

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

KRISTEN MOORE,
Grievant,

v.

Docket No. 2026-0233-CONS

**DEPARTMENT OF HUMAN SERVICES/
BUREAU FOR FAMILY ASSISTANCE,**
Respondent.

DECISION

Grievant, Kristen Moore, was employed by Respondent, Department of Human Services, Bureau for Family Assistance. On September 15, 2025, Grievant filed a grievance, assigned docket number 2026-0150-DoHS, protesting the suspension of her employment pending investigation. On the same date, Grievant filed a grievance, assigned docket number 2026-0163-DoHS, protesting alleged harassment by a co-worker. On September 17, 2025, Grievant filed another grievance, assigned docket number, 2026-0164-DoHS, again protesting the suspension of her employment pending investigation. The grievances were consolidated by order entered October 23, 2025. On January 13, 2026, Respondent, by counsel, filed *Respondent's Motion to Dismiss*, asserting the grievance was moot as Grievant had resigned from her employment. By order entered March 22, 2026, the undersigned denied the motion to dismiss, finding that the grievance was not moot as Grievant asserted an entitlement to back pay. However, the allegation regarding harassment by a coworker was rendered moot by Grievant's resignation from employment and will not be further addressed. Therefore, the remaining relief requested by Grievant is back pay for the period of suspension prior to her resignation.

A level three hearing was held on June 16, 2026, before the undersigned at the Grievance Board's Charleston, West Virginia office. Grievant appeared in person and self-represented. Respondent appeared by Human Resources Director John Osborn and was represented by counsel, James "Jake" Wegman, Assistant Attorney General. This matter became mature for decision on July 21, 2026, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant was employed by Respondent as an Economic Service Worker. Grievant was suspended pending investigation of an allegation of creating a hostile work environment. Grievant argues the suspension was improper because it was not warranted by the allegations, because it was motivated by alleged harassment and retaliation against Grievant, and because she was treated differently than a coworker. Grievant failed to prove the suspension pending investigation was improper. 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 as an Economic Service Worker and had been so employed for approximately nine years.
2. Some time prior to the suspension at issue, Grievant became friends with her coworker, B.S. Grievant and B.S. engaged in inappropriate conversations via chat on their work computers. At some point, Grievant and B.S. stopped talking. Later, Grievant overheard B.S. make comments to another coworker regarding one of

Grievant's friends, who was also a coworker. Grievant told her friend about B.S.'s comments and the friend confronted B.S. Thereafter, B.S. came into the office on his day off and Grievant believed he had filed a complaint against Grievant. Test. G.

3. On August 28, 2025, Community Service Manager II Melissa Blake sent Grievant an email stating that she had received complaints regarding Grievant's conduct, specifically "concerning harassment of other workers." Ms. Blake directed Grievant, "in lieu of a conference," to review Respondent's hostile workplace policy and to adhere to Respondent's policies. Grievant responded, denying the allegation of harassment and requesting to be informed of the specifics of the allegation. Ms. Blake responded stating that Grievant was not "in trouble" but that "due to the nature of the complaints you need to read our policy to make sure you understand the agency expectations." Ms. Blake refused to disclose who had made the complaint. G. Ex. 1.

4. Thereafter, suspecting that the complaint had been made by B.S., Grievant confronted B.S., asking to speak with him about the complaint. When B.S. refused, Grievant told him, "you don't wanna do this" and told him to consider what might happen to B.S. if Grievant gave their chat messages to Mr. Osborn.

5. During this time, Grievant also had asked the back-up supervisor to disclose who had made the complaint. Test. G.

6. Due to Grievant's actions after the August 28, 2026, email, on September 5, 2025, Respondent orally suspended Grievant pending investigation of creating a hostile work environment. On September 12, 2025, Ms. Blake memorialized the suspension pending investigation for "allegations that you have created a hostile work environment" stating, "On August 29, 2025, allegations were reported that you had been

harassing co-workers regarding non-work related matters to the point that you had created a hostile work environment.” R. Ex. 1.

7. Grievant also made a complaint to Human Resources Director John Osborn alleging that B.S. was creating a hostile work environment. Grievant claimed she had documents to prove the claim but then refused to provide the documents. Mr. Osborn informed Grievant that Respondent would conduct an investigation regarding Grievant’s claim. Mr. Osborn informed Grievant that, if she refused to provide the documents and her claim was proven to be false, she could face disciplinary action for making a false allegation. Test. Osborn.

8. Mr. Osborn reviewed the nature of the respective allegations and determined it was not necessary to suspend B.S. pending investigation. Test. Osborn.

9. Respondent did investigate B.S. and found that B.S. had not created a hostile work environment but terminated his employment for inappropriate communications. Test. Osborn.

10. Respondent’s Progressive Correction and Disciplinary Action policy permits suspension pending investigation when there is a “perceived threat of continuing danger to persons or property or to protect the integrity of the evidence. . . .” R. Ex. 7.

11. Respondent conducted a predetermination conference with Grievant on November 20, 2025.

12. On December 1, 2025, Grievant resigned from her position. R. Ex. 3.

13. On December 11, 2025, Respondent accepted the resignation in lieu of termination of Grievant’s employment. R. Ex. 4.

14. In the years prior to Grievant's suspension pending investigation, Ms. Blake had placed Grievant on an attendance improvement plan, which Ms. Blake was required to rescind after Grievant was approved for Family Medical Leave Act leave. Grievant also complained to administrators about alleged harassment by Ms. Blake and filed an EEO complaint against Ms. Blake alleging hostile work environment. Test. G.

Discussion

The suspension of an employee pending investigation of an allegation of misconduct is not disciplinary in nature and the grievant bears the burden of proving that such suspension was improper. *Ferrell and Marcum v. Reg'l Jail and Corr. Facility Auth.*, Docket No. 2013-1005-CONS (June 4, 2013); W. VA. CODE ST. R. § 143-1-12.3.b.

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 asserts that the suspension pending investigation was improper because it was not warranted by the allegations, because it was motivated by Ms. Blake's alleged harassment and retaliation against Grievant, and because she was treated differently than B.S. Respondent asserts the suspension pending investigation was proper under the Division of Personnel's legislative rule and Respondent's policy.

The Division of Personnel's legislative rule provides the following authority for

investigatory suspension:

An appointing authority may suspend any employee without pay indefinitely to perform an investigation regarding an employee's conduct which has a reasonable connection to the employee's performance of his or her job or when the employee is the subject of an indictment or other criminal proceeding . . . The appointing authority shall give the employee oral notice confirmed in writing within three (3) working days, or written notice of the specific reason or reasons for the suspension.

W. VA. CODE ST. R. § 143-1-12.3.b.

The grievance is limited to the determination of whether the investigatory suspension was proper at the time that decision was made. What the investigation eventually revealed is not relevant, nor is Respondent required to prove that the acceptance of Grievant's resignation as in lieu of termination was proper. At the time of the suspension, Respondent had received a complaint against Grievant alleging that she was creating a hostile work environment. Initially, Respondent was not going to suspend Grievant pending investigation. However, once Grievant was made aware of the complaint, she then chose to confront the person she assumed made the complaint and threaten him. Additionally, Grievant attempted to make her own complaint against B.S., alleging she had documentary evidence and then refusing to provide the same. Under these circumstances, Respondent was permitted to suspend Grievant pending investigation under both the Division of Personnel's Rule and its own policy.

Grievant asserts the investigatory suspension was improperly motivated by Ms. Blake's alleged harassment of Grievant or by Ms. Blake's retaliation against Grievant. In order to establish a *prima facie* case of retaliation, a grievant must establish by a preponderance of the evidence:

- (1) [T]hat he was engaged in activity protected by the statute (e.g., filing a grievance);
- (2) that his employer's official or agent had actual or constructive knowledge that the employee engaged in the protected activity;
- (3) that, thereafter, an adverse employment action was taken by the employer; and
- (4) that the adverse action was the result of retaliatory motivation or the adverse action followed the employee's protected activity within such a period of time that retaliatory motive can be inferred.

See *Coddington v. W. Va. Dep't of Health & Human Res.*, Docket Nos. 93-HHR-265/266/267 (May 19, 1994); *Graley v. W. Va. Parkways Economic Dev. & Tourism Auth.*, Docket No. 91-PEDTA-225 (Dec. 23, 1991). See generally *Frank's Shoe Store v. W. Va. Human Rights Comm'n*, 179 W. Va. 53, 365 S.E.2d 251 (1986). Once a *prima facie* case of retaliation has been established, the inquiry shifts to determining whether the employer has shown legitimate, non-retaliatory reasons for its actions. *Graley, supra*. See *Mace v. Pizza Hut, Inc.*, 180 W. Va. 469, 377 S.E.2d 461 (1989).

Grievant alleges Ms. Blake retaliated against her because she was granted FMLA leave, which removed Grievant from the attendance improvement plan Ms. Blake had implemented. The exercise of FMLA rights is a protected activity and Ms. Blake was aware of the protected activity. However, Grievant fails to make a *prima facie* case of retaliation as the FMLA issue was not close in time to the decision to suspend her pending investigation and Grievant failed to prove a retaliatory motivation. Even if Ms. Blake had a retaliatory motivation, which Grievant did not prove, Ms. Blake was not the ultimate decisionmaker. Mr. Osborn determined Grievant should be suspended pending investigation, which was a decision supported by the allegations known to him at the time and the relevant law and policy. Grievant failed to prove that the decision to suspend

her pending investigation was an improper result of any harassing or retaliatory motivation by Ms. Blake.

Grievant alleges discrimination as B.S. was not suspended pending investigation. “‘Discrimination’ means any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees.” W. VA. CODE § 6C-2-2(d). While Grievant and B.S. were treated differently, the difference in treatment was warranted based on the circumstances. Grievant was suspended after she escalated the situation by confronting and threatening B.S. Her competing allegation against B.S. appeared to be questionable due to her assertion that there was documentary evidence that she then refused to produce. Mr. Osborn’s testimony and reasoning on this difference in treatment was reasonable.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. The suspension of an employee pending investigation of an allegation of misconduct is not disciplinary in nature and the grievant bears the burden of proving that such suspension was improper. *Ferrell and Marcum v. Reg’l Jail and Corr. Facility Auth.*, Docket No. 2013-1005-CONS (June 4, 2013); W. VA. CODE ST. R. § 143-1-12.3.b.

2. 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.*

3. The Division of Personnel's legislative rule provides the following authority for investigatory suspension:

An appointing authority may suspend any employee without pay indefinitely to perform an investigation regarding an employee's conduct which has a reasonable connection to the employee's performance of his or her job or when the employee is the subject of an indictment or other criminal proceeding. . .The appointing authority shall give the employee oral notice confirmed in writing within three (3) working days, or written notice of the specific reason or reasons for the suspension.

W. VA. CODE ST. R. § 143-1-12.3.b.

4. In order to establish a *prima facie* case of retaliation, a grievant must establish by a preponderance of the evidence:

- (1) [T]hat he was engaged in activity protected by the statute (e.g., filing a grievance);
- (2) that his employer's official or agent had actual or constructive knowledge that the employee engaged in the protected activity;
- (3) that, thereafter, an adverse employment action was taken by the employer; and
- (4) that the adverse action was the result of retaliatory motivation or the adverse action followed the employee's protected activity within such a period of time that retaliatory motive can be inferred.

See Coddington v. W. Va. Dep't of Health & Human Res., Docket Nos. 93-HHR-265/266/267 (May 19, 1994); *Graley v. W. Va. Parkways Economic Dev. & Tourism Auth.*, Docket No. 91-PEDTA-225 (Dec. 23, 1991). *See generally Frank's Shoe Store v. W. Va. Human Rights Comm'n*, 179 W. Va. 53, 365 S.E.2d 251 (1986). Once a *prima facie* case of retaliation has been established, the inquiry shifts to determining whether the employer

has shown legitimate, non-retaliatory reasons for its actions. *Graley, supra. See Mace v. Pizza Hut, Inc.*, 180 W. Va. 469, 377 S.E.2d 461 (1989).

5. “‘Discrimination’ means any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees.” W. VA. CODE § 6C-2-2(d).

6. Grievant failed to prove the suspension pending investigation was improper. 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). 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: August 25, 2026

Billie Thacker Catlett
Chief Administrative Law Judge