THE WEST VIRGINIA PUBLIC EMPLOYEES

GRIEVANCE BOARD

CRAIG STIHLER,

Grievant,

v.

Docket No. 07-DNR-360D

DIVISION OF NATURAL RESOURCES,

Respondent.

ORDER GRANTING DEFAULT

AND CONTINUING DEFAULT HEARING

Grievant, Craig Stihler, filed a notice of default in this grievance on July 13, 2007, claiming his employer, the Division of Natural Resources, had defaulted at level three of the grievance procedure by failing to hold a hearing within the required time limits. A pre- hearing telephone conference was held at level four on January 23, 2008. Grievant appeared *pro se*, and Respondent was represented by William R. Valentino, Assistant Attorney General.

"The grievant prevails by default if a grievance evaluator required to respond to a grievance at any level fails to make a required response in the time limits required in this article, unless prevented from doing so directly as a result of sickness, injury, excusable neglect, unavoidable cause or fraud." W. Va. Code § 29-6A-3(a). When a grievant asserts that his employer is in default, the grievant must establish such default by a preponderance of the evidence. Once the grievant establishes that a default occurred, the employer may show that it was prevented from responding in a timely manner

as a direct result of sickness, injury, excusable neglect, unavoidable cause, or fraud. The parties agreed during the telephone conference that the Grievant had agreed to extend the statutory time limit for holding a hearing at level three, but that the time limit had been extended to a specific date, March 17, 2006, and that a hearing was not held at level three by that date. Respondent conceded that it had defaulted at level three by failing to hold a hearing by March 17, 2006.

For the foregoing reasons, Grievant's request for a finding of default in this grievance is hereby **GRANTED**. Grievant is presumed to have prevailed on the merits of the underlying grievance. Respondent may request a hearing on the remedy in order to demonstrate that, notwithstanding the presumption that the grievant prevailed on the merits of his grievance, awarding such remedy would be contrary to law or clearly wrong. W. Va. Code § 29-6A-3(a)(2); *Williamson v. W. Va. Dep't of Tax & Revenue*, Docket No. 98-T&R-275D2 (Jan. 6, 1999). (See footnote 1) The level four hearing scheduled for February 27, 2008, is **CANCELED**.

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BRENDA L. GOULD

Administrative Law Judge

Date: January 31, 2008

Footnote: 1

Respondent noted during the telephone conference that it intended to request a hearing on the remedy, and that the Division of Personnel should be made a party to the grievance as this is a classification grievance. The parties also discussed whether this grievance should be consolidated with Cincotta v. Division of Natural Resources, Docket No. 07-DNR-359D, for hearing on the remedy. Grievant did not want this grievance to be consolidated with Cincotta, stating that he and Mr. Cincotta are not in the same classification, do not perform the same duties, and are not seeking the same relief. Respondent did not have a preference on consolidation of the grievances. These grievances will not be consolidated.