**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**MICHAEL KEATON,**

**Grievant,**

**v.** **Docket No. 2011-0188-DOT**

**WEST VIRGINIA DEPARTMENT OF TRANSPORTATION/
DIVISION OF HIGHWAYS,**

**Respondent.**

## DECISION

Virgil Michael Keaton ("Grievant") is employed by the West Virginia Department of Transportation/Division of Highways ("DOH") as a crew leader. Mr. Keaton filed the original expedited grievance at level three of the grievance process on August 19, 2010, stating as follows: "[o]n Aug.16 Grievant informed that he was to be placed on unauthorized leave and unpaid suspension." As relief, Mr. Keaton seeks: "[t]o be made whole, including removal of disciplinary action, any lost pay and benefits and interest on loss pay."

On December 21, 2010, a level three grievance hearing was held at the West Virginia Public Employees Grievance Board Charleston office. Grievant appeared by his Representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Grievant did not appear in person.[1] Respondent DOH was represented by Jason C. Workman, Esquire. Also, appearing was Gary Alvis, Roane County DOH Highway Administrator, as the agency representative.

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[1] Grievant was serving the three-day suspension imposed by Respondent at the time of the December 21, 2010, hearing. Therefore, he was not present in person.

On December 20, 2010, Grievant filed a Motion to Find Respondent in Bad Faith, citing W. VA. CODE §§ 6C-2-3(p)(1) and 6C-2-3(o). Respondent had not been served with this Motion until December 21, 2010, the day of the hearing. In his Motion, Grievant asserted that his due process rights had been violated by Respondent because the suspension imposed by the Respondent was set to coincide with the time of this hearing; therefore, the hearing was not being held during Grievant's regular working hours. Further, Grievant sought relief in the form of a default judgment against the Respondent in this proceeding.

Respondent asserted that there was no bad faith in the Grievant's suspension being set on December 20, 2010, December 21, 2010, and December 22, 2010. Respondent argued that there was a clerical mistake made in processing the paperwork for the suspension which resulted in the suspension being served over said dates. The arguments of both parties on Grievant's Motion were placed on the record.

Upon consideration of the arguments of both parties, and upon review of W. VA. CODE § 6C-2-3(b)(1) and applicable law, the Motion to Find the Respondent in Bad Faith and request for default judgment was denied.[2]

The Respondent then presented its case in chief. At the conclusion of Respondent's case in chief, this matter was continued, upon the request of Grievant's Representative, to allow the Grievant to be present in person. The matter was continued until January 14, 2011.

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[2]Administrative Law Judge Wendy A. Elswick ruled on said motion at the December 21, 2010, hearing and advised both parties of her ruling on the record.

This matter was reconvened on January 14, 2011, at the West Virginia Public Employees Grievance Board Charleston office. Present were Grievant, Virgil Michael Keaton, in person and with his Representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union, Jason Workman, Esquire, counsel for Respondent DOH, and DOH representative, Gary Alvis, Roane County DOH Highway Administrator.

At the conclusion of the hearing, the parties agreed to submit proposed Findings of Fact and Conclusions of Law by February 25, 2011. Grievant submitted proposed Findings of Fact and Conclusions of Law to the Grievance Board on February 25, 2011. Respondent submitted proposed Findings of Fact and Conclusions of Law to the Board by letter dated February 25, 2011. The same was received by the Grievance Board on March 2, 2011; therefore, this matter became mature for decision on that date.

**Synopsis**

Grievant was involved in an argument with his supervisor over a work assignment. Following this argument, Grievant informed his supervisor that he was leaving the work site and going home for the day. Grievant was charged with several policy violations and suspended without pay for three days. Respondent proved that Grievant violated DOH and DOP policies and procedures. Grievant did not offer sufficient evidence in support of mitigating the suspension. The grievance is denied. The suspension of the Grievant is upheld.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

## Findings of Fact

1. Grievant, Virgil Michael Keaton, is employed by DOH as a crew leader for the Roane County Division of Highways.

2. Grievant has been employed by DOH for over fifteen years, during the last ten of which Grievant has been a crew leader. Prior to that, Grievant was employed as an operator.

3. As a crew leader, Grievant works in a supervisory position.

4. On August 12, 2010, Gary Alvis, Roane County DOH Highway Administrator and Grievant's supervisor, held a routine morning meeting with his crew leaders to provide them their work and personnel assignments for the day.

5. Grievant was given the assignment of patching potholes around the high school.

6. Grievant normally ran a ditching crew. However, Grievant expressed to Alvis that because it had been raining, it was too wet to ditch. Accordingly, Grievant was given the pothole patching assignment.

7. Grievant became noticeably upset during this meeting regarding his assignment.

8. At the conclusion of the meeting, Alvis asked the crew leaders if anyone had concerns over their assignments; there were no concerns raised by those present.

9. Immediately following this meeting, Grievant approached Alvis, stating that Alvis "was fucking him" and that Alvis "was always fucking with him."

10. Grievant began arguing with Alvis about his assignment (patching potholes),

the assignment of a more experienced operator to another crew, and over the fact that no flaggers were assigned to him that day.

11. The road Grievant's crew was assigned to patch was closed and school was not in session.

12. Grievant then said something to the effect of "Fuck it. I'm leaving" and walked out to the crew office and sat down.

13. Grievant was belligerent and angry during his argument with Alvis.

14. During Grievant's argument with Alvis, other employees had walked through the room in which Grievant and Alvis were present, but there was no one in the room with them throughout the argument.[3]

15. Alvis reported the incident on the same date by calling the DOH personnel office.

16. Grievant did not request leave from Alvis, his supervisor, before he left the work site on August 12, 2010. Grievant only told Alvis that he [Grievant] was leaving work.

17. Alvis asked another employee, Junior Nichols, to temporarily upgrade to crew leader for the day [to lead Grievant's crew as Grievant stated he was leaving work]. Grievant was present in the room when Alvis asked this of Nichols.

18. Grievant admits using the profanity detailed herein toward his supervisor, Alvis.

19. Grievant did not inform Alvis of why he was leaving work that day.

20. Grievant did not complete a leave request slip on August 12, 2010, prior to

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[3]Although other employees were apparently present during at least part of this exchange, none were offered as witnesses at this hearing.

his leaving work.

21. Grievant left work on August 12, 2010, without the approval of his supervisor.

22. Supervisor, Gary Alvis, did not advise Grievant that Grievant's leaving work that day would be considered unauthorized leave.

23. On August 17, 2010, Grievant was given a Form RL-544, West Virginia Department of Transportation, Notice to Employee, advising Grievant that disciplinary action in the form of a three-day suspension was being taken against Grievant for his taking unauthorized leave on August 12, 2010.[4]

24. Grievant refused to sign the RL-544 when it was presented to him on August 17, 2010.

25. Grievant did not mention to his supervisor that he was sick on August 12, 2010, when he was provided the Form RL-544.

26. Grievant was provided an opportunity to respond to the Form RL-544 Notice in writing or by meeting in person with an agency representative.

27. Grievant met with James E. Roten, Jr., District Engineer/Manager-3, on August 26, 2010, as documented by Form RL-546.[5]

28. At his meeting with James E. Roten, Jr., on August 26, 2010, Grievant first

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[4]See Respondent's Exhibit 2.

[5]See Respondent's Exhibit 3. It is noted that there was a significant delay in this document being processed and submitted to the Respondent's district office to initiate the suspension.

raised his claim that he left work on August 12, 2010, due to illness. At that time, Grievant provided Roten with the handwritten statements of three other employees supporting his claim of illness.[6]

29. Grievant called none of those three individuals to testify at the Level 3 grievance hearing.

30. Grievant has somewhat of a history of being disrespectful toward his supervisor, Alvis. In the past, Grievant has "hung up" on his supervisor during at least one telephone conversation.

**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. Procedural Rules of the W. Va. Public Employee Grievance Bd. 156 C.S.R. 1 § 3; *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 &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.*

Respondent contends that it properly suspended Grievant for three working days citing "misconduct interfered with the conduct of Highways' business." The suspension letter dated December 14, 2010, specifies the reason for this suspension as follows:

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[6]See Respondent's Exhibit 3.

> [o]n August 12, 2010 you were given the assignment to hot-mix patch the high school access road. You verbally expressed your displeasure for the assignment to your supervisor in an openly hostile manner using profanity. You then left the worksite without approval from your supervisor. The nature of your offense coupled by your visible position of authority as a Crew Supervisor, indicates that a three (3) day suspension is appropriate. Furthermore, because you did not attain approval to leave the worksite on this date, your time off is considered unauthorized.

See Respondent's Exhibit 1.

Respondent asserts that Grievant's actions warranted suspension, pursuant to the West Virginia Division of Highways Administrative Operating Procedures under Section II, Payroll/Personnel, Chapter 6, Disciplinary Action. This policy went into effect on April 15, 2007, and states in part:

> [e]xamples of poor performance or misconduct that may warrant suspension in response to a single performance issue or instance of misconduct include but are not limited to those for which the imposition of a lesser penalty would be warranted . . . .

See Respondent's Exhibit 4. Although Respondent did not specifically state in the suspension letter dated December 14, 2010, that insubordination was one of the reasons Grievant was suspended, Jeff Black, Director of Human Resources Division for DOH, indicated during his testimony at the December 21, 2010, hearing that insubordination and refusal to work were also part of the misconduct for which Grievant was suspended.

Grievant argues that he was not hostile toward his supervisor and that he did not take unauthorized leave. Grievant admits he was not pleased with the number of workers his supervisor allocated for his assignment. Grievant asserts that he wanted additional workers to serve as flaggers on his assignment, but his supervisor did not agree that

flaggers were needed. Further, Grievant argues that he told his supervisor that he was sick and going home. Grievant admits using profanity with his supervisor. However, Grievant contends that this profanity is commonly used at his place of employment, and that his supervisor has used the same language with him.

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. Dept. of Health & Human Resources*, Docket No. 96-HHR-371 (Oct. 30, 1996); *Pine v. W. Va. Dept. of Health & Human Resources*, 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. Dept. of Health & Human Resources*, Docket No. 93-HHR-050 (Feb. 4, 1993). As Grievant and Respondent disagree as to some of the events occurring on August 12, 2010, that resulted in the three-day suspension of the Grievant, the undersigned must make a credibility determination.

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 the following: 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.*

It is noted that the undersigned was not present at the two level three grievance hearings held in this matter. Therefore, the undersigned did not have the opportunity to observe the witnesses' demeanor. However, demeanor is only one of the factors that may be used to assess a witness's credibility.

The record indicates that Grievant made no mention of illness when he was given the notice of disciplinary action, Form RL-544. Thereafter, Grievant met with James E. Roten, Jr. on or about August 26, 2010, regarding his disciplinary action and proposed suspension. At that point, Grievant began to assert that he was ill on the day of the incident and provided three handwritten statements from some of his co-workers to support his claims of illness. See Respondent's Exhibit 3. In the "Summary of Employee's Remarks" section on the Form RL-546, there is no mention that Grievant used profanity toward his supervisor, even though Grievant now admits his use of profanity. See Respondent's Exhibit 3. Even though Grievant claims that he told his supervisor that he was sick and going home before he left the work site, Grievant admitted during cross examination that he could have only thought he said he was sick, or that maybe his supervisor did not hear what he said.

The record indicates that Grievant never requested to use any of his accrued leave prior to his leaving the work site on August 12, 2010. The undersigned finds it interesting that Grievant *told* his supervisor that he was leaving work after Grievant accused his supervisor of "fucking with him." Grievant admittedly did not ask for permission or authorization from his supervisor to leave work that day. Grievant simply told his supervisor that he was going home and then did so. The use of sick or annual leave is to be requested by an employee in advance of taking said leave. See West Virginia

Department of Transportation, Administrative Procedures, Volume III, Chapter 10, "Attendance, Leave, and Overtime."

Grievant also asserts that he was not required to complete a leave request form before he left the work site on August 12, 2010. In support of his position, Grievant testified that when someone calls in sick, he or she fills out a leave slip when he or she returns to work. So, Grievant claims he was going to fill out the leave slip when he returned to work the next day. The undersigned is not persuaded by Grievant's argument. Calling in sick and leaving work early due to illness are totally different situations. If one is at home and is too sick to go to work, there is no way he or she can complete a leave request slip from home. The proper procedure in that situation is to complete the leave request slip when he or she returns to work. However, if one is at work, where the forms are readily available, an employee is required by policy to request leave from his or her supervisor and complete a leave request form before leaving work, if at all possible. Therefore, Grievant's leave taken on August 12, 2010, was unauthorized.

Insubordination is defined as the "willful failure or refusal to obey reasonable orders of a superior entitled to give such order." *Riddle v. Bd. of Directors/So. W. Va. Community College*, Docket No. 93-BOD-309 (May 31, 1994); *Webb v. Mason County Bd. of Educ.,* Docket No. 26-89-004 (May 1, 1989). In order to establish insubordination, the following must be present: (a) an employee must refuse to obey an order (or rule or regulation); (b) the refusal must be wilful; and, c) the order (or rule or regulation) must be reasonable and valid. *Butts v. Higher Educ. Interim Governing Bd.,* 212 W. Va. 209, 569 S.E.2d 456 (2002) (per curiam). *See Santer v. Kanawha County Bd. of Educ.,* Docket No. 03-20-092

(June 30, 2003); *Riddle v. Bd. of Directors/So. W. Va. Community College,* Docket No. 93-BOD-309 (May 31, 1994); *Webb v. Mason County Bd. of Educ.,* Docket No. 26-89-004 (May 1, 1989).

"Employees are expected to respect authority and do not have the unfettered discretion to disobey or ignore clear instructions." *Reynolds v. Kanawha-Charleston Health Dep't,* Docket No. 90-H-128 (Aug. 8, 1990). As a rule, few defenses are available to the employee who disobeys a lawful directive; the prudent employee complies first and expresses his disagreement later. *See Day v. Morgan Co. Health Dep't,* Docket No. 07-CHD-121 (Dec. 14, 2007). An employer has the right to expect subordinate personnel "to not manifest disrespect toward supervisory personnel which undermines their status, prestige, and authority . . . ." *McKinney v. Wyoming County Bd. of Educ.,*Docket No. 92-55-112 (Aug. 3, 1992) (citing *In re Burton Mfg. Co.,* 82 L.A. 1228 (Feb. 2, 1984)).

"Certainly, an employer is entitled to expect its employees to conform to certain standards of civil behavior." *Redfearn v. Dep't of Labor*, 58 MSPR 307 (1993). All employees are 'expected to treat each other with a modicum of courtesy in their daily contacts.' *See Fonville v. DHHS*, 30 MSPR 351 (1986)(*citing Glover v. DHEW,* 1 MSPR 660 (1980)). Abusive language and abusive, inappropriate, and disrespectful behavior are not acceptable or conducive to a stable and effective working environment. *Hubble v. Dep't of Justice,* 6 MSPR 659, 6 MSPR 553 (1981). *See Graley v. W. Va. Parkways Economic Dev. and Tourism Auth.*, Docket No. 99-PEDTA-406 (Oct. 31, 2000)." As a crew leader, Grievant is held to a higher standard than regular employees. Crew leader is a leadership position, and Grievant should be setting a good example for other employees.

Respondent has the right to expect a higher level of performance from their supervisors. *See Cobb v. Dep't of Admin./General Services Div.,* Docket No. 97-Admin-404/455 (May 26, 1999).

The record establishes that Grievant was angry with his supervisor about the work assignment he was given and the personnel assigned to work on his crew. Grievant was hostile and confrontational toward his supervisor and accused his supervisor of "fucking with him." Grievant's behavior toward his supervisor was accusatory, inappropriate, and disrespectful. Grievant's inappropriate behavior, if allowed to continue without consequences, would serve only to undermine the authority of his supervisor and foster an unstable working environment.

Further, Grievant did not leave work due to illness as he claims. Grievant left his work site because he was angry about his assignment and because his supervisor did not change the assignment as Grievant had wanted. Essentially, Grievant did not get his way and decided to leave work instead of abiding by the directive of his supervisor. Grievant refused a lawful work assignment from his supervisor. Moreover, Grievant did not allege safety concerns as the basis for his refusal to work. Grievant was openly disrespectful toward his supervisor, used profanity toward his supervisor, and refused a work assignment without cause. Grievant was clearly insubordinate.

Although Grievant did not specifically discuss mitigation, Grievant contends that he should not have received a three-day suspension for his conduct. The West Virginia Supreme Court has stated that the grievance process is not intended to be a "procedural quagmire where the merits of the cases are forgotten." *Spahr v. Preston County Bd. of*

*Educ.,* 182 W. Va. 726, 730, 391 S.E.2d 739, 743 (1990); *Ewing v. Board of Educ. of County of Summers,* 202 W. Va. 228, 503 S.E.2d 541 (1998). While Grievant did not use the term “mitigation”, he raised the defense in his testimony.

Respondent has substantial discretion to determine a penalty in these types of situations, and the undersigned Administrative Law Judge cannot substitute her judgment for that of the employer. *Jordan v. Mason County Bd. of Educ.*, Docket No. 99-26-080 (July 6, 1999); *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).

"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 Resources/Welch Emergency Hosp*., Docket No. 96-HHR-183 (Oct. 3, 1996). Grievant bears the burden of demonstrating that 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).

A lesser disciplinary action may be imposed when mitigating circumstances exist. Mitigating circumstances are generally defined as conditions which support a reduction in the level of discipline in the interest of fairness and objectivity, and also include consideration of an employee's long service with a history of otherwise satisfactory work

performance. *Pingley v. Div. of Corrections*, Docket No. 95-CORR-252 (July 23, 1996). "When considering whether to mitigate the punishment, factors to be considered include the employee's work history and personnel evaluations; whether the penalty is clearly disproportionate to the offense proven; the penalties employed by the employer against other employees guilty of similar offenses; and the clarity with which the employee was advised of prohibitions against the conduct involved." *Phillips v. Summers County Bd. of Educ.*, Docket No. 93-45-105 (Mar. 31, 1994). *See Austin v. Kanawha County Bd. of Educ.*, Docket No. 97-20-089 (May 22, 1997). Mitigation of a penalty is considered on a case-by-case basis. *Conner v. Barbour County Bd. of Educ.,* Docket No. 95-01-031 (Sept. 29, 1995); *McVay v. Wood County Bd. of Educ.,* Docket No. 95-54-041 (May 18, 1995).

Grievant's work history appears to have been satisfactory until the incident on August 12, 2010. The record demonstrates that Grievant and his supervisor have had some disagreements prior to the August 12, 2010, incident, and that Grievant had at least once "hung up" on his supervisor during a telephone conversation. Grievant has a position of leadership within DOH and is expected to set an example for other employees. However, Grievant's conduct on August 12, 2010, was wholly disrespectful, and his offenses, such as insubordination, the use of profanity toward his supervisor, and the taking of unauthorized leave, are very serious. Respondent's disciplinary procedure provides that an employee may be suspended for these types of offenses without having to go through a process of progressive discipline. The undersigned is not persuaded that the three-day suspension imposed was disproportionate to Grievant's misconduct. Further, the undersigned cannot find any abuse of discretion on the part of the Respondent.

Respondent has met its burden of proving the charges against Grievant. Further,

Grievant has not met his burden of demonstrating that the three-day suspension was clearly excessive or clearly disproportionate to his offenses. Therefore, the grievance is DENIED.

**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. 156 C.S.R. 1 § 3; *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 &Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. Certainly, an employer is entitled to expect its employees to conform to certain standards of civil behavior. *Redfearn v. Dep't of Labor*, 58 MSPR 307 (1993). All employees are 'expected to treat each other with a modicum of courtesy in their daily contacts.' *See Fonville v. DHHS*, 30 MSPR 351 (1986)(*citing Glover v. DHEW,* 1 MSPR 660 (1980)). Abusive language and abusive, inappropriate, and disrespectful behavior are not acceptable or conducive to a stable and effective working environment. *Hubble v. Dep't of Justice,* 6 MSPR 659, 6 MSPR 553 (1981). *See Graley v. W. Va. Parkways Economic Dev. and Tourism Auth.*, Docket No. 99-PEDTA-406 (Oct. 31, 2000).

3. In order to establish insubordination, the following must be present: (a) an employee must refuse to obey an order (or rule or regulation); (b) the refusal must be wilful; and, c) the order (or rule or regulation) must be reasonable and valid. *Butts v. Higher*

*Educ. Interim Governing Bd.,* 212 W. Va. 209, 569 S.E.2d 456 (2002) (per curiam). *See Santer v. Kanawha County Bd. of Educ.,* Docket No. 03-20-092 (June 30, 2003); *Riddle v. Bd. of Directors/So. W. Va. Community College,* Docket No. 93-BOD-309 (May 31, 1994); *Webb v. Mason County Bd. of Educ.,* Docket No. 26-89-004 (May 1, 1989).

4. "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 Resources/Welch Emergency Hosp.*, Docket No. 96-HHR-183 (Oct. 3, 1996).

5. Grievant bears the burden of demonstrating that 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).

6. Respondent has proven by a preponderance of evidence that Grievant took unauthorized leave and was insubordinate.

7. Grievant has failed to establish that the three-day suspension imposed for this conduct was disproportionate to the offenses committed.

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: May 9, 2011.**

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**CARRIE H. LEFEVRE**
**ADMINISTRATIVE LAW JUDGE**