THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

CHESTINA D. MCKENZIE,

Grievant,

v. **Docket No. 2021-0537-DHHR**

DEPARTMENT OF HEALTH AND HUMANRESOURCES/
MILDRED MITCHELL BATEMAN HOSPITAL,

Respondent.

DECISION

Grievant, Chestina D. McKenzie, filed an expedited level three grievance against her employer, Respondent, Department of Health and Human Resources (DHHR), Mildred Mitchell Bateman Hospital (MMBH) on September 16, 2020, stating as follows: "[t]he Grievant was dismissed from her position without just cause." As relief sought, Grievant stated, "[t]o be made whole in every way, including, but not limited to, reinstatement of position along with any applicable lost time, benefits, and tenure, as well as removal of disciplinary action from the Grievant's files."

A level three hearing was held at the Grievance Board's Charleston, West Virginia, office on November 19, 2021, May 6, 2022, and June 23, 2022, by Zoom video conferencing.[1] This ALJ, the parties, and their representatives appeared from separate

[1] This matter was first scheduled for hearing on March 5, 2021. For good cause shown, this grievance was continued at the Grievant's request, and Respondent had no objection to the same. This grievance was rescheduled for hearing on July 28, 2021. Respondent requested this hearing be continued and Grievant had no objection to the same. For good cause shown, the hearing was continued and rescheduled to be held on November 19, 2021. On that day, the parties appeared, and the hearing commenced as schedule, but minutes into the hearing, Respondent requested a continuance because of an emergency. Grievant had no objection to the continuance. For good cause shown, the Respondent's request for hearing was granted. The matter was next scheduled for hearing on May 6, 2022. On that date, the parties appeared, but before

locations. At the final day of hearing, Grievant appeared in person and by her representative, Michael Hansen, UE Local 170, West Virginia Public Workers Union, and Respondent appeared by counsel, James "Jake" Wegman, Esquire, Assistant Attorney General.[2] Tamara Kuhn served as the Respondent's representative. Also appearing was Morgan Huyett, a summer intern at the Attorney General's office. Grievant had no objection to her attendance.

At the conclusion of the level three hearing on June 23, 2022, this ALJ set July 29, 2022, as the mailing date for the parties proposed post-hearing submissions. Mr. Hansen retired from the UE following this hearing, and Samantha Crockett resumed being Grievant's representative and prepared Grievant's post hearing submissions. On July 5, 2022, Grievant requested an extension of the submission date. There being no objection to Grievant's request, and for good cause shown, on July 6, 2022, this ALJ granted the request and changed the date to August 8, 2022. On August 10, 2022, Grievant requested a second extension to the first week of September be granted. There being no objection to Grievant's request, and for good cause shown, on that same date, this ALJ granted the request and changed the mailing date to September 2, 2022. This matter became mature upon the receipt of the last of the parties' final proposed post-hearing submissions on September 6, 2022.

Synopsis

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the commencement of the hearing, both Grievant and Respondent requested a continuance so that they could review the record of the first day of hearing. For good cause shown, the hearing was continued. The grievance was rescheduled to June 23, 2022, at which time all parties appeared, and the hearing commenced as scheduled.

[2] At the first day of hearing, Ms. Crockett appeared as Grievant's representative, and Stephen R. Compton, Esq., Deputy Attorney General. At the second hearing, Grievant was represented by Michael Hansen, UE Local 170, West Virginia Public Workers Union, and Respondent, by Mr. Wegman.

Respondent dismissed Grievant from employment for patient neglect in violation of state regulations and Mildred Mitchell-Bateman Hospital policy. Grievant admits to failing to strictly comply with the same, but denies neglecting the patient. Respondent proved by a preponderance of the evidence that Grievant actions constituted patient neglect and that such justified Grievant's dismissal. Therefore, the grievance is DENIED.

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

Findings of Fact

1. Grievant was employed by Respondent as a health service worker (HSW) at Mildred Mitchell-Bateman Hospital (MMBH), which is a state-owned psychiatric hospital operated by DHHR. Grievant had been so employed by Respondent since 2019.

2. T.S. is a patient who resides at MMBH. Upon physician or treatment team's orders, T.S. is required to be observed continuously by hospital staff on a one-on-one basis. One-on-one (1:1) observation is considered "strict" and requires "[t]he assigned staff must keep the patient within intervening distance (arm's length and/or one step back) at all times."[3]

3. Grievant successfully completed the required training on 1:1 observations on November 24, 2019.

4. Grievant was assigned to care for T.S. adhering to 1:1 observations during her shift on August 17, 2020. Grievant was reluctant to work with T.S. because about

[3] *See*, Respondent's Exhibit 11, MMBH Policy Number

two weeks before, on July 30, 2020, Grievant was assigned to provide 1:1 care for T.S., and during that time, T.S. claimed to have swallowed a zipper to get Grievant disciplined. Grievant was suspended pending investigation and both Adult Protective Services and the Legal Aid of West Virginia patient advocate stationed at MMBH investigated the claim. T.S. was examined at the facility following her claim and she had not swallowed a zipper. Eventually, both investigations into the incident concluded that Grievant had neither abused nor neglected T.S.

5. Grievant's first day back at work following the suspension pending investigation was August 17, 2020.

6. Grievant went to then-Assistant Chief Nurse Executive Jami Boykin and asked for her assignment to be changed, but Ms. Boykin refused.

7. T.S. was in the hall when Grievant arrived for her 1:1 duty, and T.S. then told Grievant that she needed to go to the bathroom. Grievant and T.S. went into T.S.'s room and T.S. went into the bathroom and sat on the toilet while Grievant sat on T.S.'s bed facing T.S. At that time T.S. told Grievant that she swallowed an ink pen. T.S. stated that she had the pen up her sleeve and swallowed it to get Grievant fired. Grievant had not seen T.S. swallow a pen. Grievant reported T.S.'s allegations. T.S. then told Grievant she had swallowed the pen to get Grievant fired.

8. Then Assistant Chief Nurse Executive Jami Boykin completed an APS referral about the T.S. incident, as well as an MMBH incident form, and a patient grievance form for T.S. DON Boykin asked Grievant to draft a statement about the incident. The submission of these documents prompted both an APS investigation and

a separate investigation at MMBH via its Patient Advocate, Teri Stone, and RN Debbie Frasher, MMBH Staff Investigator.

9. Grievant was suspended pending investigation into the August 17, 2020, incident.

10. Grievant's statement about the August 17, 2020, event states as follows:

> 5:00 PM this even[ing] I was on facecheck and was helping out with meals. Wh[ile] I was in the hall I could hear her cussing at me. I went to the RN an[d] ask[ed] if someone else could sit with her at 6 an[d] if I could take a break. I went an[d] talked to Jamie to see if I could go to another unit. She said just go back to your unit an[d] see how things go. So when I got off the elevator Jennifer was in the hall at the phone wanted me to take [T.S.] so I did. T.S. got off the phone said she needed to use the bathroom so I took her I sat on the bed facing her. She was only on the toilet about a minute an[d] got up an[d] said she swallowed a pen that she had it up her sleeve. I didn't see her do anything. We go out in the hall an[d] she looked at me and said she did it to get me fired.[4]

11. T.S. was examined and it was confirmed that she had swallowed an ink pen. The pen was in T.S.'s stomach. T.S. underwent a surgical procedure during which the ink pen was removed using "raptor forceps," also called "rat-tooth forceps." T.S. was sedated during the procedure, but no incision was required. This procedure is considered an invasive procedure.[5]

12. There is no evidence to establish exactly when T.S. swallowed the ink pen. All that is known for certain is the time at which T.S. told Grievant about it.

13. Ms. Stone began her investigation into the incident on August 18, 2020. Ms. Stone reviewed the "pre-investigation packet," chart documentation, and Grievant's

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[4] *See*, Respondent's Exhibit 4, Grievant's statement.
[5] *See*, Respondent's Exhibit 7, August 18, 2020, Operative Report.

written statement. Ms. Stone noted in her report that she spoke to Kim Mannon, Assistant CEO, on August 18, 2020, who confirmed that T.S. swallowed a pen, and she received an email from RN Nurse Manager Denise Cihy in which she which explained that staff are told to interpret "intervening distance" as "arm's length and/or one step back" from the patient. Ms. Stone did not interview T.S., Grievant, or anyone else during her investigation.

14. Ms. Stone finished her investigation on August 25, 2020. In her investigation report, Ms. Stone concludes that Grievant's actions met the definition of neglect "due to failing to provide the required level of supervision for the patient based on her 1:1 monitoring level" because Grievant sat on T.S.'s bed while T.S. was in the bathroom and was not within intervening distance from her.[6]

15. After receiving Ms. Stone's report, Tamara Kuhn, MMBH Director of Human Resources, scheduled a predetermination conference for Grievant to be held on September 1, 2020. In attendance on that date were Grievant, Ms. Kuhn, Assistant CEO Mannon, and Susan Kelly-Jarrell, Assistant Director of Nursing. During the conference, Grievant admitted that she had not been an arm's length away from T.S. while she was in the bathroom.

16. By letter dated September 8, 2020, Grievant was notified that she was dismissed from employment, effective September 24, 2020, for neglect in violation of W.VA. CODE ST. R. § 64-59-3.12. and MMBH Policy MMBHE018 because Grievant failed to comply with the required 1:1 observations.

Discussion

[6] *See*, Respondent's Exhibit 3, Grievant's Exhibit 1, Investigation Report.

The burden of proof in disciplinary matters rests with the employer to prove by a preponderance of the evidence that the disciplinary action taken was justified. W.VA. CODE ST. R. § 156-1-3 (2018). "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). Where the evidence equally supports both sides, the employer has not met its burden. *Id*.

Permanent state employees who are in the classified service can only be dismissed "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. 1, *Oakes v. W. Va. Dep't of Finance & 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); *Sloan v. Dep't of Health & Human Res.*, 215 W. Va. 657, 600 S.E.2d 554 (2004) (*per curiam*). *See also* W. VA. CODE ST. R. § 143-1-12.2.a. (2016). "Although it is true that dismissal is inappropriate when the employee's violation is found to be merely a technical one, it is also true that seriously wrongful conduct can lead to dismissal even if it is not a technical violation of any statute. . . The test is not whether the conduct breaks a specific law, but rather whether it is potentially damaging to the rights and interests of the public." *W. Va. Dep't of Corr. v. Lemasters*, 173 W. Va. 159, 162, 313 S.E.2d 436, 439 (1984). "'Good cause' for dismissal will be found when an employee's conduct shows a gross disregard for professional responsibilities or the public safety."

Drown v. W. Va. Civil Serv. Comm'n, 180 W. Va. 143, 145, 375 S.E.2d 775, 777 (1988) (*per curiam*).

Respondent dismissed Grievant for neglect pursuant to W.VA. CODE ST. R. § 64-59-3.12. and MMBH Policy MMBHE018 by failing to adhere to 1:1 observations while T.S. was in the bathroom, and T.S. was found to have swallowed the pen and required an invasive procedure to remove it from her stomach. Grievant admits that she was not complying with 1:1 observations, but that she did not see T.S. swallow the pen and there is no way to determine when T.S. swallowed it. Grievant contends that T.S. could have swallowed the pen at any point during that day.

Neglect is defined as "[a]ny negligent, reckless or intentional failure to meet the needs of a client, or applicable statutory or regulatory requirements, including, but not limited to: lack of needed supervision, nutritional deprivation, or failure to implement or update a treatment plan." W.VA. CODE ST. R. § 64-59-3.12. The MMBH Policy MMBHE018 definition of neglect is identical.

Given the evidence presented, Grievant has admitted her failure to comply with 1:1 observations requirements because she did not stay within an arm's length of T.S. during the time she was in the bathroom. Given Grievant's training and her knowledge that T.S. had claimed to swallow a zipper only two weeks prior, Grievant's failure to stay within an arm's length of T.S. while in the bathroom compromised T.S.'s safety. Further, the Grievant's failure to provide T.S. with the needed level of supervision is by, definition, neglect. Therefore, Respondent has proved by a preponderance of the evidence that Grievant's actions toward T.S. on August 17, 2020, constitute neglect. It is true that there is no way to tell exactly when T.S. swallowed the pen, but if Grievant

had been following the requirements of 1:1 observations it would be known whether T.S. swallowed the pen while she was in the bathroom. Further, Ms. Stone's investigation was poor, but Grievant admitted to neglect. T.S. was found to have swallowed the pen as she claimed, and surgery was required to remove it from her stomach.

An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. *See Bedford County Memorial Hosp. v. Health & Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health & Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff'd* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998).

"'[T]he "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. Syllabus Point 3, *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996).'" Syl. Pt. 1, *Adkins v. W. Va. Dep't of Educ.,* 210 W. Va. 105, 556 S.E.2d 72 (2001) (*per curiam*). "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 & Human Res.,* Docket No. 93-HHR-322 (June 27, 1997), *aff'd* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998); *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001), *aff'd* Kanawha Cnty. Cir. Ct. Docket No. 01-AA-161 (July 2, 2002), *appeal refused*, W.Va. Sup. Ct. App. Docket No. 022387 (Apr. 10, 2003). Based upon the evidence presented, this ALJ cannot find that Respondent's decision to dismiss Grievant was arbitrary and capricious, or otherwise unreasonable.

Grievant argues that her dismissal was excessive discipline. "[A]n allegation that a particular disciplinary measure is disproportionate to the offense proven, or otherwise arbitrary and capricious, is an affirmative defense and the grievant bears the burden of demonstrating that the penalty was 'clearly excessive or reflects an abuse of agency discretion or an inherent disproportion between the offense and the personnel action.' *Martin v. W. Va. Fire Comm'n,* Docket No. 89-SFC-145 (Aug. 8, 1989)." *Conner v. Barbour County Bd. of Educ*., Docket No. 94-01-394 (Jan. 31, 1995), *aff'd*, Kanawha Cnty. Cir. Ct. Docket No 95-AA-66 (May 1, 1996), *appeal refused*, W.Va. Sup. Ct. App. (Nov. 19, 1996). "Mitigation of the punishment imposed by an employer is extraordinary relief, and is granted only when there is a showing that a particular disciplinary measure is so clearly disproportionate to the employee's offense that it indicates an abuse of discretion. Considerable deference is afforded the employer's assessment of the seriousness of the employee's conduct and the prospects for rehabilitation." *Overbee v. Dep't of Health & Human Res./Welch Emergency Hosp*., Docket No. 96-HHR-183 (Oct. 3, 1996); *Olsen v. Kanawha County Bd. of Educ.*, Docket No. 02-20-380 (May 30,

2003), *aff'd*, Kanawha Cnty. Cir. Ct. Docket No. 03-AA-94 (Jan. 30, 2004), *appeal refused*, W.Va. Sup. Ct. App. Docket No. 041105 (Sept. 30, 2004). "When considering whether to mitigate the punishment, factors to be considered include the employee's work history and personnel evaluations; whether the penalty is clearly disproportionate to the offense proven; the penalties employed by the employer against other employees guilty of similar offenses; and the clarity with which the employee was advised of prohibitions against the conduct involved." *Phillips v. Summers County Bd. of Educ.*, Docket No. 93-45-105 (Mar. 31, 1994); *Cooper v. Raleigh County Bd. of Educ.*, Docket No. 2014-0028-RalED (Apr. 30, 2014), *aff'd*, Kanawha Cnty. Cir. Ct. Docket No. 14-AA-54 (Jan. 16, 2015).

While Respondent had the authority to dismiss Grievant for her conduct, Respondent was not required to do so. However, Respondent has the discretion to determine the discipline to be imposed upon an employee, and this ALJ cannot substitute her judgment for that of the employer. Given that Respondent has proved the charge of neglect, and as T.S. swallowed a pen and required surgery to remove it from her stomach, there was good cause for Grievant's dismissal. This ALJ cannot conclude that Respondent's decision to dismiss Grievant from employment was unreasonable, or otherwise arbitrary and capricious. Accordingly, this grievance is DENIED.

The following Conclusions of Law support the decision reached:

Conclusions of Law

1. The burden of proof in disciplinary matters rests with the employer to prove by a preponderance of the evidence that the disciplinary action taken was justified. W.VA. CODE ST. R. § 156-1-3 (2018). "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). Where the evidence equally supports both sides, the employer has not met its burden. *Id*.

2. Permanent state employees who are in the classified service can only be dismissed "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. 1, *Oakes v. W. Va. Dep't of Finance & 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); *Sloan v. Dep't of Health & Human Res.*, 215 W. Va. 657, 600 S.E.2d 554 (2004) (*per curiam*). *See also* W. VA. CODE ST. R. § 143-1-12.2.a. (2016). "Although it is true that dismissal is inappropriate when the employee's violation is found to be merely a technical one, it is also true that seriously wrongful conduct can lead to dismissal even if it is not a technical violation of any statute. . . The test is not whether the conduct breaks a specific law, but rather whether it is potentially damaging to the rights and interests of the public." *W. Va. Dep't of Corr. v. Lemasters*, 173 W. Va. 159, 162, 313 S.E.2d 436, 439 (1984). "'Good cause' for dismissal will be found when an employee's conduct shows a gross disregard for professional responsibilities or the public safety." *Drown v. W. Va. Civil Serv. Comm'n*, 180 W. Va. 143, 145, 375 S.E.2d 775, 777 (1988) (*per curiam*).

3. "Neglect" is defined as "[a]ny negligent, reckless or intentional failure to meet the needs of a client, or applicable statutory or regulatory requirements, including,

but not limited to: lack of needed supervision, nutritional deprivation, or failure to implement or update a treatment plan." W.VA. CODE ST. R. § 64-59-3.12. and MMBH Policy MMBHE018.

4. "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. *See Bedford County Memorial Hosp. v. Health & Human Serv.,* 789 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind,* Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health & Human Res.*, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *See State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Id. (citing Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

5. "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 a board of education." *See generally, Harrison v. Ginsberg,* [169 W. Va. 162], 286 S.E.2d 276, 283 (W. Va. 1982)*." Trimboli v. Dep't of Health & Human Res.*, Docket No. 93-HHR-322 (June 27, 1997).

6. "[A]n allegation that a particular disciplinary measure is disproportionate to the offense proven, or otherwise arbitrary and capricious, is an affirmative defense and the grievant bears the burden of demonstrating that the penalty was 'clearly excessive

or reflects an abuse of agency discretion or an inherent disproportion between the offense and the personnel action.' *Martin v. W. Va. Fire Comm'n,* Docket No. 89-SFC-145 (Aug. 8, 1989)." *Conner v. Barbour County Bd. of Educ*., Docket No. 94-01-394 (Jan. 31, 1995), *aff'd*, Kanawha Cnty. Cir. Ct. Docket No 95-AA-66 (May 1, 1996), *appeal refused*, W.Va. Sup. Ct. App. (Nov. 19, 1996). "Mitigation of the punishment imposed by an employer is extraordinary relief, and is granted only when there is a showing that a particular disciplinary measure is so clearly disproportionate to the employee's offense that it indicates an abuse of discretion. Considerable deference is afforded the employer's assessment of the seriousness of the employee's conduct and the prospects for rehabilitation." *Overbee v. Dep't of Health & Human Res./Welch Emergency Hosp*., Docket No. 96-HHR-183 (Oct. 3, 1996); *Olsen v. Kanawha County Bd. of Educ.*, Docket No. 02-20-380 (May 30, 2003), *aff'd*, Kanawha Cnty. Cir. Ct. Docket No. 03-AA-94 (Jan. 30, 2004), *appeal refused*, W.Va. Sup. Ct. App. Docket No. 041105 (Sept. 30, 2004). "When considering whether to mitigate the punishment, factors to be considered include the employee's work history and personnel evaluations; whether the penalty is clearly disproportionate to the offense proven; the penalties employed by the employer against other employees guilty of similar offenses; and the clarity with which the employee was advised of prohibitions against the conduct involved." *Phillips v. Summers County Bd. of Educ.*, Docket No. 93-45-105 (Mar. 31, 1994); *Cooper v. Raleigh County Bd. of Educ.*, Docket No. 2014-0028-RalED (Apr. 30, 2014), *aff'd*, Kanawha Cnty. Cir. Ct. Docket No. 14-AA-54 (Jan. 16, 2015).

7. Respondent proved by a preponderance of the evidence that Grievant's conduct on August 17, 2020, meets the definition of neglect and that the same justifies Respondent's decision to dismiss her from employment.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Intermediate Court of Appeals.[7] Any such appeal must be filed within thirty (30) days of receipt of this decision. 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 19, 2022.

Carrie H. LeFevre
Administrative Law Judge

[7] 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 West Virginia 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.