

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**BRANDI GALIANO,**

**Grievant,**

**v.**

**Docket No. 2022-0161-DHHR**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES/  
BUREAU FOR CHILDREN AND FAMILIES,**

**Respondent.**

**DECISION**

Grievant, Brandi Galiano, was employed by the Department of Health and Human Resources/Bureau For Children and Families, as a Social Worker III. Grievant filed the initial grievance directly to level three on or about September 7, 2021. This grievance challenges Grievant's dismissal from employment on August 23, 2021. A level three hearing was conducted before the undersigned on May 26, 2022, and July 21, 2022, by Zoom conferencing originating from the Westover office of the Public Employees Grievance Board. Grievant appeared in person, and by her representative, Chester Sprankle. Respondent appeared by Melanie Urquhart, and Brittany N. Ryers-Hindbaugh, Assistant Attorney General. This matter became mature for consideration upon receipt of the last of the parties' fact/law proposals on September 1, 2022.

**Synopsis**

Grievant was employed as a Social Service Worker III with the Bureau for Children and Families in Weston, West Virginia. Respondent met its burden of proof and demonstrated by a preponderance of the evidence that Grievant was dismissed for good cause. Respondent demonstrated that Grievant had a history of unsatisfactory

work performance. The record also established that Grievant missed Multi-Disciplinary Team meetings and court hearings. Respondent provided Grievant repeated and extensive attempts to correct her performance. Accordingly, this grievance is denied.

The following Findings of Fact are based upon the record of this case.

### **Findings of Fact**

1. Grievant was employed as a Social Service Worker III with the Bureau for Children and Families for approximately twenty years. Grievant was responsible for adoption services.

2. In 2019, Grievant began to demonstrate unsatisfactory work performance. Grievant failed to timely submit adoption packets, complete documentation, or complete various tasks assigned by her supervisor.

3. Grievant was placed on a Performance Improvement Plan from July 1, 2019 through September 30, 2019. During the Performance Improvement Plan, Grievant continued to miss visits with children and pre-adoptive families. As a result, Respondent received complaints about Grievant's failure to return phone calls, failure to contact families, and she began to miss court hearings.

4. Grievant was placed on another Performance Improvement Plan from December 11, 2019 through May 16, 2020. During the second Performance Improvement Plan, Grievant continued to miss court hearings.

5. Angie Sloan, Social Services Program Manager, discussed the social worker license renewal with Grievant and the responsibility of a social worker to renew their license.

6. Grievant failed to renew her social work license during the second Performance Improvement Plan. In addition, Grievant's face-to-face dashboard fell to 11-15% when the federal expectation is 95%.

7. Grievant was issued a 5-day suspension on May 4, 2020.

8. An additional 10-day suspension was issued to Grievant on December 2, 2020. Grievant continued to fail to timely complete her supervisor provided to-do list, failed to provide monthly reports timely, failed to provide requested training certificates, and failed to complete monthly contacts.

9. Grievant continued to miss court-ordered in-person contacts. Grievant continued to fail to finalize adoptions resulting in adoptions not being progressed in a timely manner as required by law.

10. Grievant was placed on a third Performance Improvement Plan on December 22, 2020.

11. Grievant participated in a predetermination conference with Jodi Conner, Adoption Program Manager, on August 6, 2021.

12. The purpose of the meeting was to inform the Grievant that disciplinary action was being considered and to give Grievant an opportunity to respond. Grievant provided no explanation for her unsatisfactory work performance.

13. Mary Rosanna is a Program Manager of Home Finding with the Bureau for Children and Families. Ms. Rosanna indicated that Grievant was ultimately dismissed for missing court hearings and a Multi-Disciplinary Team (MDT) meeting during her Performance Improvement Plan.

14. Grievant was familiar with the adoption process but failed to follow through on the adoption requirements resulting in delays in the adoption process. Grievant's continued job failures resulted in delayed court proceedings impacting children who were going through the adoption process. Grievant was terminated on August 23, 2021, with an effective date of September 7, 2021.

### **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 Rule of the W. Va. Public Employees Grievance Bd., 156 C.S.R. 1 § 3 (2018); *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988). The generally accepted meaning of preponderance of the evidence is "more likely than not." *Riggs v. Dep't of Transp.*, Docket No. 2009-0005-DOT (Aug. 4, 2009) *citing Jackson v. State Farm Mut. Ins. Co.*, 215 W. Va. 634, 640, 600 S.E.2d 346, 352 (2004). See *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. *Leichliter, supra*.

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, 51, 380 S.E.2d 216, 218 (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 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. 2, *Buskirk v. Civil Service Comm’n*, 175 W. Va. 279, 332 S.E.2d 579 (1985); Syl. Pt. 1, *Oakes v. W. Va. Dept. of Finance & Admin.*, 164 W. Va. 384, 264 S.E.2d 151 (1980). See *Guine v. Civil Service Comm’n*, 149 W. Va. 461, 468, 141 S.E.2d 364, 368-69 (1965); *Smith v. Clay County Health Dep’t*, Docket No. 2012-0451-ClaCH (Apr. 17, 2012).

The charge against Grievant is essentially gross misconduct. The "term gross misconduct as used in the context of an employeremployee 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. 91PEDTA225 (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. 02INS108 (Sept. 13, 2002).

The record of this case supports a finding that Respondent has met its burden of proof in establishing by a preponderance of the evidence that Grievant engaged in gross misconduct. The record established that Grievant failed to consistently and timely submit adoption packets, complete documentation, complete tasks, provide logs and reports, or initiate case transfer back to the district, despite Grievant’s direction to accomplish these tasks. Grievant failed to maintain her face-to-face dashboard at the 95% federal expectation. During Grievant’s supervisor absence, Grievant’s percentage dropped as low as 78%, indicating an unwillingness or inability to maintain without constant prompting.

It is undisputed that Grievant missed court hearings and MDT meetings. Respondent’s Foster Care Policy and Adoption Policy state throughout that a worker’s

responsibilities include MDT meetings and court hearings. The record also established that there had been repeated and extensive attempts to correct Grievant's performance since 2019. This began with multiple coaching sessions for missing scheduled court hearings and MDT meetings, being prepared for court hearings, keeping documentation up to date, and adhering to her work schedule. A Performance Improvement Plan was put in place in July of 2019. Grievant continued to miss visits with children and pre-adoptive families which resulted in complaints to her supervisor. Grievant missed a court hearing which resulted in the Assistant Prosecuting Attorney issuing a subpoena to ensure Grievant's attendance.

The record established that a second Performance Improvement Plan was put in place in late 2019 going through spring of 2020. During this time, Grievant missed a court hearing resulting in possible contempt of court. Grievant did not renew her social work license timely resulting in desk duty and failed to update her calendar with court dates and visits as required by her supervisor. As a result, Grievant was suspended on two different occasions. In December of 2020, Grievant was placed on a new Performance Improvement Plan. Grievant continued to demonstrate only fair performance and continued to demonstrate infractions that Respondent had been attempting to address

Grievant argues, through her representative, that Respondent engaged in a violation of policy, and failed to demote her in lieu of dismissing her from employment. Both arguments are without merit. The argument that Respondent violated policy by not informing Grievant that disciplinary action was being considered is not supported by the record. In fact, the record provided that Grievant was informed at the predetermination

conference with Jodi Conner, Adoption Program Manager, on August 6, 2021, that disciplinary action was being considered. The argument that Grievant should have been demoted does not have any factual support in the record. A demotion decision was discretionary, and there exists no evidence that Respondent's discretion in this matter was exercised in an arbitrary or capricious manner.

Grievant engaged in misconduct, if not gross misconduct, by failing to consistently and to timely submit adoption packets, complete documentation, complete tasks and provide reports, despite supervisor direction to accomplish these same tasks. Grievant also missed MDT meetings and court hearings several times throughout her Performance Improvement Plans. Respondent has met its burden of proof and established by a preponderance of the evidence that Grievant was dismissed from employment for good cause.

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 Rule of the W. Va. Public Employees Grievance Bd., 156 C.S.R. 1 § 3 (2018); *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988). The generally accepted meaning of preponderance of the evidence is "more likely than not." *Riggs v. Dep't of Transp.*, Docket No. 2009-0005-DOT (Aug. 4, 2009) *citing Jackson v. State Farm Mut. Ins. Co.*, 215 W. Va. 634, 640, 600 S.E.2d 346, 352 (2004). See *Leichliter v. W. Va. Dep't of Health & Human Res.*,

Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. *Leichliter, supra*.

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, 51, 380 S.E.2d 216, 218 (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 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. 2, *Buskirk v. Civil Service Comm'n*, 175 W. Va. 279, 332 S.E.2d 579 (1985); Syl. Pt. 1, *Oakes v. W. Va. Dept. of Finance & Admin.*, 164 W. Va. 384, 264 S.E.2d 151 (1980). See *Guine v. Civil Service Comm'n*, 149 W. Va. 461, 468, 141 S.E.2d 364, 368-69 (1965); *Smith v. Clay County Health Dep't*, Docket No. 2012-0451-ClaCH (Apr. 17, 2012).

3. The "term gross misconduct as used in the context of an employeremployee 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. 91PEDTA225 (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. 02INS108 (Sept. 13, 2002).



4. Respondent has met its burden of proof and established by a preponderance of the evidence that Grievant engaged in misconduct, which was good cause for dismissal from her employment.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Intermediate Court of Appeals.<sup>1</sup> Any such appeal must be filed within thirty (30) days of receipt of this Dismissal Order. 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 named as a party to the appeal. However, the appealing party is required to serve a copy of the appeal petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

**Date: October 17, 2022**

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

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<sup>1</sup>On April 8, 2021, Senate Bill 275 was enacted, creating the Intermediate Court of Appeals. The act conferred jurisdiction to the Intermediate Court of Appeals over “[f]inal judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to §29A-5-4 or any other provision of this code[.]” W. VA. CODE § 51-11-4(b)(4). The West Virginia Public Employees Grievance Procedure provides that an appeal of a Grievance Board decision be made to the Circuit Court of Kanawha County. W. VA. CODE § 6C-2-5. Although Senate Bill 275 did not specifically amend W. VA. CODE § 6C-2-5, it appears an appeal of a decision of the Public Employees Grievance Board now lies with the Intermediate Court of Appeals.