

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

DERECK PALMER,
Grievant,

v.

Docket No. 2024-0519-DHF

**DEPARTMENT OF HEALTH FACILITIES/
WILLIAM R. SHARPE, JR. HOSPITAL,**
Respondent.

DECISION

This action was filed by Grievant, Dereck Palmer, on January 30, 2023, challenging a ten-day suspension that he received for making insubordinate remarks to other employees at Sharpe Hospital. This case was filed directly to level three of the grievance procedure. A level three evidentiary hearing was conducted before the undersigned on April 29, 2024, by Zoom conferencing. Grievant appeared *pro se*. Respondent appeared by Ginny Fitzwater, Human Resources Director for the Office of Health Facilities, and by its attorney, James "Jake" Wegman, Assistant Attorney General. This matter became mature for consideration and a decision upon receipt of the last of the parties' Findings of Fact and Conclusions of Law on June 1, 2024.

Synopsis

Grievant is employed by the William R. Sharpe, Jr. Hospital as a housekeeper. Grievant was issued a ten-day suspension for comments to fellow employees after being told repeatedly to change his behavior. Respondent established the allegations by a preponderance of the evidence. Grievant acknowledged that he had been reprimanded and coached by Sharpe staff to be vigilant to act with civility and proper decorum when

interacting with fellow employees. It was proper to issue a suspension pursuant to the principles of progressive discipline to Grievant when his misconduct continued.

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

Findings of Fact

1. Grievant is employed by the William R. Sharpe, Jr. Hospital as a housekeeper.
2. By Notice of Disciplinary Suspension dated January 29, 2024, Grievant received a ten-day suspension due to being insubordinate with his supervisor.
3. Respondent alleged that Grievant entered his supervisor's office demanding to know why he was not made employee of the month. Grievant's supervisor repeatedly asked Grievant to lower his voice after Grievant persisted in yelling. Grievant complained that the winner of the employee of the month award was "shady." Grievant then left and returned to his supervisor's office additional times to express his anger with the candidate winning employee of the month.
4. Respondent also alleged that Grievant caused a disruption in the laboratory by asking lab employees why he was not being instructed to clean the lab windows.
5. Respondent had made several attempts to correct Grievant's behavior through counseling, and reprimands. Grievant had also been subjected to a five-day suspension due to his behavior at the hospital.
7. On January 4, 2023, Grievant overheard a coworker congratulate an employee on receiving employee of the month. The employee noted that Grievant became hostile toward him, which caused the employee to feel uncomfortable. Grievant acted out by shoving his cleaning cart around and appeared disgusted. Grievant then

complained that he was not employee of the month and that he intended on visiting human resources. The employee of the month asked his supervisor to work with another employee until Grievant was able to calm down.

8. Chris Wagoner, Grievant's supervisor, asked both employees to meet in his office to mediate the situation. Grievant argued that he had unreported information on the other employee concerning his job performance. The other employee understandably felt put off by Grievant's statement that he had a list of job performance violations he had failed to report. Grievant declared that he would not work with that employee and requested that Mr. Wagoner not assign them to work together.

9. Grievant later returned to Mr. Wagoner's office to ask how an employee of the month is determined. Grievant made statements that Sharpe employees were crooked, and that the employee of the month was rigged. Grievant loudly stated that he wanted to work by himself. The whole time, Grievant was visibly upset and loud.

10. Grievant admitted at the predetermination conference that he was upset due to being named in a lawsuit filed against him. Grievant also acknowledged that he raised his voice during the encounters.

11. Lisa McClain is employed by Respondent as a member of the laboratory staff. Lab employees like to decorate their windows for the holidays, which results in residue on the windows. Ms. McClain indicated that the lab employees took responsibility for cleaning their own window. Ms. McClain asked another housekeeper if they could keep a bottle of window cleaner.

12. Grievant returned with a bottle of window cleaner and confronted the lab employees in a loud and offensive manner about why he could not clean the windows. Grievant appeared upset and repeatedly asked the lab employees "what's the problem."

13. Ms. McClain spoke to Mr. Wagoner about Grievant being disruptive, and that he would fixate on matters that did not concern him.

14. Desiree Hollen is employed by Respondent as a member of the laboratory staff. Ms. Hollen indicated that Grievant would come in and "sit and talk" even though lab workers were trying to work. Ms. Hollen was concerned that this behavior may create privacy issues with patient records.

15. Ms. Hollen also experienced an event in which Grievant stated that he had a list of employees that he intended to turn into management. Grievant shook the list of names at her and said that "he was done with this shit."

16. Pat Ryan, Chief Executive Officer of Sharpe Hospital, explained that Grievant previously received a written reprimand due to inappropriate comments to a female coworker. The undersigned recently upheld this disciplinary action in a previous grievance. Grievant also received a second written reprimand for similar behavior. Grievant also received a five-day suspension for leaving his cleaning cart unattended in the presence of patients. Mr. Ryan believed a suspension was appropriate discipline due to Grievant's misconduct and previous discipline.

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*.

Respondent argues that Grievant violated fundamental policies related to an employee's code of conduct and such behavior amounted to insubordination. Insubordination "includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued . . . [by] an administrative superior." *Santer v. Kanawha County Bd. of Educ.*, Docket No. 03-20-092 (June 30, 2003); *Butts v. Higher Educ. Interim Governing Bd.*, 212 W. Va. 209, 569 S.E.2d 456 (2002) (*per curiam*). See *Riddle v. Bd. of Directors, So. W. Va. Community College*, Docket No. 93-BOD-309 (May 31, 1994); *Webb v. Mason County Bd. of Educ.*, Docket No. 26-89-004 (May 1, 1989). "[F]or there to be 'insubordination,' the following must be present: (a) an employee must refuse to obey an order (or rule or regulation); (b) the refusal must be wilful; and (c) the order (or rule or regulation) must be reasonable and valid." *Butts, supra*.

The record supports a finding that Grievant committed insubordination when he failed to follow instructions concerning his behavior toward fellow employees. This was evident during his behavior regarding the employee of the month and his interaction with lab staff and cleaning lab windows. Grievant is aware of proper conduct at the hospital

and has previously been disciplined for inappropriate behavior. Based upon the facts established by a preponderance set out above, the undersigned finds that Grievant has willfully ignored these conduct parameters when he expressed anger over the award of employee of the month and exhibited disruptive behavior in the hospital lab. Grievant has acknowledged to the undersigned that he had been reprimanded and coached by Sharpe staff to be vigilant to act with civility and proper decorum when interacting with fellow employees.

Respondent offered Policy Memorandum 2108, which sets out that employees are expected to "conduct themselves in a professional manner." Employees are expected to "conduct themselves professionally in the presence of . . . fellow employees." In addition, the suspension complied with the principles of progressive discipline. Grievant had been issued previous disciplinary action due to his misconduct with fellow employees. Accordingly, due to the undisputed facts in this case, it appears that it was proper to issue a ten-day suspension when Grievant's inappropriate conduct continued at the hospital.

The following Conclusions of Law support the decision in this case.

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. Insubordination "includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued . . . [by] an administrative superior." *Santer v. Kanawha County Bd. of Educ.*, Docket No. 03-20-092 (June 30, 2003); *Butts v. Higher Educ. Interim Governing Bd.*, 212 W. Va. 209, 569 S.E.2d 456 (2002) (*per curiam*). See *Riddle v. Bd. of Directors, So. W. Va. Community College*, Docket No. 93-BOD-309 (May 31, 1994); *Webb v. Mason County Bd. of Educ.*, Docket No. 26-89-004 (May 1, 1989). "[F]or there to be 'insubordination,' the following must be present: (a) an employee must refuse to obey an order (or rule or regulation); (b) the refusal must be wilful; and (c) the order (or rule or regulation) must be reasonable and valid." *Butts, supra*.

3. Respondent proved the charges against Grievant by a preponderance of the evidence and proved that the suspension was proper.

Accordingly, this 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).

Date: July 22, 2024

Ronald L. Reece
Administrative Law Judge