THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

JEANNISE DIANE GRECO,
Grievant,

v. **DOCKET NO. 2016-1880-CONS**

MONONGALIA COUNTY HEALTH DEPARTMENT,
Respondent.

DECISION

Three grievances were filed in 2016 by Grievant, Jeannise Diane Greco, against her employer, the Monongalia County Health Department, which were consolidated at level one. The first grievance was filed on June 21, 2016, and is comprised of nine pages of allegations, but generally alleges harassment and bullying. As relief Grievant seeks an apology,[1] payment for medical counseling, a change in her supervisor, that written violations, letters of reprimand and a plan of improvement be removed from her file,

[1] Relief such as a public apology is not available from this Grievance Board. *Emrick v. Wood County Bd. of Educ.*, Docket No. 03-54-300 (Mar. 9, 2004); *Hall v. W. Va. Div. of Corr.*, Docket No. 89-CORR-687 (Oct. 19, 1990). "The Grievance Board has also held, 'a letter stating that actions of certain employees were inappropriate is in the nature of a request for an apology, which is not available from this Grievance Board.' *Emrick, supra*." *Lawrence v. Bluefield State College*, Docket No. 2008-0666-BSC (June 19, 2008).

discipline against another employee,[2] attorney fees,[3] a committee be formed to oversee employees who file grievances, a supervisor assigned to the Harrison County office,[4]

---

[2] It is a well-settled rule that the Grievance Board does not have the authority to order an agency to impose discipline on an employee. Relief which entails an adverse personnel action against another employee is extraordinary, and is generally unavailable from the Grievance Board. *Stewart v. Div. of Corr.*, Docket No. 04-CORR-430 (May 31, 2005); *Jarrell v. Raleigh County Bd. of Educ.*, Docket No. 95-41-479 (July 8, 1996). Any decision concerning disciplinary action generally resides with the employer. *Dunlap v. Dep't of Envtl. Prot.,* Docket No. 2008-0808-DEP (Mar. 20, 2009); *Cassella v. Div. of Highways*, Docket No. 2012-0496-DOT (Dec. 11, 2012).

[3] It is well established that the Grievance Board does not have the authority to award attorney fees. *Brown-Stobbe/Riggs v. Dep't of Health and Human Resources*, Docket No. 06-HHR-313 (Nov. 30, 2006); *Chafin v. Boone County Health Dep't*, Docket No. 95-BCHD-362R (June 21, 1996). New WEST VIRGINIA CODE § 6C-2-6 is entitled, "Allocation of expenses and attorney's fees." It specifically states: "(a) Any expenses incurred relative to the grievance procedure at levels one, two or three shall be borne by the party incurring the expense."

[4] The undersigned has no authority to make decisions about how Respondent runs the agency. "A grievant's belief that his supervisor's management decisions are incorrect is not grievable unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to, or interference with, the employee's effective job performance or health and safety." *Rice v. Dep't of Transp.,* Docket No. 96-DOH-247 (Aug. 29, 1997).

> [I]t is not the role of this Grievance Board to change agency policies, and that is what Grievants are seeking. The undersigned has no authority to require an agency to adopt a policy or to make a specific change in a policy, absent some law, rule or regulation which mandates such a policy be developed or changed. *Skaff v. Pridemore*, 200 W. Va. 700, 490 S.E.2d 787 (1997); *Olson v. Bd. of Trustees*, Docket No. 99-BOT-513 (Apr. 5, 2000); *Gary and Gillespie v. Dep't of Health and Human Resources,* Docket No. 97-HHR-461 (June 9, 1999).
>
> > While this grievance procedure provides state employees with a mechanism to pursue complaints regarding a variety of terms and conditions of employment, it does not empower this Grievance Board with authority to simply substitute its judgment for that of agency management in the day-to-day supervision of its workforce. *See Skaff, supra*.
>
> *Board, et al., v. W. Va. Dep't of Health and Human Resources,* Docket No. 99-HHR-329 (Feb. 2, 2000).

Frame v. Dep't of Health and Human Res., Docket No. 00-HHR-240/330 (April 20, 2001).

monthly meetings with supervisors and employees, and damages for violation of rights and pain and suffering,[5] and protection from harm. The second grievance was filed on July 25, 2016, and is comprised of four pages of allegations, but generally alleges generally retaliation and reprisal, violations of posting and selection procedures,[6] improper classification, and harassment, and contests, among other things, a written reprimand Grievant received. As relief Grievant seeks proper classification as a part-time employee from March 2006 through December 2011, with benefits and years of service, plus interest, discipline be imposed on other employees, that a team leader position be posted, that she be awarded costs, fees, penalties and interest, and consideration for mental, physical, emotional, and financial strain. The third grievance was filed on November 22, 2016, and is comprised of seven pages of allegations, but generally alleges harassment, discrimination, abuse of power, reprisal, hostile work environment, and that she was denied the right to representation.[7] As relief Grievant seeks that disciplinary action be imposed

---

[5]It is well established that the Grievance Board has never awarded punitive or tort-like damages in making an employee whole.

> *W. Va. Code* § 29-6A-5(b) allows for the provision of "fair and equitable" relief which has been interpreted by the Grievance Board to encompass such issues as back pay, travel reimbursement, and overtime, but not to include punitive or tort-like damages for pain and suffering. *Spangler v. Cabell County Bd. of Educ.,* Docket No. 03-06-375 (Mar. 15, 2004); *Walls v. Kanawha County Bd. of Educ.*, Docket No. 98-20-325 (Dec. 30, 1998); *Hall v. W. Va. Dep't of Transp*., Docket No. 96-DOH-433 (Sept. 12, 1997); *Snodgrass v. Kanawha County Bd. of Educ.*, Docket No. 97-20-007 (June 30, 1997).

Miker v. W. Va. Univ., Docket No. 06-HE-133 (July 18, 2006).

[6] No testimony was offered to explain this allegation or the allegation of improper classification. Accordingly, the undersigned cannot address this allegation.

[7] No testimony was offered that Grievant requested representation and was denied representation at any time. Accordingly, this allegation will not be addressed.

on other employees, negative documentation be removed from her personnel file, and her performance evaluations for 2015[8] and 2016 be removed from her personnel file as invalid.

A hearing was held at level one on January 20, 2017, and the grievance was denied at that level on February 10, 2017. Grievant appealed to level two on February 27, 2017. Grievant then filed two additional grievances, which were consolidated with this matter. The first was filed on March 21, 2017, and is comprised of nine pages, making claims similar to those in the earlier grievances. No additional statement of relief sought was provided. The second was filed on or about April 18, 2017, and contests an "EPA 2 document with a below standard score," which was presented to Grievant on March 27, 2017. As relief Grievant seeks removal of the EPA-2 from all employment files, that other employees "found to be guilty of violating any state, federal, county law, rule, policy, statute, Codes, written agreements and any other violation deemed applicable as a result of the findings in all my grievance cases within this grievance process and in any other legal proceeding be held accountable for their actions," and attorney fees.

A mediation session was held on May 26, 2017. Grievant appealed to level three on July 5, 2017, and a level three hearing was held before the undersigned Administrative Law Judge on September 11, 2017, at the Grievance Board's Westover office. Grievant was represented by Gregory H. Shillace, Esquire, Shillace Law Office, and Respondent was represented by Kenneth Hopper, Esquire, Pullin, Fowler, Flanagan, Brown & Poe, PLLC. This matter became mature for decision on October 11, 2017, on receipt of

[8] Grievant received this evaluation in 2015. No grievance was filed when the evaluation was received by Grievant. The undersigned ruled at the level three hearing that no evidence would be taken on that evaluation.

Respondent's Proposed Findings of Fact and Conclusions of Law. Grievant declined to submit written argument.

Synopsis

Grievant received a verbal warning for confronting a co-worker in an inappropriate manner, and was given a corrective action plan. Respondent demonstrated that the verbal warning was justified. Grievant challenged her evaluation, and asserted that she was being retaliated against for filing a grievance, that she was being harassed, bullied, and subjected to a hostile work environment, and discriminated against, citing a number of incidents. Generally, the incidents cited by Grievant were instances where she was simply being supervised. Grievant did not prove any of her claims, except for her claim that she did not counsel a client outside her office.

The following Findings of Fact are properly made from the record developed at levels one and three.

Findings of Fact

1. Grievant is employed by the Monongalia County Health Department ("MCHD") as a part-time employee, and is a Nutritionist.

2. MCHD conducts operations in offices in six counties in North Central West Virginia, including Harrison County. While the Nutritionists employed by MCHD usually are required to work out of more than one of the county offices, Grievant requested that she be stationed only at the Harrison County Women, Infants and Children ("WIC") office in order to be close to her infant, and this request was granted.

3. As a part-time employee, Grievant works three eight-hour days each week, which are the only days MCHD operates a clinic in the Harrison County office. Grievant also counsels clients in her office who come to the Harrison County WIC office.

4. When clients come to the Harrison County WIC office for services, they check in with Kelly Rolstad, a Nutrition Assistant. Clients are taken into Ms. Rolstad's office where she records client information on the computer, and she then takes the clients into a second waiting room to wait for lab work or for the Nutritionist to assist them.

5. On June 2, 2016, Ms. Rolstad was taking a client to the second waiting area, and the client's chart to the appropriate area, and observed Grievant sitting in the second waiting area with a client talking to them. Ms. Rolstad was concerned that Grievant was discussing medical information with the client which could be overheard by another client seated in the second waiting area, which she believed would be a HIPPA violation. Ms. Rolstad reported this observation to her supervisor, Kellie Walker, that same day, and Ms. Walker advised Grievant's supervisor, Brenda Fisher, of the same.

6. Ms. Fisher met with Grievant on June 7, 2016, regarding her meeting with the client in the second waiting area, and counseled her that this was not appropriate, and that she was to meet with clients in her office.

7. Grievant counsels women who come to the Harrison County WIC office on dietary issues, breastfeeding, and heights and weights of the children they bring to clinic. When Grievant counsels clients she needs to ask them questions and enter information into her computer as she is speaking to them, issue benefits, and have the client sign the pad connected to the computer, and her computer is in her office. Grievant cannot conduct

client counseling in the waiting area, and agrees that she should not counsel clients in areas outside her office. Grievant did not counsel a client in the waiting area.

8. On June 9, 2016, Grievant confronted Ms. Rolstad. Grievant raised her voice to Ms. Rolstad and told her not to tell her how to do her job. Grievant was loud enough that other employees in the office could hear her, although they could not hear what she was saying.

9. Grievant denied yelling at Ms. Rolstad, but testified that she called Ms. Fisher on June 9, 2016, to tell her "something" had happened between her and Ms. Rolstad, and Ms. Fisher told Grievant she would contact her when Ms. Fisher's supervisor, Anne McBride returned to the office. Grievant did not further identify what it was that she told Ms. Fisher had happened. Grievant also agreed that she and Ms. Rolstad did engage in a "verbal confrontation." Her explanation was that she had simply asked Ms. Rolstad if she had a problem with her and Ms. Rolstad responded that she did not think Grievant was professional and that Grievant did not do her job, to which Grievant responded that Ms. Rolstad did not know anything about her job. Grievant did not indicate why she felt the need to report this type of conversation to Ms. Fisher, or why she had confronted Ms. Rolstad at this time.

10. On June 13, 2016, Grievant received a verbal warning from Ms. Fisher for retaliating against and verbally attacking Ms. Rolstad for reporting Grievant's action to her supervisor, and Grievant was placed on a corrective action plan. The written documentation of this warning states that the conversation was loud enough to be overheard by clients and staff, and was "disrespectful, unprofessional, and unacceptable workplace conduct. If you have an issue with a coworker, you are to go through the proper

chain of command." The corrective action plan contained the following points: "Work with all staff in a congenial, polite manner. If you have an issue with a coworker, you are to go through the chain of command. You are to call me or Anne [McBride] and inform us of the situation. You are to counsel clients in your office not in the waiting room, lab, or any area outside of your office. If they are coughing, keep your distance and use sanitizer. You are not to retaliate on coworkers." The documentation states that if "no other infractions occur, this will be removed from your file in 1 year." As of the level three hearing, this documentation had not been removed from Grievant's file.

11. The documentation of the verbal warning also contains an allegation that Grievant had stated that she could not see the last client of the day because she had to nurse her baby, and that it had been reported to Ms. Fisher that Grievant had said that Ms. Fisher told her she "could see clients anywhere and that you could refuse to see them if they were sick. That is not what we discussed." No evidence was offered by Respondent in support of these allegations.

12. Grievant was dismissed from her probationary employment by Respondent in 2012. She filed a grievance, the grievance was granted by the Grievance Board by Decision dated April 22, 2013, and Respondent was ordered to reinstate Grievant.

13. Ms. Fisher was Grievant's supervisor in 2012 when Grievant's employment was terminated, and retains the belief that Grievant's dismissal should have been upheld. It is Ms. Fisher's belief that Respondent would have prevailed had it been allowed to call witnesses. The level three decision in that matter (*Greco v. Monongalia County Health Department*, Docket No. 2012-1293-MonHD (April 22, 2013)) indicates that Respondent was represented by an attorney, and that witnesses did testify in support of Respondent's

action, and it does not indicate that Respondent was at any time denied the opportunity to present any witness.

14. The level one hearing on this grievance was held seven months after the first grievance was filed. By Grievant's own admission, Respondent had trouble accommodating the schedules of all participants, and the hearing was continued twice at the request of Grievant or her attorney. Nonetheless, Grievant holds the belief that the delay in scheduling was caused mostly by Respondent and was in reprisal for filing grievances.

15. In July 2016, Dr. Smith sent Grievant an email which Grievant interpreted as an insinuation that she was spending too much work time and resources on her grievances. The wording of the email was not made a part of the record.

16. In September 2016, Grievant was told that she had 16 deficiencies in her records. This occurred after she had stated in a statement of grievance that she had never been cited for a deficiency. Eleven of these deficiencies were that the client signature on documents was upside down. This was, in fact, a deficiency. Grievant had not been told how clients were to sign the documents, and she was not disciplined for this. Five of the deficiencies were generated because information was not saved on one screen, but the computer program allowed Grievant to move to the next screen. Regardless of whether this was a programming issue, a computer issue, or human error, Grievant was not disciplined for this error either, which was a deficiency. The record does not reflect whether other employees were advised of such deficiencies.

17. A client complained by telephone to the Harrison County WIC office that Grievant had not issued her formula for her infant. Ms. Rolstad took the call and relayed

the information to a supervisor. Ms. Fisher contacted Grievant regarding this complaint, and Grievant explained to Ms. Fisher that the formula document the client had presented had expired. Ms. Fisher told Grievant she would have issued the formula while she was waiting on a current document. Grievant did not think she should issue the formula in this case, and took it upon herself to contact someone "with the state," and was told not to issue the formula. The record does not reflect that Ms. Fisher told Grievant to issue the formula, or that she was disciplined for not doing so or for the complaint, or that there was anything improper in a supervisor advising an employee of a client complaint and following up on this. Grievant is of the belief that the client complaint was possibly coerced by Ms. Fisher or Ms. Rolstad, even though she has no evidence to support this.

18. There are windows in Grievant's office, and because the lights caused her to have headaches, she would turn the overhead lights off in her office and close her door, even when clients were in her office. When Ms. Fisher observed this she told Grievant she was to have the light on in her office if her door was closed. Ms. Fisher was concerned that the dim light could present liability issues for Respondent, particularly when a client was in Grievant's office. Ms. Fisher did not tell any other employee he or she had to have the light on in his or her office if the door was closed, because no other employee had the light off in his or her office with the door closed.

19. After the grievance was filed in April 2016, Ms. Fisher began appearing at the Harrison County WIC office on clinic days, which are the days Grievant is working. Now Ms. Fisher goes to the office on some clinic days, but Ms. McBride and Ms. Walker also go some days, and the three rotate this duty. Grievant agrees that there is nothing improper with this, but she does not like it, nor do some other employees. Grievant feels

like her supervisor is there everyday watching her. Supervisors also go to other MCHD offices.

20. On October 31, 2016, Ms. Fisher asked Grievant why she had sent a fax on Sunday night from the office. Grievant does not have a key to access the building which houses the office, and she had sent the fax that morning, not on Sunday, and she told Ms. Fisher this. The fax sheet showed Grievant had sent the fax on Sunday. When Grievant investigated, she discovered that the fax clock was off by 12 hours that morning, and that Ms. Fisher had also sent a fax that morning which had been recorded as sent on Sunday. Grievant was not disciplined for this, nor does the record indicate that Ms. Fisher did not believe Grievant. Grievant noted that Ms. Fisher did not apologize to Grievant for questioning her, although she did not indicate why Ms. Fisher should do so.

21. On October 31, 2016, Grievant wore a Halloween themed T-shirt to work. MCHD has a Dress Code in place which states that employees are to dress professionally, and are not allowed to wear T-shirts to work. The Dress Code allows employees to wear casual attire, including T-shirts, on the last Friday of each month. October 31 was not a Friday, and there is no exception in the Dress Code for holidays. Grievant was not disciplined, nor was she sent home to change. Ms. McBride and Ms. Fisher told Grievant she could zip up her sweater to resolve the issue, and when she did not zip it up far enough to resolve their concerns, one or both of them said, “zip,” “zip,” “zip,” until the sweater was zipped far enough, which Grievant found to be demeaning. Grievant emailed Dr. Smith to help her with this issue, and he was under the impression that Grievant could not understand what a T-shirt was. Dr. Smith was busy, and told Grievant she was being disruptive and she needed to deal with her supervisors. Dr. Smith acknowledged that he

was terse with Grievant because he was in business meetings at the time. Grievant testified that "no one else was [in compliance] either," but provided no details of how employees were not in compliance with the Dress Code, whether they were not in compliance on October 31, or whether employees not in compliance with the Dress Code were dealt with in some fashion by their supervisor. Grievant did not deny that her attire was in violation of the Dress Code.

22. On October 31, 2016, shortly before it was time for Grievant to clock out for the day, Ms. Fisher and Ms. McBride entered Grievant's office to give her her performance evaluation. Ms. Fisher had indicated earlier in the month that the meetings with employees to go over performance evaluations would be scheduled, but she did not schedule such a meeting for Grievant. The record does not reflect whether she scheduled such meetings in advance for other employees. Ms. Fisher did not give Grievant a chance to respond to the performance evaluation during this meeting, but told her she could respond later.

23. Ms. Fisher has made it a practice to meet with Grievant regarding any issues related to her job late in the day so that they do not interfere with Grievant's work, as Grievant has indicated that such meetings make her nervous, and she sometimes has to leave work because she is so upset.

24. Grievant's performance evaluation for the rating period from September 1, 2015, to August 31, 2016, was completed by Ms. Fisher. Grievant's overall rating was 1.47, which falls within the range of scores for "needs improvement." She received a rating of "needs improvement" in 12 of the 23 categories rated, and a rating of "meets expectations" in 11 categories. The categories where Ms. Fisher found Grievant to need improvement were, "willingly accepts a variety of responsibilities," "adapts to new situations

in a positive manner," "works well with others to achieve organization's goals," "shares information with others when appropriate," "acts independently while keeping supervisor informed," "performs work according to current guidelines and directives," "treats all customers with respect," "work output matches expectations established," "work results satisfy organizations' goals," "work is organized and presented professionally," "work product is thorough and complete," and "employee is a dependable team member." The summary comments state that Grievant "needs to concentrate on clients and the needs of the day, i.e., nutrition education, walk-ins, on-lines, and answering the phone. She needs to learn to work as a team member supporting her team mates and the organization's goals rather than her own personal agenda." There are three places on this evaluation in the comments section which discuss Grievant's improper counseling of a client in the waiting area.

25. Grievant's 2015-2016 performance evaluation set out an improvement/development plan as follows: "Work cooperatively with other staff to provide good customer service to the clients. Always be respectful of coworkers and clients. Contact your supervisor if you will be late or need to leave early. Follow the chain of command. Sign your name legibly. Note the reason you are signing and choose the correct radio button. Follow Agency and Program policy and procedures. Follow the Agency Dress Code. Make arrangements whenever possible and make it a priority to attend Staff Trainings at the main office."

26. In February 2017, Ms. Fisher observed Grievant's meeting with a client, and used what is called a "routine monitoring tool" during this observation, which lists the areas Grievant is to cover with a client. Such observations are normally scheduled with the

employee, and the supervisor had in the past provided a copy of this tool to the employee for the employee to review during the client meeting. The routine monitoring tool had changed since Grievant had last seen one, and Grievant was not provided with a copy to use during the client meeting. The record does not reflect that Grievant was disciplined or negatively evaluated as a result of any of this. Grievant is of the belief that other employees were not monitored in the same fashion as she was, but she did not identify what she believed was different in this regard, or who the employees were who were treated differently.

27. In February 2017, when Grievant returned from being off work on Family Medical Leave, she was told by Ms. Fisher that she was limited to using three hours of sick leave per medical appointment. Grievant looked at the sick leave rules, and told Ms. Fisher she was also allowed travel time to and from appointments, and Ms. Fisher responded that yes, she was allowed up to an hour of travel time.

28. In March 2017, Grievant's computer scanner quit working and she could not scan documents to issue formula using her computer. Grievant was told by some unidentified person that if another employee could not scan the documents for her, she could use another scanner. Grievant did not find this solution to work for her, and after two weeks she called someone in "IT" who came the next day to fix the scanner. The record does not reflect whose responsibility it is to resolve issues of this type, or who Grievant talked to about this problem.

29. Grievant is not required by MCHD to draw blood from clients as most of the other Nutritionist's are, because she has a fear of blood.

30. When Grievant complained that she was being required to take the first chart on clinic days, Ms. Fisher put in place a rotation system in the Harrison County WIC office for which employee takes the first chart of the day, so that Grievant takes the first chart of the day only on odd numbered days.

31. Grievant asked to work 20 hours a week. Respondent did not believe it could grant this accommodation because the MCHD needs the Nutritionists to work all day on clinic days, at least three days a week.

Discussion

This grievance involves one disciplinary issue, the verbal warning, and several non-disciplinary issues. "A counseling session is non-disciplinary and is used to discuss a potential problem before it requires utilizing the progressive discipline process." *Hairston v. Dep't of Health and Human Res.*, Docket No. 05-HHR-247 (Feb. 17, 2006). The first issue which will be addressed is whether the verbal warning should be upheld. The burden of proof rests with the employer to prove the charges against an employee by a preponderance of the evidence. *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988). "The 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 and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. *Id*. The burden of proof is on Grievant to prove the remaining claims by a preponderance of the evidence.

Grievant received a verbal warning and was given a corrective action plan. The testimony by Ms. Fisher was that the verbal warning was given for Grievant's action of confronting Ms. Rolstad, because Ms. Rolstad had reported Grievant to her supervisor. In addition to the testimony of Ms. Rolstad that Grievant had confronted her and raised her voice to her, Respondent presented the testimony of two other employees who testified Grievant was loud enough to be heard throughout the office, Patricia Johnson and Tanya Griffith. Grievant denied that she had raised her voice, although she acknowledged that the confrontation could be characterized as a "verbal confrontation," which was significant enough to her that she felt the need to report it to Ms. Fisher. Grievant's take on the testimony of the three witnesses to the event was that they were all lying. While Grievant indicated that Ms. Rolstad may not like her, and that Ms. Johnson had issues with her, she did not give any reason why Ms. Griffith would lie. It was clear, however, from Ms. Griffith's testimony that she has issues with Grievant, as she testified that Grievant "refuses" to answer the telephone in the office, she works on personal items at work, she doesn't spend a lot of time with clients, and she had "demanded" that Ms. Griffith let her use her office when Grievant's office was flooded.

In situations where the existence or nonexistence of certain material facts hinges on witness credibility, detailed findings of fact and explicit credibility determinations are required. *Jones v. W. Va. Dep't of Health & Human Res.*, Docket No. 96-HHR-371 (Oct. 30, 1996); *Pine v. W. Va. Dep't of Health & Human Res.*, Docket No. 95-HHR-066 (May 12, 1995). An Administrative Law Judge is charged with assessing the credibility of the witnesses. *See Lanehart v. Logan County Bd. of Educ.*, Docket No. 95-23-235 (Dec. 29,

1995); *Perdue v. Dep't of Health and Human Res./Huntington State Hosp*., Docket No. 93-HHR-050 (Feb. 4, 1994).

The Grievance Board has applied the following factors to assess a witness's testimony: 1) demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and 5) admission of untruthfulness. Additionally, the administrative law judge should consider 1) the presence or absence of bias, interest, or motive; 2) the consistency of prior statements; 3) the existence or nonexistence of any fact testified to by the witness; and 4) the plausibility of the witness's information. *See Holmes v. Bd. of Directors/W. Va. State College*, Docket No. 99-BOD-216 (Dec. 28, 1999); *Perdue, supra*.

The undersigned finds Ms. Rolstad's testimony on its own not credible. Ms. Rolstad testified at the level one hearing with regard to Grievant counseling a client in the second waiting area that Grievant "was talking about [sic] them about WIC-related issues. Telling them their package, their program – what they got." She stated that she heard Grievant elicit medical information from these clients. However, at the level three hearing, Ms. Rolstad backtracked, and testified that she did not recall what she heard Grievant talking to the client about, it could have been any number of things, and she returned immediately to her office. However, with regard to Grievant raising her voice to her, Ms. Rolstad's testimony was consistent with that of Ms. Johnson and Ms. Griffith, and to some extent with Grievant's. Ms. Rolstad did not testify that Grievant had confronted her about reporting her to Ms. Walker, rather, Ms. Rolstad testified that Grievant had told her not to tell her how to do her job, which is very similar to Grievant's rendition of the confrontation. Ms. Johnson testified simply that Grievant was talking very loudly, and she pulled the door closed and

told them they had a client. She did not say she knew what the discussion was about. Ms. Griffith stated that she was in her office with the door shut, and that Grievant's voice was loud enough for her to hear Grievant, although she could not hear what it was she was saying, and did not know where Grievant was. She did not indicate, however, how she knew it was Ms. Rolstad Grievant was addressing, but she did speak to Ms. Rolstad later. The undersigned sees nothing in the testimony of Ms. Rolstad, Ms. Johnson, or Ms. Griffith which would discredit their testimony on this point, other than their feelings toward Grievant.

As to Grievant's testimony, she admitted that she initiated the discussion, but did not indicate why she had chosen to do so. Grievant must have felt the discussion was somewhat unusual, else she would not have reported it to Ms. Fisher. Grievant's testimony throughout the hearing left the impression that Grievant seems to think her supervisor is out to get her, regardless of whether there is some valid reason for her supervisor's action or not, which casts doubt on her credibility.

The undersigned concludes from the totality of the testimony that Grievant did, in fact, raise her voice to Ms. Rolstad in an inappropriate manner. The undersigned cannot conclude that Respondent proved that Grievant confronted Ms. Rolstad for reporting her to Ms. Walker, although the timing of the incident suggests that this was the case. Nonetheless, this is sufficient to uphold the verbal warning and the corrective action plan. However, any documentation which remains in Grievant's file should reflect that Respondent did not demonstrate that Grievant had refused to see the last client of the day because she had to nurse her baby, and that it had been reported to Ms. Fisher that Grievant had said that Ms. Fisher told her she "could see clients anywhere and that you

could refuse to see them if they were sick," as Respondent presented no evidence in support of these statements.

Grievant alleged she was being retaliated against for prevailing in her 2012 grievance, and that she was being bullied, harassed, subjected to a hostile work environment, and discriminated against. During her testimony she described the incidents which she felt were improper actions toward her, and those incidents are set forth in the Findings of Fact. Grievant made a number of allegations on the pages attached to her various grievance forms, but failed to put forward any evidence in support of many of these allegations. To the extent that the allegations on the grievance forms were not the subject of any testimony or exhibits placed into the record, the undersigned concludes that the allegations were not proven and they will not be addressed.

In addition to these various incidents, Grievant challenged the counseling session, her 2016 evaluation, and an EPA-2 which she received in March 2017. An EPA-2 is an employee performance evaluation form which is to be used as an interim or mid-point review, for probationary employees, or in special situations. An employee grieving his or her evaluation must establish by a preponderance of the evidence that the evaluation is wrong because the evaluator abused his or her discretion in rating the grievant, or the performance evaluation was the result of some misinterpretation or misapplication of established policies or rules governing the evaluation process. *Wiley v. W. Va. Div. of Natural Res.*, Docket No. 97-DNR-397 (Mar. 26, 1998); *Maxey v. W. Va. Dep't of Health & Human Serv.*, Docket Nos. 92-HHR-088/224/362 (Aug. 16, 1993); *Messenger v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-388 (Apr. 7, 1993); *Hurst v. W. Va. Dep't of Transp.*, Docket No. 91-DOH-326 (Feb. 27, 1992); *Wiley v. W. Va. Workers'*

Compensation Fund, Docket No. WCF-89-015 (July 31, 1989). This also applies to the EPA 2. In order to prove a supervisor has acted in a manner that constitutes an abuse of discretion, the grievant must prove the evaluation was the result of arbitrary or capricious decision-making. *Kemper v. W. Va. Dep't of Transp*., Docket No. 91-DOH-325 (Mar. 2, 1992).

Generally, an agency's action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Eads, supra (citing Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982). "While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the employer]." *Blake v. Kanawha County Bd. of Educ.,* Docket No. 01-20-470 (Oct. 29, 2001).

Grievant presented no evidence in support of her challenge to the 2015-2016 evaluation, other than her testimony that she had not counseled a client in the waiting area. Accordingly, the evaluation and the improvement/development plan will stand, except that

all comments regarding Grievant counseling a client in the waiting area are to be stricken from the evaluation for the reasons which will be discussed below. However, Grievant did not demonstrate that her rating in any category would have been different had Ms. Fisher not believed she had counseled a client in the waiting area. No rating on the evaluation need be adjusted.

Grievant testified that she did not counsel a client outside her office, and that she could not do so because she had to use her computer while she was doing client counseling, and her computer is in her office. As noted above, Ms. Rolstad's testimony on whether she heard what Grievant was saying was inconsistent and not credible. Ms. Fisher testified that Grievant admitted she had counseled the client in the waiting area, and that she had done so because the client was ill and she did not want the client in her office passing on this illness to her. Grievant denied admitting this to Ms. Fisher, although she agreed it would be inappropriate to counsel a client in the waiting area. Grievant also admitted that she had discussed with Ms. Fisher that she and her daughter had been ill, and that she thought she had contracted the illness via client contact. Grievant did point out that Ms. Fisher has a practice of not allowing her to respond to allegations regarding her conduct, and it is quite clear from Ms. Fisher's testimony that she harbors the belief that Grievant should not have been returned to her employment, and that she also harbors misconceptions about the reasons Grievant prevailed in her prior grievance. Grievant's testimony was at times not clear, and if she interacts with Ms. Fisher with the same lack of clarity, this may have contributed to Ms. Fisher misinterpreting Grievant's comments. The undersigned concludes that Grievant did not make clear to Ms. Fisher that she was denying the allegation that she counseled a client in the waiting area, and that Ms. Fisher's

recall several days later of what Grievant had said to her was not accurate. The undersigned concludes that it is more likely than not that Grievant did not counsel a client outside of her office, and all comments on the 2015-2016 evaluation related to this issue are to be removed from the evaluation.

No evidence was presented on the EPA 2, and the EPA 2 itself was not made a part of the record. Accordingly, the undersigned has no way to evaluate this document, and the allegations made by Grievant with regard to the EPA 2 will not be considered.

As to the remaining allegations, WEST VIRGINIA CODE § 6C-2-2(o) defines reprisal as "the retaliation of an employer toward a grievant, witness, representative or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it." To demonstrate a *prima facie* case of reprisal, the Grievant must establish by a preponderance of the evidence the following elements:

> (1) that he engaged in protected activity (i.e., filing a grievance);
> (2) that he was subsequently treated in an adverse manner by the employer or an agent;
> (3) that the employer's official or agent had actual or constructive knowledge that the employee engaged in the protected activity; and
> (4) that there was a causal connection (consisting of an inference of a retaliatory motive) between the protected activity and the adverse treatment.

Cook v. Div. of Natural Res., Docket No. 2009-0875-DOC (Jan. 22, 2010); *Vance v. Jefferson County Bd. of Educ.,* Docket No. 02-19-272 (Oct. 31, 2002); *Conner v. Barbour County Bd. of Educ*., Docket Nos. 93-01-543/544 (Jan. 31, 1995). *See also Frank's Shoe Store v. W. Va. Human Rights Comm'n*, 179 W. Va. 53, 365 S.E.2d 251 (1986). "[T]he critical question is whether the grievant has established by a preponderance of the evidence that his protected activity was a factor in the personnel decision. The general rule is that an employee must prove by a preponderance of the evidence that his protected

activity was a 'significant,' 'substantial' or 'motivating' factor in the adverse personnel action." *Conner v. Barbour County Bd. of Educ*., Docket No. 93-01-154 (Apr. 8, 1994).

If a grievant makes out a *prima facie* case of reprisal, the employer may rebut the presumption of retaliation raised thereby by offering legitimate, non-retaliatory reasons for its action. *Id. See Mace v. Pizza Hut, Inc.,* 377 S.E.2d 461 (W. Va. 1988); *Shepherdstown Vol. Fire Dep't v. W. Va. Human Rights Comm'n,* 309 S.E.2d 342 (W. Va. 1983); *Webb v. Mason County Bd. of Educ.,* Docket No. 89-26-56 (Sept. 29, 1989). "Should the employer succeed in rebutting the *prima facie* showing, the employee must prove by a preponderance of the evidence that the reason offered by the employer was merely a pretext for a retaliatory motive." *Conner v. Barbour County Bd. of Educ*., Docket No. 93-01-154 (Apr. 8, 1994). *See Sloan v. Dep't of Health and Human Res.*, 215 W. Va. 657, 600 S.E.2d 554 (2004).

WEST VIRGINIA CODE § 6C-2-2(l) defines "harassment" as "repeated or continual disturbance, irritation or annoyance of an employee that is contrary to the behavior expected by law, policy and profession." What constitutes harassment varies based upon the factual situation in each individual grievance. *Sellers v. Wetzel County Bd. of Educ*., Docket No. 97-52-183 (Sept. 30, 1997). "Harassment has been found in cases in which a supervisor has constantly criticized an employee's work and created unreasonable performance expectations, to a degree where the employee cannot perform her duties without considerable difficulty. *See Moreland v. Bd. of Trustees*, Docket No. 96-BOT-462 (Aug. 29, 1997)." *Pauley v. Lincoln County Bd. of Educ*., Docket No. 98-22-495 (Jan. 29, 1999). A single incident does not constitute harassment. *Johnson v. Dep't of Health and*

Human Res., Docket No. 98-HHR-302 (Mar. 18, 1999); *Metz v. Wood County Bd. of Educ*., Docket No. 97-54-463 (July 6, 1998).

Grievant related several examples of what she saw as instances of harassment or retaliation. Despite Grievant's view of events, there is no evidence that Grievant has been held to unreasonable performance expectations by Ms. Fisher, nor does the evidence reflect that Ms. Fisher or any other supervisor has done anything other than act appropriately as Grievant's supervisor. The undersigned is not going to go through each and every instance detailed by Grievant. In summary, Grievant's supervisor has the absolute right and duty to supervise Grievant's work, even if it is on a daily basis, and to tell Grievant when she is doing something which is not appropriate. The record does not reflect that other employees are being allowed to function without supervision or direction. It appears quite clear that the problem is that Grievant harbors the belief that any interaction with Ms. Fisher is harassment and that she is being treated differently from other employees, whether that belief is accurate or not, and she does not like it when Ms. Fisher tells her she is not allowed to do something, or that her behavior is not in compliance with policy. On Ms. Fisher's part, despite her denials, it is clear that she still harbors ill feelings from Grievant's firing, which sentiment is likely felt by Grievant. One would not expect that when Grievant was returned to work after her employment was terminated by Respondent, and left under the same supervisor, that everyone would just go about their business as if nothing had happened. Perhaps the workplace environment would be improved for everyone if Ms. Fisher were not Grievant's supervisor, but Grievant did not prove that she has been harassed or retaliated against by Ms. Fisher, or any other employee of Respondent.

Bullying is not defined for purposes of the grievance procedure. Webster's online Dictionary defines the verb bully as, "to frighten, hurt, or threaten; . . . to cause (someone to do something by making threats or insults or by using force." It defines bully as a transitive verb as, "to treat abusively; to affect by means of force or coercion;" and as an intransitive verb as, "to use browbeating language or behavior." None of the incidents related by Grievant indicate that anyone has bullied her at any time.

This Board has generally followed the analysis of the federal and state courts in determining what constitutes a hostile work environment. *See Lanehart v. Logan County Bd. of Educ.*, Docket No. 97-23-088 (June 13,1997). The point at which a work environment becomes hostile or abusive does not depend on any "mathematically precise test." *Harris v. Forklift Systems, Inc.,* 510 U.S. 17, at 22, (1993). Instead, "the objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiffs position, considering all the circumstances." *Oncale v. Sundowner Offshore Servs., Inc.,* 523 U.S. 75 (1998) (quoting *Harris, supra*). These circumstances "may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance," but are by no means limited to them, and "no single factor is required." *Harris,* supra at p.23; *Rogers v. W. Va. Reg'l Jail & Corr. Facility Auth.,* Docket No. 2009-0685-MAPS (Apr. 23, 2009). "'To create a hostile work environment, inappropriate conduct must be sufficiently severe or pervasive to alter the conditions of an employee's employment.' *Napier v. Stratton,* 204 W. Va. 415, 513 S.E.2d 463, 467 (1998). *See Hanlon v. Chambers,* 195 W. Va. 99, 464 S.E.2d 741 (1995)."

Corley, et al., v. Workforce West Virginia, Docket No. 06-BEP-079 (Nov. 30, 2006). "As a general rule 'more than a few isolated incidents are required' to meet the pervasive requirement of proof for a hostile work environment case. *Fairmont Specialty Servs.,* [*v. W. Va. Human Rights Comm'n*, 206 W. Va. 86, 522 S.E.2d 180 (1999)], *citing Kinzey v. Wal-Mart Stores, Inc.,*107 F.3d 568, 573 (8th Cir. 1997)." *Marty v. Dep't of Admin.,* Docket No. 02-ADMN-165 (Mar. 31, 2006). Grievant did not demonstrate that a reasonable person would find the instances she related to constitute a hostile work environment, either individually or collectively.

For purposes of the grievance procedure, discrimination is defined as "any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees." W. VA. CODE § 6C-2-2(d). In order to establish a discrimination claim asserted under the grievance statutes, an employee must prove:

> (a) that he or she has been treated differently from one or more similarly-situated employee(s);
>
> (b) that the different treatment is not related to the actual job responsibilities of the employees; and,
>
> (c) that the difference in treatment was not agreed to in writing by the employee.

Frymier v. Higher Education Policy Comm., 655 S.E.2d 52, 221 W. Va. 306 (2007); *Harris v. Dep't of Transp.*, Docket No. 2008-1594-DOT (Dec. 15, 2008).

While Grievant made some blanket assertions that other employees were treated differently, Grievant presented no evidence to support a finding that other employees are treated differently from her. Respondent presented evidence that in fact Grievant has

received more favorable treatment than other employees in that, when she has requested some special accommodation, it has granted this accommodation when it was possible to do so.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. The verbal warning is a disciplinary matter, and as such, the burden of proof rests with the employer. The employer must meet this burden by proving the charges against an employee by a preponderance of the evidence. *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988). "The 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 and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. *Id*.

2. Respondent did not prove all the allegations in the verbal warning, but Respondent did demonstrate that a verbal warning was warranted.

3. Grievant has the burden of proving the non-disciplinary allegations of her grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res*., Docket No. 89-DHS-72 (Nov. 29, 1990). *See also 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).

4. An employee grieving his or her evaluation must establish by a preponderance of the evidence that the evaluation is wrong because the evaluator abused his or her discretion in rating the grievant, or the performance evaluation was the result of some misinterpretation or misapplication of established policies or rules governing the evaluation process. *Wiley v. W. Va. Div. of Natural Res*., Docket No. 97-DNR-397 (Mar. 26, 1998); *Maxey v. W. Va. Dep't of Health & Human Serv*., Docket Nos. 92-HHR-088/224/362 (Aug. 16, 1993); *Messenger v. W. Va. Dep't of Health & Human Res*., Docket No. 92-HHR-388 (Apr. 7, 1993); *Hurst v. W. Va. Dep't of Transp*., Docket No. 91-DOH-326 (Feb. 27, 1992); *Wiley v. W. Va. Workers' Compensation Fund*, Docket No. WCF-89-015 (July 31, 1989). In order to prove a supervisor has acted in a manner that constitutes an abuse of discretion, the grievant must prove the evaluation was the result of arbitrary or capricious decision-making. *Kemper v. W. Va. Dep't of Transp*., Docket No. 91-DOH-325 (Mar. 2, 1992).

5. WEST VIRGINIA CODE § 6C-2-2(o) defines reprisal as "the retaliation of an employer toward a grievant, witness, representative or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it." To demonstrate a *prima facie* case of reprisal, the Grievant must establish by a preponderance of the evidence the following elements:

> (1) that he engaged in protected activity (i.e., filing a grievance);
> (2) that he was subsequently treated in an adverse manner by the employer or an agent;
> (3) that the employer's official or agent had actual or constructive knowledge that the employee engaged in the protected activity; and
> (4) that there was a causal connection (consisting of an inference of a retaliatory motive) between the protected activity and the adverse treatment.

Cook v. Div. of Natural Res., Docket No. 2009-0875-DOC (Jan. 22, 2010); *Vance v. Jefferson County Bd. of Educ.,* Docket No. 02-19-272 (Oct. 31, 2002); *Conner v. Barbour County Bd. of Educ*., Docket Nos. 93-01-543/544 (Jan. 31, 1995). *See also Frank's Shoe Store v. W. Va. Human Rights Comm'n*, 179 W. Va. 53, 365 S.E.2d 251 (1986).

6. WEST VIRGINIA CODE § 6C-2-2(l) defines "harassment" as "repeated or continual disturbance, irritation or annoyance of an employee that is contrary to the behavior expected by law, policy and profession." What constitutes harassment varies based upon the factual situation in each individual grievance. *Sellers v. Wetzel County Bd. of Educ*., Docket No. 97-52-183 (Sept. 30, 1997). "Harassment has been found in cases in which a supervisor has constantly criticized an employee's work and created unreasonable performance expectations, to a degree where the employee cannot perform her duties without considerable difficulty. *See Moreland v. Bd. of Trustees*, Docket No. 96-BOT-462 (Aug. 29, 1997)." *Pauley v. Lincoln County Bd. of Educ*., Docket No. 98-22-495 (Jan. 29, 1999). A single incident does not constitute harassment. *Johnson v. Dep't of Health and Human Res*., Docket No. 98-HHR-302 (Mar. 18, 1999); *Metz v. Wood County Bd. of Educ*., Docket No. 97-54-463 (July 6, 1998).

7. This Board has generally followed the analysis of the federal and state courts in determining what constitutes a hostile work environment. *See Lanehart v. Logan County Bd. of Educ.*, Docket No. 97-23-088 (June 13,1997). The point at which a work environment becomes hostile or abusive does not depend on any "mathematically precise test." *Harris v. Forklift Systems, Inc.,* 510 U.S. 17, at 22, (1993). Instead, "the objective severity of harassment should be judged from the perspective of a reasonable person in

the plaintiffs position, considering all the circumstances." *Oncale v. Sundowner Offshore Servs., Inc.,* 523 U.S. 75 (1998) (quoting *Harris, supra*). These circumstances "may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance," but are by no means limited to them, and "no single factor is required." *Harris,* supra at p.23; *Rogers v. W. Va. Reg'l Jail & Corr. Facility Auth.,* Docket No. 2009-0685-MAPS (Apr. 23, 2009). "'To create a hostile work environment, inappropriate conduct must be sufficiently severe or pervasive to alter the conditions of an employee's employment.' *Napier v. Stratton,* 204 W. Va. 415, 513 S.E.2d 463, 467 (1998). *See Hanlon v. Chambers,* 195 W. Va. 99, 464 S.E.2d 741 (1995)." *Corley, et al., v. Workforce West Virginia*, Docket No. 06-BEP-079 (Nov. 30, 2006). "As a general rule 'more than a few isolated incidents are required' to meet the pervasive requirement of proof for a hostile work environment case. *Fairmont Specialty Servs.,* [*v. W. Va. Human Rights Comm'n*, 206 W. Va. 86, 522 S.E.2d 180 (1999)], *citing Kinzey v. Wal-Mart Stores, Inc.,*107 F.3d 568, 573 (8th Cir. 1997)." *Marty v. Dep't of Admin.,* Docket No. 02-ADMN-165 (Mar. 31, 2006).

8. Grievant did not demonstrate that a reasonable person would find the instances she related to constitute a hostile work environment, either individually or collectively.

9. Bullying is not defined for purposes of the grievance procedure. Webster's online Dictionary defines the verb bully as, "to frighten, hurt, or threaten; . . . to cause (someone to do something by making threats or insults or by using force." It defines bully

as a transitive verb as, “to treat abusively; to affect by means of force or coercion;” and as an intransitive verb as, “to use browbeating language or behavior.”

10. In order to establish a discrimination claim asserted under the grievance statutes, an employee must prove:

> (a) that he or she has been treated differently from one or more similarly-situated employee(s);
>
> (b) that the different treatment is not related to the actual job responsibilities of the employees; and,
>
> (c) that the difference in treatment was not agreed to in writing by the employee.

Frymier v. Higher Education Policy Comm., 655 S.E.2d 52, 221 W. Va. 306 (2007); *Harris v. Dep’t of Transp.*, Docket No. 2008-1594-DOT (Dec. 15, 2008).

11. Grievant did not prove the allegations of retaliation, harassment, bullying, or discrimination.

12. Grievant did not demonstrate that her evaluation was inaccurate, except for the comments that she had counseled a client in the waiting area.

Accordingly, this grievance is **GRANTED IN PART, AND DENIED IN PART**. Respondent is **ORDERED** to remove from any documentation of the verbal warning which remains in any file all references to Grievant refusing to see the last client of the day, and that Grievant had said she could see clients anywhere and refuse to see sick clients. Respondent is **FURTHER ORDERED** to remove from Grievant’s 2015-2016 evaluation all comments regarding Grievant counseling a client outside her office. The remainder of the 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 appealing party must also provide the Board with the civil action number so that the certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

BRENDA L. GOULD
Deputy Chief Administrative Law Judge

Date: November 22, 2017