THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

CRYSTAL ANN HALL,
Grievant,

v. **DOCKET NO. 2011-0100-MAPS**

DIVISION OF JUVENILE SERVICES/
INDUSTRIAL HOME FOR YOUTH,
Respondent.

DECISION

This grievance was filed at level three of the grievance procedure by Grievant, Crystal Ann Hall, on July 24, 2010, challenging her dismissal by Respondent, the Division of Juvenile Services. The statement of grievance reads:

> By letter dated July 6, 2010, I was informed that, effective July 22, 2010, I was terminated from my position as [C]orrections Program Manager 1 at the WV Industrial Home for Youth. Termination is without just cause, is discriminatory and retaliatory. In taking this action, the employer violated, misapplied, and/or misinterpreted statu[t]e, policy, rule, regulation and/or unwritten practices, including but not limited to WV Division of Personnel Rule 12.2 regarding dismissals.[1]

The relief sought by Grievant is "[r]einstatement to my position as Corrections Program Manager 1 at the WV Industrial Home for Youth with full back-pay and benefits, to have all disciplinary actions removed from any and all personnel records, and to be made whole in any other way deemed appropriate."

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[1] Grievant did not identify how she believed Rule 12.2 was violated, nor did she address this issue in her post-hearing written argument. This argument is deemed abandoned, and will not be addressed.

Two days of hearing were held at level three before the undersigned Administrative Law Judge on March 29 and 30, 2011, at the Grievance Board's Westover, West Virginia office.[2] Grievant was represented by Walt Auvil, Esquire, Rusen & Auvil, PLLC, and Respondent was represented by Stephen R. Compton, Assistant Attorney General. This matter became mature for decision on May 18, 2011, upon receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant, a supervisor, was dismissed from her employment by Respondent for creating a hostile work environment for one of her subordinates, by engaging in a sexual relationship with her subordinate's husband; misuse of state property and abuse of state time, specifically, using her state-issued cell phone to send and receive personal text messages, both during work hours and during non-work hours, including an inordinate number of text messages to and from her subordinate's husband, some of which were sexually explicit; and lying to an investigator. Respondent proved the charges against Grievant, and demonstrated good cause for her dismissal.

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 Division of Juvenile Services ("DJS" or "Respondent"), at the Industrial Home for Youth ("IHY") in Salem, West Virginia, for 15

[2] A third day of hearing was set for April 1, 2011, but the parties decided that day would not be needed, and a telephonic conference was held instead to close the record and set the briefing schedule.

years. The IHY is a juvenile detention center. At the time of her dismissal, Grievant was a Corrections Program Manager 1, and was a supervisor in charge of the programs and treatment for residents, and reported directly to the Superintendent of the IHY, Joseph Merendino.

2. Grievant was dismissed from her employment by letter dated July 6, 2010, effective July 22, 2010, "as a result of your conduct which created a hostile work environment as prohibited by the West Virginia Division of Personnel's Policy DOP-B6 - 'Prohibited Workplace Harassment', misuse of state property and abuse of state time." The dismissal letter states that an investigation of an EEO complaint filed by another employee found that Grievant "had or are having a sexual and emotional relationship with 'J.L.';" that Grievant "misused state property to conduct this relationship with a subordinates's spouse by using your state-issued mobile phone and/or state e-mail to further this relationship and discuss the same with others;" that Grievant "abused state time by spending excessive time texting back and forth to 'J.L.' and others during work hours that were not work-related;" that Grievant was "untruthful and misleading with the purpose of altering the investigation during your interview with the investigator;" and that "a prohibited non-discriminatory hostile work environment was created by your actions." The letter further stated that "[a]s a high ranking supervisor, you are held to a higher standard of conduct because you are properly expected to set an example for employees under your supervision," and that Grievant "did not meet a reasonable standard of conduct." Finally, the letter notes that during the predetermination hearing Grievant continued to deny that she engaged in the alleged misconduct, and that she had been recently disciplined twice for failure to follow directives. "Your defiant nature and repeated failure to abide by

directives from me and the facility superintendent has eroded any confidence that I have in your ability to lead such a vital and important program at the Industrial Home. Not only have you lost my confidence, you have lost the confidence of many of your subordinates and any effectiveness you may have had as a leader."

3. Grievant supervised several employees, including Heather Laulis. Grievant and Mrs. Laulis were also close friends, their families frequently got together outside of work, and they babysat each other's children.

4. In September 2009, Grievant moved Mrs. Laulis from another building at the IHY to an office down the hall from Grievant. Mrs. Laulis made this move voluntarily.

5. Grievant had been issued a state-owned cell phone, which she used to send personal text messages during work hours, and while she was off work. The cell phone plan called for unlimited text messaging, so there was no additional charge for the personal text messages sent and received by Grievant. Grievant frequently used text messaging as a substitute for telephone conversation.

6. Grievant was not told by her supervisor or anyone else that she could not use her state-issued cell phone for personal use, or that she was using it too much for her personal use. Respondent does not have a policy or procedure in place governing the use of state-issued cell phones for conducting personal business.

7. Superintendent Merendino used his state-issued cell phone to place and receive personal phone calls.

8. Sometime during 2009 or early 2010, Grievant began having a sexual relationship with John Laulis, Mrs. Laulis' husband. Grievant and Mr. Laulis conversed several times a day, sending text messages back and forth, using the phone number

assigned to Grievant's state-issued cell phone, both during work and while off work. The volume on one day, April 19, 2010, was 300 messages back and forth, with 188 of these occurring during business hours.[3] Mrs. Laulis was aware that Grievant and her husband had been exchanging a large volume of text messages both during work hours and after work hours.

9. Mrs. Laulis began to suspect that her husband was having an affair, and she began to suspect that it was Grievant who was having an affair with her husband. As their relationship deteriorated, on many occasions Mrs. Laulis had telephone conversations with her husband during work hours when she would become upset and raise her voice and use profanity. Mrs. Laulis would become so loud that she disrupted the work of the other two staff members in her immediate work area, Dianna Hoover and Amber Davis. Mrs. Laulis asked Ms. Hoover and other employees if they were texting her husband.

10. On March 24, 2010, Mrs. Laulis discovered some personal items of Grievant's in her husband's backpack. She sent Grievant a text message confronting her about this discovery, and Grievant denied the items were hers, except for a ring. On March 31, 2010, Mrs. Laulis asked Superintendent Merendino to move her out of Grievant's work area. On April 6, 2010, this request was granted and Mrs. Laulis was moved from Grievant's work area, but Grievant continued as Mrs. Laulis' supervisor.

11. On April 20, 2010, Mrs. Laulis filed an Equal Employment Opportunity ("EEO") complaint, claiming retaliation and that a hostile work environment had been

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[3] It should be kept in mind that texting represents a usually limited conversation between two people. Each time an individual made a new response it was counted as one text message. For example, a response of "OK" was counted as one text message.

created, beginning March 24, 2010, by Grievant. The incident which is detailed as occurring on March 24, 2010, happened at Mrs. Laulis' home when she looked in her husband's backpack and found Grievant's son's iPod shuffle, and Grievant's scarf and ring. Mrs. Laulis claim of retaliation was based on Mrs. Laulis' therapist telling her that Mrs. Laulis' husband had told her Mrs. Laulis was going to be fired.

12. On April 20, 2010, Grievant's state-issued cell phone was confiscated by DJS personnel. The text messages on the cell phone were backed up on a desktop computer and then printed. Some of the messages found on the cell phone revealed graphic details of Grievant's sexual relationship with Mr. Laulis.

13. An investigation of Mrs. Laulis' EEO complaint was conducted by Steven Crook, Chief Investigator for the West Virginia Regional Jail Authority. Mr. Crook interviewed Grievant and several other employees of the IHY. Mr. Crook did not find the complaint to fit within the guidelines of an EEO complaint.

14. Mr. Crook asked Grievant if she was having a relationship with Mr. Laulis. Grievant lied when she told him she was not having a relationship with Mr. Laulis.

15. Mr. Crook concluded that Grievant had lied to him for the purpose of altering the investigation; that she was having a relationship with Mr. Laulis, and that this created a non-discriminatory hostile work environment of a psychological nature for Mrs. Laulis; and that Grievant misused state property and state time with her excessive use of the state-issued cell phone for personal business, both during work hours and while not at work.

16. Grievant had not received an evaluation advising her that she was not completing her work as required.

17. Grievant received a written reprimand on April 27, 2010, for failure to spend at least 20 hours a week on the units monitoring staff as she had been directed by her supervisor to do. This written reprimand was not grieved.

18. Grievant received a second written reprimand on May 18, 2010, for failure to follow her assigned schedule, and failure to attend a Director's meeting as required. This written reprimand was not grieved.

19. Grievant filed a grievance in 2005 contesting her demotion from Assistant Superintendent at the IHY for touching a male subordinate on the butt and upper thigh, making inappropriate comments of a sexual nature at work, and inaccurate time keeping. The Grievance Board decision reduced the demotion to a written reprimand.

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).

"'As a supervisor, Grievant may be held to a higher standard of conduct, because [s]he is properly expected to set an example for those employees under [her] supervision, and to enforce the employer's proper rules and regulations, as well as implement the directives of [her] supervisors.' *Wiley v. W. Va. Div. of Natural Resources, Parks and Recreation*, Docket No. 96-DNR-515 (Mar. 26, 1988)." *Lilly v. Dep't of Transp.*, Docket No. 07-DOH-387 (June 30, 2008).

Respondent proved that Grievant engaged in a sexual relationship with the spouse of her subordinate; that she lied to an investigator employed by Respondent to conduct an investigation of an EEO complaint; and that she used her state-issued cell phone to place and receive an inordinate number of personal phone calls and text messages, during work hours and while off duty. The question is whether these acts are punishable, and if so, has Respondent demonstrated good cause for dismissal. Grievant argued that she took no action toward, nor did she say anything to Mrs. Laulis which created a hostile work

environment, and DJS had no policy in place which precluded Grievant from using her state-issued cell phone as a personal phone, and no one ever told her she could not do so. As to Grievant's untruthful statements during the investigation, Grievant did not believe whether she was having an affair was work related, and she was concerned for her family because Mrs. Laulis had allegedly been making some statements about Grievant and her children which worried Grievant.

Nondiscriminatory Hostile Workplace Harassment is defined in the Division of Personnel's Prohibited Workplace Harassment Interpretive Bulletin as:

> Verbal, non-verbal or physical conduct not discriminatory in nature that is so atrocious, intolerable, and so extreme and outrageous as to exceed bounds of decency and which creates fear, intimidates, ostracizes, psychologically or physically threatens, embarrasses, ridicules, or in some other way unreasonably over burdens or precludes an employee(s) from reasonably performing her or his work.

This Board has generally followed the analysis of the federal and state courts in determining what constitutes a hostile work environment. *See Lanehart v. Logan County Bd. of Educ.*, Docket No. 97-23-088 (June 13,1997). The point at which a work environment becomes hostile or abusive does not depend on any "mathematically precise test." *Harris v. Forklift Systems, Inc.,* 510 U.S. 17, at 22, (1993). Instead, "the objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiffs position, considering all the circumstances." *Oncale v. Sundowner Offshore Servs., Inc.,* 523 U.S. 75 (1998) (quoting *Harris, supra*). These circumstances "may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance," but are by no means limited to them, and

"no single factor is required." *Harris,* supra at p.23; *Rogers v. W. Va. Reg'l Jail & Corr. Facility Auth.,* Docket No. 2009-0685-MAPS (Apr. 23, 2009). "'To create a hostile work environment, inappropriate conduct must be sufficiently severe or pervasive to alter the conditions of an employee's employment.' *Napier v. Stratton,* 204 W. Va. 415, 513 S.E.2d 463, 467 (1998). *See Hanlon v. Chambers,* 195 W. Va. 99, 464 S.E.2d 741 (1995)." *Corley, et al., v. Workforce West Virginia*, Docket No. 06-BEP-079 (Nov. 30, 2006). "As a general rule 'more than a few isolated incidents are required' to meet the pervasive requirement of proof for a hostile work environment case. *Fairmont Specialty Servs.,* [*v. W. Va. Human Rights Comm'n*, 206 W. Va. 86, 522 S.E.2d 180 (1999)], *citing Kinzey v. Wal-Mart Stores, Inc.,*107 F.3d 568, 573 (8th Cir. 1997)." *Marty v. Dep't of Admin.,* Docket No. 02-ADMN-165 (Mar. 30, 2006).

"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)." *Corley, et al., supra.*

There is no doubt that Grievant's decision to engage in a sexual relationship with the husband of her good friend and subordinate was a poor one, and that it caused Ms.

Laulis much anguish while at work and when at home. The undersigned concludes that Grievant's actions created a difficult environment in the workplace for Mrs. Laulis. Mrs. Laulis had to face Grievant as a supervisor, knowing that she was having an affair with her husband. It was Grievant's own choice to proceed with this relationship. How could such a relationship result in anything but trouble for everyone involved? Grievant pointed to the fact that Mrs. Laulis could have asked to be moved at any time, but did not do so until the end of March, as support for the theory that the work environment was not hostile.[4] All this shows is that it was not until the end of March that Mrs. Laulis finally realized that Grievant was lying to her when she told her there was nothing going on between her and Mr. Laulis. Grievant's action created a hostile work environment.

Using her state-issued cell phone to send text messages detailing her encounters with Mr. Laulis, which could be retrieved by her employer, further calls into question Grievant's judgement. While no one explicitly told Grievant she could not use her cell phone for personal business, and this could have easily been dealt with by simply telling Grievant there were limitations on the use of the cell phone, as a supervisor, Grievant should have been aware that state property is not for personal use, and that one needs to limit one's personal phone calls, particularly during work hours. Apparently, Superintendent Merendino did not set a great example in this regard, nor did he make any effort to control Grievant's use of the cell phone. Obviously, Grievant did not believe in such limits either for herself or for her subordinates, given that Mrs. Laulis was also allowed

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[4] Grievant also noted that it was Mrs. Laulis who often was disruptive in the workplace. While this is true, first, the reason for the disruptions was Mrs. Laulis' deteriorating relationship with her husband, to which Grievant was contributing. Second, this does not excuse Grievant's behavior.

to engage in extensive personal conversations during work hours which disrupted the work of others in the office. Grievant seems incapable of setting boundaries either for herself or others.

Finally, Grievant lied to the investigator when she told him she was not having a relationship with Mr. Laulis. It is not surprising that Respondent would lose confidence in her ability to be a supervisor. It is apparent that Grievant needs supervision, and it is questionable whether she possesses the judgement skills necessary for a supervisor. Grievant certainly was not setting a good example for her subordinates. Further, when a supervisor views having an affair with the husband of a subordinate as not having anything to do with her job, as Grievant stated repeatedly to Superintendent Merendino and in her testimony, that person should not continue to serve in the role of supervisor. So, at the very least, a demotion would be justified. However, Dale Humphreys, Director of DJS, testified that the agency had no other position available into which Grievant could be placed.

Respondent demonstrated that it acted properly in removing Grievant from her position as a supervisor. Respondent could have chosen to demote Grievant, but it had no positions available into which she could have been placed. Grievant chose to engage in conduct which was inappropriate for a supervisor, and when she was no longer entitled to serve in that role, Respondent was not required to create a non-supervisory position for her. Respondent demonstrated good cause for Grievant's dismissal.

Finally, in this case, Grievant has alleged that her dismissal was in reprisal for filing a grievance six years ago.[5] WEST VIRGINIA CODE § 6C-2-2(o) defines reprisal as "the retaliation of an employer toward a grievant, witness, representative or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it." To demonstrate a *prima facie* case of reprisal, the Grievant must establish by a preponderance of the evidence the following elements:

> (1) that he engaged in protected activity (i.e., filing a grievance);
> (2) that he was subsequently treated in an adverse manner by the employer or an agent;
> (3) that the employer's official or agent had actual or constructive knowledge that the employee engaged in the protected activity; and
> (4) that there was a causal connection (consisting of an inference of a retaliatory motive) between the protected activity and the adverse treatment.

Cook v. Div. of Natural Res., Docket No. 2009-0875-DOC (Jan. 22, 2010); *Vance v. Jefferson County Bd. of Educ.* Docket No. 02-19-272 (Oct. 31, 2002); *Conner v. Barbour County Bd. of Educ.*, Docket Nos. 93-01-543/544 (Jan. 31, 1995). *See also Frank's Shoe Store v. W. Va. Human Rights Comm'n*, 179 W. Va. 53, 365 S.E.2d 251 (1986). "[T]he critical question is whether the grievant has established by a preponderance of the evidence that his protected activity was a factor in the personnel decision. The general rule is that an employee must prove by a preponderance of the evidence that his protected activity was a 'significant,' 'substantial' or 'motivating' factor in the adverse personnel action." *Conner v. Barbour County Bd. of Educ.*, Docket No. 93-01-154 (Apr. 8, 1994).

If a grievant makes out a *prima facie* case of reprisal, the employer may rebut the presumption of retaliation raised thereby by offering legitimate, non-retaliatory reasons for

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[5] Grievant did not pursue this argument in her post-hearing written argument, and may have abandoned this argument.

its action. *Id. See Mace v. Pizza Hut, Inc.,* 377 S.E.2d 461 (W. Va. 1988); *Shepherdstown Vol. Fire Dept. v. W. Va. Human Rights Comm'n,* 309 S.E.2d 342 (W. Va. 1983); *Webb v. Mason County Bd. of Educ.,* Docket No. 89-26-56 (Sept. 29, 1989). "Should the employer succeed in rebutting the *prima facie* showing, the employee must prove by a preponderance of the evidence that the reason offered by the employer was merely a pretext for a retaliatory motive." *Conner v. Barbour County Bd. of Educ.*, Docket No. 93-01-154 (Apr. 8, 1994). *See Sloan v. Dept. of Health and Human Res.*, 215 W. Va. 657, 600 S.E.2d 554 (2004).

Grievant did not demonstrate that her protected activity was a 'significant,' 'substantial' or 'motivating' factor in the decision to dismiss her. The grievance was filed six years ago. The only evidence presented that that grievance had any bearing whatsoever on Grievant's dismissal was Grievant's testimony that Mr. Merendino told her those in charge were out to get her because of that grievance. The undersigned cannot assign any weight whatsoever to these statements standing alone with no foundation presented for this conclusion by Mr. Merendino. In fact, the undersigned has no way to even weigh whether Mr. Merendino was being serious or truthful in these statements to Grievant, as Mr. Merendino was not called by either party to testify.

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. "'As a supervisor, Grievant may be held to a higher standard of conduct, because [s]he is properly expected to set an example for those employees under [her] supervision, and to enforce the employer's proper rules and regulations, as well as implement the directives of [her] supervisors.' *Wiley v. W. Va. Div. of Natural Resources, Parks and Recreation*, Docket No. 96-DNR-515 (Mar. 26, 1988)." *Lilly v. Dep't of Transp.*, Docket No. 07-DOH-387 (June 30, 2008).

4. "'To create a hostile work environment, inappropriate conduct must be sufficiently severe or pervasive to alter the conditions of an employee's employment.'

Napier v. Stratton, 204 W. Va. 415, 513 S.E.2d 463, 467 (1998). *See Hanlon v. Chambers,* 195 W. Va. 99, 464 S.E.2d 741 (1995)." *Corley, et al., v. Workforce West Virginia*, Docket No. 06-BEP-079 (Nov. 30, 2006). "As a general rule 'more than a few isolated incidents are required' to meet the pervasive requirement of proof for a hostile work environment case. *Fairmont Specialty Servs.,* [*v. W. Va. Human Rights Comm'n*, 206 W. Va. 86, 522 S.E.2d 180 (1999)], *citing Kinzey v. Wal-Mart Stores, Inc.,*107 F.3d 568, 573 (8th Cir. 1997)." *Marty v. Dep't of Admin.,* Docket No. 02-ADMN-165 (Mar. 30, 2006).

5. "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)." *Corley, et al., supra.*

6. Respondent proved the charges against Grievant, and demonstrated good cause for her dismissal.

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: June 23, 2011