WEST VIRGINIA PUBLIC EMPLOYEES

GRIEVANCE BOARD

NANCY JAMISON,

Grievant,

v. **Docket No. 2008-0661-MonEd**

MONONGALIA COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Nancy Jamison ("Grievant") initiated this proceeding on September 4, 2007, alleging entitlement to mileage reimbursement for travel between her two half-time positions as a Secretary for Respondent Monongalia County Board of Education ("the BOE"). As relief, she seeks reimbursement for these expenses during the 2006-2007 school year (See footnote 1) and the 2007-2008 school year. A level one hearing was held on October 31, 2007, and the grievance was denied at that level in a decision dated November 20, 2007. Level two mediation was waived by agreement of the parties, and a level three hearing was convened in Westover, West Virginia, on March 13, 2008. Grievant was represented by John E. Roush, Esquire, of the School Service Personnel Association, and the BOE was represented by Jennifer S. Caradine, Esquire, of Dinsmore and Shohl, LLP. This matter became mature for consideration upon receipt of the parties' fact/law proposals on April 16, 2008.

Synopsis

Grievant holds two separate, half-time positions with the BOE and seeks reimbursement for

mileage driven between her two job sites each day. As in her previous grievance on this issue, decided in 2007, Grievant is not entitled to mileage reimbursement for travel between two separate positions. She also alleges that a newly-enacted statute entitles her to such reimbursement, because it states that mileage is reimbursed to employees who are “required” to use a personal vehicle “in the course of employment.” Because it is Grievant's choice to maintain two separate positions, and this is not required by either of her contracts with her employer, this statute also does not require that her mileage expenses be reimbursed. The grievance is denied.

Findings of Fact

1. Grievant is employed by the BOE as a Secretary.

2. Grievant has served in two half-time positions for several years. In 1999, she was the successful bidder for a half-time position in the Gear-Up Program at the Central Office. At some later time, she also successfully bid on another half-time position at Cheat Lake Middle School.

3. Until 2005, Grievant received mileage reimbursement for traveling from one job site to the other in the middle of her workday.

4. Beginning with the 2005-2006 school year, the BOE ceased paying Grievant for mileage, based upon its interpretation of *Monongalia County File 7-26*, entitled “Employee Travel.” 5. On July 19, 2006, Grievant filed a grievance regarding the refusal of the BOE to continue paying her for mileage reimbursement, which grievance was denied at level four on March 20, 2007. *See Jamison v. Monongalia County Bd. of Educ.*, Docket No. 06- 30-408 (“*Jamison 1*"). (See footnote 2)

6. In 2006, Grievant's position at the Central Office ceased to exist due to closure of the program, so she was transferred to a half-time position at Brookhaven Elementary School. Since that time, Grievant has worked in the two half-time positions at Brookhaven and at Cheat Lake Middle School.

7. At the conclusion of the 2006-2007 school year, Grievant again requested mileage reimbursement for the seven miles she travels each day between the two schools where she works, which was denied by the BOE.

8. In August of 2007, Grievant requested confirmation as to whether or not mileage reimbursement would be granted for the upcoming school year, which request was also refused.

9. Effective July 1, 2007, the West Virginia Legislature enacted W. Va. Code § 18A-2-14,

which provides that a board of education must “reimburse any school personnel for each mile traveled when the employee is required to use a personal motor vehicle in the course of employment.”

Discussion

Because this grievance does not involve a disciplinary matter, Grievant has the burden of proving her case by a preponderance of the evidence. Procedural Rules of thePublic Employees Grievance Board, 156 C.S.R. 1 § 156-1-3 (2008); *Howell v. W. Va. Dep't of Health & Human Res*., Docket No. 89-DHS-72 (Nov. 29, 1990); *See 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). "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).

Grievant alleges entitlement to reimbursement for both the 2006-2007 and 2007- 2008 school years. However, her claims differ for each year, in that her claim for 2007- 2008 is based upon the Legislature's enactment of W. Va. Code § 18A-2-14. However, with respect to mileage reimbursement for 2006-2007, the same conditions existed which were discussed and ruled upon in *Jamison 1*. At the outset of the level one hearing, the parties agreed that this claim would be governed by the outcome of the appeal of *Jamison 1*, agreeing to hold this part of the grievance “in abeyance.”

The Grievance Board's ruling in *Jamison 1* was based upon the administrative law judge's review and interpretation of applicable statutory law, cases, and the BOE's internal policy. Noting that Grievant was (as she is now) employed in two separate, half-time positions, it was found that “[b]ecause Grievant's travel from one position to another is not connected by any employment contract,” she was not entitled to have her mileage expenses paid by her employer. Although the BOE had provided Grievant mileage reimbursement in the years prior to 2005, the administrative law judge held that 'there isno basis in statute, policy or otherwise that would obligate an employer to reimburse a non- itinerant employee for . . . travel to the employment site of a second, part-time position.”

As a general rule, this Grievance Board adheres to the doctrine of *stare decisis* in adjudicating

grievances that come before it. *Chafin v. W. Va. Dep't of Health & Human Resources*, Docket No. 92-HHR-132 (July 24, 1992), *citing Dailey v. Bechtel Corp.*, 157 W. Va. 1023, 207 S.E.2d 169 (1974). This adherence is founded upon a determination that the employees and employers whose relationships are regulated by this agency are best guided in their actions by a system that provides for predictability, while retaining the discretion necessary to effectuate the purposes of the statutes applied. Consistent with this approach, this Grievance Board follows precedents established by the Supreme Court of Appeals of West Virginia as the law of this jurisdiction. Likewise, prior decisions of this Grievance Board are followed unless a reasoned determination is made that the prior decision was clearly in error. *Shaffer v. Kanawha County Bd. of Educ.*, Docket No. 00-20- 085 (June 12, 2000); *Belcher v. W. Va. Dep't of Transp.*, Docket No. 94-DOH-341 (Apr. 27, 1995).

With regard to Grievant's claim of mileage reimbursement for 2006-2007, the undersigned finds that this Grievance Board's decision in *Jamison 1* is controlling, and there has been no demonstration by Grievant which would justify its reversal. Therefore, although the parties had agreed to place this portion of Grievant's claim in abeyance, the undersigned feels compelled to clarify that the findings of *Jamison 1* have not been reversed, so Grievant's claim must be denied. Moreover, it is simply not possible to hold a portion of a grievance “in abeyance,” once the case has been submitted for a finaldecision by an administrative law judge. Pursuant to W. Va. Code § 6C-2-5, a decision of an administrative law judge is “final upon the parties,” and all claims asserted in the instant grievance must either be deemed abandoned or be ruled upon in this Decision. Accordingly, the undersigned finds that Grievant's claim for mileage expenses during 2006- 2007 must be denied, as set forth in *Jamison v. Monongalia County Bd. of Educ.*, Docket No. 06-30-408 (Mar. 20, 2007).

As to 2007-2008, Grievant has reiterated her contentions from *Jamison 1* regarding her interpretation of the BOE's policy 7-26 and a portion of W. Va. Code § 18A-4-8a, which discusses the minimum monthly salaries for employees who are employed under less than a full-time schedule. (See footnote 3) In addition, Grievant contends that the newly-enacted W. Va. Code § 18A-2-14 clarifies that she is entitled to reimbursement for traveling between her two work sites each day.

As discussed above, the administrative law judge in *Jamison 1* rejected Grievant's claims. In addition to the conclusions discussed previously herein, that Decision found that:

> 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 compensatedfor 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. (See footnote 4) 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.

Once again, the undersigned finds no justification for reversing the findings of *Jamison 1*. Neither the statute cited, nor the BOE's internal policy, establish any entitlement to reimbursement for mileage driven between two separate, half-time positions.

For similar reasons, W. Va. Code § 18A-2-14 also does not entitle an employee in Grievant's situation to mileage reimbursement. As stated in that statute, reimbursement is only required for employees who are "required to use a personal motor vehicle in the course of employment." Because Grievant could just as easily be employed in only one half-time position, and it has been her choice to hold two separate positions instead of a full-time position, she cannot be said to be "required" to drive her vehicle between her two jobs. Neither is Grievant driving from one job site to another "in the course of" her employment, because neither position requires her to do this. As stated in *Jamison 1*, "Grievant's travel from one position to another is not connected by any employmentcontract." This Grievance Board has also held in other cases that employees were not entitled to compensation for travel between two separate, part-time positions, because the travel was not part of the employee's daily job duties, i.e., not "in the course of employment." *See Workman v. Lincoln County Bd. of Educ.*, Docket No. 95-22-36 (Mar. 18, 1996); *Wheeler v. Lincoln County Bd. of Educ.*, Docket No. 96-22-535 (July 15, 1997).

As noted in Grievant's previous case on this issue, her situation differs from that of the grievant in *Sexton v. Boone County Board of Education*, Docket No. 94-03-044 (June 22, 1994), who was "employed as a full-time custodian under one contract of employment which sets forth two separate areas of assignment." *Id.* Grievant, on the other hand, has two separate and distinct contracts of employment, neither of which is connected to nor dependent upon the other in any fashion. Accordingly, Grievant has not established that her travel between jobs is either required by the BOE or is part of her assigned job duties.

The following conclusions of law are appropriate in this matter.

Conclusions of Law

1. In a non-disciplinary matter, Grievant has the burden of proving her case by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 156-1-3 (2008); *Howell v. W. Va. Dep't of Health & Human Res*., Docket No. 89-DHS-72 (Nov. 29, 1990); *See 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). 2. School employees are entitled to mileage reimbursement for travel which requires the use of their personal vehicle in the course of their employment. W. Va. Code § 18A-2-14.

3. Because Grievant holds two separate part-time positions with the BOE, she is not entitled to compensation for travel from one work site to another. *Jamison v. Monongalia County Bd. of Educ.*, Docket No. 06-30-408 (Mar. 20, 2007); *Workman v. Lincoln County Board of Education*, Docket No. 95-22-36 (Mar. 18, 1996).

4. Grievant's travel from one part-time position to another is not required by any contract of employment and does not occur in the course of her employment.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* 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 W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

Date: August 27, 2008

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DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

As will be discussed later in this Decision, Grievant is not currently pursuing her claim for reimbursement for 2006-2007.

Footnote: 2

As of the level three hearing, this grievance was on appeal in circuit court, and no final order had been entered.

Footnote: 3

W. Va. Code § 18A-4-8a(1) provides:

> *[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.*

Footnote: 4

Monongalia County File 7-26 provides, in part, as follows:

> *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 time to 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.*