**THE WEST VIRGINIA PUBLIC EMPLOYEES**
**GRIEVANCE BOARD**

**RONALD RAY CRITES, JR.,**
**Grievant,**

**v.** **Docket No. 2011-0890-DHHR**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES/**
**WILLIAM R. SHARPE, JR. HOSPITAL,**
**Respondent.**

## DECISION

Grievant, Ronald Crites, filed this grievance on December 16, 2010, alleging that he was terminated from his employment without good cause. Grievant seeks to be made whole, including restoration of all lost wages with interest and restoration of all benefits. This grievance was filed directly to level three. An evidentiary hearing was conducted before the undersigned Administrative Law Judge on November 8, 2011, at the Board's Westover office location. Grievant appeared in person and by his representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent was represented by its attorney, Anne B. Ellison, Assistant Attorney General. This matter became mature for consideration upon receipt of the last of the parties' proposed findings of fact and conclusions of law on January 3, 2012.

### Synopsis

Grievant was charged with verbal abuse and exploitation of hospital patients while performing his duties as a health service worker. Respondent met its burden of proof and

demonstrated by a preponderance of the evidence that Grievant's termination was for good cause.

The following findings of fact are based upon the record developed at level three.

**Findings of Fact**

1. Grievant has been employed as a health service worker since September 16, 2008, on the evening shift of unit G-2 at William R. Sharpe, Jr. Hospital.

2. Grievant was dismissed from employment on December 13, 2010, based upon substantiated charges of both verbal abuse and exploitation of patients at the hospital. In particular, Grievant was charged with using inappropriate, vulgar language when redirecting patients; that he would mimic and ridicule certain patients; and that Grievant borrowed money from at least two patients. Respondent's Exhibit No. 21.

3. Beginning in October and continuing up to December of 2010, Jodi Puzio-Bungard, Director of Social Work for Sharpe Hospital, began receiving reports from patients that Grievant was borrowing money from them. One patient advised that Grievant asked to borrow $5.00, and the patient gave him $10.00. The patient indicated that Grievant paid him back. One other patient reported that Grievant asked to borrow money, and the patient gave him $10.00. The patient acknowledged that Grievant paid him back the borrowed money. Ms. Puzio-Bungard assessed the patients as being credible, and she further based this opinion upon documentation from their physicians that their thoughts were organized.

4. Ms. Puzio-Bungard opined that because an employee is in a position of perceived power over the patient, a patient might feel compelled to lend the employee money. Hence, Respondent has in place a policy prohibition on such conduct.

5. Jennifer Hyre, Health Service Worker, complained to Ms. Puzio-Bungard that Grievant would mimic and ridicule patients. Grievant would mimic a patient's mumble, head tic, and told the patient he is stupid. The patient is diagnosed with paranoid schizophrenia. He walks hunched over, mumbles, and speaks to his hallucinations. All of this behavior was imitated by Grievant in a mocking manner.

6. Grievant engaged in the same behavior by imitating how another patient would repeat himself, scream, and speak. Not only were these incidents reported by the patients, they were corroborated by two different staff members. In addition to mocking the patients, Grievant would use inappropriate language toward the patients.

7. The administration of Sharpe determined that the mocking and mimicking of patients, as well as the use of vulgar language, amounted to verbal abuse, and financial exploitation of a patient amounted to neglect.[1]

**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 Employees Grievance Board, 156 C.S.R. 1 § 3 (2008); *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988). "A preponderance of the evidence is evidence of greater weight

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[1]Notwithstanding the allegations placed in the termination letter, Respondent presented evidence of sexual abuse of patients, and evidence of alleged drug use by Grievant. The undersigned allowed this to take place in large part because the termination letter was not offered as an exhibit until the end of the Respondent's case-in-chief. Had the undersigned known that these allegations did not appear in the termination letter, the evidence would have been precluded. Hence, the allegations of sexual abuse and drug use that were presented at level three do not appear in the findings of fact and are not considered in ruling on this grievance.

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). Where the evidence equally supports both sides, the employer has not met its burden. *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Permanent state employees who are in the classified service can only be dismissed for "good cause," meaning "misconduct of a substantial nature directly affecting the rights and interest of the public, rather than upon trivial or inconsequential matters, or mere technical violations of statute or official duty without wrongful intention." Syl. Pt. 1, *Oakes v. W. Va. Dep't of Finance and Admin.*, 164 W. Va. 384, 264 S.E.2d 151 (1980); *Guine v. Civil Serv. Comm'n*, 149 W. Va. 461, 141 S.E.2d 364 (1965).

Grievant was employed as a Health Service Worker at William R. Sharpe, Jr. Hospital in Weston, West Virginia. Sharpe Hospital is a state-operated mental health facility. By letter dated December 13, 2010, D. Parker Haddix, Chief Executive Officer, informed Grievant of his decision to dismiss him, citing, in pertinent part, the following:

> This is to inform you that the investigation of the allegations of verbal abuse and patient exploitation has been concluded. The findings of the investigation have substantiated that both verbal and physical abuse did occur. The findings indicated that inappropriate, vulgar language has been used when redirecting patients; that you mimic and make fun of particular patients and that you have taken money from at least two separate patients.

The charge against Grievant is essentially gross misconduct, as Respondent asserts Grievant verbally abused and exploited patients of the hospital. The issue before the undersigned Administrative Law Judge is whether Respondent met its burden of proof and demonstrated by a preponderance of evidence that Grievant engaged in this behavior.

The "term gross misconduct as used in the context of an employer-employee relationship implies a willful disregard of the employer's interest or a wanton disregard of standards of behavior which the employer has a right to expect of its employees." *Graley v. W. Va. Parkways Economic Dev. & Tourism Auth.*, Docket No. 91-PEDTA-225 (Dec. 23, 1991) (*citing Buskirk v. Civil Serv. Comm'n*, 175 W. Va. 279, 332 S.E.2d 579 (1985)). *See Evans v. Tax & Revenue/Ins. Comm'n*, Docket No. 02-INS-108 (Sept. 13, 2002).

Respondent has met its burden of proof. Grievant did verbally abuse and exploit patients at the hospital. Grievant's actions demonstrated a disregard for the residents, his employer's policies, and demonstrated abuse and exploitation of the patients. The reasons for Grievant's dismissal meet the requirements outlined in *Oakes*, *supra*.

Respondent is mandated to protect and care for a segment of the mentally challenged population of West Virginia. As a Health Service Worker within Sharpe Hospital, Grievant is responsible for the care and protection of the residents. The misconduct was of such a nature to justify Respondent's decision to terminate Grievant's employment.

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. Procedural Rules of the W. Va. Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2008); *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988).

2. Permanent state employees who are in the classified service can only be dismissed for "good cause," meaning "misconduct of a substantial nature directly affecting the rights and interest of the public, rather than upon trivial or inconsequential matters, or mere technical violations of statute or official duty without wrongful intention." Syl. Pt. 1, *Oakes v. W. Va. Dep't of Finance and Admin.*, 164 W. Va. 384, 264 S.E.2d 151 (1980); *Guine v. Civil Serv. Comm'n*, 149 W. Va. 461, 141 S.E.2d 364 (1965).

3. Respondent has met its burden of proving that Grievant's conduct was of a substantial nature directly affecting the rights and interest of the residents in question at Respondent's facility. Grievant was dismissed for good cause.

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: January 24, 2012**

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**Ronald L. Reece**
**Administrative Law Judge**