead. You saw fit to drive the dump truck to the circle in front of the Student Center even when not authorized to do so and then stated after your altercation with your assigned lead that you were going to the Physical Plant department even though you were not authorized to be at a location other than your break site or the work site. Returning to Physical Plant at this time of day and in this manner is unacceptable.

My most serious concerns rest with your actions at the Physical Plant department later on August 8 following the break episode. You engaged your primary supervisor, Mr. Charles Young, over the issue of the pins for the dump truck body. Mr. Young was taken aback by the level of your concern over the issue of the pins. In his mind a proper work assignment had been made and that you needed simply to go and accomplish that assignment and stop arguing about the tailgate pins. You were in the process of leaving the garage and office area, when Mr. Young directed you to stay and discuss the issue with him. Your refused to do so and then left the garage area. This is an insubordinate act and violates the provisions of Board of Governors policy.

Marshall University Board of Governors Policy HR-10, Employee Infractions, lists a series of employee acts which if they occur may warrant either suspension without pay or termination of employment. Paragraph 2.5.2 of the subject policy reads as follows, *"Gross insubordination, including willful and flagrant disregard of a legitimate order, threatening or striking a supervisor."*

Mr. Young's direction for you to remain and discuss your issues with him was a reasonable and prudent direction that had a good and valid business purpose. Your failure to comply with this direction is unacceptable.

After you had left the garage area you boarded the dump truck. Mr. Young followed you and standing next to the open door of the dump truck cab asked you again to explain what exactly you were so concerned about with regard to the tailgate pins. You refused to discuss the matter with him, and Mr. Young alleges that you called him a moron in this conversation. Mr. Young states that he asked you to repeat this statement but that you refused to do so.

Mr. Young then stated that he needed to give you a letter regarding a meeting that had been rescheduled to Thursday afternoon, August 9. He alleges that you refused to accept the letter stating that he could put [it] in your mailbox inside the building.

Mr. Young alleges that he asked you four times to get out of the truck and explain to him what you were so concerned about with regard to the tailgate pins. You finally got out after the fourth direction from Mr. Young. The first three instances in which he told you to get out of the truck in which you did not do so constitute three additional counts of insubordination. These are also violations of paragraph 2.5.2 of Board of Governors policy HR-10 as set forth above.

Mr. Young alleges that you finally got out of the truck cab, walked to the back of the truck, pointed to the tailgate and said something perfunctory like, “See. I need the pins.” You then went forward and re-entered the truck cab. With the door to the cab still open, Mr. Young stood next to the cab and directed you to park the truck and go home. It was his intention to send you away from the campus with pay on this date due to your behavior and the disruption you were causing. You are alleged to have stated to Mr. Young that he could not provide such a direction to you. He is certainly authorized as supervisor to take this action.

Then in clear violation of the directions of Mr. Young you put the dump truck in gear and started to roll forward with Mr. Young still standing right next to and dangerously close to the truck. Mr. Young was struck by the dump body and the contact tore several buttons off his shirt. Mr. Young asserts that after doing this, you parked the truck, obtained your personal possessions and left. Mr. Young states that he asked you to consider remaining on site as Public Safety had been summoned and was on the way to investigate the incident and write up a report. He states that you declined to remain and left in your personal vehicle.

Your initial refusal to park the truck and go home when Mr. Young directed you to do so is an additional violation of the provisions of paragraph 2.5.2 or Board of Governors policy HR-10. It is especially serious that you did not follow Mr. Young's directions in that your refusal to do so led to potentialpersonal injury and to damage to University-owned property. An investigation of this incident continues, and you may be criminally liable for your actions.

Paragraph 2.5.2 of Board of Governors policy HR-10 includes a provision prohibiting *“...striking a supervisor.”* Striking a supervisor can be accomplished with a vehicle. Your deliberate act was to strike Mr. Young with the dump truck.

Board of Governors policy HR-10 includes paragraph 2.5.9 which prohibits *“Physical abuse of persons on University or College property or at any University or College authorized function or event.”* Just as we would not tolerate at all any physical abuse of an employee by a supervisor, we shall not allow any physical abuse of a supervisor.

Your actions as set forth above are serious and unacceptable. Accordingly, you are terminated from employment at Marshall University.

Grievant was charged with several acts of 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). "[F]or there to be 'insubordination,' the following must be present: (a) an employee must refuse to obey an order (or rule or regulation); (b) the refusal must be wilful; and c) the order (or rule or regulation) must be reasonable and valid." *Butts, supra.* In other words, there must be not only a refusal to obey a reasonable and valid order, but the refusal must be wilful. *Id.* "[F]or a refusal to obey to be 'wilful,' the motivation for the disobedience must be contumaciousness or a defiance of, or contempt for authority, ratherthan a legitimate disagreement over the legal propriety or reasonableness of an order." *Id.*

"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). An employee's belief that management's decisions are incorrect, absent a threat to the employee's health and safety, does not confer upon him the right to ignore or disregard the order, rule, or directive. *Vickers v. Bd. of Directors/W. Va. State College*, Docket No. 97-BOD-122B (Aug. 7, 1998). *See Parker v. W. Va. Dep't of Health and Human Res.*, Docket No. 97-HHR-042B (Sept. 30, 1997). Additionally, an employer has the right to expect subordinate personnel "to not manifest disrespect toward supervisory personnel which undermines their status, prestige, and authority . . .". *McKinney v. Wyoming County Bd. of Educ.,* Docket No. 92-55-112 (Aug. 3, 1992) (citing *In re Burton Mfg. Co.*, 82 L.A. 1228 (Feb. 2, 1984)).

While Respondent did not prove every point set forth in the termination memorandum, it is clear from the evidence that Grievant repeatedly questioned, or wilfully refused, Mr. Young's clear, reasonable directives on August 8, 2007, and refused to accept a letter he tried to hand to her, directing him to put it in her mailbox. Grievant certainly “manifested disrespect toward supervisory personnel.” While the profanity she used in the Student Center may not have been insubordination, it certainly was inappropriate behavior in the presence of students and parents.

The more serious charge obviously is that Grievant hit Mr. Young with the dump truck. Grievant denied hitting Mr. Young with the dump truck, testifying at the hearing thatshe checked her mirrors and did not see anyone. Grievant also asserted when she gave her statement that Mr. Young had made a false report. Grievant offered no reason why Mr. Young would do this. Mr. Young agreed that

Grievant had checked her mirrors, stating he thought she was looking at him when she began moving the dump truck forward, and he could see her in the side mirror. He stated the dump truck had been so close to him that he had to jump back to avoid being injured, and the side of the truck caught his shirt and tore the buttons off.

In situations where the existence or nonexistence of certain material facts hinges on witness credibility, detailed findings of fact and explicit credibility determinations are required. *Jones v. W. Va. Dep't of Health & Human Res*., Docket No. 96-HHR-371 (Oct. 30, 1996); *Pine v. W. Va. Dep't of Health & Human Res*., Docket No. 95-HHR-066 (May 12, 1995). An Administrative Law Judge is charged with assessing the credibility of the witnesses. *See Lanehart v. Logan County Bd. of Educ*., Docket No. 95-23-235 (Dec. 29, 1995); *Perdue v. Dep't of Health and Human Res./Huntington State Hosp*., Docket No. 93-HHR-050 (Feb. 4, 1993).

The Grievance Board has applied the following factors to assess a witness's testimony: 1) demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and 5) admission of untruthfulness. Additionally, the administrative law judge should consider 1) the presence or absence of bias, interest, or motive; 2) the consistency of prior statements; 3) the existence or nonexistence of any fact testified to by the witness; and 4) the plausibility of the witness'sinformation. *See Holmes v. Bd. of Directors/W. Va. State College*, Docket No. 99-BOD- 216 (Dec. 28, 1999); *Perdue, supra*.

The undersigned did not observe the witnesses, but listened to the testimony recorded at the hearing, and has evaluated the plausibility of the scenarios offered by the witnesses. Mr. Young testified that he had just finished speaking with Grievant, and was just turning to leave, when Grievant started moving the truck forward so that it caught his shirt. He was so close to the vehicle, that regardless of Grievant's intentions, it would have been dangerous for her to move the truck, and she should have made sure he had moved away from the truck before putting a dump truck in gear.

Grievant's testimony at the level three hearing five months after the incident was more detailed than the written statement she gave immediately after the incident. Grievant testified that as she returned to the drivers' seat, Mr. Young walked off the other way, and she thought he had returned to his office. This was not in her written statement. She testified she got back in the truck, and then heard Mr. Young tell her to park the truck and go home. She testified she told him he could not do that, and he told her he could. She stated she reached down for the keys, started the vehicle, put it in

gear, let the brake off, checked the mirrors and did not see anyone, and started forward. She stated she was not aware that Mr. Young was around the truck at the time she started forward. Grievant knew Mr. Young was around the truck, because he had just told her to park it and go home. Further her written statement does not say anything about checking the mirrors, and had she done so, Grievant would have seen Mr. Young. Grievant also testified at the level three hearing that she told Mr. Young she did not know how to lower the tailgate with the chains, as she had never been trained, but later testified she did not tell anyone at Marshallthat she had never been trained on the operation of the dump truck. Mr. Young testified Grievant never told him she did not know how to lower the tailgate with the chains, which is why he could not understand why she was having a problem.

Grievant's co-worker, Ms. Thacker, was in the passenger seat at the time of this incident, and was called to testify at the hearing. Her testimony was not helpful. She did not recall that Grievant had dumped any gravel off the truck at the Omega House; she was not in the Student Center at the time Grievant made the statements attributed to her; she did not know what Mr. Young and Grievant had said to one another in Mr. Young's office even though she was close by; she did not recall why she had gotten back into the dump truck after Grievant had talked to Mr. Young; she did not know what Mr. Young had said when he was standing at the passenger side door of the dump truck because she “tuned him out;” she did not hear Mr. Young tell Grievant to go home; and she did not believe that Grievant could have hit Mr. Young with the dump truck. Her response to Grievant when Grievant told her Mr. Young had said she had hit him with the dump truck was, “no way.” She testified that when she saw Mr. Young after Grievant had parked the truck, he was behaving as he normally did, which in her estimation was, “very irrational.” The only information the undersigned can glean from this testimony is that Ms. Thacker did not have a high opinion of Mr. Young, and she did not believe Grievant would intentionally hit him with the dump truck.

Grievant's testimony that she checked her mirrors before moving the truck, and did not see Mr. Young, is not credible. Mr. Young's testimony that the truck had hit him was not discredited. While it is possible that Grievant did not intend to clip Mr. Young with the dump truck, at the very least, she moved a large piece of equipment in a reckless manner,because she disagreed with her supervisor and was in a snit; and she did, in fact, clip Mr. Young with the truck bed. Fortunately, he was able to move out of the way and was not injured. Had the truck gotten more than his shirt, he could have been seriously injured, all because of Grievant's attitude and carelessness. Such conduct is not

acceptable, especially when an employee is operating a dangerous piece of equipment.

Marshall University Board of Governors Policy No. HR-10 “[d]efines infractions which if committed by a classified or nonclassified employee require immediate suspension or dismissal.” Section 1.1. Section 2.5.2 provides that “[g]ross insubordination, including willful and flagrant disregard of a legitimate order, threatening or striking a supervisor,” is an employee infraction subject to immediate suspension or dismissal. Likewise, physical abuse of a person on Marshall property is an employee infraction which is subject to immediate suspension or dismissal.

Grievant's conduct may be better characterized as gross misconduct, than insubordination. “The 'term gross misconduct as used in the context of an employer- employee relationship implies a willful disregard of the employer's interest or a wanton disregard of standards of behavior which the employer has a right to expect of its employees.' *Graley v. W. Va. Parkways Economic Dev. & Tourism Auth.*, Docket No. 91- PEDTA-225 (Dec. 23, 1991) (*citing Buskirk v. Civil Serv. Comm'n*, 175 W. Va. 279, 332 S.E.2d 579 (1985)). *See Evans v. Tax & Revenue/Ins. Comm'n*, Docket No. 02-INS-108 (Sept. 13, 2002).” *Bachman v. Potomac State College of WVU,* Docket No. 07-HE-198 (Jan. 17, 2008). Marshall demonstrated that Grievant's actions on August 8, 2007, amounted to misconduct, regardless of the label, and were actions for which she could be dismissed. The following Conclusions of Law support the Decision reached.

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. 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). "[F]or there to be 'insubordination,' the following must be present: (a) an employee must refuse to obey an order (or rule or regulation); (b) the refusal must be wilful; and c) the order (or rule or regulation) must be

reasonable and valid." *Butts, supra*. In other words, there must be not only a refusal to obey a reasonable and valid order, but the refusal must be wilful. *Id.*

3. "[F]or a refusal to obey to be 'wilful,' the motivation for the disobedience must be contumaciousness or a defiance of, or contempt for authority, rather than a legitimate disagreement over the legal propriety or reasonableness of an order." *Id*.

4. "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). An employee's belief that management'sdecisions are incorrect, absent a threat to the employee's health and safety, does not confer upon him the right to ignore or disregard the order, rule, or directive. *Vickers v. Bd. of Directors/W. Va. State College*, Docket No. 97-BOD-122B (Aug. 7, 1998). *See Parker v. W. Va. Dep't of Health and Human Res.*, Docket No. 97-HHR-042B (Sept. 30, 1997). Additionally, an employer has the right to expect subordinate personnel "to not manifest disrespect toward supervisory personnel which undermines their status, prestige, and authority . . .". *McKinney v. Wyoming County Bd. of Educ.*, Docket No. 92-55-112 (Aug. 3, 1992) (citing *In re Burton Mfg. Co.*, 82 L.A. 1228 (Feb. 2, 1984)).

5. “The 'term gross misconduct as used in the context of an employer-employee relationship implies a willful disregard of the employer's interest or a wanton disregard of standards of behavior which the employer has a right to expect of its employees.' *Graley v. W. Va. Parkways Economic Dev. & Tourism Auth.*, Docket No. 91-PEDTA-225 (Dec. 23, 1991) (*citing Buskirk v. Civil Serv. Comm'n*, 175 W. Va. 279, 332 S.E.2d 579 (1985)). *See Evans v. Tax & Revenue/Ins. Comm'n*, Docket No. 02-INS-108 (Sept. 13, 2002).” *Bachman v. Potomac State College of WVU,* Docket No. 07-HE-198 (Jan. 17, 2008).

6. Grievant's deliberate and reckless act endangered her supervisor, and constituted misconduct for which she was subject to dismissal.

Accordingly, this grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County. The appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 6C-2- 5. Neither the West Virginia Public 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 the Rules of Practice and Procedure of the West Virginia Public Employees Grievance Board at . 6.19 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 certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County.

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BRENDA L. GOULD

Administrative Law Judge

Date: May 5, 2008