THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

KENNETH R. LITTEN,
Grievant,

v. **DOCKET NO. 2011-0862-DOT**

DIVISION OF HIGHWAYS,
Respondent.

DECISION

This grievance was filed at level three of the grievance procedure by Grievant, Kenneth R. Litten, on December 3, 2010, challenging the termination of his employment by Respondent, Division of Highways. The relief sought by Grievant is "[r]einstatement of my job, all back pay and ben[e]fits and my record expunged."

Two days of hearing were held at level three before the undersigned Administrative Law Judge on July 28 and 29, 2011, at the Grievance Board's Westover, West Virginia office. Grievant was represented by Katherine L. Dooley, Esquire, the Dooley Law Firm, P.L.L.C., and Respondent was represented by Krista D. Black, Attorney, Legal Division. This matter became mature for decision on August 29, 2011, upon receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant was dismissed from his employment by Respondent for accessing and attempting to access pornographic websites on a state computer. Grievant acknowledged that someone had committed this network violation utilizing the identification number assigned to him, but denied that it was he. Grievant's explanation was that he had left his

password and user identification number on the bulletin board in the break room, and that someone else had been able to log onto the group computer using his identification number and password. Respondent did not demonstrate that it was more likely than not Grievant who had committed this violation on the date in question. Respondent's request to have backpay awarded offset by wages earned by Grievant during the period after his dismissal is granted.

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

Findings of Fact

1. Prior to his dismissal, Grievant had been employed by the Division of Highways ("DOH" or "Respondent"), in the Shop at the District 5 Headquarters in Burlington, West Virginia, for 11 years, and was a Mechanic 3.

2. Grievant was notified on November 16, 2010, that a recommendation had been made that he be dismissed from his employment. Grievant denied the allegations against him. By letter dated November 29, 2010, Jeff Black, Director of Human Resources for DOH, notified Grievant that his employment was terminated effective December 15, 2010, for "violation of the West Virginia Office of Technology's policies on Information Security and Network Violation Management, and the Department of Transportation's policy regarding Proper Use of Information Technology. More specifically:

On August 27, 2010 during the hours of 10:00 a.m. and 2:00 p.m., you visited and attempted to visit numerous known pornographic websites. You were denied access to over 400 requested sites or files that are categorized as known pornography or offensive search engine keywords. The Office of Technology was able to trace these activities to the

IP address for your computer, 10.69.205.18,[1] and your unique user identification, A073191. Due to the serious nature of this offense, coupled with your prior discipline for misuse of state resources, your dismissal is warranted."

3. The West Virginia Office of Technology ("OOT") monitors computer usage by state employees in an effort to protect the statewide network from the introduction of viruses and malware which could harm the network. OOT has identified websites which are known to put the network at risk for viruses and malware, or are likely to put the network at risk, and blocks access to these websites. These websites include those considered by OOT to be pornographic. When an employee attempts to access these types of websites, OOT is alerted to the possible network violation, and OOT personnel then review the activity for a period of time to determine whether a violation has occurred. Employees can employ various techniques to defeat the blocked access to websites.

4. The Department of Transportation also has a policy in place which prohibits employees of DOH from accessing "potentially threatening, offensive, or harassing information," including "material that could be construed as . . . obscene, pornographic, profane, sexually oriented or sexually explicit . . . or otherwise inappropriate or illegal." Respondent's Exhibit 28.

5. Prior to August 27, 2010, Grievant had taken most if not all of the online training course provided by OOT on computer information security. This training included information on the importance of safeguarding the network by not accessing pornographic and other non-secure, non-work-related websites, and the importance of safeguarding

[1] This was not Grievant's computer, but a computer used by Grievant and the other Mechanics at Grievant's worksite. Grievant did not have a computer assigned to him.

each individual's password. Grievant had also been made aware, through other training, of the importance of safeguarding his password.

6. OOT's Information Security Policy states at Section 4.17 that "[e]ach employee must be accountable for securing his or her computer, and for any actions that can be identified to have originated from it." The stated purpose of the Information Security Policy is to establish "objectives and responsibilities for all West Virginia state government agencies, employees, vendors, and business associates, specifically the Executive, regarding information security and the protection of information resources. Respondent's Exhibit 19. (Emphasis in original.) This Policy further provides at Section 5.2.3 that "[e]mployees must guard against access to files and take precautions to protect IT devices when away from the workstation. This includes but may not be limited to the following: Logging off computer . . .." Respondent's Exhibit 25.

7. OOT's Information Security Policy States at Section 4.14 that "controls must be established and maintained to protect the confidentiality of passwords," and "passwords are confidential and **must not** be shared under any circumstances." (Emphasis in original.) Respondent's Exhibit 25.

8. Grievant was not assigned his own computer, but he had been assigned his own user identification number which he used to sign onto the computer located in the break room. Grievant's co-workers in the District 5 Shop at Burlington also used this computer. Grievant also had his own password.

9. When he was first assigned a user identification number, Grievant wrote his user identification number, except the first letter, on the front of the community sheet of paper which outlined the procedure for logging onto the computer, and he wrote his

password on the back of this paper. This paper was on the bulletin board beside the computer in the break room shared by the employees. Grievant's first password was Sissy9, and this was written in blue ink on the back of the login document, with a capital S written in overtop of a lower case s. Every 30 days Grievant was required to change his password, and he did so by changing the number in his password to the next number. Below the 9, written in blue ink was the number 10, reflecting that he had changed his password to Sissy10, and below that in blue ink was the number 11, for Sissy11. Below 11, written in black ink was the number 12, and then below that in black ink was the number 13. There is room on the document for only one or two more numbers below the space where the 13 is written. No additional numbers were recorded on the document. By the time Grievant was dismissed from his employment his password was Sissy25.

10. Grievant did not properly safeguard his password.

11. There are nine Mechanics, one Welder, a Shop Foreman, an Office Assistant, an Equipment Supervisor, and an Assistant to the Equipment Supervisor assigned to the District 5 Shop at Burlington.

12. On August 30, 2010, personnel in OOT became aware, during a routine review of activity, that on August 27, 2010, someone had attempted to access pornographic websites utilizing Grievant's user identification number, between the hours of 10:00 a.m. and 2:00 p.m. The "identified computer was denied access to over 400 requests to sites or files that were categorized as known pornography or offensive search engine keywords," as defined by OOT. Respondent's Exhibit 12. The pictures on at least some of these websites were at the very least sexually oriented and sexually explicit.

13. When OOT personnel were alerted to the fact that someone using Grievant's identification number had attempted to access websites classified by OOT as pornographic, OOT personnel reviewed the activity on the computer for a 24-hour period surrounding the time period on August 27, 2010. In the course of this review, OOT personnel generated a "Network Violation Report," which summarized the inappropriate searches on August 27, 2010, the times of the searches, search terms, and pictures from websites which had been accessed using Grievant's identification number. The Network Violation Report was provided to DOH.

14. This was the first time OOT had generated a Network Violation Report for Grievant's user identification number.

15. No one observed Grievant accessing or attempting to access pornographic or sexually explicit websites on August 27, 2010.

16. When the Mechanics work on a piece of equipment, they record the hours they work on the equipment on a work order. The beginning and ending time recorded may not be exact, as they record their time to the nearest half hour.

17. On August 27, 2010, Delbert J. "D. J." Streets, a Mechanic employed by DOH at the Burlington Headquarters, began working on a crane around 7:30 a.m. Before he could begin repairs, he had to move the crane to the work area. Grievant assisted Mr. Streets with the repairs, joining him right around 7:30 a.m., or very soon thereafter. (Testimony of D.J. Streets, July 29, 2011.) The work order completed by Grievant and accepted by his supervisor shows that Grievant worked on the crane from 6:30 a.m. until 9:00 a.m. Prior to Mr. Streets moving the crane, Grievant had looked at it to determine

what work needed to be completed on it to correct the problem. Mr. Streets did not see Grievant when he moved the crane to the work area at 7:30 a.m.

18. Someone logged onto the computer in the break room using Grievant's identification number and password at 7:16 a.m., and logged off almost 45 minutes later, at approximately 7:54 a.m. During this time, websites classified by OOT as pornographic were accessed, or access was attempted and denied.

19. When Grievant finished working on the crane on August 27, 2010, he began working on a box truck, helping Shane Dolly, a Mechanic employed by DOH at the Burlington Headquarters. The work order completed by Grievant shows that he worked on the box truck from 9:00 a.m. until 11:30 a.m. Mr. Dolly recorded his time working on the box truck as 8:00 a.m. until 11:00 a.m. After Grievant and Mr. Dolly completed the work on the box truck, Grievant put away the ladders and other tools and equipment they had been using in repairing the box truck.

20. Someone logged onto the computer in the break room using Grievant's identification number and password at 9:53 a.m., and logged off over one half hour later at 10:26 a.m. During this time, websites classified by OOT as pornographic were accessed, or access was attempted and denied.

21. Grievant took his lunch break between 11:30 a.m. and 12:00 p.m. on August 27, 2010. There was no improper computer usage during this time period under Grievant's user identification number.

22. Michael Eversole, a Mechanic at the DOH Burlington Headquarters, worked on a pickup truck on August 27, 2010, from 11:00 a.m. until 3:30 p.m. Grievant assisted

him with the repairs on this truck. The work order shows Grievant worked on this truck from 12:00 p.m. to 3:30 p.m.

23. Someone logged onto the computer in the break room using Grievant's identification number and password at 12:30 p.m., and logged off almost 45 minutes later at 1:13 p.m. During this time, websites classified by OOT as pornographic were accessed, or access was attempted and denied.

24. Grievant worked 47.5 hours during the week of August 27, 2010, and 7.5 of the 8 hours worked on August 27, 2010, were overtime.

25. Grievant was suspended for 10 days without pay in 2009 for misuse of state equipment.

26. Grievant was viewed as a good employee who was always willing to help his co-workers with diagnosing mechanical problems and making repairs. His experience was an asset in diagnosing mechanical problems. Grievant's last performance evaluation was completed in September 2010, covering the period from January 1 through December 31, 2009. He received a rating of meets expectations. He was rated as exceeds expectations in 8 of the 23 categories, and was not rated as needing improvement in any category.

27. Respondent has consistently imposed a 15-day suspension on employees who are not supervisors for a first offense of accessing or attempting to access pornographic websites on a state computer resulting in the generation of a Network Violation Report, a 20-day suspension for a first offense if the employee is a supervisor, and dismissal for a second offense of this same type.

28. Respondent did not consider Grievant's tenure or work history in determining whether Grievant should be dismissed.

29. In November 2010, DOH employees were required to use a computer to enter information regarding their job duties and responsibilities on a job comparison questionnaire to be submitted to the Division of Personnel. Many of the employees at the Burlington Headquarters did not feel competent to perform this task, or did not want to do it, so the secretary in the office, Debra Aman, offered to do this for them. In order to complete this task, however, Ms. Aman had to enter the data under the user identification number for each employee, and the employees had to give her their passwords. Many of the employees gave Ms. Aman their passwords. D.J. Streets saw that Ms. Aman was having difficulty getting all the data entered and had become stressed, so he told her he would enter the data for his job. Then he asked if she would like for him to enter the data for other employees, and Ms. Aman gave him the user identification number and password for another employee, and he entered the data.

30. The OOT takes password security seriously, and considers the sharing of a password, and the failure to protect a password to be a more serious violation than accessing pornographic websites, because these acts put the network at higher risk than accessing pornographic websites. If an unauthorized person is able to access the network, he can transfer files to an iPod or thumb drive, and there will be no record left for the audit trail, or he can introduce viruses, Trojans, and other malicious software; whereas someone accessing a pornographic website leaves a trail that can be followed by OOT personnel to repair any damage. OOT views the individual's password as so sensitive that it should never be shared with anyone, including OOT personnel.

31. None of the employees who gave Ms. Aman their passwords was disciplined for this violation of OOT policy.

32. During the summer of 2010, DOH hired five summer workers in District 5. DOH did not obtain identification numbers for these temporary employees so that they could log onto a computer with their own number and password and enter their time. Leslie Staggers, the District 5 Human Resources contact person, made the decision to allow these five temporary employees to use the identification numbers assigned to five full-time employees who did not use the computer, using a password chosen by the temporary employees. DOH considered this to be a violation of OOT Policy, but Ms. Staggers was not disciplined for this misuse of personal employee identification numbers.

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, 284,] 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).

Grievant, as a tenured state employee, had a property interest in his employment. *Perry v. Sindermann*, 408 U.S. 593 (1972), cited in *Jones v. Nicholas County Bd. of Educ.*, Docket No. 92-34-305 (July 28, 1993), *aff'd*, Nos. 93-AA-213, 94-AA-76 (Kanawha County Cir. Ct. Apr. 5, 1995). "When an individual is deprived of this interest, certain procedural safeguards are merited. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985)." *Jones*, *supra*.

"Where an act of misconduct is asserted in a notice of dismissal, it should be identified by date, specific or approximate, unless the characteristics are so singular that there is no reasonable doubt when it occurred. If an act of misconduct involves persons or property, these must be identified to the extent that the accused employee will have no reasonable doubt as to their identity." Syl. Pt. 2, *Clarke v. W. Va. Bd. of Regents*, 279 S.E.2d 169 (W. Va. 1981), citing Syl. Pts. 4 and 5 of *Snyder v. Civil Serv. Comm'n*, 238 S.E.2d 842 (W. Va. 1977). The charges against Grievant, as stated in the dismissal letter, were that on August 27, 2010, during the hours of 10:00 a.m. and 2:00 p.m., he visited and attempted to visit numerous known pornographic websites.

Grievant did not dispute the clear evidence that someone had used his identification number and password to attempt to access pornographic websites. Grievant argued that Respondent did not prove that it was in fact he who had engaged in this conduct, pointing out that no one saw Grievant using the computer to access inappropriate material on the date in question. Grievant denied engaging in this conduct, and testified that he had written his identification number and password on the back of a sheet of paper which was on the bulletin board beside the community computer, and that anyone could have used his identification number and password to log onto the computer. Grievant also pointed to other instances of improper conduct by DOH employees which had resulted in no discipline being imposed. The undersigned must first evaluate the credibility of Grievant's testimony.

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's information. *See Holmes v. Bd. of Directors/W. Va. State College*, Docket No. 99-BOD-216 (Dec. 28, 1999); *Perdue, supra*.

Grievant has consistently denied the allegations against him. In this case, there was nothing in Grievant's demeanor or attitude which would lead the undersigned to conclude that he was lying when he denied the allegations. Respondent asserted that Grievant was lying when he testified that he had written his password and user identification number on the login instruction sheet on the bulletin board because he would surely remember that his dog's name, Sissy, was part of the password, and would not need to write it down. This is not necessarily true, depending on whether Grievant was considering using some other name, or some other combination of capital and lower case letters in the password, how frequently he used the computer, and how many passwords he had to have for access to different information. The undersigned will take notice that state employees must also have a password for access to payroll information on the state Auditor's website, and with some agencies, to access leave balances. The undersigned would certainly not be surprised if Grievant had trouble remembering what number had been used in his password, and what the number was when the password was changed every 30 days, particularly if he did not use the computer everyday. The undersigned's review of the manner in which the password changes are written on the login sheet suggest that Grievant was not lying. Had he fabricated this testimony and written the password on the sheet after the fact, one would think he would not have stopped the password numbers at number 13, but rather, would have continued to list the number in his password through

the most recent number of 25, and would have used the same color ink throughout. This, of course, raises the question of how someone else knew Grievant's password when the last password posted on the bulletin board was Sissy13, and Grievant's password in August of 2010 would have been somewhere between Sissy13 and Sissy25.

Grievant's denial is also supported by the work orders completed for the day in question, the testimony of the employees Grievant was working with on equipment, and the fact that the person conducting the inappropriate searches did so for a total of around two hours on a day when Grievant was working overtime.

The first inappropriate internet searches occurred between 7:30 a.m. and 7:54 a.m. The work order for the crane shows that Grievant was working on it from 6:30 a.m. to 9:00 a.m. Mr. Streets testified that Grievant was not working on the crane when he went to move it to the work area at 7:30 a.m. While it is possible then that Grievant was using the computer at this time, Mr. Streets also testified that Grievant did join him in working on the crane right after he moved it at 7:30 a.m. Had Grievant been on the computer in the break room, he would not have joined Mr. Streets right after 7:30 a.m., as someone was on the computer in the break room using Grievant's identification number until almost 8:00 a.m. It will also be noted that this time period was not identified in the dismissal letter as a period of time when inappropriate internet searches were conducted.

Respondent's problem in putting Grievant at the computer when the second inappropriate search was conducted at 10:06 a.m. on August 27, 2010, is that the work orders show that Grievant was working on a box truck from 9:00 a.m. to 11:30 a.m. Grievant admitted that the starting and ending time shown on the work orders is not exact, as employees round these times to the nearest half hour. However, 10:06 a.m. is not near

the starting or ending time shown on the work order. Grievant's user identification number was logged in at 9:53 a.m., and logged off at 10:26 a.m. Grievant would have to have left in the middle of working on the box truck and been away for more than one half hour in order to have been on the computer at this time, something that one would think would not go unnoticed. Grievant admitted that he would at times leave for short periods of time to go get a tool or part, or for a smoke break. However, Mr. Dolly did not testify that Grievant was absent from the work area for such an extended period of time.

The same is true of the time in the early afternoon when the inappropriate computer usage was recorded. Someone logged onto the community computer using Grievant's identification number and password at 12:30 p.m., and logged off almost 45 minutes later at 1:13 p.m., right in the middle of the time Grievant was helping Mr. Eversole. Mr. Eversole provided no testimony that Grievant left the work area for such an extended period of time.

Further, 7.5 of the 8.5 hours Grievant worked on August 27, 2010, were overtime, which would mean that if Grievant's supervisor was letting him sit in the break room and goof off on the computer for nearly two hours, his supervisor was not properly managing overtime hours, and really did not need Grievant at work that day on overtime for 7.5 hours. Most state agencies do not have the financial resources available to waste on unnecessary overtime.

The undersigned concludes that Respondent has not met its burden of demonstrating that it was more likely than not that it was Grievant who was conducting inappropriate searches on the internet on August 27, 2010.

Respondent also argued that Grievant's failure to secure his password was a more severe violation of policy. While this was indeed the testimony of James Weathersbee, Information Security Officer/Privacy Officer for OOT, it is clear that DOH has not taken to heart the importance of keeping one's password private. Further, this was not what Grievant was charged with.

Finally, Respondent filed a Motion with its Proposed Findings of Fact and Conclusions of Law, asking that any backpay award be offset by wages earned by Grievant since his dismissal. The Grievance Board has recognized that a Grievant has some "obligation to mitigate any damages he might incur as a result of a wrongful termination of his employment." *Keller v. W. Va. Dep't of Transp.*, Docket No. 2009-1440-DOT (Sept. 8, 2010). Respondent is not, in this case, asserting that Grievant had such an obligation, but rather, believes that Grievant did obtain other employment, and that any wages he actually earned after his dismissal should reduce any backpay award. Grievant did not register any objection to this motion. While it would have been prudent for Respondent to have raised this issue at a point earlier in time, and, in fact, it would be necessary to do so for evidentiary purposes were Respondent asserting that Grievant made no effort to mitigate his damages but was required to do so, the undersigned sees no reason why Respondent's request cannot be considered in setting the backpay award. The undersigned will offset Grievant's backpay award by any wages he earned for work performed on Monday through Friday, his usual work days at DOH, between the time Grievant was dismissed and the time he is reinstated.

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, 284,] 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. It is improper for state employees to use their work computers to access, or attempt to access, websites classified by the Office of Technology as pornographic, and such attempts place the state network at risk.

4. Respondent did not demonstrate that it was more likely than not that Grievant accessed or attempted to access websites on a computer at work on August 27, 2010, which were categorized by the Office of Technology as pornographic.

Accordingly, this grievance is **GRANTED.** Respondent is **ORDERED** to reinstate Grievant to his position, and pay him backpay for the period from December 16, 2010, until the date he is reinstated, less the gross wages Grievant earned during that time period through alternate employment during the Monday through Friday work week, and to reinstate his annual leave, sick leave, retirement benefits, and any other benefits lost as a result of his dismissal which it is possible to return. Respondent is also **ORDERED** to remove all record of Grievant's dismissal from all personnel files.

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 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).

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BRENDA L. GOULD
Administrative Law Judge

Date: September 27, 2011