

**WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**DEBORAH GUILLOT,**

**Grievant,**

**v.**

**Docket No. 2022-0627-DHHR**

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

**Respondent.**

**DECISION**

Grievant, Deborah Guillot, was employed by Respondent, Department of Health and Human Resources. On February 22, 2022, Grievant filed a grievance against Respondent, stating:

I am grieving wrongful termination. I was suspended from my job as a CPS Supervisor on September 9, 2021 and then terminated on February 23, 2022.

As relief, Grievant requested, "Reinstated to my former position when terminated, reinstatement of all leave and benefits, full salary with statutory interest and to be made whole."

Grievant filed directly to level three of the grievance process.<sup>1</sup> A level three hearing was held by videoconferencing before the undersigned on June 30, 2023. Grievant appeared and was represented by Gordon Simmons. Respondent appeared by Melanie Urquhart, Deputy Commissioner, and was represented by Steven R. Compton, Deputy Attorney General. This matter became mature for decision on August 9, 2023, upon the receipt of each party's proposed findings of fact and conclusions of law.

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<sup>1</sup>West Virginia Code § 6C-2-4(a)(4) permits a grievant to proceed directly to level three of the grievance process when the grievance deals with the discharge of the grievant.

## **Synopsis**

Grievant was dismissed for violating DHHR's Off-the-Job Conduct policy. It is undisputed that two underage employees sold alcohol to an underage operative at the inn co-owned by Grievant and her husband. Grievant then interfered with police questioning of her underage employees and was disorderly. Grievant contends she was an inactive secondary owner, that she was protecting minors, and that her dismissal was excessive. Grievant failed to prove these affirmative defenses. DHHR proved that Grievant's actions discredited DHHR and negatively affected public trust, providing good cause for dismissal. Accordingly, this 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, West Virginia Department of Health and Human Resources (DHHR), as a Supervisor for Child Protective Services (CPS) in Preston County.
2. Grievant and her husband co-own and reside at a business known as Maxine's at the Inn (aka "the Inn") in Kingwood, West Virginia, in Preston County.
3. Grievant's husband is Kingwood's mayor, which is not a full-time position. (Testimony of Carrie Poier, Grievant's friend).
4. Grievant's husband is the chef at the Inn. Grievant is usually retrieved to serve alcohol because most wait staff are underage and Grievant's husband is typically busy in the kitchen. (Grievant and Carrie Poier's testimony).

5. On the afternoon of September 3, 2021, the West Virginia Alcohol Beverage Control Administration (ABCA) conducted a routine compliance check at the Inn. (Respondent's Exhibit 2).

6. During the check, an underage operative and an ABCA agent, Dave Sapp<sup>2</sup>, entered the Inn. They seated themselves at the bar. (Respondent's Exhibit 2).

7. Two female employees, who were 15 and 17 years old, went behind the bar. The 15-year-old placed menus in front of the agent and the underage operative. The underage operative ordered two beers. The 17-year-old placed a beer in front of Agent Sapp. The 15-year-old placed a beer in front of the underage operative. Neither employee asked for identification. (Respondent's Exhibit 2).

8. Agent Sapp and the underage operative then went to the check-out station. The 15-year-old rang up the purchase and accepted payment from the underage operative. (Respondent's Exhibit 2).

9. Agent Sapp and the operative left the Inn. They met with State Trooper Thunder Nicholson and other ABCA agents, including agent John Short.

10. The ABCA agents and State Trooper Nicholson returned to the Inn to continue with the investigation. The two underage employees were brought out to the back parking lot. Trooper Nicholson proceeded to interrogate the two underage employees.

11. Grievant was having a drink on the front porch with her friend and former coworker, Carrie Poier, when someone came out and said police were interrogating the girls and that the girls were crying. Grievant went to the back parking lot to check things out. (Ms. Poier's testimony).

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<sup>2</sup>Mr. Sapp has since deceased.

12. Interestingly, Grievant had previously been on multiple CPS calls with Trooper Nicholson and thought of Trooper Nicholson as a bully. (Respondent's Exhibit 3, Grievant's testimony).

13. When Trooper Nicholson requested information from the underage employees, Grievant interjected with every question and stood between him and the girls. Grievant argued with Trooper Nicholson while telling the girls not to cooperate or answer the trooper's questions. Grievant continued to escalate in her belligerence and use of profanity, at one point referring to the ABCA agents as the "two assholes." Grievant accused an agent of lying about the underage operative being served by the 15-year-old employee. Grievant's conduct was inciteful and made it difficult to conduct the routine issuance of a citation during an underage compliance check. Grievant also got into Trooper Nicholson's face and screamed obscenities at him. Grievant informed the agents and trooper that she worked for CPS and knew the local judge "who would not like [what they were doing]." (Testimony of ABCA Agent John Short, Respondent's Exhibits 1 & 2).

14. Trooper Nicholson asked Grievant to step out of the way, but she refused. Grievant then got into the trooper's face and called him several expletives. Trooper Nicholson asked Grievant to back off, but she continued to shout and curse. Trooper Nicholson had Grievant turn around, handcuffed her, and placed her into his patrol car. Grievant was still disruptive while she sat in the patrol car. Grievant was charged with disorderly conduct. (Respondent's Exhibit 2).

15. Trooper Nicholson held his composure despite Grievant's behavior. (Agent Short's testimony).

16. The ABCA usually does compliance checks on all the establishments in an area in one night. Grievant's conduct prevented the ABCA from doing checks on other establishments in the area that night. (Agent Short's testimony).

17. Grievant and her husband were charged by the ABCA with multiple violations, including but not limited to the following:

W. Va. Code § 60-7-12(a) – It is unlawful for any licensee, or agent, employee, or member thereof, on such licensee's premises to:

W. Va. Code § 60-7-12(a)(3) - Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating beer, wine, or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine, or alcoholic liquors on the licensee's premises, by any person less than 21 years of age;

W. Va. Code § 60-7-12(a)(6) - Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine, or alcoholic liquors, covered by this article, to any person who is less than 21 years of age; or

W. Va. Code § 60-7-12(a)(11) - Violate any reasonable rule of the commissioner;

175 CSR 2 § 4.2. - Age for purchase of alcoholic beverages.  
— No licensee shall sell any alcoholic beverage or nonintoxicating beer to individual below the age of 21 years. The licensee must require proof of age by way of at least 1 of 3 documents certifying the age of the individual, one form of proof shall be either a valid driver's license, commercial driver's license or Department of Motor Vehicles identification card showing that the holder is at least 21 years of age;

175 CSR 2 § 5.1.1. - No licensee, nor any agent, employee or member thereof, shall on such licensee's premises:  
175 CSR 2 § 5.1.1.c. - Sell, give away, or permit the sale of, gift to, consumption of or the procurement of any alcoholic liquors or nonintoxicating beer, for any person under the age

of 21 years....; 175 CSR 2 § 5.1.1.d. - Permit the consumption by, or serve, on the licensed premises, any alcoholic liquors or nonintoxicating beer, to any person under the age of 21 years; and 175 CSR 2 § 5.1.1.j. - Violate any reasonable rule of the Commissioner.

W. Va. Code § 60-7-12(a)(10) - It is unlawful for any licensee, or agent, employee, or member thereof, on such licensee's premises to:

W. Va. Code § 60-7-12(a)(10)(A) - Employ any person who is less than 16 years of age in a position where the primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating beer, wine, or alcoholic liquors to any person; or

W. Va. Code § 60-7-12(a)(10)(B) - Employ any person who is between 16 years of age and younger than 21 years of age who is not directly supervised by a person aged 21 or over in a position where the primary responsibility for such employment is to sell, furnish, tender, serve or give nonintoxicating beer, wine, or alcoholic liquors to any person;

175 CSR 2 § 4.4. - Inspection. — the licensee shall at reasonable times permit the immediate inspection of the licensed premises by the Commissioner, in order to ensure that the laws and rules of the State of West Virginia are enforced. Upon the presentation of credentials the licensee will allow the Commissioner immediate access to the licensed premises, and there shall be no occasion for delay in the conduct of such inspection. No licensee shall personally or by any agent or employee hinder or interfere with an inspection of the licensed premises nor shall any licensee allow patrons or others to hinder or interfere with the inspections;

(Respondent's Exhibit 2).

18. On September 9, 2021, Grievant was suspended by Respondent pending an investigation. While the suspension letter alleged that alcohol was served by minors to a minor in an establishment co-owned by Grievant, that Grievant interfered with

questioning, and that Grievant became disorderly, it did not allege that Grievant failed to request or lacked approval for secondary employment. (Respondent's Exhibit 5).

19. On October 13, 2021, Grievant made some admissions to Respondent through a written statement. Grievant stated, "In my attempt to help those kids I may have added to their trauma." Grievant also admitted to knowing the two girls were under 18 years old. (Respondent's Exhibit 3).

20. Neither girl had a special waiver to allow them to serve alcohol.

21. On November 10, 2021, Grievant and her husband pled guilty to all charges levied against them by the ABCA. (Respondent's Exhibit 2)

22. As for disorderly conduct, Grievant entered a diversion program where she stayed out of trouble for the requisite five months and the charge was dismissed. (Grievant's testimony).

23. Grievant had a stellar record and outstanding Employee Performance Appraisals (EPAs) from the start of her employment with Respondent in 2015. It is not clear whether Respondent took this into account when dismissing Grievant, as Grievant's supervisor was later dismissed and not called to testify.

24. By letter dated February 7, 2022, Grievant was dismissed for violating DHHR Policy Memorandum 2108, as follows:

Your dismissal is the result of an incident on September 3, 2021, at Maxime's at the Inn, in Kingwood, involving an Alcohol Beverage Control Administration investigation that resulted in you being cited for disorderly conduct. This is in violation of DHHR Policy Memorandum 2108: *Employee Conduct*. More specifically, your dismissal is based upon the following incident.

- On September 9, 2021, the Commissioner of Bureau for Social Services was notified that on the afternoon of

September 3, 2021, a supervisor employed by the Alcohol Beverage Control Administration accompanied an underage male into Maxime's at the Inn in Kingwood, WV and ordered alcohol. The underage male and the supervisor were served alcohol without presenting identification by two females who were later identified as underage females employed at this establishment. Agent John Short and Trooper Thunder Nicholson were contacted regarding the occurrence and arrived at the establishment to investigate. You informed the agent and trooper that you were half owner of Maxime's at the Inn. During their investigation, you attempted to interfere with the communication between the agent and trooper with the two underage females who served alcohol at the bar. You were then confined to a police car and cited for disorderly conduct. ...

- OHRM could find no approval for secondary employment in your records.

DHHR Policy Memorandum 2108: *Employee Conduct* at Section F provides: Off-the-job conduct is generally not subject to the Department's scrutiny; however, the Department relies heavily on the public's trust. Therefore, an employee's off-the-job conduct should not reflect adversely upon an employee's ability to perform his or her job, impair the efficient operation of the Department, nor serve to discredit the Department or negatively affect the public trust. An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Department. Certain off-the-job conduct may subject employees to discipline, up to and including dismissal.

As half-owner of the establishment, you are deemed equally liable for any misconduct by the establishment. It is your responsibility as a business owner to ensure that the business follows all laws/rules/regulations applicable to that business. ...

After considering your reported conduct and your response, it is our decision that your dismissal is warranted for Off the Job Conduct (DHHR Policy Memorandum 2108 – Employee Conduct). As a CPS Supervisor, you are employed to protect underage citizens within your district. As part owner of the Preston County Inn, an establishment that serves alcohol, it



was your responsibility to ensure no violation of Alcohol Beverage Control Administration (ABC) code in employing underage servers to serve alcohol and to ensure no violation of ABC code in serving alcohol to a minor. Your actions in this matter demonstrate a serious lapse of judgment. With your training and experience in Child Protective Services, you should have been well aware that your action would have significant ramifications, including endangering the very citizens this agency is charged to protect – its children....

The State of West Virginia, DHHR, and its agencies have reason to expect their employees to observe a standard of conduct that will not reflect discredit on the abilities and integrity of their employees or create suspicion with reference to their employees' capability in discharging their duties and responsibilities. The nature of your misconduct is sufficient to cause the Bureau to conclude that you did not meet a reasonable standard of conduct as an employee of Bureau of Social Services thus warranting dismissal. ...

(Respondent's Exhibit 6).

25. While Grievant submitted the secondary employment form to Respondent, Respondent does not have any record of that submission and never approved Grievant for secondary employment. (Grievant's testimony).

26. The secondary employment policy was never entered into the record.

27. DHHR Policy Memorandum 2108, Employee Conduct, provides in part:

Off-the-job conduct is generally not subject to the Department's scrutiny; however, the Department relies heavily on the public's trust. Therefore, an employee's off-the-job conduct should not reflect adversely upon an employee's ability to perform his or her job, impair the efficient operation of the Department, nor serve to discredit the Department or negatively affect the public trust. An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Department. Certain off-the-job conduct may subject employees to discipline, up to and including dismissal. ..."

(Respondent's Exhibit 7).

28. The policy further provides, “Employees are prohibited from: .... Using profane, threatening, or abusive language towards others.”

### **Discussion**

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. 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 employer has not met its burden. *Id.* “Any party asserting the application of an affirmative defense bears the burden of proving that defense by a preponderance of the evidence.” W. VA. CODE ST. R. § 156-1-3 (2018).

Grievant was dismissed for breach of policy through conduct that Respondent asserts discredited its reputation, negatively affected public trust, and was abusive towards the law enforcement. 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 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); *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). “‘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*).

DHHR Policy Memorandum 2108, Employee Conduct, provides in part:

Off-the-job conduct is generally not subject to the Department's scrutiny; however, the Department relies heavily on the public's trust. Therefore, an employee's off-the-job conduct should not reflect adversely upon an employee's ability to perform his or her job, impair the efficient operation of the Department, nor serve to discredit the Department or negatively affect the public trust. An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Department. Certain off-the-job conduct may subject employees to discipline, up to and including dismissal. ...

The policy further provides, “Employees are prohibited from: .... Using profane, threatening, or abusive language towards others.”

Respondent contends Grievant failed to properly monitor a business she co-owns with her husband, which resulted in two underage employees selling alcohol to an underage operative, interfered with police questioning of the minors, engaged in disorderly conduct towards law enforcement, and failed to get approval for secondary employment. Grievant asserts that, because the secondary employment policy was never submitted into evidence, Respondent did not prove the policy covers Grievant’s situation as an owner. Since Respondent did not submit its secondary employment policy into the record, it failed to prove that Grievant violated it. As for the remaining allegations, Grievant does not contest that she co-owns a business where underage employees served alcohol to an underage operative, that she confronted law enforcement and interfered with their questioning of the minors, that she verbally abused law enforcement with profane language, and that she repeatedly interfered with law enforcement’s

performance of its duties. Grievant admits that her conduct was inappropriate. When she pled guilty to the allegations in the ABCA charging document, Grievant admitted that she did not conduct herself in a suitable manner.

However, Grievant attempts to minimize her conduct by arguing that she did not burn her bridges with law enforcement as a CPS worker because CPS workers generally deal with the Sheriff rather than the state police. She furthers this argument by adding that Trooper Nicholson was reassigned out of the area. Grievant asserts that she has never known her underage staff to serve alcohol. Grievant contends she was only the secondary owner of the Inn, not actively involved in its daily operations, and that she was simply following her instinct to protect children when she interfered with law enforcement. Thus, Grievant's defenses to these charges must be treated as affirmative defenses.<sup>3</sup>

Grievant attempts to distance herself from the ABCA infractions in arguing she is an uninvolved secondary owner. Yet, Grievant's testimony shows that on the evening of the compliance check Grievant was available to serve alcohol and help if the minors needed assistance. Grievant was drinking on the front patio while the minors served alcohol that day. Grievant resided at the Inn. It appears that Grievant was regularly at the Inn when not at her job with Respondent and was generally available to assist. Further, Grievant and Ms. Poier (Grievant's friend and former coworker) testified that Grievant's husband was usually busy cooking in the back and did not like to be bothered with requests to serve alcohol. Grievant clearly observed and assisted in the day-to-day operations. Most if not all staff were minors. Because she was the primary adult available to assist the minors in serving alcohol, Grievant would have had an inkling, based on the

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<sup>3</sup>An affirmative defense assumes the truth of the underlying allegation in raising a defense to it. BLACK'S LAW DICTIONARY, 60 (6th ed. 1990).

frequency she was being summoned, as to the likelihood that the minors were serving alcohol. It seems highly unlikely that the only time the minors served alcohol was on the occasion of the ABCA compliance check.

As for Grievant's other defenses, Grievant's claim that she was following her instinct to protect children is dubious. Grievant stated in writing to Respondent, "In my attempt to help those kids I may have added to their trauma." It appears more likely that Grievant's primary purpose in interfering was to protect her business interests. Grievant did not provide any evidence that the underage servers were actively monitored. Grievant testified that she has worked with Trooper Nicholson as a CPS worker. Ms. Poier was also familiar with Trooper Nicholson through her work with CPS. Thus, the state police had some regular involvement in working with CPS. Trooper Nicholson's reassignment does not negate the impropriety and negative effects of Grievant's behavior. Grievant failed to prove any of her defenses.

Grievant's conduct was clearly a violation of state law, occurred in a public setting, and impacted the public trust and reputation of DHHR. Grievant did not dispute that she was a co-owner of the Inn and that underage employees served alcohol to an ABCA agent and an underage operative. Grievant pled guilty to the numerous associated charges filed against her by the ABCA. Grievant did not dispute that she was disruptive and belligerent with law enforcement. Grievant did not prove any of her defenses. Respondent proved by a preponderance of the evidence that it had good cause to dismiss Grievant.

Grievant contends mitigation is warranted because Respondent failed to consider her stellar work record and lack of prior 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 and Human Resources/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). Grievant showed that she had a stellar work record but failed to prove that dismissal was disproportionate to her actions, that another employee received a lesser penalty for similar conduct, or that she was ignorant of the impropriety of her conduct. Grievant failed to prove that mitigation is warranted. Thus, 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. 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 employer has not met its burden. *Id.* “Any party asserting the application of an affirmative defense bears the burden of proving that defense by a preponderance of the evidence.” W. VA. CODE ST. R. § 156-1-3 (2018).

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 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); *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). “‘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. Respondent proved by a preponderance of the evidence that it had good cause to dismiss Grievant.

4. Grievant did not prove by a preponderance of the evidence that mitigation was warranted or any of her other affirmative defenses.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Intermediate Court of Appeals.<sup>4</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: September 20, 2023**

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**Joshua S. Fraenkel**  
**Administrative Law Judge**

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<sup>4</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.