

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

BRYAN CHRISTOPHER MANGIS,
Grievant,

v.

Docket No. 2025-0705-DHS

**DEPARTMENT OF HOMELAND SECURITY/
NORTHERN CORRECTIONAL FACILITY,**
Respondent.

DECISION

Grievant, Bryan Christopher Mangis, filed this action directly to level three, pursuant to WEST VIRGINIA CODE § 6C-2-4(a)(4), against his former employer, the Department of Homeland Security/Northern Correctional Facility, on June 5, 2025, contesting the termination of his probationary employment for unsatisfactory performance. Grievant seeks, "My Job Back."

A level three hearing was conducted before the undersigned on October 7 and 21, 2025, by Zoom video conferencing. Grievant appeared *pro se*. Respondent appeared by Mark L. Garren, Assistant Attorney General. The matter became mature for consideration upon receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law on November 25, 2025.

Synopsis

Grievant was dismissed from his probationary employment as a Correctional Officer 1 because of unsatisfactory performance. The record demonstrated that Grievant's work performance was unsatisfactory. The record did not demonstrate that Grievant's work performance was effective and met Respondent's expectations as a

probationary employee. The record did not support a ruling that the dismissal be mitigated to a lesser employment action. The grievance is denied.

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

Findings of Fact

1. An employment offer for a Correctional Officer 1 position was tendered to, and accepted, by Grievant on November 6, 2024. Grievant started his employment on November 18, 2024. All new correctional officers are required to serve a one-year probationary period. Accordingly, Grievant was hired as a twelve-month probationary employee.

2. This probationary period was a trial work period designed to allow Respondent an opportunity to evaluate the ability of Grievant to effectively perform the work of the position and to adjust to the organization and programs of the agency. The probationary period is viewed as an integral part of the examination process and is utilized for the most effective adjustment of a new employee and for the elimination of those who do not meet the employer's required standards of work.

3. Grievant acknowledged receiving and reading multiple policy directives including those regarding Leave Usage and the Probationary Period. Grievant underwent training during his probationary period.

4. Sean Markey, Deputy Superintendent, Tony Stockclase, Associate Superintendent of Security, and Teresa Rush, Human Resources Manager, indicated that Grievant was assigned to a "rover" position which required him to actively walk throughout the correctional facility to transport inmates and perform other assigned duties. The rover position is not a sedentary position and is critical for conveying information, providing

routine and emergency assistance to other correctional officers and individuals, and maintaining security in the correctional facility.

5. Captain Reggie Sellers reviewed a security video taken on May 4, 2025, and observed Grievant walk into the B-Rover's Office, turn off the light, put his feet up on the desk, leaning back in the chair, and seemingly attempt to take a nap. The video depicting this action by Grievant while on the job lasted approximately two hours.

6. Grievant's activities, as shown on the video, occurred during Grievant's regularly scheduled work shift when he was expected to be performing his job duties as a rover throughout the correctional facility. Grievant was not supposed to be within the B-Rover Office for any extended period, other than a thirty-minute lunch break, and Grievant was not performing any of his assigned job duties during the two-hour video. This conduct placed the correctional facility, as well as those working or housed in the facility, at an increased security risk.

7. Teresa Rush, Human Resources Manager, indicated that during his twelve-month probationary period, Grievant took excessive leave, contrary to the Leave Usage Policy. Ms. Rush also indicated that Grievant was provided with an Employee Performance Appraisal which reflected that he did not complete the mandatory security checks and cell checks on March 8, 2025.

8. As a result of the March 4, 2025, video and Grievant's absences, Captain Sellers prepared a Dismissal Memo to Superintendent Michael Reger requesting that Grievant be dismissed from his position as a Correctional Officer I at the Northern Regional Jail and Correctional Center. Superintendent Reger delivered a Notice to Grievant on May 21, 2025, advising him that a predetermination conference was

scheduled for May 22, 2025, to provide him with the opportunity to respond to the anticipated action that he be dismissed from his position.

9. The predetermination conference was held on May 23, 2025, and attended by Grievant, Superintendent Reger, Deputy Superintendent Markey, Captain Sellers and Human Resources Manager Rush. At the conclusion of the conference, Grievant was dismissed from his position for the reasons stated in the May 23, 2025, letter, including sleeping on the job and excessive absences.

Discussion

When a probationary employee is terminated on grounds of incompetency or unsatisfactory performance, rather than misconduct, the termination is not disciplinary, and the employer carries no burden of proof in a grievance proceeding. The employee has the burden of establishing by a preponderance of evidence that his services were satisfactory. *Bonnell v. W. Va. Div. of Corr.*, Docket No. 89-CORR-163 (Mar. 8, 1990); *Bowman v. W. Va. Educ. Broadcasting Auth.*, Docket No. 96-EBA-464 (July 3, 1997); *Walker v. W. Va. Public Serv. Comm'n*, Docket No. 96-PSC-422 (Mar. 11, 1992). "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).

In the instant case, the video clearly shows Grievant spending two hours in the Rover Office with the lights turned off and his feet on the desk while on the job. The record demonstrates that Grievant was not performing any of his assigned job duties while he reclined in the office and his failure to perform his duties risked placing those working or housed in the facility at an increased security risk. Grievant's assertion that

he was not actually asleep during the video is not persuasive and fails to meet his burden that he was performing his job duties. In situations where “the existence or nonexistence of certain material facts hinges on witness credibility, detailed findings of fact and explicit credibility determinations are required.” *Jones v. W. Va. Dep’t of Health & Human Res.*, Docket No. 96-HHR-371 (Oct. 30, 1996); *Young v. Div. of Natural Res.*, Docket No. 2009-0540-DOC (Nov. 13, 2009); See also *Clarke v. W. Va. Bd. of Regents*, 166 W. Va. 702, 279 S.E.2d 169 (1981). In assessing the credibility of witnesses, some factors to be considered ... are the witness: 1) demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and 5) admission of untruthfulness. Additionally, the ALJ should consider: 1) the presence or absence of bias, interest, or motive; 2) the consistency of prior statements; 3) the existence or nonexistence of any fact testified to by the witness; and 4) the plausibility of the witness information. *Id.*, *Burchell v. Bd. of Trustees, Marshall Univ.*, Docket No. 97-BOT-011 (Aug. 29, 1997).

Based on the record of this case, the undersigned finds the testimony of Respondent’s witnesses to be credible and reliable. Their testimony was consistent, plausible, and supported by the video and documentary evidence. No bias or motive was demonstrated, and no evidence of dishonesty was revealed. The testimony of Grievant at the hearing was not corroborated by any independent testimony or evidence. In any event, asleep or just reclining in the chair in the undisputed video, clearly demonstrates that Grievant was not performing any of his assigned job duties.

Historically, the probationary period of employment has a specific purpose. During this time, an employee is to learn the duties of his or her position, and the employer

assesses the employee's ability to meet work standards and adjust to the expectations of the agency. *Hackman v. W. Va. Dep't of Transp.*, Docket No. 01-DMV-582 (Feb. 20, 2002). The record established that Grievant's work performance was unsatisfactory, was somewhat unprofessional, and it did not align with Respondent's work standards. Grievant offered no independent evidence in rebuttal and Grievant's testimony was contrary to the record of the case. The record was undisputed that Grievant's absences were excessive. Grievant did not demonstrate that his performance was satisfactory during his probationary period.

Finally, Grievant argues that he should have received a lesser employment action. The Grievance Board has held that "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 Res./Welch Emergency Hosp.*, Docket No. 96-HHR-183 (Oct. 3, 1996).

Nevertheless, a lesser disciplinary action may be imposed when mitigating circumstances exist. See *Conner v. Barbour County Bd. of Educ.*, Docket No. 95-01-031 (Sept. 29, 1995). Mitigating circumstances are generally defined as conditions which support a reduction in the level of discipline in the interest of fairness and objectivity, and also include consideration of an employee's long service with a history of otherwise satisfactory work performance. See *Pingley v. Div. of Corr.*, Docket No. 95-CORR-252 (July 23, 1996). When assessing the penalty imposed, "[w]hether to mitigate the

punishment imposed by the employer depends on a finding that the penalty was clearly excessive in light of the employee's past work record and the clarity of existing rules or prohibitions regarding the situation in question and any mitigating circumstances, all of which must be determined on a case by case basis." *McVay v. Wood County Bd. of Educ.*, Docket No. 95-54-041 (May 18, 1995)(citations omitted).

The record of this case did not support the finding that dismissal should be mitigated. It was established that Grievant was neglecting his job duties for two hours while on the job. Grievant was also abusing his leave time, resulting in unsatisfactory attendance. Respondent's decision to terminate Grievant's probationary employment was justified, not clearly disproportionate to the offenses, nor an abuse of discretion. Given the record of the case, as well as the low threshold to justify the dismissal of a probationary employee, the undersigned concludes that the decision to dismiss Grievant was not arbitrary and capricious, or otherwise unreasonable or unlawful.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. When a probationary employee is terminated on grounds of incompetency or unsatisfactory performance, rather than misconduct, the termination is not disciplinary, and the employer carries no burden of proof in a grievance proceeding. The employee has the burden of establishing by a preponderance of the evidence that his services were satisfactory. *Bonnell v. W. Va. Div. of Corr.*, Docket No. 89-CORR-163 (Mar. 8, 1990); *Bowman v. W. Va. Educ. Broadcasting Auth.*, Docket No. 96-EBA-464 (July 3, 1997); *Walker v. W. Va. Public Serv. Comm'n*, Docket No. 96-PSC-422 (Mar. 11, 1992).

2. A probationary employee may be dismissed at any point during the probationary period that the employer determines his services are unsatisfactory. Division of Personnel Administrative Rule 143 C.S.R. 1 § 10.5(a).

3. In situations where “the existence or nonexistence of certain material facts hinges on witness credibility, detailed findings of fact and explicit credibility determinations are required.” *Jones v. W. Va. Dep’t of Health & Human Res.*, Docket No. 96-HHR-371 (Oct. 30, 1996); *Young v. Div. of Natural Res.*, Docket No. 2009-0540-DOC (Nov. 13, 2009); See also *Clarke v. W. Va. Bd. of Regents*, 166 W. Va. 702, 279 S.E.2d 169 (1981). In assessing the credibility of witnesses, some factors to be considered ... are the witness: 1) demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and 5) admission of untruthfulness. Additionally, the ALJ should consider: 1) the presence or absence of bias, interest, or motive; 2) the consistency of prior statements; 3) the existence or nonexistence of any fact testified to by the witness; and 4) the plausibility of the witness information. *Id.*, *Burchell v. Bd. of Trustees, Marshall Univ.*, Docket No. 97-BOT-011 (Aug. 29, 1997).

4. The Grievance Board has held that “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 Res./Welch Emergency Hosp.*, Docket No. 96-HHR-183 (Oct. 3, 1996).

5. Grievant did not demonstrate that his performance was satisfactory during his probationary period.

6. Grievant did not demonstrate that his dismissal should be reduced to a lesser employment action.

Accordingly, this grievance is **DENIED**.

“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). 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).

Date: January 20, 2026

Ronald L. Reece
Administrative Law Judge