THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

MARY J. COFFMAN,

Grievant,

v. **Docket No. 2009-0690-DOT**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION\DIVISION OF HIGHWAYS,

Respondents.

DECISION

Mary J. Coffman ("Grievant") is employed by the West Virginia Division of Highways ("DOH") in the Human Resources Section. She is classified as an Office Assistant 2 and has been so employed for the past eight years. On November 17, 2008, Ms. Coffman filed a level one grievance form. As her Statement of Grievance she wrote the following:

> On November 6, 2008, supervisor provoked an anxiety attack and abandoned Grievant without rendering aid or seeking assistance.

As relief Grievant seeks:

> To be made whole, including restoration of leave exhausted by episode triggered 11/6/08. And disciplinary action to be taken against supervisor.

Grievant and Respondent jointly waived level one and a level two mediation was held on April 30, 2009. Grievant appealed to level three and a hearing was held in the Charleston office of the West Virginia Public Employees Grievance Board on July 30, 2009. Grievant was present at the hearing and was represented by Gordon J. Simmons, UE Local 170, WVPWU.[1] Respondent DOH was represented by Jennifer F. Alkire,

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[1] West Virginia Public Workers Union.

Esquire, DOH Legal Section. Each party submitted Proposed Findings of Fact and Conclusions of Law which were received by the Grievance Board on August 14, 2009. This grievance became mature for decision on that date.

Synopsis

Grievant alleges that her supervisor knew Grievant was suffering from medical conditions related to stress and her supervisor caused Grievant to have an anxiety attack by making unreasonable demands upon her. Grievant was having medical difficulties that her employer was aware of, but Grievant did not prove that her supervisor acted in an inappropriate way or that her supervisor intentionally caused Grievant to suffer an anxiety attack. Consequently, the Grievance is DENIED.

After a thorough review of the entire record in this matter, the following facts are found to have been proven by a preponderance of the evidence.

Findings of Fact

1. Mary J. “Janie” Coffman, Grievant, is employed in the DOH Human Resources Division. She is classified as an Office Assistant 2 (“OA 2") and has been so employed for eight years.

2. Grievant’s immediate supervisor in the Human Resources Division is Patricia “Trish” Holstein. Ms. Holstein is classified as an Administrative Services Assistant 2 and her supervisor is the Director of Human Resources, Jeff Black.

3. Ms. Holstein has been Grievant’s supervisor since November 2006.

4. In addition to supervising Grievant, Ms. Holstein supervises Sharon Monday, who is also classified as an OA 2. Ms. Holstein also supervises temporary and summer

employees.

5. A major part of Grievant's job is preparing paper files for scanning into electronic files. This process is routinely called "prepping" the file. Prepping files for scanning includes putting the paper contents of a file in the correct order, removing staples, and checking for and discarding duplicate and incorrectly filed documents.

6. It was Ms. Holstein's expectation that Grievant prep a minimum of ten files per day. This is a lower output than is expected from other employees. The temporary employees who work for Ms. Holstein are expected to prepare approximately forty files for scanning in a day. However, the temporary employees are not assigned other tasks throughout the day.[2]

7. Prior to the incident giving rise to this grievance, Grievant had been suffering from medical difficulties including high blood pressure and bouts of depression and anxiety. Grievant tended to become overly defensive when she received instruction, expectations or her work was criticized by either Ms. Holstein or Mr. Black.

8. Grievant occasionally displayed behaviors such as crying, shaking and hyperventilating while at work, not only for work-related reasons, but for personal reasons as well. In some cases, these behaviors are triggered by stimuli that Grievant, herself, cannot identify.

9. Grievant's physician has provided Mr. Black with a letter describing Grievant's medical maladies and requesting that Grievant be allowed to work in a "stress-free"

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[2] To determine what a fair expectation would be for prepping files, Ms. Holstein timed herself in performing that job. She concluded that a file could easily be prepped for scanning in fifteen minutes or less.

environment. Mr. Black has been in contact with Grievant's doctor in an effort to identify more specific accommodations that may be made to assist Grievant to succeed in the workplace.[3]

10. Because of the concern with the potential of a negative reaction, Ms. Holstein was less likely to discuss expectation and performance with Grievant than with her other subordinates. Additionally, Ms. Holstein assigned Grievant significantly fewer tasks and less ambitious work goals and deadlines. To help with Grievant's performance, Ms. Holstein removed the following duties from Grievant and assigned them to the other OA 2, Sharon Monday:

- Enter 2nd halves into Mainframe and verify all necessary paperwork is attached to new employee paperwork;
- Contact org/district for needed backup personnel forms;
- Input new employment, leave of absence, separations, promotions and summer employment into tracking system;
- Enter applicant personal information, phone numbers, driver's license, and address changes into Mainframe;
- Reconcile mainframe entries daily against the Personnel Transaction Report.[4]

No duties were shifted from Ms. Monday to Grievant.

11. On the morning of November 6, 2008, while Ms. Holstein was sitting at the reception desk where Grievant typically sits, Ms. Holstein noticed that the Grievant had "prepped" only two files in two days.

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[3] No testimony was offered to indicate whether Ms. Holstein was aware of this ongoing process, but she certainly knew that Grievant was having problems coping with her daily work.

[4] Respondent's Exhibit 1. The duties are listed herein as they appear on the exhibit. Ms. Monday stated that the duties were substantial but she did not mind doing them.

12. When Grievant reported to work that morning, Ms. Holstein brought the file preparation issue to Grievant's attention. Grievant defended her work product and use of work time. Ms. Holstein raised the issue of the excessive amount of time it takes Grievant to enter transactions, stating that it should not take over 15 minutes per transaction entry. *See* Footnote 2 *supra.*

13. Grievant continued to defend her work output and indicated that Ms. Holstein and Mr. Black were not treating her fairly. At this point, Ms. Holstein took Grievant into Ms. Monday's office so that they could continue their discussion in private.

14. While in the office, Ms. Holstein continued to discuss Grievant's lack of sufficient work product and Grievant defended her work performance. Grievant became upset and Ms. Holstein left the room because the discussion was becoming "too heated" and because Grievant stated that she wanted to call her union representative.[5] When Ms. Holstein left the room, Grievant had raised her voice but she was not crying, shaking or exhibiting any other signs Ms. Holstein associated with an anxiety attack.

15. After Ms. Holstein left the room, Sharon Monday went back to her office, where she found Grievant sitting in the chair with her hands shaking. Grievant was not crying, nor was she hyperventilating or displaying any other symptoms that Ms. Monday associated with an anxiety attack.

16. Grievant asked Ms. Monday to retrieve Grievant's pills from her purse. Ms. Monday left her office to get Grievant's purse. Upon returning to the room, Ms. Monday found Grievant on the telephone. Grievant handed Ms. Monday the telephone and

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[5] Respondent's Exhibit 2. This was an account of the discussion held between Grievant and Ms. Holstein, completed by Ms. Holstein shortly after the incident took place.

Grievant's doctor was on the other end of the line. Grievant's doctor told Ms. Monday that it sounded as if Grievant was having an anxiety attack and instructed Ms. Monday to get a paper bag for Grievant to breath into so she would not hyperventilate.

17. Once again, Ms. Monday left the room to get a paper bag. While Ms. Monday was out of the room, Grievant fell off the chair she was sitting in, could not get up off the floor, and lost control of her bladder. Ms. Monday returned to the room and found Grievant was sitting on the floor shaking, crying and ranting that Ms. Holstein is trying to kill her.

18. Ms. Monday went to get help from co-workers who were in the reception area. Ms. Holstein did not go back into the office because she did not think her presence would be helpful. After Grievant was helped to a chair she took her blood pressure with a cuff she kept in her purse. She reported that her blood pressure reading to be 127 over 137 and requested to be taken to the hospital.

19. Two DOH managers, Eugene Godfrey and Drema Smith helped Grievant walk to the car and Mr. Godfrey drove while Ms. Smith accompanied Grievant in the car and into the hospital emergency room.

20. Mr. Godfrey and Ms. Smith stayed with Grievant until her son came to the hospital to pick her up.

Discussion

As this grievance does not involve a disciplinary matter, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). 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 that her supervisor provoked an anxiety attack and then abandoned her without giving Grievant any aid or assistance. The evidence simply does not support Grievant's claim. Ms. Holstein's supervisor, Jeff Black, described her as exuberant about her work and aggressive at getting it done, but not abrasive. He and Ms. Holstein had discussed ways for Ms. Holstein to manage Grievant's work without causing her undue stress. Ms. Holstein took duties away from Grievant in an effort to reduce the stress of keeping her work current. It is unreasonable to expect Grievant's supervisor to completely refrain from discussing deficiencies in Grievant's performance with her.

Ms. Holstein raised a legitimate work issue with Grievant on November 6, 2008. When it became apparent that the issue was going to take further discussion, she took Grievant into a room where they could discuss the problem in private. Ms. Holstein left the room when it appeared that the discussion was getting too heated. When Ms. Monday entered the room shortly thereafter, Grievant was not exhibiting symptoms of an anxiety attack. While it is clear that Grievant suffered a rather severe anxiety attack after her discussion with Ms. Holstein, it is apparent that Ms. Holstein did not do anything to intentionally provoke Grievant's condition. Likewise, Ms. Holstein did not abandon Grievant and fail to get her help. When Ms. Holstein left the room, Grievant was not in the throes of her anxiety attack but had stated that she was going to call her union representative. Ms. Monday observed Grievant shortly after Ms. Holstein left the room and noted that she was not crying but only that her hands were shaking. Ms. Holstein did not know that

Grievant was suffering an anxiety attack when she left the office. It was not possible for Ms. Holstein to have abandoned Grievant or refused to get her help. Grievant asserts that Ms. Holstein's ambivalence to her health was evident from the fact that she did not reenter the room to help once it was discovered that Grievant was ill. However, it was evident that there were several people engaged in assisting Grievant. Further, if Ms. Holstein was the source of Grievant's anxiety, it would have been cruel for her to come back into the room while others were attempting to calm Grievant.

Grievant is clearly suffering from severe medical problems that make it difficult for her to function in a busy office. However, Grievant failed to prove by a preponderance of the evidence that Ms. Holstein intentionally provoked her into an anxiety attack or that her supervisor abandoned Grievant during such an attack and refused to get her assistance. Accordingly, the grievance is denied.[6]

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va.*

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[6] Grievant also asserts that the undersigned should impose disciplinary measures upon Ms. Holstein as a result of this incident. As authority for this proposition he sites W. VA. CODE § 6C-2-2(I) which states "[a] supervisor or administrator responsible for a willful act of bad faith toward an employee . . . may be subject to disciplinary action, including demotion or discharge." Because Ms. Holstein was not found to have committed a willful act of bad faith against Grievant, this section does not apply. Nonetheless, it is worth noting that the Grievance Board has routinely held that the remedy of disciplinary action against a fellow employee is not available through the Grievance procedure. *See Stewart v. Div. of Corr.*, Docket No. 04-CORR-430 (May 31, 2005); *Jarrell v. Raleigh County Bd. of Educ.* Docket No. 95-41-479 (July 8, 1996); *Dunlap v. Dep't of Envtl. Protection*, Docket No. 2008-0808-DEP (March 20, 2009) (dealing with remedies available after a finding of default).

Dep't of Health & Human Res., Docket No. 89-DHS-72 (Nov. 29, 1990). 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. Grievant failed to prove by a preponderance of the evidence that her supervisor intentionally provoked her into an anxiety attack or that her supervisor abandoned Grievant during such an attack and refused to get her assistance.

Accordingly, The 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: FEBRUARY 17, 2010

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WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE