THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

DEBRA ANN MULLINS,

Grievant,

v. **Docket No. 2010-1642-DodED**

DODDRIDGE COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Debra Ann Mullins, filed this grievance against her employer, Doddridge County Board of Education, dated May 28, 2010, stating as follows: "I took a personal leave day on a Continuing Education Day at the beginning of the school year. I am forced to make up this CE Day by taking addition hours in order to get 18 CE credit hours. Making up this time has required me to work beyond my 200 day contract." This violates WV Code 6C-2-2(i)(1)." As relief sought, the Grievant requests: "I would like to have my personal leave day reinstated."

A Level One hearing was held on June 18, 2010, and denied by decision issued July 6, 2010. A Level Two mediation was conducted on September 14, 2010. The Level Three appeal was perfected on February 3, 2011. Respondent filed a Motion to Dismiss on February 22, 2011, asserting Grievant's Level Three appeal was untimely. Thereafter, Grievant filed a Motion to Quash in response to Respondent's motion. Respondent filed its Response to Grievant's Motion to Quash on April 6, 2011. By Order entered April 11, 2011, it was ruled that given the totality of the circumstances, Grievant substantially complied with the provisions of W. Va. Code § 6C-2-1 *et seq*. and Respondent's Motion to Dismiss was denied.

A Level Three hearing was held on December 20, 2011, before the undersigned Administrative Law Judge at the Grievance Board's Westover, West Virginia, office. Grievant appeared in person and with her Representative, Owens Brown, West Virginia Education Association. Respondent appeared by counsel, Richard. S. Boothby, Esquire, Bowles Rice McDavid Graff & Love LLP. This matter became mature for decision on January 27, 2012.[1]

Synopsis

Grievant, an elementary school teacher, was on leave on a day when professional staff development training was offered by Respondent. To obtain the eighteen hours of professional staff development training required by law, Grievant attended a training session on one of her days off later in the year. Grievant earned more than enough professional staff development credits to comply with policy requirements. However, Grievant asserts that because she took a training session on one of her days off, the leave day she took earlier in the year on a "CE" day, should be restored to her. Grievant further argues that because the leave day was not restored, she has worked beyond her 200-day contract. Respondent asserts that Grievant has not worked beyond her 200-day contract and that she is not entitled to restoration of the day of leave. Grievant has failed to present sufficient evidence to prove her claims by a preponderance of the evidence. As such, this grievance is DENIED.

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

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[1] Respondent submitted its proposed Level Three Decision on January 27, 2012. Grievant did not submit proposals, but in an email communication to the Grievance Board dated February 13, 2012, Grievant's Representative asked that the decision be rendered based on the record developed at the Level Three hearing.

Findings of Fact

1. Grievant, Debra Ann Mullins, is employed by Respondent, Doddridge County Board of Education, as a teacher at Doddridge County Elementary School.

2. State Board Policy 5500, 126 C.S.R. 149 § 4.2, requires professional employees, such as teachers, to obtain eighteen credit hours of job-related staff development, or continuing education, each school year.

3. At the beginning of the 2009-2010 school year, Respondent conducted a professional development program on August 21, 2009 and August 24, 2009. Six hours of continuing education training were offered each day.

4. Grievant attended the staff development held on August 21, 2009, earning six hours of continuing education credit. Those attending on August 21, 2009, were provided a Professional Development Program for the 2009-2010 school year which listed the requirements for receiving continuing education ("CE") credits for the school year, and a listing of the professional development trainings scheduled during the school year.

5. Grievant was on leave on August 24, 2009, and did not attend the staff development offered that day. Grievant was charged one personal leave day for her absence. Grievant was paid her usual salary for this day, but she did not earn any professional development training credits that date.

6. By letter dated March 31, 2010, Grievant was notified by Janice Michels, Superintendent, that she still needed to earn three hours of professional development training to meet the eighteen-hour requirement established by State Board Policy 5500.

This letter also asked Grievant to speak with her principal by April 26, 2010, about her plan for obtaining the needed hours.

7. To obtain the required professional development training hours, Grievant attended a professional development training session on April 24, 2010, which was not a school day. Grievant attended this training on her own time and was compensated at the rate of $25.00 per hour, the accepted stipend rate.

8. As of April 29, 2010, Grievant had earned twenty-one hours of professional development training. Therefore, Grievant met her yearly requirement of completing eighteen hours of professional development training.

Discussion

Prior to the Level Three hearing in this matter, Respondent filed a Renewed Motion to Dismiss and Memorandum of Law in which it again asserts that Grievant's appeal to Level Three was untimely filed. This renewed motion was addressed at the commencement of the Level Three hearing. The issue of timeliness that Respondent raises was already ruled upon by then Acting Deputy Chief Administrative Law Judge William B. McGinley by Order entered April 11, 2011. The Level Three appeal has already been found to be timely filed; therefore, this issue will not be addressed further herein.

As this is not a disciplinary matter, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R.1 § 3 (2008); *Howell v. W. Va. Dep't of Health 7 Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is

offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. Of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). "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 supports both sides equally, the Grievant has not met her burden. *Id.*

Grievant argues that because she had to take a professional development training on one of her days off to meet the requirements of Policy 5500, a leave day she took earlier in the year on a continuing education day should be restored.[2] She further argues that if the day is not restored, she has worked beyond her 200-day contract. Respondent argues that Grievant in no way worked beyond her 200-day contract when she chose to attend a professional development training on one of her days off. Further, Respondent asserts that Grievant is not entitled to any restoration of the leave day she used on August 24, 2009.

State Board Policy 5500 clearly requires teachers to complete eighteen hours of professional development training, or continuing education, each year and each board of education must schedule at least three non-instructional days of staff development each year. *See, Id.;* 126 C.S.R. 149. Grievant knew she had to obtain eighteen hours of professional development each year. She attended the first training session

[2] There was much debate over whether the leave taken should have been classified as sick leave or personal leave. The undersigned finds this irrelevant. The fact is that she was absent on August 24, 2009, and was on leave. The taking of leave on that day ensured she would be compensated for that day. The type of leave it was has no bearing on how this grievance is to be decided.

conducted by Respondent on August 21, 2009, earning six credit hours, but took leave on the day when the second training session was offered. Grievant was paid for the day she was on leave, but she did not earn any CE credits, and rightly so. Grievant knew that she had to take additional professional development trainings to obtain the required number of credits, and did so. Grievant attended a professional development training session on one of her days off in April 2010. Attending this program earned her the last few credit hours she needed for the year. Grievant was paid $25.00 per hour for attending the training session on her day off.

Grievant does not dispute that she was paid for the leave she took on August 24, 2010, nor does she dispute that she was compensated for the time she attended the professional development training session on her day off. Grievant's argument is that because she took leave on a CE day in August, which was charged against her available leave balance, then attended such a training on one of her days off later in the year, she should be returned the one day of leave she took on August 24, 2009. Grievant further asserts that if her leave day is not returned to her, or restored, she has worked beyond her 200-day contract. However, Grievant cites no law in support of her position.

Policy 5500 requires teachers to complete eighteen hours of professional development training each school year. If not, they can be subject to disciplinary action. This training is required no matter if the teacher is absent on a day when the training is offered. If a teacher is absent, he or she is to complete the training at another time. That is exactly what happened in this matter. Grievant has not been penalized in any

way and was paid for the leave she took, as well as for the day she attended the training on her day off.

Continuing education days are entirely different from leave days and cannot be compared. Grievant took leave on August 24, 2009. Taking a day of leave ensured that Grievant was paid for that day, even though she did not work. Taking the professional development training on her day off to meet the mandatory professional development training requirement does not entitle Grievant to the return of a leave day used. She had to complete the required training, she chose to take the training on her day off, and she was paid for the time she spent at the training on her day off. Grievant met the eighteen-hour professional development training requirement and has not been penalized in the least. Moreover, taking her day of leave, then attending the training on a day off in no way resulted in Grievant working beyond her 200-day contract.

Accordingly, Grievant has failed to meet her burden of proving her claims by a preponderance of the evidence.

The following Conclusions of Law support the decision reached:

Conclusions of Law

1. As this is not a disciplinary matter, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R.1 § 3 (2008); *Howell v. W. Va. Dep't of Health and Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990).

2. Professional employees of county boards of education must obtain eighteen hours of job-related staff development each year, and each board of education

must schedule at least three non-instructional days of staff development each year. *See*, West Virginia Board of Education Policy 5500, 126 C.S.R. 149 (1997).

3. Grievant has failed to prove her claim by a preponderance of the evidence. Further, Grievant has failed to prove that Respondent violated any law or policy in this matter. Grievant failed to prove that she worked beyond her 200-day contract or that she was entitled to restoration of the leave she used on August 24, 2009.

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 (eff. July 7, 2008).

DATE: July 19, 2012.

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Carrie H. LeFevre
Administrative Law Judge