



REPLY TO:
101 Harper Park Drive
Suite D
Beckley, WV 25801
Telephone: 255-6155

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

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.

Governor

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

STEVEN RAMEY

v.

Docket No. H-88-005

WEST VIRGINIA DEPARTMENT OF HEALTH

D E C I S I O N

Grievant, Steven Ramey, was employed by the West Virginia Department of Health as a Health Service Worker assigned to Huntington State Hospital for approximately three (3) years. He filed a grievance at Level IV on July 29, 1988 protesting his dismissal. Level IV hearings were held August 24, 1988 and September 6, 1988. Proposed findings of fact and conclusions of law were submitted by the parties on September 26, 1988.

By letter dated July 18, 1988 grievant was notified by Charles J. Langan, Ph.D., Administrator, that he was dismissed from his duties at Huntington State for "negligence, that is, reporting for work in an unfit physical condition which rendered you unable to carry out the duties and responsibilities of your job as

a Health Service Worker in an efficient, effective and safe manner." (Employer's Exhibit No. 5) Mr. Langan went on to cite actions of the grievant on July 15, 16 and 17, 1988 which led to the decision to terminate his employment. The letter also makes reference to and incorporates as reasons for dismissal three previous suspensions for similar conduct.

Mr. Ramey does not allege any procedural defect of notice or violation of pertinent Department of Health personnel policy on dismissals but merely contends the evidence presented by the department is insufficient to warrant his dismissal. A review of that evidence, including the testimony of supervisors and co-workers and written documentation, indicates the department's case is more than sufficient.

Grievant was first employed at Huntington State Hospital in 1985. A personnel evaluation dated June 13, 1986 ranked his overall job performance in the "moderately functional, acceptable performance" category. (Employee's Exhibit No. 3a) An evaluation dated October 24, 1986 placed him in the "fully functional or nearly fully functional, above average performance" category. (Employee's Exhibit No. 3c) His evaluation of February 13, 1987 rated his performance on the "non-functional, unsatisfactory" performance level. (Employee's Exhibit No. 3b) Mr. Ramey's evaluation of June 23, 1987 noted he was once again performing on the "moderately functional, acceptable" level. (Employee's Exhibit No. 3d) On October 29, 1987 grievant was given a numerical

score of 3.43 out of a possible five (5) points and placed in the "good/acceptable" category. (Employee's Exhibit No. 3e) Grievant's last evaluation before his dismissal, dated March 9, 1988, placed him on the same level. (Employee's Exhibit No. 3f)

Grievant was given a suspension of four (4) days without pay on May 24, 1988 for refusing to comply with a directive from Health Nurse Margaret Myers that he remain on duty in compliance with hospital policy for emergency staffing. (Employer's Exhibit No. 1) On May 31, 1988 grievant was suspended again for ten (10) days without pay because of sleeping while on duty and insubordination. (Employer's Exhibit No. 2) By letter dated June 15, 1988 grievant was suspended for twenty (20) days without pay for sleeping while on duty on June 12, 1988. (Employer's Exhibit No. 4).¹

On July 15, 1988 grievant reported to work at 6:45 a.m. and joined his supervisor and other staff members for a morning briefing on the events of the previous shift and particular instructions for the day. According to the testimony of Ms. Sandra

¹It should be noted that appeals of all three suspensions were filed with the West Virginia Civil Service Commission prior to the effective date of grievance procedures contained in W.Va. Code §29-6A-1, et seq. Although grievant's dismissal letter indicates the action was taken because of his behavior on July 15, 16 and 17, 1988, the actions precipitating these suspensions are incorporated therein and must be reviewed to determine if the dismissal was warranted. Grievant made no objection at the Level IV hearing to admission of evidence relating to the suspensions or advanced any legal argument that such evidence was not relevant.

Wargo, the nurse in charge at the time, Mr. Ramey was noticeably drowsy and fell asleep several times during the briefing. (T.___) She also noticed that during the course of the day grievant's speech was slurred, that he walked unsteadily and when he signed a daily roster sheet for other employees, his handwriting was nearly illegible. (T.___) During the same shift, while female patients were assembled on an outside basketball court, one left the hospital premises and, according to Ms. Wargo, Mr. Ramey opted to climb an eight to ten foot fence in an attempt to return her rather than using an open gate several feet away. (T.___) These incidents were reduced to writing by Ms. Wargo in the form of a "report of contact" dated June 15, 1988. (Employer's Exhibit No. 12) Ms. Wargo further testified that on numerous shifts on which she was supervisor, the grievant appeared extremely drowsy and sometimes incoherent in his speech. (T.___) On April 23, 1987, according to Ms. Wargo, Mr. Ramey returned from supper at approximately 8:00 p.m. in that condition and she became concerned that he would be unable to perform his duties. Confronted by Ms. Wargo, grievant stated he was only sleepy and denied taking medication. (T.___) At approximately 5:30 p.m. the following day, according to Ms. Wargo, Mr. Ramey began exhibiting the same behavior causing both his co-workers and patients to complain to her that he was intoxicated and unable to work. (T.___) Ms. Wargo and Ms. Becky Rogers then conferred with Mr. Ramey and he denied taking medication. Ms. Wargo relieved him of duty

for that shift and asked him to leave the hospital. (T.__) These incidents were reported to Head Nurse Margaret Myers on an incident report form the next day. (Employer's Exhibit No. 13)

Ms. Myers testified that she too had observed on numerous occasions that grievant would report to work very alert but at certain times of the day he would suddenly appear very drowsy and unsteady in his gait. She also approached grievant about his behavior on several occasions and was told he was only sleepy. (T.__) Ms. Myers testified about one particular incident of May 30, 1988 when she discovered grievant asleep on a couch surrounded by patients who were making comments about his behavior. According to Ms. Myers grievant didn't awaken until she had called his name five times. (T.__) After a discussion with grievant about sleeping on the job, Ms. Myers instructed him to go home. This occurrence was reported to Ms. Betty Lucente, Director of Nursing, in a memorandum dated May 31, 1988. (Employer's Exhibit No. 8) Ms. Myers recounted another incident on June 11, 1988 when grievant reported to work at 6:45 a.m. and during the morning shift report he sat with his head against the wall with his eyes closed. During the day grievant's speech was slurred, his movements were very slow and he appeared groggy. (T.__) Ms. Myers testified she asked grievant for a list of patients who eat in the dining room upon his return from there and he could not recollect where the list was or which co-worker accompanied him and the patients to breakfast. (T.__) Ms. Myers also stated

she observed the same behavior on June 12, 1988 and noticed during the evening shift report on that date grievant appeared extremely disoriented, giving different reports for the same patients. (T.___) Ms. Myers further testified that on the following day grievant called in asking permission to take holiday leave and was refused but because his speech was slurred, he was advised to stay home. (T.___) These incidents were reduced to writing in the form of a memorandum dated June 13, 1988 and placed in Mr. Ramey's personnel file. (Employer's Exhibit no. 9) Ms. Myers also related that grievant's co-workers continuously approached her with concerns about working with him when he was unable to perform his duties and complaints about having to pay more attention to his behavior than that of the patients. (T.___) According to Ms. Myers, grievant's behavior precipitated a meeting with him, Ms. Lucente and herself on March 25, 1988 in which a discussion of substance abuse and a treatment program at the hospital proved fruitless. (T.___) Ms. Lucente's testimony corroborated Ms. Myers' account of numerous complaints from co-workers and the general demoralizing effect grievant's actions were having on his particular ward. She also expressed an opinion that Mr. Ramey's behavior was particularly alarming and posed a danger to patients and himself since his duties involved the direct care of mentally ill patients who, at times, required physical intervention and restraint. (T.___)

Ms. Nancy Lane, Health Service Worker, was occasionally assigned to the same ward and shifts as grievant and she also testified that she had witnessed his slurred speech, drowsy demeanor and unsteady walk on many occasions. (T.___) She related a specific incident occurring on June 12, 1988 when grievant fell asleep at a nurse's station in the presence of two staff members and two patients and he awoke and asked a question but "nodded out" before she could answer. (T.___) Ms. Lane and Ms. Judy Schoenlein made a written account of this incident and submitted it to Ms. Myers. (Employer's Exhibit No. 11) Ms. Lane recalled working with grievant on July 16 and 17, 1988 and observing him trying to take an order for the hospital canteen from a patient but he was unable to understand her because he was so drowsy. (T.___) Ms. Lane further testified that she had once observed grievant sleeping on a picnic table on the hospital grounds and on at least one occasion she had to shake him in order to wake him to take a telephone call. (T.___) It was Ms. Lane's opinion that Mr. Ramey provided her little assistance when she worked with him and instead imposed an additional burden upon her. (T.___)

Grievant denied that he had ever been asleep while on duty or reported to work under the influence of any medication which would impair his ability to perform his work in a safe and effective manner. (T.___) He acknowledged his doctor prescribed him Valium and Codeine for a work-related injury but stated he only took these medications as needed and only when he was off-duty.

(T.__) Mr. Ramey specifically disputed the testimony of Ms. Myers, Ms. Wargo and Ms. Lane and denied he had ever been under the influence of any intoxicating substance while on duty. (T.__) Grievant presented documentation of his work-related injury and on-going treatment for that injury. (Employee's Exhibit No. 1,2) Essentially, Mr. Ramey's defense to the hospital's charges was an assertion that he had health problems related to the injury and personal problems associated with the long illness and death of his father which caused him to lose sleep and thus report to work on occasions in less than ideal mental and physical condition. According to the grievant the hospital administration was unsympathetic to his problems and simply had no grounds on which to suspend or dismiss him from his employment.

The testimony of witnesses on behalf of the hospital provided the more credible account of grievant's work performance during the last several months of his employment there. It is not entirely clear when that performance began deteriorating but it is obvious that as early as April 1988 his behavior on the job was posing not only a threat to the patients but co-workers and himself as well. According to Ms. Wargo and Ms. Myers grievant was often the only male on a given night and the nature of patients served at the hospital frequently required some form of physical intervention on his part. As both noted, a health service worker who is not mentally alert or physically capable to handle such situations is a serious liability. Although the hospital administration avoided the characterization of grievant's

action as drug-induced, the conclusion that he either reported to work under the influence of his prescribed medication or took it during work hours is inescapable. Contrary to Mr. Ramey's assertion that the administration took advantage of his personal and health-related problems, there was ample testimony that he was indeed offered assistance through a hospital program for employees in such situations and refused that assistance. In addition to the foregoing, the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Grievant was employed by the West Virginia Department of Health as a Health Service Worker assigned to Huntington State Hospital from 1985 until his dismissal on July 18, 1988.

2. As a Health Service Worker, grievant's duties at the hospital included accompanying patients to and from meals in the dining room, supervising various patient group activities, observing of patient behavior, accompanying patients to doctor's appointments, supervising recreational activities and physically restraining patients as the need arose.

3. From April 1988 until his dismissal on July 18, 1988, grievant reported to work on numerous occasions under the influence of either sedatives or pain medication with the result that he

was unable on those occasions to perform his duties in an efficient effective and safe manner.

CONCLUSIONS OF LAW

1. Pursuant to the provisions of W.Va. Code §29-6A-6, 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.

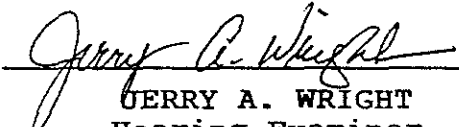
2. An administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs. Clarke v. West Virginia Board of Regents, 301 S.E.2d 618 (W.Va. 1983); State ex rel. Wilson v. Truby, 281 S.E.2d 231 (W.Va. 1981); Powell v. Brown, 238 S.E.2d 220 (W.Va. 1977).

3. The West Virginia Department of Health complied with all provisions of its personnel policy relating to the suspension and dismissal of employees when it terminated grievant's employment at Huntington State Hospital on the grounds of neglect of duty.

4. The West Virginia Department of Health has proven by a preponderance of the evidence the charge of willful neglect of duty against the grievant, Steven Ramey.

Accordingly, the grievance is DENIED and the decision of the West Virginia Department of Health to dismiss grievant from his employment at Huntington State Hospital is hereby affirmed.

Either party or the West Virginia Civil Service Commission may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code §29-6A-7) Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.


JERRY A. WRIGHT
Hearing Examiner

Dated: December 4, 1988