

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**MYCAH AUVILLE,**

**Grievant,**

**v.**

**Docket No. 2023-0511-CONS**

**WOOD COUNTY BOARD OF EDUCATION,**

**Respondent.**

**DECISION**

Grievant, Dr. Mycah Elizabeth Auville, Ed D., is employed by Respondent, the Wood County Board of Education, as a multi-categorical special education teacher. Grievant filed multiple level one grievances beginning on November 17, 2022<sup>1</sup>. In each grievance, Grievant filed lengthy statements that are incorporated in full by reference. In all Grievant's grievances, Grievant alleged she suffered from acts of reprisal, retaliation, and harassment, had her confidentiality breached, and was incorrectly charged paid leave time for preparing for and participating in her own grievances. For relief, Grievant initially sought to have her benefit time returned. At the level three hearing, Grievant admitted her benefit time was returned and she was now only pursuing claims of reprisal, retaliation, and harassment against Respondent.

Grievant filed her first two level one grievances on November 17, 2022, and November 30, 2022. These two grievances were consolidated at level one under docket number 2023-0511-CONS. Following the December 14, 2022, level one hearing, a level one decision was rendered on January 13, 2023. Grievant then filed another level one

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<sup>1</sup> Docket numbers 2023-0398-WooED and 2023-0397-WooED were consolidated at the level one hearing. Grievant later filed grievances assigned docket numbers 2023-0574-WooED and 2023-0599-WooED, which were later consolidated here.

grievance dated January 14, 2023<sup>2</sup> alleging she was incorrectly charged a half day of paid leave time to attend a telephonic hearing in a previously filed grievance. Grievant filed her last grievance on January 25, 2023,<sup>3</sup> alleging various acts of reprisal, retaliation and harassment relating to participating in her grievance hearing on January 13, 2023. These later two grievances were also consolidated into docket number 2023-0511-CONS by order of the Grievance Board on July 13, 2023.

Grievant appealed her initial grievance to level two on January 22, 2023. Following unsuccessful mediation, Grievant appealed to level three of the grievance process on April 18, 2023. After all grievances here were consolidated<sup>4</sup>, a level three hearing was held before the undersigned on October 11, 12 and 13, 2023, at the Grievance Board's Charleston, West Virginia office. Grievant appeared in person and was represented by her husband, Benjamin Auville. Respondent appeared by Wood County Board of Education Superintendent, Christie Willis, and was represented by Richard S. Boothby Esquire, Bowles Rice LLP. This matter became mature for decision on November 30, 2023, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

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<sup>2</sup> Docket No. 2023-0574-WooED.

<sup>3</sup> Docket No. 2023-0599-WooED.

<sup>4</sup> Please note, Grievant has filed other grievances for other various allegations not related to the events here. Some of her grievances have been ruled on, some withdrawn, and some are still pending. Grievant has withdrawn Dockets 2023-0107-WooED, 2023-0573-WooED, 2024-0002-WooED, 2024-0003-WooEd and 2024-0075-WooED for events unrelated to the allegations here. Please also note that due to the number of grievances filed, Respondent has filed a motion for bad faith determination and allocation of costs to Grievant pursuant to W. VA. CODE § 6C-2-4(c)(6) which will not be discussed here.

## **Synopsis**

Grievant argues she suffered from acts of reprisal, retaliation, and harassment by having her paid leave days taken away for preparing for and participating in her own grievances. Grievant also claims she was harassed due to her right to confidentiality being breached by other school employees finding out she was absent due to participating in a grievance. Grievant claimed Respondent's actions caused her a financial loss. Grievant failed to establish Respondent committed acts of reprisal, retaliation, or harassment when Grievant knowingly input the wrong absence code into the school's Substitute Employment Management System ("SEMS") for each grievance she prepared for and attended. Grievant suffered no loss when her paid leave time was returned due to requesting her SEMS code to be corrected. Accordingly, 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 has been employed by Respondent as a multi-categorical special education teacher at Parkersburg South High School since 2019.
2. School employees, including Grievant, are responsible for entering and monitoring their absences in the Substitute Employment Management System ("SEMS"), an on-line platform. (*See Respondent's Exhibit No. 36*).
3. Some schools, including Grievant's school, allow employees to either enter their requested paid time off by using the SEMS' online platform or by filling out a paper "absence request form." If the absence request form is used, it must be turned in to the

school's secretary who then manually enters the information in the SEMS. (See *Respondent's Exhibit Nos. 4 and 37*).

4. Employees must identify the type of absence by recording the proper code for the type of absence.

5. Grievant was aware of how to use the online platform and the absence request form.

6. Full-time West Virginia school employees' benefits include, among other things, 15 paid leave days per school year. However, full-time school employees may use no more than five paid leave days each school year without regard to cause. Paid days off without regard to cause are sometimes referred to as "SB6 days<sup>5</sup>," which is the code used for that type of absence in the SEMS.

7. Attending a grievance proceeding does not count against the five paid leave days for school employees. The SEMS code for attending a grievance is "other approved assignment" ("OAA").

8. If a school employee does not code their absence in the SEMS correctly, then the school employee can request it to be changed so they will not be charged for a paid leave absence.

9. Grievant needed to be absent from employment due to participating in a grievance on multiple occasions. Grievant chose to fill out an absence request form each time instead of using the online platform for her grievances.

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<sup>5</sup> "SB6" is the term used for "Senate Bill 6" which dealt with "Personal Leave without Cause" for school employees from a past legislative session.

10. The absence request form did not specifically include a selection for inputting the proper OAA code for absences for grievance related events.

11. Grievant knew the proper code was OAA, but each time, Grievant checked “SB6” as the reason for her absence on the days she was to appear for grievance related events because OAA was not an option on the form.

12. Grievant made no attempt to seek clarification regarding the missing code on the form.

13. Grievant turned in her absence request form to the secretary at Parkersburg South High School, Beth Baker. Beth Baker then entered Grievant’s absence request form into the SEMS using the “SB6” code.

14. Grievant coded her time off for September 19, 2022, as an SB6 day.

15. SB6 was not the right SEMS code for this grievance related event. By entering SB6 day, Grievant was charged with using one of her five paid leave days without cause for the 2022-2023 school year.

16. The September 19, 2022, level one hearing began at 9:00 a.m. and concluded at 10:01 a.m. (*See Respondent’s Exhibit No. 5*).

17. It was Grievant’s understanding that she was allowed up to four working hours to “prepare<sup>6</sup>” for her grievance, which Grievant interpreted to include up to four hours after her grievance had concluded to prepare for the next level of the grievance process.

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<sup>6</sup> Neither party chose to argue whether the term “prepare” was only to be used to be used before a grievance hearing or could also be used up to four hours after a grievance hearing had concluded.

18. After the September 19, 2022, level one hearing ended at 10:01 a.m., the grievant “used the afternoon to prepare for the next level of mediation and took [her] lunch and plan period off campus” because this was the “best time to discuss, plan, and strategize for one of these grievances . . . right after a hearing when the information is fresh in the mind.” (*See Respondent’s Exhibit No. 7*).

19. Grievant did not inform Respondent or any other school employee that she planned to use the rest of the day on September 19, 2022, to prepare for one of her pending grievances.

20. Blennerhassett Elementary School Principal Betsy Patterson was forced to call in a substitute teacher for the full day to cover Grievant’s class on September 19, 2023.

21. When Grievant failed to return to school on September 19, 2023, without notice, Principal Patterson assumed Grievant had taken the full day off and changed the coding for September 19, 2022, from full day SB6 to half-day OAA and half-day SB6. (*See Respondent’s Exhibit Nos. 6*).

22. Grievance checked her paystub and noticed she was charged a full day for SB6 time for September 19, 2022, when she did not return to school after attending her grievance.

23. On November 7, 2022, Grievant attended level two mediations in Charleston, West Virginia in docket number 2023-0107-WooED and docket number 2023-0115-WooED. (*See Respondent’s Exhibit No. 8*).

24. Grievant again filled out an employee absence form for November 7, 2022, and selected SB6 as the code for the reason for her absence. (*See Respondent's Exhibit No. 8*).

25. SB6 was not the correct SEMS code for participating in grievance related events. By entering SB6 for November 7, 2023, Grievant was charged with using one of her five leave without cause days for the 2022-2023 school year. (*See Respondent's Exhibit No. 13*).

26. After the mediations concluded, Grievant again "used the afternoon to prepare for the next level of mediation and took [her] lunch and plan period off campus" because this was the "best time to discuss, plan, and strategize for one of these grievances . . . right after a hearing when the information is fresh in the mind." (*See Respondent's Exhibit No. 8*).

27. Grievant again failed to inform Principal Patterson or any school employee that she planned to use the rest of the day on November 7, 2022, to prepare for one of her pending grievances.

28. On or about December 2, 2022, Grievant filed a level one grievance concerning being charged a paid time off day for November 7, 2022. (*See Respondent's Exhibit No. 8*).

29. On December 2, 2022, Grievant attended an approximately 45-minute telephone conference with her representative, the assigned administrative law judge, a representative of Respondent and counsel for Respondent regarding the possible consolidation of grievances and being charged paid time leave for attending her grievance. (*See Respondent's Exhibit No. 20*).

30. Grievant filled out another employee absence form for a half day to attend the December 2, 2022, conference call. Grievant selected SB6 on her employee absence from. (*See Respondent's Exhibit No. 20*).

31. SB6 was not the right SEMS code for the grievance related telephone conference. By entering an SB6 day, Grievant was charged using half of one of her five leave without cause days for the 2022-2023 school year.

32. On January 14, 2023, Grievant filed a level one grievance concerning her being charged for using one of her paid time off days for attending the December 2, 2022, conference call. (*See Respondent's Exhibit 20*).

33. On January 13, 2023, Grievant attended a level three hearing in Charleston, West Virginia for her grievance with Docket No. 2022-0107-WooED. (*See Respondent's Exhibit No. 27*).

34. For the January 13, 2023, grievance, Grievant selected SB6 as her reasoning to needing to be absence. Grievant entered a full SB6 day absence to attend the January 13, 2023, grievance. (*See Respondent's Exhibit No. 25*).

35. SB6 was not the correct SEMS code for the January 13, 2023, level three grievance hearing. By entering SB6, Grievant was charged with using one of her five leave without cause days for the 2022-2023 school year.

36. On days Grievant was scheduled to be absent, Principal Patterson had to assign and pay a substitute teacher to fill in Grievant's classroom.

37. Superintendent Christie Willis and Assistant Superintendent John Merritt were both in Charleston for Grievant's level three hearing on January 13, 2023. Mr. Merritt



is the Respondent's agent charged with managing time off for participation in W. Va Public Employee Grievance Board Processes.

38. The level three hearing on January 13, 2023, was halted and subsequently rescheduled for May 10-12, 2023. (*See Respondent's Exhibit No. 27*).

39. Because the level three hearing was continued, Superintendent Willis directed Mr. Merritt to alert SEMS coordinator Terry Harris that Grievant would be returning to school that same day.

40. Mr. Merritt sent an email to Terry Harris from his phone at 10:36 a.m. on January 13, 2023, which stated: "Please make sure that Auville is off this morning as other approved assignment. She will be back at work this afternoon. I know we already have a sub there. (See Respondent's Level One Exhibit No. 6 in Docket No. 2023-0599-WooED).

41. Ms. Harris forwarded Mr. Merritt's email to Principal Patterson and Ms. Baker at 10:54 a.m. (See Respondent's Level One Exhibit No. 6).

42. Principal Patterson was under the impression from Mr. Merritt's email that Grievant would be back at work in time for the afternoon classes.

43. At 11:55 a.m., Principal Patterson noticed that Grievant had not arrived yet at PSHS and informed Ms. Harris and Ms. Baker via email that Grievant's afternoon absence was to be documented as SB6 because she was made aware the grievance hearing had concluded and she had expected Grievant to have returned to her classroom. (*See Respondent's Level One Exhibit No. 6*).

44. Grievant drove back to Parkersburg, West Virginia, changed her clothes, had lunch, and then returned to work later in the day at Parkersburg South High School.

45. Upon returning to the school, Grievant was alerted that Principal Patterson wanted to see Grievant. Grievant became anxious hearing that Principal Patterson wanted to see her in her office and subjectively felt she was being “targeted” by Principal Patterson due to her grievance related events.

46. Grievant entered the school’s office at around 1:03p.m. and had a brief conversation with Principal Patterson. During their conversation, Principal Patterson asked Grievant about why it had taken so long for her to get back to school, asked about her plan for the remainder of the workday, and asked what should be done about the substitute teacher that was already working Grievant’s classroom that day. (See *Respondent’s Level One Exhibit No. 9*).

47. Principal Patterson is responsible for overseeing the cost of school employees, including substitute employees, at PSHS. Principal Patterson was forced to pay the substitute teacher for a full day for January 13, 2023, even after Grievant returned to school.

48. At 1:10 p.m. on January 13, 2023, Principal Patterson informed Ms. Harris, Ms. Baker, and Mr. Merritt that Grievant had arrived at work and requested Grievant’s paid leave absence for the afternoon of January 13, 2023, be removed from SEMS. (See *Respondent’s Level One Exhibit No. 6*).

49. Grievant was not charged any paid leave time from her accrued paid leave account balance for her grievance-related half-day absence on January 13, 2023.

50. At some point on January 13, 2023, after meeting with Principal Patterson, Grievant communicated with her representative husband regarding her conversation with Principal Patterson.

51. At approximately 1:25 p.m., on January 13, 2023, Grievant's representative emailed Superintendent Willis regarding Principal Patterson's conversation with Grievant. Grievant's representative informed Superintendent Willis that Grievant was being targeted due to her grievances and her privacy has been violated due to people not attending the grievance being made aware Grievant had attended a grievance. Particularly, in his email, Grievant's representative stated that Grievant was "immediately called in by her principal ... and was questioned on information that [Grievant] does not, and never has, consent[ed] to sharing with her principal. Betsy knows things Betsy should not know. Betsy just targeted her employee based on Dr. Auville's participation in the Grievance Process today." (See *Grievant's Exhibit No. 6*). Grievant's representative then asked the superintendent, "are you going to do anything about it?" *Id.*

52. Superintendent Willis responded to Grievant's representative's email by saying she took his allegations seriously and ordered an investigation into the allegations of harassment.

53. Superintendent Willis hired an outside investigator to investigate Grievant's representative's claims regarding Grievant being targeted and harassed by Principal Patterson.

54. As part of his investigation, the outside investigator spoke to relevant employees about the events of January 13, 2023. (See *Respondent's Exhibit No. 29*). Grievant chose not to be interviewed by the investigator due to her representative not being present<sup>7</sup>. (See *Respondent's Exhibit No. 29*).

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<sup>7</sup> Grievant did attempt to reach her representative but was unsuccessful. The investigator left Grievant his business card. At the level three hearing, Grievant's representative asserted he did attempt to contact the investigator to no avail.

55. At the level three hearing, Grievant admitted she was aware that SB6 is not the correct SEMS code for grievance-related events and was aware the employee absence form did not include OAA as an option.

56. Due to not having OAA as an option, Grievant admitted she created her own process to request time off to attend grievances and would choose SB6 as her reason for needing to be absent. (*See Grievant's testimony at level three hearing*).

57. Grievant wanted to be discreet regarding her grievances and did not want other school employees to be aware she was attending a grievance.

58. Grievant is aware that Ms. Harris is the SEMS coordinator and can change the codes for incorrect absences previously entered the SEMS. (*See Respondent's Exhibit No. 3 at bates p. 6; Respondent's Exhibit No. 4*).

59. On December 5, 2022, Grievant informed Beth Baker that some of her absences were related to grievances. (*See Respondent's Exhibit No. 30*).

60. Grievant requested to have her previously charged paid sick days to be returned to her account. At the level three hearing, Grievant stated that she was not seeking the return of any paid leave days from Respondent as relief as all her time had been corrected and returned. (*See Level Three Testimony of Grievant*).

61. Grievant's representative is her husband who previously served in the United State's Airforce.

### **Discussion**

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. 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. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff’d*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

Grievant argues she was targeted for being a military spouse and suffered from deliberate acts of reprisal, retaliation, and harassment for preparing for and participating in the grievance process. Grievant claims she was harassed by having her confidentiality of participating in the grievance process breached due to several school employees learning about her being involved in grievance hearings. Grievant asserts she has suffered financial loss from being improperly charged paid leave days for being absent from school on days she participated in grievance hearings.<sup>8</sup>

Respondent denied any acts of reprisal, harassment, or retaliation. Respondent argues Grievant knowingly entered the wrong code for her reasons for being absent in the school’s system each time she attended grievances. Respondent asserts the code Grievant selected caused Grievant to be charged for a paid sick day. Respondent argues it did not violate Grievant’s confidentiality because the process to correct an employee’s leave time includes approval from other school employees. Respondent asserts Grievant did not suffer any financial loss because her leave time was returned to Grievant.

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<sup>8</sup> Grievant initially made additional allegations to demonstrate acts of harassment and retaliation but apparently has chosen not to pursue those allegations by failing to address them in her Proposed Findings of Facts and Conclusions of Law. Grievant previously had alleged unauthorized opening and misdirection of an envelope Grievant had sent to the Board’s central office by unnamed persons. Grievant also alleged deletion of her “entire grade book, lesson plans, and student work” by unnamed persons.

The West Virginia Code is clear when dealing with reprisal or retaliation for participating in grievance proceedings. Particularly, the Code states “No reprisal or retaliation of any kind may be taken by an employer against a grievant or any other participant in a grievance proceeding by reason of his or her participation. Reprisal or retaliation constitutes a grievance and any person held responsible is subject to disciplinary action for insubordination.” W. VA. CODE § 6C-2-3(h) (2022). Reprisal is defined as “the retaliation of an employer toward a grievant, witness, representative or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.” W. VA. CODE § 6C-2-2(o).

Grievant has failed to meet her burden to establish reprisal or retaliation. The record revealed that Grievant knowingly entered the wrong code in the school’s SEMS system each time she participated in a grievance. Grievant was aware of how to use the school’s SEMS online platform, which allowed Grievant to choose OAA for grievance related absences. The record shows that instead of using the online platform, Grievant made up her own process by only using the physical absence request form and selecting SB6. Grievant was aware SB6 was not the correct code. Grievant was aware the SEMS system counts SB6 days as paid leave days.

Grievant knew to check her pay stubs to review her balance of paid leave days. Grievant cannot claim reprisal and retaliation for her own intentional acts of knowingly selecting the wrong code. Grievant could have simply used the online SEMS platform and selected OAA. It is reasonable that Respondent would charge Grievant with a SB6 days when Grievant intentionally selected SB6 as her reason for being absent. Respondent

had no way of knowing the subjective reasoning for Grievant's absences and it is reasonable for Respondent to rely on the code Grievant selected.

Grievant also failed to establish she was harassed by Respondent. Grievant asserts Principal Patterson harassed her by questioning Grievant in her office. Grievant asserts she was also harassed when the confidentiality of her participation in the grievance process was breached. "Harassment" means repeated or continual disturbance, irritation or annoyance of an employee that is contrary to the behavior expected by law, policy and profession." W. VA. CODE § 6C-2-2(l) (2022). "What constitutes harassment varies based upon the factual situation in each individual grievance." *Sellers v. Wetzel County Bd. of Educ.*, Docket No. 97-52-183 (Sept. 30, 1997).

Grievant failed to cite any law regarding her confidentiality being breached. For grievances purposes confidentiality is only generally discussed regarding personnel files. Particularly, regarding grievances files, "[a]ll grievance forms decisions, agreements, and reports shall be kept in a file separate from the personnel file of the employee and may not become a part of the personnel file, but shall remain confidential except by mutual agreement of the parties. W. VA. CODE § 6C-2-2(q)(1) (2022). Grievant failed to introduce any evidence that anything regarding her grievances became a part of her personnel file.

Further, nothing in the record revealed harassment by Respondent for repeated and continual behavior. The only repeated and continual behavior here is Grievant's continued action of repeatedly selecting the wrong SEMS code as her reason for being absent. The record revealed that Principal Patterson wanted to know whether Grievant would be back in time to teach her afternoon class. Principal Patterson is responsible for

paying for a substitute teacher for either a half day or a full day and Grievant did not provide notice of when she would return to her classroom. Nothing in the record revealed any evidence that Principal Patterson's actions were contrary to law, policy, or professionalism. Grievant's own subjective anxiety of being called to the principal's office does not convert a reasonable supervisory action to harassment.

While Grievant claimed she was targeted for being a military spouse, there was no evidence supporting her argument that she was targeted for being associated with the military<sup>9</sup>. Principal Patterson's actions of questioning Grievant were reasonable and in the normal course of performing her duties. Grievant did not give anyone at the school notice of when she would return to work and Principal Patterson was responsible for ensuring Grievant's classroom was covered for in her absence.

Grievant failed to establish that she was harassed because other school employees found out she participated in a grievance. Grievant caused her own right to privacy of a grievance to be breached. Grievant's own actions of repeatedly selecting the wrong SEMS code caused a need for the code to be corrected. The record revealed a formal process needed to occur to correct a SEMS coding error. For example, for single correction incident, Mr. Merritt sent an email to Terry Harris from his phone while still attending Grievant's hearing to ensure Grievant had the correct coding for her absence. (*See Respondent's Level One Exhibit No. 6*). Ms. Harris promptly forwarded Mr. Merritt's

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<sup>9</sup> Grievant presented testimony of a former employee who had retired from the United States Air Force who testified that he had resigned after Principal Patterson had told him she hated the military. Principal Patterson's alleged negative view of the military is not relevant when Grievant failed to prove that Principal Patterson's actions toward her were improper. Also, Principal Patterson was not given the opportunity to address the allegations concerning her statement and beliefs regarding the military.



email to Principal Patterson and Ms. Baker at 10:54 a.m. the same day. A similar procedure occurred each time a correction needed to be made. Had Grievant merely correctly coded her absences, no other school employee would have been made aware that Grievant needed her SEMS code to be changed from SB6 to OAA.

Further, the investigation that occurred to determine whether Grievant was harassed by Principal Patterson did not breach Grievant's right of confidentiality. Nothing in the record revealed any evidence demonstrating the investigation was placed in Grievant's personnel file. The investigation only occurred because Grievant's representative called Superintendent Willis and questioned her about what was going to be done about the alleged harassment. It is reasonable that the investigator would question witnesses regarding the events which would reveal Grievant's reasoning for being late returning to school. As such, Grievant failed to meet her burden to establish any improper actions by Respondent.

Grievant failed to prove she suffered any financial loss or loss of benefit. Grievant initially received paid days off that were charged against her five "leave without cause" days. Grievant requested her leave days to be returned due to being absent for attending a grievance. Respondent corrected the wrong SEMS code and returned the "leave without cause" days back to Grievant. Grievant did not introduce any evidence showing any other alleged financial harm. Accordingly, the grievance should be denied.

The following Conclusions of Law support the decision reached.

### **Conclusions 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. 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. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff’d*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

2. “No reprisal or retaliation of any kind may be taken by an employer against a grievant or any other participant in a grievance proceeding by reason of his or her participation. Reprisal or retaliation constitutes a grievance and any person held responsible is subject to disciplinary action for insubordination.” W. VA. CODE § 6C-2-3(h). Reprisal is defined as “the retaliation of an employer toward a grievant, witness, representative or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.” W. VA. CODE § 6C-2-2(o).

3. “‘Harassment’ means repeated or continual disturbance, irritation or annoyance of an employee that is contrary to the behavior expected by law, policy and profession.” W. Va. Code § 6C-2-2(l). “What constitutes harassment varies based upon the factual situation in each individual grievance.” *Sellers v. Wetzel County Bd. of Educ.*, Docket No. 97-52-183 (Sept. 30, 1997).

4. Regarding grievance files, “[a]ll grievance forms decisions, agreements and reports shall be kept in a file separate from the personnel file of the employee and may not become a part of the personnel file, but shall remain confidential except by mutual written agreement of the parties.” W. VA. CODE § 6C-2-2(q)(1) (2022).

5. Grievant failed to meet her burden of establishing she suffered from acts of reprisal, retaliation, or harassment and did not suffer any financial harm because she

repeatedly and knowingly input the wrong code to report her absence for attending a grievance.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Intermediate Court of Appeals.<sup>10</sup> 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: January 18, 2024.**

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**Wes H. White**  
**Administrative Law Judge**

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<sup>10</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 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.