THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

LUTHER TED LANE,
Grievant,

v. **DOCKET NO. 2009-1073-DHHR**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
MILDRED MITCHELL-BATEMAN HOSPITAL,
Respondent.

DECISION

This grievance was filed at level three of the grievance procedure by Grievant, Luther Ted Lane, on February 23, 2009, after he was dismissed from his employment at Mildred Mitchell-Bateman Hospital by Respondent. A second grievance form was filed by Grievant's representative on March 11, 2009. The statement of grievance from this second grievance form reads, "[i]nappropriate termination, wrongful suspension, distorted facts, harassment, hostile work environment,[1] no appropriate accom[m]odations for physical disability." The relief sought by Grievant is "[r]einstated, receipt of all accrued sick, annual and holiday time, removal of all mention of termination from personnel file, made whole in every way so I can continue serving and helping the pt's at MMBH."

Two days of hearing were held at level three before Administrative Law Judge Mark A. Barney on May 11 and November 16, 2009, at the Grievance Board's Charleston, West Virginia office. Grievant was represented by Jeff Watson, and Respondent was

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[1] Grievant presented no evidence in support of his claims of harassment and a hostile work environment, nor did he discuss these claims in his post-hearing written argument. These claims are deemed abandoned and will not be addressed.

represented by B. Allen Campbell, Supervising Senior Assistant Attorney General. This matter became mature for decision on or about December 21, 2009, upon receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law. This matter was transferred to the undersigned Administrative Law Judge on January 6, 2010, for administrative reasons.

Synopsis

Grievant was dismissed from his employment at Mildred Mitchell-Bateman Hospital following an extended period of poor performance and bizarre behavior, culminating in the discovery of his unlocked, unattended office in an extreme state of disarray with multiple non-prescription medications, prescription medications, and tools in plain sight, and it appeared that he was living in his office. When Grievant arrived at the office he appeared confused and unsteady, and his speech was erratic. Grievant submitted to drug screening, which did not disclose the presence of any non-prescribed drugs in his system. Grievant was suspended without pay pending an investigation, and then dismissed from his employment. Respondent demonstrated that Grievant was unable or unwilling to perform the duties of his job, and that it was not likely that his performance or behavior would improve.

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

Findings of Fact

1. Grievant was employed by the Department of Health and Human Resources ("HHR" or "Respondent"), at Mildred Mitchell-Bateman Hospital ("MMBH"), as a Chaplain. He had been an employee of MMBH for approximately seven years.

2. MMBH is an acute psychiatric hospital located in Huntington, West Virginia.

3. Grievant was supervised by Dr. Vernon Kirk, Director of Psychology at MMBH, during 2006, 2007, and more than half of 2008.

4. On April 19, 2007, Grievant received a written reprimand from his supervisor for his failure to maintain his office in an appropriate condition. The office was in such a state of disarray that it was a safety hazard, and it appeared that Grievant was sleeping in his office. Grievant was told to clean up his office and that he was not to sleep in his office except in emergency situations, and then only with the approval of the Administrator on call. Dr. Kirk noted that a referral was needed for a "mental health evaluation by doctor of your choice."

5. For security reasons, sometime in 2007 all employees of MMBH who had keys to the buildings, including Grievant, were required to turn in those keys, except personnel who needed keys, such as security personnel. After this any employee who needed admittance to a building after hours was required to find a security guard to let them in. Grievant continued to believe he needed a key to the building housing the Chapel and his office, and repeatedly asked if he could have a key.

6. Grievant's Annual Performance Appraisal for the period from September 1, 2006, through August 31, 2007, completed by Dr. Kirk, concluded that Grievant's job performance barely met expectations, with many areas needing improvement. The

Performance Appraisal noted that Grievant had taken a "high level of necessary medical leave" due to a medical condition. It stated Grievant "must become computer proficient in order to view and add to patients' chart, and to be in communication with hospital leadership by the standard method now used of e-mail." Dr. Kirk did not meet with Grievant to review this evaluation because Grievant was off work on many days, "or was in such a state that I judged he could not grasp this ..."

7. In Grievant's Interim Performance Appraisal, dated February 28, 2008, Dr. Kirk concluded that Grievant's job performance did not meet expectations. He also noted that Grievant "has not been able to use the GROUP WISE email system - this has been a goal for 3 years. He also has not learned to do electronic medical records on the CPRS [Certified Patient Record System] system."

8. In January or February 2008 Grievant was in a car accident and suffered a head injury. As a result of this accident, Grievant was required to take some additional time off work. Although Grievant has been under the care of a doctor and a psychiatrist, the record does not reflect that Grievant has been diagnosed with traumatic brain injury or any other condition which would cause him to be unable to follow directions or perform his job duties.

9. In August of 2008, Bonnie Commella, Administrative Assistant, became Grievant's supervisor. On August 5, 2008, Ms. Commella and Kieth Anne Worden, Human Resources Director at MMBH, met with Grievant and advised him that Ms. Commella would be his new supervisor. They advised Grievant that he would need to clock in and out rather than simply signing in and out as he had been doing, that he would need to work a set schedule, and that he could not sleep while at work. At this time, Grievant was working

4 hours a day, for a total of 20 hours a week, and he was advised that he did not get a lunch break while working this schedule. Grievant had to be told several times after this that he needed to establish a work schedule with set hours.

10. On August 6, 2008, Grievant called in to MMBH and left two voice mails for Ms. Commella regarding the hours he was planning to work. Grievant sounded confused and he repeated himself.

11. On August 29, 2008, Grievant called in to MMBH three times, leaving the same message each time that he was ill and would not be in. Grievant sounded confused, and was slurring his words.

12. Grievant was repeatedly told by Ms. Commella to lock his office door when he left the office, and that his office door should not be locked when he was in his office. Grievant was either unable to understand when his door was to be locked, or refused to comply with these simple instructions.

13. As noted in Grievant's 2006-2007 Performance Appraisal, MMBH employees, including Grievant, are required to record patient information on a computer program referred to as CPRS. Grievant received extensive training on use of the computer and this computer program over an extended period of time, and was given simple written instructions explaining how to log onto the computer. Nonetheless, Grievant was not able to log onto the computer, and when he was able to use CPRS he did not enter the required amount of patient information. In August 2008, Grievant entered 13 notes on the computer in a month's time, when he was required to document 10 to 15 notes per day.

14. On September 3, 2008, an employee of MMBH reported to Ms. Commella that Grievant's car was parked on the walking trail, and Grievant was in the car eating his lunch. Grievant had been told that cars were not to be driven on the walking trail.

15. On September 5, 2008, an employee of MMBH advised Ms. Commella that Grievant's car was again parked on the walking trail. Grievant was told not to drive on the walking trail, and was again advised that he did not get a lunch break.

16. On September 30, 2008, Ms. Commella and Ms. Worden met with Grievant and directed him to stop talking to other employees about his discontent with Ms. Worden and Ms. Commella.

17. On October 2, 2008, Dr. Kirk sent Ms. Commella a memorandum documenting that he had found Grievant's behavior to be "remarkably effusive and energetic," "intrusively seeking out staff members to greet." He noted Grievant had shown "significant cognitive confusion," being "unable to repeat back clear, simple instructions" given to him by Ms. Commella. He had found Grievant's behavior to verge "on the inappropriate as he over-assertively attempted to control the [September 30, 2008] conference with you, his supervisor." He concluded by saying that he agreed that a "fitness-to-work exam is indicated."

18. On October 31, 2008, Grievant was dressed in a Halloween costume while at work, and carried a singing fish into the office of Cindy Parsons, a MMBH employee. He also had something in his coat pocket which made a loud laughing noise every few minutes. He stayed in Ms. Parsons' office for 45 minutes talking to her and patting her on the back as she was trying to work. Grievant asked Ms. Parsons if she was married, and made her very uncomfortable. Ms. Parsons complained about Grievant's behavior.

19. On the Sunday after Halloween, Grievant conducted church services at the Chapel at MMBH dressed in a Halloween costume. Grievant had asked Ms. Commella if he could dress in a Halloween costume for the church services, and she had told him no. Grievant then left Ms. Commella a voice mail thanking her for letting him dress in a Halloween costume for the church services.

20. At various times Grievant had asked if he could panhandle outside the gate at MMBH, and wore a red nose, asking various employees, including Ms. Commella, if they wanted to squeeze it. He would at times be very loud, screaming across a room, and he went into staff offices, uninvited, playing his guitar and singing the same verse over and over while staff members were working.

21. On October 28, 2008, Ms. Commella verbally reprimanded Grievant for the statements he made in a note to David Hall, part-time Chaplain, which Ms. Commella found to be negative and disruptive in tone in referencing Ms. Worden and Ms. Commella. Grievant was directed by Ms. Commella to "cease comments to other employees, orally, in email, or in writing, about the actions of the HR Director, the Chief Executive Officer, or me."

22. On November 19, 2008, Dr. Kirk completed Grievant's Performance Evaluation for the period from September 1, 2007, through August 31, 2008, as he had supervised Grievant during all but one month of this rating period. Dr. Kirk rated Grievant's performance as needing improvement in 20 out of 23 categories, for an overall rating of needs improvement.

23. On November 24, 2008, Grievant was placed on a Performance Improvement Plan. Ms. Commella thought the Improvement Plan would be beneficial because she

believed if she set written goals for Grievant, he would try to adhere to the goals. The Improvement Plan addressed use of the computer, making comments to others about Grievant's supervisor, time spent in the office versus working directly with patients, wearing unprofessional attire, such as a clown nose, proper call-in procedure for calling off work, incorrect references by Grievant to his position as the Director of a Department, attendance, taking items from dumpsters, and purchases.

24. Ms. Commella did not believe Grievant understood his duties, and he would ask her the same questions again and again, even though he would take notes during their meetings.

25. Grievant had been told by Ms. Commella that there was a possibility that he would be moved to another office, but she would advise him well in advance if this was going to occur, and he would not be required to pack up or move his things. Sometime after this discussion Ms. Commella went to Grievant's office, where she observed that he had started boxing his things. She also observed plywood in his office, which Grievant said he had gotten out of the dumpster. Ms. Commella again told Grievant that no decision had been made as to whether he would be moving to another office, and she told him to remove the plywood from his office. When she returned at another time the plywood was still in his office.

26. On December 5, 2008, Randy Fetty, Building Grounds Manager at MMBH, needed to take a contractor into Grievant's office to take some measurements. When he reached Grievant's office Mr. Fetty found the door open, and Grievant was not in the office

or immediately outside the office.[2] Grievant's office and the private bathroom attached to the office were a disaster, the office smelled of rotten food, and it appeared that Grievant was living in his office. There was prescription medication in plain sight, as well as 14 containers of Lidocaine cream, an open enema container, dirty dishes, a box cutter, pliers, a hammer, nails, and clothing, including ties, belts, shoes, socks, shirts, and pants. There were lots of Christmas decorations in boxes in the office, lots of office supplies, including boxes of copy paper, and spindles of wood, and paper was taped all over the walls. There was also patient information on the desk in plain view.

27. The condition of the office was viewed by Ms. Commella and Patricia Franz, Director of Quality Advancement at MMBH, and photographs were taken of the office by Mr. Fetty. At some point Grievant returned to the office and appeared to be confused, his speech was erratic, he asked the same questions over and over, and he was unsteady on his feet. Grievant was directed to submit to drug screening, and he did so. The drug screening did not disclose the presence of any drugs in Grievant's system other than those which had been prescribed for him. Grievant said he needed assistance to get home, and a hospital security guard took him home. The security guard helped Grievant get into the car, and Grievant would then get back out of the car. This occurred three times.

28. On December 8, 2008, Grievant was suspended without pay, effective December 5, 2008, for an indefinite period of time, not to exceed 30 days, pending an

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[2] Although Grievant's representative suggested in his questioning of various witnesses that Grievant was in the immediate vicinity, no testimony was offered by any witness to substantiate this suggestion. Grievant chose not to testify.

investigation into allegations of misconduct. The suspension letter states that Grievant was notified on December 5, 2008, of the suspension by Ms. Franz and Ms. Commella.

29. On December 30, 2008, Ms. Worden notified Lee Anne Adkins, HIPAA Privacy Officer, that documents with protected health information of patients visible were on Grievant's desk on December 5, 2008, while the office door was open, and Grievant was not in the office. Ms. Worden asked Ms. Adkins to advise her regarding whether this was in compliance with federal law. Ms. Adkins' response was to contact Mr. Fetty and advise him he needed to make a formal complaint in writing. When Mr. Fetty did not do so, Ms. Adkins did not investigate this matter.

30. On January 5, 2009, the suspension was extended for 30 days because Respondent was trying to determine if there was a medical reason for Grievant's behavior. Grievant was asked to undergo a fitness-to-work examination, which Grievant refused.

31. On February 4, 2009, Ms. Commella and Mary Beth Carlisle, Chief Executive Officer at MMBH, met with Grievant and his psychiatrist, Dr. David Frederick, at a predetermination meeting. Ms. Worden participated in this meeting by telephone. While Dr. Frederick was present, Grievant was not disruptive, although Dr. Frederick had to constantly redirect him. Dr. Frederick advised that Grievant's behavior was attributable to mental health issues which he'd had for many years, and a traumatic childhood. Dr. Frederick believed he could give Grievant homework assignments to improve his behavior. When Dr. Frederick left the room for a few minutes Grievant looked angrily at Ms. Carlisle and said something to the effect, "so, you're not going to give me a key." Ms. Carlisle asked Grievant if he could assure her his behavior would change, and he offered her no assurances of this.

32. On February 9, 2009, Grievant was dismissed from his employment by HHR, effective 15 days after February 4, 2009. The dismissal letter states the reason for the dismissal is Grievant's "continued inability or unwillingness to maintain your work space in a safe, sanitary and tidy manner, continued bizarre behaviors which are often disruptive and failure to maintain patient information in a confidential and secured manner." The letter goes on to describe the events of December 5, 2008, and the condition of Grievant's office at that time, and states that the office door had been left open while patient information was in plain sight on the desk. The letter further states that during the predetermination meeting Grievant "centered the discussion on the lesser important issues (such as access to a key to the building) without recognition of much larger issues. It was clear that you fail to understand the reasons why your behaviors cause such a disruption to the organization. There was nothing in this meeting that would lead me to believe that even with significant time and effort from leadership you would be able to change your behavior. Unfortunately, it does not appear that our attempts are assisting you. . .."

33. After his dismissal, Grievant sent Ms. Commella several notes in the mail telling her he was praying to forgive her, and about healing her of a medical condition she had.

34. Dr. Lumapos, also an employee of MMBH, has at times kept his office in a state of disarray,[3] keeping magazines and books stacked on the floor, and open food

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[3] Grievant placed into the record a memorandum dated December 2004, four years before Grievant was dismissed, and pictures of an office in disarray, which one witness recognized as Dr. Lumapos' office. No witness was presented to testify as to the date these pictures were taken, or to otherwise authenticate the condition of the office when the pictures were taken.

containers in the office. Dr. Lumapos did not keep his clothes, medications, box cutters, or tools in the office. Dr. Lumapos was not living in his office, nor did he exhibit any of the behaviors Grievant exhibited. Dr. Lumapos retired from MMBH in 2009. The record does not reflect that Dr. Lumapos continued to keep his office in a state of extreme disarray after he was told to clean it up.

35. Grievant received a rating of meets expectations on his annual performance evaluations for the years from September 1, 2000, through August 30, 2003, and from September 1, 2005, through February 28, 2006.

36. On December 20, 2008, Grievant requested certain accommodations for the problems associated with the leg he had broken, and head trauma. Grievant requested that he be allowed the use of a cane to walk up and down stairs, that he be allowed to take notes during meetings and conversations with supervisors and staff, and that he be allowed access to the elevator in the building where his office was located during normal working hours. Respondent was willing to grant these accommodations had Grievant returned to work, and was already allowing Grievant to take notes.

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*.

The employer must also demonstrate that misconduct which forms the basis for the dismissal of a tenured state employee is of a "substantial nature directly affecting rights and interests of the public." *House v. Civil Serv. Comm'n*, 181 W. Va. 49, 380 S.E.2d 226 (1989). "The judicial standard in West Virginia requires that 'dismissal of a civil service employee be for good cause, which means misconduct of a substantial nature directly affecting rights and interests of the public, rather than upon trivial or inconsequential matters, or mere technical violations of statute or official duty without wrongful intention.' Syl. Pt. 2, *Buskirk v. Civil Service Comm'n*, [175 W. Va. 279, ___,] 332 S.E.2d 579, 581 (W. Va. 1985); *Oakes v. W. Va. Dept. of Finance and Admin.*, [164 W. Va. 384,] 264 S.E.2d 151 (W. Va. 1980); *Guine v. Civil Service Comm'n*, [149 W. Va. 461,] 141 S.E.2d 364 (W. Va. 1965)." *Scragg v. Bd. of Dir. W. Va. State College*, Docket No. 93-BOD-436 (Dec. 30, 1994).

Respondent demonstrated good cause for Grievant's dismissal. Respondent clearly demonstrated that, whether by choice or because of some undocumented mental or physical condition, Grievant was not able to follow simple directions, was not able to perform his duties, and exhibited extreme behaviors which are not acceptable for an employee. Grievant was given many opportunities over a long period of time to correct his behavior, and showed no improvement, and no real desire or ability to improve. Ms. Carlisle believed that Grievant should be dismissed for the safety of the other employees and the patients, and the undersigned cannot disagree with her assessment. Grievant

presented no evidence that his behavior would change were he reinstated. The undersigned can only speculate as to the reason for Grievant's behavior, but regardless of the reason, it is clear that Grievant cannot be reinstated to his position at MMBH. It should be pointed out that although Grievant asked for some minor accommodations, he did not request a leave of absence in order to obtain any treatment through which he would seek to improve his behavior.

Grievant disputed specific charges in the dismissal letter. Grievant argued that Respondent did not prove there was a HIPPA violation, as is referred to in the dismissal letter. The dismissal letter, however, does not assert such a violation. The dismissal letter states as one of the reasons for Grievant's dismissal "failure to maintain patient information in a confidential and secured manner." Grievant did not dispute that he had left patient information in view in his unsecured office while he was out of the office. Respondent has proven this charge.

Grievant argued that his office was cluttered because he thought he would be moving, he had just received office supplies and he had no storage space, and there is nothing wrong with a cluttered office. Grievant had no reason to believe that he needed to take any action related to moving. He had been informed that it was simply a possibility, and he would be advised well in advance if he were in fact moving. Even were the undersigned to accept Grievant's excuses, it does not explain or excuse the extreme condition of Grievant's office, and the fact that it appeared he was living in it. The condition of Grievant's office is really just one symptom of Grievant's problem.

Grievant also argued his behaviors were the result of a brain injury, presenting as proof articles on traumatic brain injuries and post concussion syndrome. Grievant,

however, presented no medical diagnosis of these conditions, other than his psychiatrist's note of head trauma on the request for accommodation, nor did he present a medical opinion that his extreme behaviors were caused by this condition. Finally, Grievant did not present any evidence that with certain accommodations he could improve his behavior and could perform his duties. The undersigned cannot perform the role of diagnosing Grievant's medical or mental conditions.

Finally, Grievant argued that the penalty imposed was too severe. Grievant pointed to the good evaluations he had received up until 2007, and the fact that another employee of MMBH who had a messy office was not dismissed. "The argument a disciplinary action was excessive given the facts of the situation, is an affirmative defense, and Grievant bears the burden of demonstrating the penalty was 'clearly excessive or reflects an abuse of the agency['s] discretion or an inherent disproportion between the offense and the personnel action.' *Martin v. W. Va. Fire Comm'n*, Docket No. 89-SFC-145 (Aug. 8, 1989)." *Meadows v. Logan County Bd. of Educ.*, Docket No. 00-23-202 (Jan. 31, 2001).

In assessing the penalty imposed, "[w]hether to mitigate the punishment imposed by the employer depends on a finding that the penalty was clearly excessive in light of the employee's past work record and the clarity of existing rules or prohibitions regarding the situation in question and any mitigating circumstances, all of which must be determined on a case by case basis." *McVay v. Wood County Bd. of Educ.*, Docket No. 95-54-041 (May 18, 1995)(citations omitted). The Grievance Board has held that "mitigation of the punishment imposed by an employer is extraordinary relief, and is granted only when there is a showing that a particular disciplinary measure is so clearly disproportionate to the employee's offense that it indicates an abuse of discretion. Considerable deference is

afforded the employer's assessment of the seriousness of the employee's conduct and the prospects for rehabilitation." *Overbee v. Dep't of Health and Human Res./Welch Emergency Hosp.*, Docket No. 96-HHR-183 (Oct. 3, 1996). "Respondent has substantial discretion to determine a penalty in these types of situations, and the undersigned Administrative Law Judge shall not substitute her judgement for that of the employer. *Tickett v. Cabell County Bd. of Educ.*, Docket No. 97-06-233 (Mar. 12, 1998); *Huffstutler v. Cabell County Bd. of Educ.*, Docket No. 97-06-150 (Oct. 31, 1997)." *Meadows, supra.*

Grievant failed to demonstrate that he should be reinstated to his employment. Grievant's past evaluations do not offset the poor evaluations he received over the last two years of his employment, his failure to follow even simple instructions, and his failure to perform his basic job duties in an acceptable manner. As to the comparison of Grievant's office to that of Dr. Lumapos, while it is clear that Dr. Lumapos' office was also at times in a state of disarray, the undersigned cannot agree with Grievant's conclusion that Dr. Lumapos' office was in worse shape than his. Importantly, there was no evidence that Dr. Lumapos was living in his office, or that he had prescription and non-prescription medications scattered throughout the office, or tools which could be used by patients to injure themselves or others. Overall, as noted above, the messy office was just one more symptom of Grievant's problem.

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. *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988).

2. The employer must also demonstrate that misconduct which forms the basis for the dismissal of a tenured state employee is of a "substantial nature directly affecting rights and interests of the public." *House v. Civil Serv. Comm'n*, 181 W. Va. 49, 380 S.E.2d 226 (1989). "The judicial standard in West Virginia requires that 'dismissal of a civil service employee be for good cause, which means misconduct of a substantial nature directly affecting rights and interests of the public, rather than upon trivial or inconsequential matters, or mere technical violations of statute or official duty without wrongful intention.' Syl. Pt. 2, *Buskirk v. Civil Service Comm'n*, [175 W. Va. 279, ___,] 332 S.E.2d 579, 581 (W. Va. 1985); *Oakes v. W. Va. Dept. of Finance and Admin.*, [164 W. Va. 384,] 264 S.E.2d 151 (W. Va. 1980); *Guine v. Civil Service Comm'n*, [149 W. Va. 461,] 141 S.E.2d 364 (W. Va. 1965)." *Scragg v. Bd. of Dir. W. Va. State College*, Docket No. 93-BOD-436 (Dec. 30, 1994).

3. Respondent demonstrated good cause for dismissal of Grievant from his employment.

4. "The argument a disciplinary action was excessive given the facts of the situation, is an affirmative defense, and Grievant bears the burden of demonstrating the penalty was 'clearly excessive or reflects an abuse of the agency['s] discretion or an inherent disproportion between the offense and the personnel action.' *Martin v. W. Va. Fire Comm'n*, Docket No. 89-SFC-145 (Aug. 8, 1989)." *Meadows v. Logan County Bd. of Educ.*, Docket No. 00-23-202 (Jan. 31, 2001).

5. Grievant did not demonstrate that the discipline imposed was excessive.

Accordingly, this grievance is **DENIED.**

Any party or the Division of Personnel 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 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. *See also* 156 C.S.R. 1 § 6.20 (2008).

BRENDA L. GOULD
Administrative Law Judge

Date: February 18, 2010