THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SHAWN BRUTON,
Grievant,

v. **Docket No. 2026-0107-DHF**

DEPARTMENT OF HEALTH FACILITIES,
MILDRED MITCHELL-BATEMAN HOSPITAL,
Respondent.

DECISION

Grievant, Shawn Bruton, was employed by Respondent, Department of Health Facilities, at Mildred Mitchell-Bateman Hospital. On August 15, 2025, Grievant filed this grievance against Respondent stating, "wrongful termination regarding policy MMBHC026." For relief, Grievant seeks "re-employment."

The grievance was properly filed directly to level three pursuant to W. VA. CODE § 6C-2-4(a)(4). A level three hearing was held on November 25, 2025, before the undersigned at the Grievance Board's Charleston, West Virginia office. Grievant was self-represented. Respondent appeared by Tamara Kuhn, Human Resources Director, and was represented by counsel, James "Jake" Wegman, Assistant Attorney General. This matter became mature for decision on December 30, 2025, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant was employed by Respondent at Mildred Mitchell-Bateman Hospital as a security guard. Respondent terminated Grievant's employment for misconduct of inappropriate contact with a patient's family member. Respondent proved by a preponderance of the evidence it had good cause to dismiss Grievant for misconduct. Respondent did not violate any law, rule, or policy or act in an arbitrary and capricious

manner by terminating Grievant's employment. Grievant failed to prove the termination of his employment was improper or disproportionate punishment. Further, Grievant failed to prove that mitigation of the punishment was warranted. 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 was employed by Respondent, Department of Health Facilities, at Mildred Mitchell-Bateman Hospital ("MMBH") as a security guard since March 2023.

2. MMBH is a state-run acute psychiatric hospital for patients with mental illness hospitalized by court order. The patients are vulnerable and require heightened standards of care.

3. Patient DP's mother, RC, contacted Stephanie Davis of Adult Protective Services ("APS") regarding a complaint of physical and verbal abuse by a MMBH nurse. Those allegations have no bearing on the instant grievance. However, during that conversation, RC told Ms. Davis that Grievant had obtained her number from the patient file and had been texting her. RC provided Ms. Davis with screenshots of the text messages reflecting "Shawn @ Batemans" as the contact name. R. Ex. 1; testimony of S. Davis.

4. Because there was a possible violation of patient privacy rights regarding the telephone number of a patient's guardian, Ms. Davis advised Human Resources Director, Tamara Kuhn, by email, that RC alleged that Grievant was communicating with her by text message. Further, Ms. Davis provided the screenshots of text messages from

RC. However, no additional contact information or phone number was supplied by RC until July 17, 2025. R. Ex. 1; testimony of S. Davis.

5. Based on the possible violation of MMBH policy, Director Kuhn launched an investigation of these allegations against Grievant. Because suspension is customary when investigations are done, Director Kuhn advised Grievant of the situation and his suspension pending investigation. R. Ex. 4 and 9 (p. 7 of 7); testimony of T. Kuhn.

6. During this discussion on July 7, 2025, Grievant admitted contact with a patient's family member and informed Director Kuhn that he would provide a written statement and the names of witnesses. Testimony of T. Kuhn and Grievant; R. Ex. 4.

7. Following the discussion, Grievant provided his written statement, which confirmed that Grievant had indeed had social media and message contact with patient DP's mother, RC. Grievant stated, "I told her my name and told her to look me up on facebook. She friended me a day later and we corresponded thru messenger." Further, RC and Grievant made plans for a lunch date on two occasions but Grievant never attended a lunch date with RC. R. Ex. 5; testimony of T. Kuhn and Grievant.

8. Fellow security guard, Chris Daniels, confirmed Grievant had face-to-face contact with RC while DP was a patient and that Grievant messaged with RC after DP's release. Further, when Grievant advised him of an invitation to dinner with RC, Mr. Daniels advised Grievant, "it was a bad idea." R. Ex. 2; testimony of C. Daniels and Grievant.

9. By letter of July 8, 2025, Chief Executive Officer Craig Richards advised Grievant of his suspension pending investigation because Respondent "has received allegations that you are communicating with a patient's family member via text message

and determined that an investigation into the matter is warranted. … When presented with the allegation, you stated, “I haven't talked to a patient’s family member other than a visitor who wanted my phone number and asked me out to lunch.’ You informed Ms. Kuhn that you would provide a written statement and the names of witnesses.” R. Ex. 4.

10. On or about July 17, 2025, RC provided the alleged phone number for “Shawn @ Batemans.” Grievant testified the number presented by RC was not his phone number but did not provide documentation. The accuracy of the phone number was made moot by Grievant’s admission regarding contact with RC and corroboration by Mr. Daniels; thus, the phone number will not be addressed further.

11. Policy MMBHC026, titled *Professional Relationships with Patients*, states in the introductory paragraph,

> The primary goal of Mildred Mitchell-Bateman Hospital is the professional and effective treatment of the condition for which the patients are admitted to this hospital. Any conduct with a patient, former patient, or family member of a patient of a personal or intimate nature by any employee of Mildred Mitchell-Bateman Hospital shall be considered as risking an adverse affect on the treatment and prognosis of said patient and shall be viewed as exploitation, which shall be cause for immediate disciplinary action as severe as dismissal. Employees of Mildred Mitchell-Bateman hospital are required to abstain from all personal, intimate, financial, or business relationships with patients (or the family members of patients).

R. Ex. 3.

12. Policy MMBHC026 further provides examples of prohibited conduct including, but not limited to, “personal emails or communications on social networking sites such as ‘Twitter’ or ‘Facebook’…Text messaging to or from personal cell phones.” R. Ex. 3.

13. Policy OSA-PM 2108, *Employee Conduct*, requires the following: "2.2 Expectations: Employees are expected to: . . . 2.2.3 Comply with all Division of Personnel, Department, and Agency policies; . . . 2.2.7 Conduct themselves professionally in the presence of residents, patients, clients, fellow employees, and the public; . . . 2.2.12 Be ethical, alert, polite, sober, and attentive to the responsibilities associated with their jobs; . . . 2.3 Prohibitions: Employees are prohibited from: . . . 2.3.2 Disrupting the normal operations of the Agency; . . . 2.3.11 Exploiting residents, patients, clients or their families, including but not limited to, matters of an intimate, personal, financial, emotional, sexual, or business nature." R. Ex. 7.

14. Grievant first acknowledged receipt of Policy MMBHC026 and DHHR Policy 2108 (now called OSA-PM 2108) on March 27, 2023, by signing and initialing two pages of listed policies. R. Ex. 8.

15. On April 3, 2023, Grievant signed an acknowledgment titled, in bold print, "Professional Relationships with Patients Policy #: MMBHC026," which states, "…I have reviewed Policy #:MMBHC026… I have been provided a written copy of the policy or have been instructed how to access it on MMBH's Intranet." R. Ex. 3.

16. On or about August 2024, Grievant placed his signature on the "Education Signature Sheet" that states, "Signature indicating that you have received, were educated on, and agree to comply with the above listed policy," which was titled MMBHC026 "Professional Relationships with Patients." R. Ex. 3.

17. During the predetermination conference of July 25, 2025, with Director Kuhn, Chief Financial Officer Tillman Adkins, and employee representative David Payne, Grievant did not deny contact with RC. He stated, "I admit to having corresponded with

the patient's mother until I found out the lady was suing the state of Minnesota, and I quit." Grievant acknowledged that close contact with patients is prohibited but implausibly claimed not to know that close contact with patients' families is prohibited. R. Ex. 6; testimony of Grievant, T. Adkins, and T. Kuhn.

18. Grievant's termination of employment was the result of consultation of Director Kuhn, Office of Human Resource Management ("OHRM"), and CEO Richards. Testimony of T. Kuhn and T. Adkins.

19. By letter of July 29, 2025, CEO Richards terminated Grievant's employment stating,

> Your dismissal is the result of a substantiated allegation that you obtained the phone number of a patient's mother/guardian and texted/messaged her about her son's treatment while a patient at the Hospital.
> This is in violation of MMBHC026 *Professional Relationships with Patients* policy, which provides: *No employee shall, while on or off duty, place 'personal' telephone calls, emails, text messages or social media or any networking sites on the Internet. Likewise, no employee is to send letters, greeting cards (including e-cards), flowers or other gifts (including food items) to patients or family members of patients*.
> This is in violation of OSA-PM 2108: *Employee Conduct*, which provides: Employees are expected to: *2.2.3 Comply with all Division of Personnel, Department, and Agency policies; 2.2.7 Conduct themselves professionally in the presence of residents, patients, clients, fellow employees, and the public; 2.2.12 Be ethical, alert, polite, sober, and attentive to the responsibilities associated with their jobs. 2.3 Prohibitions: Employees are prohibited from: 2.3.2 Disrupting the normal operations of the Agency; 2.3.11 Exploiting residents, patients, clients or their families, including but not limited to, matters of an intimate, personal, financial, emotional, sexual, or business nature.*

R. Ex. 6.

20. Policy OSA-HRP3, *Progressive Discipline Policy*, section 6.5.1 allows immediate dismissal when "…an employee commits an offense which qualifies as gross misconduct as defined in this policy." "Gross misconduct" is defined as "…exhibiting such blatant disregard of the employer's interests as to place the employer, its employees, or its customers/patients/residents at risk of harm." R. Ex. 9.

21. In two prior instances of similar conduct with patients or family members, Director Kuhn terminated the employment of both employees. Direct violation of the professional relationships policy always results in termination because the safety and welfare of patients are paramount. Testimony of T. Kuhn.

22. Respondent did not present evidence that Grievant obtained RC's phone number from the patient file.

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. 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," meaning "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); *See also* W. VA. CODE ST. R. § 143-1-12.2.a (2022).

Respondent asserts that Grievant's employment at Mildred Mitchell-Bateman Hospital was properly terminated for misconduct, specifically his inappropriate contact with a patient's family member. Respondent asserts that Grievant's misconduct violated Respondent's policies regarding employee conduct and contact of a personal nature with patients and their family members. Although Grievant admits that he exchanged messages with a patient's mother, Grievant denies a relationship with the patient's mother. Grievant implies Respondent acted improperly when it launched an investigation. Grievant counters that termination of his employment was wrongly based upon retaliation by Director Kuhn; however, Grievant provided no evidence to support this assertion and the issue will not be further addressed.[1] Lastly, Grievant asserts that the punishment was disproportionate and mitigation was warranted.

"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

[1] In his proposed findings of fact and conclusions of law, Grievant stated details regarding his allegation of retaliation. However, because Grievant did not present evidence in the hearing, it cannot be considered here.

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 argues that Grievant violated Policy MMBHC026 when he exchanged messages with RC, the mother of patient DP. Thus, Respondent terminated Grievant's employment for misconduct based upon that violation. The two-page Policy MMBHC026 is clear. On page one, the second sentence of the first paragraph prohibits "any contact with a patient, former patient, or *family member of a patient* of a personal or intimate nature." (emphasis added). The policy explicitly states that such contact "shall be viewed as exploitation" and that such contact will result in immediate disciplinary action including dismissal. In the second paragraph—one sentence—employees are unmistakably "required to abstain from all personal, intimate, financial, or business relationships with patients (or the family members of patients)." In the span of less than three years, Grievant acknowledged receipt of this policy three times. On one document, his signature represents that he was "educated on and agrees to comply with" Policy MMBHC026. The policy is based on a sound principle that personal contact is potentially harmful and could lead to exploitation of the patient and their family members. *Jenkins v. Dep't of Health and Human Resources/Mildred Mitchell-Bateman Hospital,* Docket No. 2020-0896-CONS (July 20, 2022). In the level three hearing, Director Kuhn emphasized the vulnerability of the patients and the family members of patients at MMBH. Any contact is inappropriate, unprofessional, and could harm the patient or compromise the patient's care.

The contact alone violates Policy MMBHC026. Grievant's communications with RC constitute sufficient evidence to warrant immediate termination for violation of

Respondent's policies. Because the contact is viewed as exploitation of a patient, the contact with RC was deemed "gross misconduct" as defined in Policy OSA-HRP3. Grievant's actions were "misconduct exhibiting such blatant disregard of the employer's interests as to place the employer, its employees, or its customers/patients/residents at risk of harm." Therefore, violation of Employee Conduct Policy OSA-PM2108, 2.3.11, exploit vulnerable patients and their families would equate to "gross misconduct" thereby warranting immediate dismissal.

After thoroughly reviewing all the evidence and arguments of the parties, it is clear that credibility determinations or discussions of the entirety of the evidence and arguments are not necessary. While Grievant argues he did not act improperly, Grievant's admission of the exchange of messages is sufficient to justify his termination. Moreover, the policy is not impossible to comply with, nor is it overly broad. The policy is simple—do not have personal contact with patients, including former patients, or their family members. *Jenkins, supra.* Personal contact with RC reflected gross disregard for Respondent's duty to protect the patient. Taking everything into account, Respondent proved by a preponderance of the evidence that it had good cause to terminate Grievant's employment.

The propositions disputed by Grievant are irrelevant, because they do not affect good cause for termination of Grievant. Grievant acknowledges he was aware of the policy as it relates to patients but implausibly asserts he did not know that it prohibited contact with family members. Grievant signed and acknowledged three times that he received the relevant policy. Grievant says he only had two conversations by text or messenger and never saw her again in person; therefore, he had no relationship with RC.

Mr. Daniels said RC flirted with Grievant while DP was a patient, but Respondent does not need to prove a "relationship" between Grievant and RC—contact is sufficient.

Grievant asserts it was improper to begin the investigation without verification of whether the screenshots reflected texts sent by Grievant. Grievant also denies he obtained RC's number from patient DP's file. Respondent had a duty to investigate the possible violation of patient privacy of the guardian's phone number and the alleged contact of Grievant with RC. Director Kuhn began the investigation as instructed by OHRM. As the initial step, Director Kuhn requested Grievant to provide a statement. Verification of the phone number became moot when Grievant's statement admitted communication with patient DP's mother, RC, which was also corroborated by Mr. Daniels. From that point forward, Respondent had justification for dismissal due to Grievant's misconduct. Regarding a privacy violation for accessing the patient file, Respondent did not terminate Grievant's employment for such and presented no evidence in the hearing of this allegation.

Grievant asserts his punishment was disproportionate. He argues that his behavior could have been corrected by lesser discipline; therefore, mitigation was warranted. "[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 argues that, if he was reminded that contact with family members was prohibited, he would not make that mistake again. However, Grievant acknowledged review and receipt of the policy on three occasions, including once being "educated on" the policy. Respondent's policy makes it clear that contact is viewed as exploitation of the patient, former patient, or family member of a patient. Exploitation is a serious offense, which Respondent addresses with serious discipline, "as severe as dismissal."

Grievant did not prove an exemplary work history or outstanding evaluations. On the contrary, Grievant was described as "meets expectations." Grievant did not present evidence to counter the importance of Respondent's duty to protect the vulnerable patients involuntarily placed in their care. Director Kuhn confirmed that other employees have been terminated for similar conduct. Moreover, the Grievance Board has previously upheld termination for contact in violation of Policy MMBHC026 and OSA-PM 2108. See also *Jenkins, supra.* Grievant failed to prove mitigation was warranted.

Respondent has proven good cause for termination of Grievant's employment by a preponderance of the evidence. Grievant's violation of the Respondent's policy was potentially harmful to MMBH's vulnerable patients. Furthermore, Grievant has not demonstrated that Respondent's policy violates any law, rule, or regulation that would make his termination improper.

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," meaning "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); *See also* W. VA. CODE ST. R. § 143-1-12.2.a (2022).

3. "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*).

4. "[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).

5. "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).

6. Grievant's misconduct hindered the objectives of the Respondent to protect its vulnerable patients.

7. Respondent proved by a preponderance of the evidence that Grievant's employment was terminated for good cause.

8. Grievant failed to prove his termination was improper or disproportionate punishment. Further, Grievant failed to prove that mitigation of the punishment was warranted.

Accordingly, the grievance is DENIED.

"The decision of the administrative law judge is final upon the parties and is enforceable in the circuit court situated in the judicial district in which the grievant is employed." W. VA. CODE § 6C-2-5(a) (2024). "An appeal of the decision of the administrative law judge shall be to the Intermediate Court of Appeals in accordance with §51-11-4(b)(4) of this code and the Rules of Appellate Procedure." W. VA. CODE § 6C-2-5(b) (2024). Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such an appeal and should not be named as a party to the appeal. However, the appealing party must serve a copy of the petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b) (2024).

DATE: February 13, 2026

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Kimberly D. Bentley
Administrative Law Judge