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MARLENE ADKINS

v.

DOCKET NO. 89-BOR-055

WEST VIRGINIA UNIVERSITY

DECISION

Grievant, Marlene Adkins, is employed by West Virginia University, (University) as a medical secretary assigned to the Department of Pediatrics at the West Virginia School of Medicine. Ms. Adkins filed a level one grievance on October 11, 1988 in which she alleged that a warning letter regarding her job performance was in violation of the rules and regulations of the Board of Regents and West Virginia University because the listed infractions were inaccurate, in error and de minimis in character. The grievance was denied at levels one and two and a level four appeal was received on February 9, 1989. After a level four hearing was twice continued the parties agreed to submit the matter for decision based upon the record supplemented with proposed findings of fact and conclusions of law.

The facts of this matter are as follows. On September 9, 1988 Mary Bane, Office Manager II, conducted a counseling

session with the grievant regarding an unacceptable amount of typing errors and her failure to proofread her work. Ms. Bane issued the grievant a letter of warning dated September 26, 1988 confirming a second discussion on September 23 between the two regarding the grievant's job performance. Ms. Bane cited the basis of the letter to be the grievant's failure to maintain standards of performance and conduct as outlined by the immediate supervisor. Specifically noted were the grievant's numerous typing errors and failure to proofread drafts of final copies. Ms. Bane also noted that during their discussion on September 23 she brought to the grievant's attention complaints by two physician supervisors regarding inaccurate and incomplete phone messages, the grievant's failure to follow proper procedures when scheduling a new patient clinic appointment and incorrect typing of student evaluation forms. Ms. Bane advised the grievant that she was expected to proofread drafts and final copies of letters and to accurately take phone messages and schedule appointments. The grievant was warned that her performance was expected to improve immediately and that the failure to maintain a sustained and satisfactory level could result in further disciplinary action.

The University argues that the warning letter was issued in accordance with Board of Regents and University procedures when the grievant's performance did not improve after the September 9 counseling session. The grievant argues that the letter of warning was unwarranted because

the letters referred to by Ms. Bane were actually a very small percentage of her work and because most of the corrections made on the letters can be attributed to the physicians' editing rather than errors made by the grievant. Further, the grievant asserts that the evidence produced by Ms. Bane should be given little weight because it was based primarily on hearsay and was not the best evidence available since the complaining physicians were available to testify. The grievant argues that the University has failed to show just cause for the warning letter as is required by the personnel policies of West Virginia University and the Board of Regents and requests that the letter be removed from her personnel and any other files.

Both Board of Regents and West Virginia University policies provide that when an employee fails to maintain an acceptable standard of performance the immediate supervisor will attempt to correct the situation through counseling. If counseling is not effective more formal discipline, including warning letters, may be imposed. At level two Ms. Bane submitted seven letters and a memorandum typed by the grievant on September 7 and 8. While some editing is identified, numerous typographical errors are evident, words which are part of everyday usage as well as medical terms are misspelled and numerical designations are incorrect. Examples of the grievant's work completed between September 9 and September 26 include the same errors, showing little or no improvement in the quality of her work. The grievant

cannot explain the numerous errors and states that she proofreads each document twice and utilizes a medical dictionary and the word processor's spell-check verifier.

The University has established that the grievant was performing in an unacceptable manner and that no improvement was shown after counseling. Accordingly, the letter of warning was issued in compliance with Board of Regents and West Virginia University policies.

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. The grievant is employed by West Virginia University as a medical secretary assigned to the Department of Pediatrics of the West Virginia School of Medicine.

2. The grievant was counseled on September 9, 1988 after her job performance became unacceptable.

3. When no improvement was shown in the grievant's job performance during the two week period after the counseling session a letter of warning was placed in her personnel file.

Conclusions of Law

1. When an employee fails to fulfill standards of performance he is to be counseled in an effort to resolve the problem. If counseling is not effective the employee may receive a series of warning letters. W.Va. Board of Regents Classified Employee Handbook, p. 24 (May 8, 1987); West Virginia University Employee Handbook, p. 51 (January 1979).

2. The University has proven by a preponderance of the evidence that the grievant has failed to meet performance standards and failed to improve after counseling thereby establishing just cause to issue a letter of warning.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Monongalia County or 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 §18-29-7) 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.

DATED: December 21, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER