THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

ROBERTA HANEL,
Grievant,

v. Docket No. 2014-1785-CONS

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
WILLIAM R. SHARPE, JR. HOSPITAL,
Respondent.

DECISION

Grievant, Roberta Hanel, filed her first grievance on June 18, 2014, indicating that
she had been informed that she would no longer be allowed to continue in her position as
a Licensed Practical Nurse. Grievant then filed a second grievance in which she indicated
that she had been notified of dismissal without a predetermination conference. A Level
Two mediation session was conducted on January 15, 2015. This case was placed in
abeyance for a substantial amount of time while the parties attempted to resolve the
matter. A Level Three evidentiary hearing was held before the undersigned on July 18,
2016, at the Grievance Board’s Westover office. Grievant appeared in person and by her
representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union.
Respondent appeared by its counsel, Steven R. Compton, Senior Assistant Attorney
General. This matter became mature for consideration upon receipt of the last of the
parties’ fact/law proposals September 6, 2016.
Synopsis

Grievant works at Sharpe Hospital as a Licensed Practical Nurse. In the fall of 2014 there was some discussion between Grievant and Respondent concerning her medical condition and reasonable medical accommodation. Due to what appears to be a misunderstanding, Grievant believed she was going to placed off the schedule and on a leave of absence. Grievant was understandably upset. Grievant claims she was off work and needed to use two days of annual leave around that time. It is undisputed that Respondent provided reasonable medical accommodation to Grievant to her satisfaction. Grievant failed to meet her burden of proof and establish that she is entitled to the restoration of two annual leave days to her annual leave balance.

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

Findings of Fact

1. Grievant has been employed at Sharpe Hospital for approximately three years as a Licensed Practical Nurse. On April 9, 2014, Respondent’s Disability Manager Andrew Garretson sent Grievant a letter scheduling Grievant for an independent medical evaluation on April 30, 2014, with Tristate Occupational Medicine. Beginning September 2013, Grievant was granted a medical accommodation to work no longer than twelve continuous hours.

2. On or about April 16, 2014, Grievant submitted a handwritten statement from her physician, Dr. William G. Bowles, stating: “Mrs. Hanel has Diabetes Mellitus. She has had great difficulties controlling her blood sugars as a result of working long shifts. It is medically necessary to restrict her work schedule to no more than 12 hrs in a 24 schedule.
This is strictly for medical reasons. She is still able to work at least 40 hr work week schedule.”

3. On or about May 7, 2014, Respondent received the results of Grievant’s IME with Tristate Occupational Medicine. The IME confirmed that Grievant’s medical restrictions were permanent. Grievant maintained that she is able to perform the essential functions of her job as a Licensed Practical Nurse at Sharpe Hospital and requested a reasonable medical accommodation.

4. Respondent formally granted the reasonable accommodation to Grievant as requested by correspondence dated September 4, 2015. According to Grievant, Sharpe Hospital had always informally accommodated her prior to the formal granting of the request.

5. Grievant conceded that the issue concerning the accommodation had been resolved, but that there was a remaining issue concerning time that she was taken off the schedule.

6. Grievant pointed out four non-consecutive dates in September 2014 that she used annual leave in order to look for other employment and to work around her house since she thought she was going to be off the schedule. Grievant was upset after receiving a letter from Mr. Garretson that seemed to indicate that she was going to put on a leave of absence. Grievant acknowledged that she had not lost any money and only wanted her annual leave restored. Grievant was uncertain of the dates.

7. Grievant acknowledged that she was informed that she was back on the schedule but choose to not come to work because she had other family plans and she was
upset. Grievant stated that she could have gone to work. She also stated that she had job interviews on two of the dates but choose not to go to work for her normal evening shift.

8. The record provided a letter that demonstrated that Grievant was not going to be placed on a leave of absence until October 1, 2014.

9. Grievant then modified her claim that she missed October 1 and 2, 2014. Grievant stated that she did not know if she lost any money or not for those days. Grievant presented no other proof to back up her claim other than a master schedule sheet which was blank on October 1 and 2. Grievant presented no other proof to support her claim, such as a Division of Personnel WV-11, or other documentation to support her allegation.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); 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).
The record is undisputed that following the Level One hearing, Respondent granted the accommodation request, which made that matter moot. The only outstanding issue is Grievant’s claim that she have certain days of annual leave restored. Grievant first claimed that she should be given back four days of annual leave in September 2014 that she had to take due to being upset over a letter that was going to place her off the schedule on a leave of absence. Grievant did not lose any pay and only wanted annual leave restored. Grievant then realized that this claim was inconsistent with the actual letter she received.

Grievant then indicated that she was only off the schedule on October 1 and 2, 2014. The only evidence to support this assertion was a master schedule sheet which is blank on those two days. Grievant did not produce any Division of Personnel WV-11’s or other documentation to establish that she lost any pay or leave for those days. Grievant did assert that she had to take annual leave in September because she was upset and had to look for other work. Grievant made no such claim for the days in October. The undersigned agrees with Respondent that Grievant appeared to speculate on the issue and failed to establish by a preponderance of the evidence that she had suffered a loss for which relief can granted.

The following Conclusions of Law support the decision reached.

**Conclusions of Law**

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *Holly v. Logan*
2. Grievant failed to meet her burden of proof and establish that she is entitled to the restoration of two annual leave days to her annual leave balance.

Accordingly, this grievance is DENIED.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. See also 156 C.S.R. 1 § 6.20 (2008).

Date: October 17, 2016

Ronald L. Reece
Administrative Law Judge