

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**HOLLY VANHORN,
Grievant,**

v.

Docket No. 2026-0046-DOT

**WEST VIRGINIA DEPARTMENT OF TRANSPORTATION/
DIVISION OF HIGHWAYS,
Respondent.**

DECISION

Grievant, Holly Vanhorn, filed this action on or about July 15, 2025, directly to level three, challenging her dismissal from employment with the Division of Highways. Grievant seeks reinstatement and back pay. A level three hearing was conducted before the undersigned on October 16, 2025, at the Westover office of the Grievant Board. Grievant appeared in person, and by her counsel, Justin Jack, Klie Law Offices, PLLC. The Division of Highways appeared through Judy Van Pelt, Human Resources Manager, Clifford Fulton, District 4 Maintenance Manager, and through counsel, Amy A. Osgood. This matter became mature for consideration upon receipt of the last of the parties' proposed Findings of Fact and Conclusions of Law on December 5, 2025.

Synopsis

Grievant was employed by the Division of Highways as a Transportation Worker I, Equipment Operator. Grievant was dismissed from employment for failure to obtain her Commercial Driver's License and for poor job performance. Respondent was able to demonstrate by a preponderance of the evidence that Grievant could not perform the essential duties of her position due to her failure to obtain her Commercial Driver's License. This grievance is denied.

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

Findings of Fact

1. Grievant was employed by the Division of Highways from February 1, 2024, until her dismissal from employment on August 8, 2025, as a Transportation Worker I, Equipment Operator.

2. On or about June 1, 2025, Grievant received an RL-544, Respondent Notice Form – Dismissal, recommending that Grievant be dismissed from employment. The reason for the dismissal was Grievant's failure to obtain her Commercial Driver's License (CDL) within six months of employment as required for her job position, poor attendance and poor job performance.

3. Grievant met with District Manager, William Gaskins, on or about July 8, 2025, as an opportunity to present an explanation concerning the allegations. After the meeting with Grievant, Mr. Gaskins agreed with the decision to dismiss Grievant and passed his recommendations on to Central Human Resources in Charleston, West Virginia.

4. Judy Van Pelt, Human Resources Manager, indicated that Grievant began her employment with Respondent on or about February of 2025. Ms. Van Pelt explained that in the position of Transportation Worker I, Equipment Operator, it is a requirement to obtain a CDL within six months of employment due to the equipment operated in this position.

5. On or about March 25, 2025, Grievant passed the written portion of the CDL testing necessary to obtain her permit. Grievant was then ready for "seat time" to obtain the necessary hours required to sit for the driving portion of the CDL test.

6. On or about June 13, 2025, Grievant was a “no call, no show” for her scheduled work shift. The following day Grievant called in sick but only had limited hours of sick leave. The remaining balance of leave used was deducted from her annual leave.

7. Grievant was injured on the job on or about June 21, 2024. Grievant remained off work until March of 2025.

8. Grievant returned to work in March of 2025 and began missing work. Grievant was scheduled to return to work beginning the week of March 3, 2025. Grievant used annual leave beginning March 3, 2025, through March 6, 2025. Upon returning to work, Grievant began having unscheduled absences and utilizing sick leave. Once again, Grievant exhausted her sick leave and used her annual leave to cover her absences. Grievant was placed on a six-month Attendance Improvement Plan on May 21, 2025, due to her unscheduled absences.

9. Grievant was aware of the Attendance and Overtime Policy and had acknowledged that she had reviewed the policy. Grievant did not request any type of medical accommodation because of her absences.

10. On or about May 8, 2025, while conducting traffic control to move a manlift across Route 7, Grievant allowed traffic to reflow and then stepped on the double yellow line. A coworker had to stop traffic and to tell Grievant to get back into the work zone. The situation created a safety risk to Grievant, coworkers and the public.

11. Grievant’s CDL permit was scheduled to expire on March 29, 2025. Grievant was advised that she needed to take the proper steps to obtain her CDL license.

12. Grievant advised management that she gave the CDL test card to her supervisor, Brian Canfield. When management asked Mr. Canfield if he had Grievant's test card, Mr. Canfield indicated that Grievant had not given it to him.

13. Management then contacted the Division of Motor Vehicles to determine if they had received the test card. Management was informed that a test card was never mailed because the required application and payment was never received. It was Grievant's responsibility to fill out the application for the test card.

14. Clifford Fulton, Maintenance Manager, explained that the CDL process starts with the employee being sent to the Training Academy in Buckhannon, West Virginia. The employee then takes the written portion of the exam. If that portion is passed, the employee will receive a permit and can practice driving with another licensed CDL driver and obtain "seat time", or hours needed to sit for the driving portion of the CDL exam.

15. Mr. Fulton indicated that the failure of Grievant to obtain her CDL would not maintain the qualifications to do her job duties or be able to satisfactorily perform her job.

16. Earl Gaskins, District Manager, was in a direct supervisory capacity to Grievant during her employment. Mr. Gaskins indicated that Grievant had issues with her attendance. Grievant was placed on an Attendance Improvement Plan to assist her to use leave time in a proper way and to follow policy.

17. Mr. Gaskins explained that Grievant was not dismissed from employment solely because of her attendance: it was only a factor. Mr. Gaskin indicated that the

agency extended the six-month time frame requirement for Grievant to obtain her CDL license, but Grievant failed to take the necessary steps to obtain it.

18. The obligation to get a CDL falls on the employee. Mr. Gaskin indicated that if Grievant had come to him and asked for seat time he would have made it happen. The record reflects that the Division of Highways extended the time for Grievant after her first permit expired. Management then checked with the Division of Motor Vehicles for a status and learned that Grievant failed to mail in her application. Mr. Gaskin confirmed it was for the above reasons that Grievant was dismissed from employment.

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 Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2018); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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).

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).

Grievant argues that Respondent did not schedule “seat time”, did not assign CDL trainers, and failed to prove that Grievant engaged in misconduct or poor performance. In light of the facts established on the record, these contentions have no merit. The CDL process starts with the employee being sent to the Training Academy in Buckhannon, West Virginia. The employee then takes the written portion of the exam. If that portion is passed, the employee will receive a permit and can practice driving with another licensed CDL driver and obtain “seat time”, or hours needed to sit for the driving portion of the CDL exam. The record was undisputed that the responsibility was on the Grievant to get the necessary time with a CDL coworker to qualify for the test. Respondent extended the time frame for Grievant to obtain the CDL after her permit expired, only to have Grievant be untruthful about submitting her application to the Division of Motor Vehicles. It is also undisputed that Grievant’s attendance was poor, and her job performance, on at least one occasion, was not safe.

Respondent established by a preponderance of the evidence that Grievant was dismissed from employment for good cause. The record established that Grievant failed to obtain her CDL within the required time frame, which made her unable to meet

the necessary requirements to do her job. The record also established that Grievant's attendance record was poor. Grievant's employment history demonstrated excessive unscheduled absences and "no call, no shows." Respondent also established by a preponderance of the evidence that Grievant demonstrated poor job performance during her employment history. The record showed that Grievant was conducting traffic control to move a manlift and allowed traffic to flow, but instead of walking back into the work area Grievant stepped onto the yellow line with traffic on both sides of her. A coworker had to stop traffic to allow Grievant to step out of the work zone. Respondent demonstrated by a preponderance of the evidence that their actions in dismissing Grievant from employment were for good cause, and not in violation of any law, rule or policy.

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 Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2018); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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).

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).

3. Respondent established by preponderance of the evidence that Grievant was dismissed for good cause.

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 22, 2026

Ronald L. Reece
Administrative Law Judge