THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

VALERIE J. TIBBS,
Grievant,

v. **DOCKET NO. 2011-1016-HanED**

HANCOCK COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

This grievance was filed by Grievant, Valerie J. Tibbs, on January 18, 2011, against her employer, the Hancock County Board of Education. The statement of grievance reads:

> I was asked to meet with Susan Smith Superintendent on 11-9-10. Unknown to me it was a hearing in which my supervisor Tim Reinard had in writing falsely accused me purposely wrongdoing. But the meeting on the 9th ran to[o] long for me to get to [W]eirton to do my run anyway besides I was to[o] upset to safely drive my students. I was still very upset later that day I called and made arrangements with Sue Smith to meet with her on the 10th at 2:00. I had to take the [w]hole day off on the 10th being that I was still to[o] upset to drive my students safely. My blood pressure was well over the CDL limits of 150/90. So I was asking to be compensated for that day and a half that I lost. I filled out the papers for these days but when I received them back on 11-29-10 marked denied, Mr. Rienard stated that they were filed on the wrong form so I resubmitted them on another form only to get them back on 1/5/11 not approved he stated to me that they were still the wrong forms when I asked then what form am I to use? He said he didn't know and that I would have to file a grievance.

As relief Grievant seeks to be "[paid] for ½ day on the 9th and a whole day on the 10th of Dec. - 2010."

A hearing was held at level one on January 25, 2011, and the grievance was denied at that level on February 11, 2011. Grievant appealed to level two on March 7, 2011, and a mediation session was held on June 29, 2011. Grievant appealed to level three on July

11, 2011, and a level three hearing was held before the undersigned Administrative Law Judge on November 14, 2011, at the Grievance Board's Westover office. Grievant was represented by Owens Brown, West Virginia Education Association, and Respondent was represented by William T. Fahey, Esquire. This matter became mature for decision on December 15, 2011, on receipt of Respondent's Proposed Findings of Fact and Conclusions of Law. Grievant declined to submit written argument.

Synopsis

Grievant became upset after a conference with the Superintendent, the acting Assistant Superintendent, and the Transportation Director, and went home after the conference, taking a half day of sick leave. Her blood pressure was elevated the next day, and she reported off work on sick leave that day too. She was paid for this day and a half of sick leave. The conference was called by the Superintendent to address an incident involving Grievant. The Transportation Director had conducted an investigation into the incident and summarized his findings and recommendations in writing, addressed to the Superintendent. Grievant was upset because the Transportation Director accused her of being untrustworthy, and recommended the termination of her employment. The Superintendent heard Grievant's side of the story at the conference, and did not impose any discipline on Grievant. Grievant did not demonstrate that anything improper occurred, or that she was entitled to any relief.

The following Findings of Fact are properly made from the record developed at levels one and three.

Findings of Fact

1. Grievant has been employed by the Hancock County Board of Education ("HBOE") as a Bus Operator since 1979. She transports special needs students. Grievant has a 5 3/4 hour contract, meaning her salary is based on working 5 3/4 hours daily through the school year.

2. On October 25, 2010, Grievant departed from Weir Middle School before two of the special needs students who rode her bus boarded. Efforts were made to contact Grievant by radio. Grievant attempted to respond to the call, but was unsuccessful. By the time Grievant was made aware that she needed to return to the school to pick up the two missed students, she was already in downtown Weirton, some distance from the school.

3. On October 26, 2010,Tim Reinard, Transportation Director for HBOE, spoke to Grievant about why she had left the school without the two students.

4. Mr. Reinard made further inquiries of other employees while investigating the incident, and by letter dated October 28, 2010, he advised Superintendent Suzan Smith of the conclusions he had reached. The letter was addressed to Superintendent Smith. Mr. Reinard concluded that Grievant had lied to him when he spoke with her, and he recommended in his letter that she be suspended and dismissed from her employment for "insubordination, dereliction of duty, defiance of authority and untrustworthiness. I do not need someone driving a bus with children who can not fend for themselves with wanton disregard for their special needs and those of the school and the children's parents."

5. Superintendent Smith asked Grievant to meet with her on November 9, 2010, at 12:30 p.m. When Grievant reported for the meeting, Superintendent Smith told her she wanted to ask her some questions regarding allegations Mr. Reinard had made, and asked

her if she wanted a representative. She also told Grievant she could reschedule the meeting in order to allow her to contact her representative. Grievant advised Superintendent Smith that she did not want a representative and did not want to reschedule. Superintendent Smith told Grievant to wait while she got Mr. Reinard and Danny Kaser.

6. Mr. Kaser is not a full-time employee of HBOE. He often is hired by HBOE to conduct level one grievance hearings. At the time of the meeting at issue, he was temporarily filling in as Assistant Superintendent in place of Wayne Neely, who was on extended sick leave.

7. Grievant met with Superintendent Smith, Mr. Kaser, and Mr. Reinard from a little after 12:30 p.m., until approximately 1:15 p.m., on November 9, 2010, regarding the incident on October 25, 2010. Grievant was allowed to explain what had occurred, and Superintendent Smith showed Grievant the letter Mr. Reinard had sent to her with his conclusions and recommendations. No witnesses were called during this time, and no recording was made of the discussions.

8. The gathering of individuals on November 9, 2010, was not a hearing. It was a pre-disciplinary conference.

9. Prior to going into the November 9, 2010 conference, Grievant called the HBOE Transportation office and reported off work for the afternoon, because she did not think she would have time after the meeting to arrive at the bus garage by 1:30 p.m. to make her afternoon bus run. She did not advise Superintendent Smith of her concern that she would not have time to make her afternoon run.

10. Grievant became upset when she read Mr. Reinard's recommendation that her employment be terminated. No one told Grievant during the conference on November 9, 2010, that Mr. Reinard's recommendation would be followed. Grievant went home after the conference on November 9, 2010.

11. Grievant has suffered from high blood pressure for three to four years, and takes medication for her condition every day. She frequently checks her blood pressure at home. On November 9, 2010, she checked her blood pressure at home around 4:00 or 5:00 p.m., and the reading was higher than 150/90, which is the upper limit for someone with a CDL to operate a motor vehicle subject to a CDL requirement. Grievant did not check her blood pressure that morning. Grievant did not seek medical attention. It has been Grievant's experience that her blood pressure goes up when she is under stress, or when she does not take her medication. Grievant had taken her medication that day.

12. Grievant took sick leave on the afternoon of November 9, 2010, and all day November 10, 2010, and was paid for those days.

13. Superintendent Smith sent Grievant a letter on November 15, 2010, advising her that she had concluded that the incident on October 25, 2010, was the result of a breakdown in communications, and she hoped that the information that was shared during the conference would help to resolve the problem so that it would not occur again. No discipline was imposed on Grievant.

Discussion

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

Human Res., Docket No. 89-DHS-72 (Nov. 29, 1990). *See also Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 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).

Grievant asserted first that the conference on November 9, 2010, was a hearing because Mr. Kaser was in attendance, and that she was not given notice that there was going to be a hearing. There is no evidence whatsoever to support this assertion. The gathering on November 9, 2010, to discuss the October 25, 2010 incident was clearly not a hearing. Further, Grievant was specifically advised as to the reason for the conference in advance, and was advised that the conference could be postponed to another date if Grievant wanted to have a representative present. Grievant did not wish to postpone the conference.

Grievant next asserted that she should be paid for the day and a half she took off work because the conference had caused her to become ill. First, Grievant was paid for the time she took off work. Although the statement of grievance indicates that Grievant was not allowed to take sick leave for this day and a half, the evidence placed into the record was that Grievant had paid sick leave available to her and she was allowed to use it. Second, Respondent did nothing improper here. Grievant readily admitted that it was Mr. Reinard's "vicious" letter that had caused her to become so upset. Mr. Reinard is the Transportation Director, and Grievant's supervisor. It would appear that it is his job to investigate problems and advise the Superintendent of his conclusions. There was no

evidence presented that Mr. Reinard did not conduct a proper and thorough investigation. While the Superintendent did not accept Mr. Reinard's recommendations, he certainly had the right and obligation to place them in writing. It is understandable that Grievant would have been upset by the fear that she was going to lose her job, but there is no evidence that anyone did anything improper here. Grievant presented no justification for her assertion that she was entitled to be paid a second time, or have her sick leave restored.[1]

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 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).

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[1] At the level three hearing, Grievant presented evidence related to the amount of time spent in the conference on November 9, 2010, and the hours she spent performing her bus operator duties. It is unclear whether Grievant was attempting to add a new claim to the grievance that she was entitled to be paid for the time she was in the conference on November 9, 2010. However, Grievant's representative did not state in his opening statement that he was including a claim for compensation for the time Grievant spent in this conference, Grievant did not ask at any time to amend her grievance to include this claim for additional pay, and Grievant did not submit written argument. Accordingly, this issue, which would be an entirely different grievance from the one filed, will not be addressed.

2. Grievant did not demonstrate that she was entitled to additional pay or that her sick leave should be restored.

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 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: January 4, 2012