



Deliver

REPLY TO:
401 Davis Avenue
Suite 315
Elkins, WV 26241
Telephone: 636-1123

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
Governor

Members
James Paul Geary
Orton A. Jones
David L. White

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone: 348-3361

PATTI L. CURRY

v.

DOCKET NO. BOR 87-002-2

WEST VIRGINIA UNIVERSITY

DISMISSAL ORDER

Grievant, Patti L. Curry, is employed by the West Virginia Board of Regents and presently holds the position of Legal Education Assistant for the Continuing Legal Education program at the West Virginia University College of Law.

On November 12, 1986 Ms. Curry filed a level one grievance alleging a violation of her job description resulting in her "...being unfairly overloaded with work." She further alleged that actions and practices regarding the physical layout of the office to be arbitrary, capricious, discriminatory and to constitute a substantial detriment to her job performance and health. Ms. Curry requested that she be relieved of job duties outside her job description and that the office layout be changed.

The grievance was denied at level two based on the findings of the President's designated representative that the grievant was not being asked to perform any duties not listed in her

job description and that her assigned office space provided all of the basic comforts necessary for good job performance.

By memorandum dated January 2, 1987 the grievance was appealed to level four and an evidentiary hearing was requested. Ms. Curry advised that the grievance was amended at the level two hearing and that a violation of her job description no longer existed. She further requested that she not be called at work as her office is open to the public and not convenient for calls of a confidential nature. The matter was subsequently assigned to this examiner and a hearing was scheduled for January 26, 1987.

On January 16, 1987 the grievant requested a continuance of the hearing to a date when weather conditions would not pose an almost certain threat as she had neither adequate transportation needed to travel to Elkins at that time of the year nor the financial resources to encumber the expense of car rental. The request for a continuance was granted and the hearing rescheduled for April 24, 1987. The examiner subsequently found it necessary to conduct three hearings scheduled in Charleston on that day and rescheduled the grievant's hearing for April 21, 1987. This change moved the hearing forward three days and did not serve to delay the matter in any way. The grievant

then requested that the hearing be rescheduled for May 8, 1987 to accomodate her travel plans to Elkins; that request was also granted.

Assistant Attorney General Bruce R. Walker, counsel for the respondent, notified the examiner by telephone on May 6, 1987 that he was suffering a medical problem which prohibited him from driving and requested that the hearing be continued. The grievant notified the examiner by memorandum dated May 7, 1987 that she had agreed to reschedule the hearing on May 19, 1987.

On May 18, 1987 the examiner received a memorandum from the grievant requesting that the hearing be rescheduled as her immediate supervisor had denied her "...time I regard as necessary for return travel from Elkins to Morgantown...". Also received on May 18, 1987 from Jessica Howard, grievant's supervisor, were copies of the following correspondence: a memo in which the grievant notified Ms. Howard that she would need the afternoon of Monday, May 18 and all day Wednesday, May 20 off for travel to and from Elkins; Ms. Howard's denial of annual leave for May 20 based on the office schedule and a notice dated May 15, 1987 from the grievant to Ms. Howard advising her that she would not be leaving early Monday afternoon as planned.

Having considered the distance between Morgantown and Elkins (approximately 77 miles), that the single issue to be heard would reasonably be concluded within a few hours, or less, and that the respondent's counsel would have less than twenty-four hours to change his schedule and travel arrangements from Charleston (approximately 152 miles) the examiner concluded that the grievant would have adequate travel time to return to Morgantown on Tuesday, May 19. In the alternative, the hearing could begin on Tuesday and if it should be longer in duration than expected, could be concluded on another date.

As the grievant had warned against calling her office and due to the proximity of the scheduled hearing, the examiner concluded there was no alternative but to leave a message with the Dean's office at the Law School indicating that the request for a continuance had been denied.

Immediately thereafter the grievant telephoned the Elkins office and advised that the continuance would have to be granted as she had given plenty of advance notice. She again warned that she was not to be called at work. Based upon the grievant's representations to Ms. Howard that she would not be present for the hearing on May 19, neither party appeared at the designated time.

On June 5, 1987 Mr. Walker filed a motion to dismiss on behalf of the respondent. The motion was based on the grievant's failure to prosecute, failure to appear, breach of good faith dealing and contempt of a lawful order. Grievant has offered no response to this motion.

Inasmuch as the level four hearing scheduled for this matter has been twice continued at the request of the grievant, that she failed to demonstrate good cause for a continuance to be granted and then failed to appear at the hearing scheduled for May 19, 1987, the motion to dismiss is hereby granted and this matter ORDERED to be stricken from the docket.

DATE

June 15, 1987

Sue Keller

SUE KELLER
Hearing Examiner