



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

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

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
GASTON CAPERTON
Governor

Offices
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone 348-3361

DORSIE SHIFLETT

v.

DOCKET NO. COMM-89-011

W.VA. DEPARTMENT OF COMMERCE

DECISION

Grievant, Dorsie Shiflett, was employed by the Department of Commerce (Department), Division of Parks and Recreation, as a night desk clerk at Blackwater Falls State Park. Mr. Shiflett filed a level four grievance on January 9, 1989 as a result of his having been suspended from duties on December 2, 1988. The grievant was subsequently dismissed from his position on December 20, 1988. A level four hearing was conducted on February 8, 1989 and additional information requested by the hearing examiner was submitted on February 17.

The Department presented the following evidence in support of its action. The grievant and a co-worker were issued a memorandum from Robert Johnson, Superintendent, dated January 9, 1987 in which they were reprimanded for being found asleep while on duty the night of January 6, 1987. They had been reported sleeping by a guest who, after

waiting for some time, went behind the desk and obtained his own cabin key. Both employees were warned that should they again be found sleeping while on duty they would receive a two week suspension, without pay, at the minimum with immediate dismissal a possibility.

The grievant received a second letter of reprimand dated March 31, 1987 from Superintendent Johnson when it was discovered that a room had been used the night of March 15 although it had not been assigned to a registered guest. While it was never established who may have used the room, Superintendent Johnson reminded the grievant that it was his duty to monitor the lodge during the night.

On April 15, 1987 another employee found the grievant asleep when she arrived to work at 5:45 a.m. As a result of this and the previous incidents Charles R. Spears, then Director of the Division of Parks and Recreation, suspended the grievant for seven calendar days without pay. No further incidents occurred until the grievant was reported by co-workers for sleeping while on duty on November 19 and again on November 21, 1988. Director Spears verbally suspended the grievant on December 2 for a period of twenty-two days or until an investigation could be completed. Director Spears notified the grievant by letter dated December 20 that he was dismissed, effective immediately, for gross misconduct. Those incidents previously discussed were cited as the specific reasons for dismissal.

The Department argues that the dismissal should be upheld as the action was taken as a result of a repeated offense for which the grievant had been progressively disciplined. The Department also asserts that the action was in compliance with Civil Service Rules and Regulations, Section 13.02, which provides that the appointing authority may dismiss a permanent employee for cause.

The grievant states that he did not sleep while on duty during the month of November. His wife, Lorena Shiflett, and a friend, Roy Teter, testified on his behalf. Both stated they were at the lodge the entire evening of November 19, not leaving until approximately 5:15 to 5:30 a.m., and that the grievant had not slept. Mrs. Shiflett stated that on the evening of November 21 she did not stay in the lodge but spent the night outside in their truck and the grievant checked on her several times. Mr. Teter stated that he stopped to check on Mrs. Shiflett at 11:30 or 11:45 that night but he did not go into the lodge.

The evidence offered in this matter unequivocally supports the action of the Department. The grievant had previously been counseled and suspended for sleeping while on duty. Neither of these efforts corrected the situation as the Grievant was found sleeping by co-workers on November 19 at 6:45 a.m. and again on November 21 at 4:30 a.m. Neither of his witnesses were in the lounge at that time to

dispute that testimony. As the Department has applied progressive discipline and established cause for this action, the dismissal must be upheld.

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. Grievant was employed by the Department of Commerce, Division of Parks and Recreation, as a night desk clerk at Blackwater Falls State Park.

2. The grievant was reprimanded for being found asleep by a guest while on duty the night of January 6, 1987.

3. The grievant was again found asleep while on duty the night of April 15, 1987 and was suspended, without pay, for seven calendar days.

4. The grievant was found asleep by co-workers while on duty at 6:45 a.m. on November 19 and at 4:30 a.m. on November 21, 1988.

5. The grievant's wife and a friend were both at the lodge on November 19 and 21 but not at the times he was found asleep.

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. Ramey v. Department of Health, Docket No. H-88-005 (Dec. 6, 1988).

2. W.Va. Civil Service Rules and Regulations Section 13.02 provides that the appointing authority, fifteen calendar days after giving a written notice stating the specific reasons for its action, may dismiss a permanent employee for cause. The fifteen day notice shall be at the discretion of the appointing authority when the cause of dismissal is gross misconduct.

3. The Department has established the grievant's dismissal was for cause and the action taken as a part of the progressive disciplinary policy.

Accordingly, the grievance is **DENIED**.

Either party or the West Virginia Civil Service Commission may appeal this decision to the Circuit Court of Tucker 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.

DATED February 28, 1989

Sue Keller

SUE KELLER

HEARING EXAMINER