THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

SHERRY ANN COLEMAN,
Grievant,

v. **Docket No. 2011-1204-DHHR**

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

DECISION

_____Grievant, Sherry Coleman, filed this action on February 12, 2011, against her employer, William R. Sharpe, Jr. Hospital. The complaint arose when Grievant and a fellow employee were required to take three patients off the Transitional Living Facility's grounds. One of the patients had been placed on a 15-minute check due to reported suicidal thoughts. Grievant requests that, "Staff should not have to take residents off TLF grounds to smoke. Residents contemplating suicide should not be at the TLF until they are stabilized."

This grievance was denied at level one by Christina M. Bailey, Respondent's Grievance Evaluator, on July 7, 2011. A level two mediation session was conducted on February 13, 2012. Grievant perfected her appeal to level three on that same date. A level three hearing was conducted before the undersigned Administrative Law Judge on August 2, 2012. Grievant appeared in person and by her representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent appeared by its counsel, James "Jake" Wegman, Assistant Attorney General. This matter became

mature for consideration upon receipt of the last of the parties' fact/law proposals on September 24, 2012.

Synopsis

Grievant claims she should obtain relief from management decisions that constitute a substantial detriment to, or interference with, her health and safety. In particular, she claims she should not have been required to escort a patient who is actively suicidal. The record established that the patient's psychiatrist and therapist determined that the patient was merely having passive suicidal thoughts. In addition, the record established that the patient made no attempt to leave Grievant's presence or harm himself or others. Grievant failed to demonstrate that Respondent's decision was contrary to applicable law and policy, or was arbitrary and capricious.

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

Findings of Fact

1. Grievant is employed at Sharpe Hospital as a Health Service Assistant, and works primarily at the Transitional Living Facility ("TLF").

2. The TLF is a facility at Sharpe Hospital which houses patients who have successfully completed inpatient treatment programs at Sharpe Hospital. The facility's goal is to transition patients back into society. Patients going through the program pass through six phases, from level one to level six. After completion of level six, patients can be released from the TLF. TLF staff, mental health professionals, and independent mental health professionals are all involved in assessing the patient's progress through the levels.

3. Upon returning to the TLF from a multi-day pass, the patient in question reported having suicidal thoughts on the evening of February 8, 2011. It was reported that the patient saw the word “suicide” in his thoughts.

4. The next morning the patient was seen by mental health professionals at the United Summit Center, a facility which works in conjunction with the TLF. These professionals determined that the patient had passive suicidal thoughts and had no plan of action for suicide. The Summit Center mental health professionals were familiar with the patient, and had treated him previously.

5. It was recommended that the patient remain at level six with TLF, because he was not actively suicidal. TLF Director, Jenny Guzzi, notified all staff that the patient must be accompanied by staff at all times while outside the facility. The treatment team determined that allowing the patient to go off the grounds for tobacco use would be appropriate and guard against further aggravating the patient.

6. On the evening of February 9, 2011, Grievant and another employee escorted three patients, including the patient in question, off the grounds of the TLF, to a convenient store approximately 2 miles away from the hospital.

7. While at the convenient store, Grievant stayed outside with the patients as they smoked cigarettes.

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 Board 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 claims she should obtain relief from management decisions that constitute a substantial detriment to, or interference with, her health and safety. "A grievant's belief that his [her] supervisor's management decisions are incorrect is not grievable unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to, or interference with, the employee's effective job performance or health and safety." *Rice v. Div. of Highways*, Docket No. 96-DOH-247 (Aug. 29, 1997).

The record of this grievance established that on the morning of February 9, 2011, the patient in question was seen by a therapist and a psychiatrist at the United Summit Center. It was determined that the patient, while it was true that he reported suicidal thoughts, was only experiencing passive suicidal thoughts. It was also determined that the patient had no intention of harming himself, but wanted to make the staff aware of the thoughts. Management decided that the patient should remain at level six, but should be accompanied by staff when he left the grounds to observe his behavior. The record established that the patient made no suicide attempt or actual threat. In fact, while enjoying his cigarettes, the patient made no attempt to leave Grievant's presence or cause harm to himself or others.

Based upon the facts of this case, Grievant has failed to meet her burden of proof and demonstrate by a preponderance of the evidence that Respondent violated any law

or policy or acted in an arbitrary or capricious manner.[1] In summary, Grievant did not establish that Respondent's management decision constituted a substantial detriment to, or interference with, her health and safety.

The following conclusions of law support the decision reached.

Conclusion 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 Board 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).

2. "A grievant's belief that his [her] supervisor's management decisions are incorrect is not grievable unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to, or interference with, the employee's effective job performance or health and safety." *Rice v. Div. of Highways*, Docket No. 96-DOH-247 (Aug. 29, 1997).

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[1]The "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105; 556 S.E.2d 72 (2001)(*citing In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996)). "While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the employer]." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997); *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001).

3. Grievant has failed to prove a violation, misapplication or misinterpretation of any law, rule, regulation or policy under which she works in relation to her job duties.

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: November 9, 2012

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Ronald L. Reece
Administrative Law Judge