

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

JAMES KALEB LEWIS,
Grievant,

v.

Docket No. 2022-0803-DHHR

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

DECISION

Grievant, James K. Lewis, filed this action on or about May 24, 2022, challenging a ten-day suspension for allegedly creating a hostile work environment at the William R. Sharpe, Jr. Hospital. Grievant asserted that Respondent violated Policy Memorandum 2104 and its actions were clearly wrong. Grievant seeks to be made whole, including removal of any discipline, restoration of benefits and back pay.

A level three evidentiary hearing was conducted before the undersigned on September 25, 2023, at the Grievance Board's Westover office. Grievant appeared *pro se*, via Zoom. Respondent appeared in person by Cecil Pritt, agency representative, and by counsel, Heather L. Olcott, Assistant Attorney General. This matter became mature for consideration upon receipt of the last of the parties' Findings of Fact and Conclusions of Law on October 31, 2023. Proposals were due on October 30, 2023, but the undersigned accepted Respondent's proposals on October 31, 2023. Grievant's objection and exception on accepting these proposals is preserved for the record of this case.

Synopsis

Grievant is employed by Respondent as a Recreation Specialist. Human Resources Director, Cecil Pritt, began receiving complaints at the beginning of May 2022,

stating that Grievant repeatedly made harassing, derogatory and insulting comments to other employees. In addition, Grievant used profanity in front of other employees and patients. Grievant was accused of being disruptive and he refused to submit required forms to other employees. Grievant was placed on suspension while an investigation was conducted. The investigation substantiated the complaints. Grievant was suspended for ten days without pay. The record indicates that Grievant had been coached just a month before the suspension regarding his inappropriate conduct toward a Physician's Assistant. Respondent proved that Grievant's conduct was a violation of their policy which prohibits a hostile work environment. This grievance is denied.

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

Findings of Fact

1. Grievant is employed as a Recreation Specialist with the Division of Health and Human Resources at the William R Sharpe, Jr. Hospital.
2. Grievant was coached on April 13, 2022, by Chief Executive Officer, Pat Ryan, after he learned that Grievant had yelled at Christina Nolte, a Physician's Assistant, because he did not agree with a decision relating to a patient. Mr. Ryan noted that Grievant had strong opinions concerning patients' treatment plans. Mr. Ryan warned Grievant that he needed to be respectful and control his emotions when interacting with treatment team members.
3. Grievant responded that his opinions about the patients were important because he was a member of the treatment team. Mr. Ryan explained that Grievant's input was not the issue. The troubling issue was his angry and aggressive behavior toward Ms. Nolte because he disagreed with her decision.

4. At some time in the spring of 2022, Grievant became concerned with an initiative undertaken by Sharpe Hospital which designated certain employees as “Ambassadors.” While this management decision is not the central issue of this grievance and the record is not developed on the point, Grievant considered this designation preferential treatment.

5. On or around May 9, 2022, Human Resources Director, Cecil Pritt, received complaints from six employees at Sharpe Hospital. The complaints were against Grievant alleging that he repeatedly harassed, belittled and intimidated them because he did not agree with an assignment that upper management had given those employees. The complaints also addressed inappropriate and hostile interactions with or about patients.

6. After reviewing the complaints, Mr. Pritt became aware that they raised allegations of a hostile work environment and that they contained sufficient information to justify further investigation.

7. On May 12, 2022, Grievant was placed on suspension while the matter was investigated.

8. Mr. Pritt interviewed eighteen employees or contractors who worked at Sharpe Hospital and allegedly heard or were involved in the allegations against Grievant.

9. Mr. Pritt found that several allegations about Grievant’s behavior were substantiated. In particular, Grievant stated “come get your fucking boy” or “come get your boy.” Grievant stated something to the effect, “fuck the attendance, I ain’t doing that.” Grievant stated that Ambassadors are a joke, they are “made up for Michelle Markovich.” Grievant stated the Adult Protective Services system is a “joke” and that he

is “undefeated.” In short, Grievant participated in workplace harassment in the form of intimidation, aggression, verbal abuse, intrusion, and humiliation.

10. Mr. Pritt submitted the investigation to upper management. It was determined by Pat Ryan, Cecil Pritt, and Ginny Fitzwater that Grievant should receive a ten-day suspension due to his repetitive and extreme behavior.

11. On May 25, 2022, Respondent mailed a letter to Grievant scheduling a predetermination conference for June 1, 2022. The letter informed Grievant of the allegations against him and the policies violated.

12. The record established that Grievant harassed Tara Eldridge, Certified Nursing Assistant/Ambassador, by repeatedly calling the Ambassadors a “joke” and that “ambassadors will burn.” Grievant would get ahold of Ms. Eldridge’s badge and check it to see what it said as one way to harass her about being chosen for the Ambassadors’ assignment. Ms. Eldridge indicated that Grievant repeatedly said that Ambassadors are “nobody” and were “replaceable.”

13. Ms. Eldridge indicated that Grievant yelled at her to “come get her fucking boy” after Grievant became displeased that a patient was allowed to leave his floor and attend a therapy area. This behavior embarrassed her and made her not want to return to work. On another occasion, Grievant hit the wall because he was angry at Ms. Eldridge. Grievant’s behavior scared her and was intimidating. This type of behavior toward Ms. Eldridge continued daily for months before she reported it to Mr. Pritt.

14. Jamie Parker, Health Service Worker/Ambassador, indicated that Grievant was angry with her when he learned she had been issued keys that allegedly opened his office. Grievant raised his voice at Ms. Parker, at which point she explained that the

issue was not something she could control. Grievant would say to her that ambassadors were just an assignment in a repetitive and derogatory manner.

15. Stephen Bonnett, Health Service Worker/Ambassador, indicated that Grievant asked him if he was “just an assignment” and could be replaced at any time while smiling. Mr. Bonnett felt attacked and that Grievant’s statement was meant to be aggressive toward him.

16. Amy Eakle, Health Service Worker/Ambassador, indicated that Grievant grabbed her name badge in a disrespectful fashion and said, “What is that, that’s not a position.”

17. Ms. Eakle recalled an incident in which she helped Tara Eldridge gather patients from a unit to take to a group, but Grievant said that her patient should not go. Grievant became upset and said he was going to see the provider, Christina Nolte. Grievant was upset with Ms. Eakle because she disagreed with him on whether or not the patient should be taken to a group setting.

18. Ms. Eakle also recalled an incident when attendance forms were to be completed by the Recreation Department. Grievant responded “fuck the attendance, I ain’t doing it.” Grievant did not like the Ambassador assignment and disagreed with how it was handled. Grievant stated, “ambassadors ain’t shit”; “they won’t last long” and “nobody wants it to last, we’ll make your days horrible.” Ms. Eakle reported that Grievant made daily comments about the Ambassadors in the spring of 2022. Ms. Eakle also reported that Grievant questioned everything the Ambassadors asked him to do.

19. Grievant was notified by letter dated June 7, 2022, of his ten-day suspension without pay. The letter provided that witnesses confirmed that Grievant made

inappropriate statements in reference to the Ambassadors. In addition, Grievant was disrespectful to other employees concerning their assigned work performance and to patients. This conduct was in clear violation of applicable policies more fully set out below.

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*.

Grievant was suspended for conduct that violated the Department of Health and Human Resources' Policy Memorandum 2123, Violent/Hostile Work Environment; and Policy Memorandum 2108, Employee Conduct Code. Policy Memorandum 2123 provides, in pertinent part:

Verbal, non-verbal, or physical conduct not discriminatory in nature that is so atrocious, intolerable, and so extreme and outrageous as to exceed bounds of decency and which creates fear, intimidates, ostracizes, psychologically or physically threatens, embarrasses, ridicules, or in some other way unreasonably over burdens or precludes an employee from reasonably performing her or his work.

Employees are prohibited from intimidation, aggression, staring, glaring or other nonverbal demonstrations of hostility, exclusion or social isolation, verbal abuse or insults, menacing behavior, humiliation, withholding work-related information,

sabotaging a co-worker's work product or undermining an employee's work performance, treating others less favorably, repeatedly manipulating a person's job content.

The record established that throughout April and May 2022, Grievant's behaviors were intimidating, hostile, aggressive, verbally abusive, menacing, and humiliating. In addition, the record established that Grievant withheld work-related information, undermined employees' work performance and treated other employees less favorably. Multiple witnesses and numerous statements indicated that Grievant would humiliate, degrade, and harass certain employees daily for weeks and months.

The Grievance Board has long stated that "[t]o create a hostile work environment, inappropriate conduct must be sufficiently severe or pervasive to alter the conditions of an employee's employment." *Napier v. Stratton*, 204 W. Va. 415, 513 S.E.2d 463, 467 (1998). See *Hanlon v. Chambers*, 195 W. Va. 99, 464 S.E.2d 741 (1995). Whether a working environment is hostile or abusive can be determined only by looking at all of the circumstances. Certainly any act might be construed by someone as harassing, hostile, disruptive, or offensive. In determining whether a hostile environment exists, the totality of the circumstances must be considered from the perspective of a reasonable person's reaction to a similar environment under similar or like circumstances. *Lanehart v. Logan County Bd. of Educ.*, Docket No. 97-23-088 (June 13, 1997). Abusive language and abusive, inappropriate, and disrespectful behavior are not acceptable or conducive to a stable and effective working environment. *Graley v. W. Va. Parkways Economic Div. and Tourism Auth.*, Docket No. 99-PEDTA-406 (Oct. 31, 2000).

The record established by a preponderance of the evidence that Grievant told fellow employees that their jobs were "a joke"; that they were "replaceable" and that he

planned to make their days “horrible” and said “ambassadors ain’t shit.” Grievant would say these things in front of patients and other employees. Grievant’s comments were derogatory and were obviously meant to harass, intimidate and embarrass his co-workers. Several employees found his behavior interfered with their work duties, so much that they filed complaints with the Human Resources Director. The primary target of his harassment indicated that Grievant’s behavior made her not want to come to work and embarrassed her.

The record established that Grievant repeatedly took out his anger on other employees when he disagreed with their decisions. Grievant yelled and used profanity toward Tara Eldridge on two occasions because he disagreed with allowing a patient to leave his unit. Grievant angrily hit the wall when he was upset with Ms. Eldridge because he disagreed with a decision relating to a patient. Grievant yelled at Jamie Parker in front of other employees because she was unknowingly issued keys to his office. Grievant had just been coached on these inappropriate behaviors, but he continued the same behavior.

It is clear that Grievant created a hostile work environment due to his behavior that was sufficiently severe to alter the conditions of employment at the hospital. Grievant used abusive language and disrespectful behavior that was not acceptable or conducive to a stable and effective working environment. Grievant’s behavior was also in clear violation of Respondent’s applicable policy on employee conduct. It is undisputed that employees are to conduct themselves professionally in the presence of residents, patients, clients, fellow employees, and the public, and be ethical, alert, polite, sober, and attentive to the responsibilities associated with their jobs. Not only has Grievant been trained about these policies and signed acknowledgements that he received the policies, he was also

coached about his behavior in April of 2022. Grievant continued to act out by harassing and belittling his coworkers for another month before he was placed on suspension pending an investigation. Grievant's unacceptable behavior toward his coworkers warranted his ten-day suspension. In addition, Respondent proved by a preponderance of the evidence that Grievant's behavior created an environment that was hostile to the employees who were subjected to it.

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 Grievance Board has long stated that "[t]o create a hostile work environment, inappropriate conduct must be sufficiently severe or pervasive to alter the conditions of an employee's employment." *Napier v. Stratton*, 204 W. Va. 415, 513 S.E.2d 463, 467 (1998). See *Hanlon v. Chambers*, 195 W. Va. 99, 464 S.E.2d 741 (1995). Whether a working environment is hostile or abusive can be determined only by looking

at all of the circumstances. Certainly any act might be construed by someone as harassing, hostile, disruptive, or offensive. In determining whether a hostile environment exists, the totality of the circumstances must be considered from the perspective of a reasonable person's reaction to a similar environment under similar or like circumstances. *Lanehart v. Logan County Bd. of Educ.*, Docket No. 97-23-088 (June 13, 1997). Abusive language and abusive, inappropriate, and disrespectful behavior are not acceptable or conducive to a stable and effective working environment. *Graley v. W. Va. Parkways Economic Div. and Tourism Auth.*, Docket No. 99-PEDTA-406 (Oct. 31, 2000).

3. Respondent proved by a preponderance of the evidence that Grievant's behavior created an environment that was hostile to the employees who were subjected to it. Respondent also proved by a preponderance of the evidence that the behavior of Grievant was sufficiently inappropriate to be considered abusive and warranted a ten-day suspension under the totality of the circumstances of this case.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Intermediate Court of Appeals.¹ 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

¹On 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.

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: December 15, 2023

Ronald L. Reece
Administrative Law Judge