THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SUSAN KERSHNER,

Grievant,

v. **Docket No. 2014-0731-CONS**

DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent.

DECISION

Grievant, Susan Kershner, filed this grievance against her employer, Respondent, Department of Environmental Protection ("DEP"), dated November 25, 2013, stating as follows: "Grievants are all tenured inspectors who did not benefit from Respondent's $42,000 hiring rate." The relief sought was listed as follows: "[t]o be made whole in every way including establishment of the same base pay for all inspectors, along with a step promotion/pay increase classification system of inspectors 1, 2 and 3, based on years of service." Initially, this grievance had numerous grievants. However, by the time this matter reached the level one hearing, all grievants except for Grievant Kershner had voluntarily withdrawn their claims, and had been dismissed from the matter.

A level one conference/hearing was conducted on March 11, 2015, and a decision denying the grievance was issued on July 28, 2015. However, such was not sent to Grievant or her representative. Grievant's representative received a copy of the decision on December 10, 2015, from a private attorney who was not involved in this grievance. Thereafter, Grievant appealed to level two of the grievance process on December 13, 2015. General Counsel for Respondent sent a letter to the Director of the Grievance Board dated January 5, 2016, discussing the procedural history of the matter and alleging

that the filing of the level two appeal was untimely and ultimately asked for dismissal. This letter was not a motion, and was not addressed to the administrative law judge assigned to the case. General Counsel sent a second letter addressed to the Director of the Grievance Board dated March 9, 2016, again discussing the procedural history of the case, alleging the appeal was untimely, and that the matter should be dismissed. Again, this letter was not a motion, and was not addressed to the administrative law judge assigned to the case. The administrative law judge assigned to the case at level two discovered the March 9, 2016, letter prior to the scheduled mediation date, and convened a telephonic hearing to address the same on March 10, 2016. The administrative law judge did not dismiss the matter.

A level two mediation was conducted on March 11, 2016. Grievant perfected her appeal to level three on March 17, 2016. The undersigned was thereafter assigned to hear this grievance. The grievance was then scheduled for level three hearing on August 15, 2016. However, Respondent, by counsel, moved to continue the hearing and place the matter in abeyance to allow the parties additional time to attempt settlement. Grievant had no objection to the same. By Order entered August 12, 2016, Respondent's Motion to Continue and Hold in Abeyance was granted, and the matter was ordered placed in abeyance until October 12, 2016. Thereafter, the matter was scheduled for a level three hearing on January 4, 2017.

On December 22, 2016, Respondent, by counsel, filed a "Renewed Motion to Dismiss" alleging numerous grounds for dismissal, including timeliness, mootness, and that Grievant was attempting to pursue a claim that had never been grieved. Thereafter, the undersigned granted Grievant until December 30, 2016, to file a response to the

same. Grievant's response was submitted to the Grievance Board on December 31, 2016, a Saturday, and clocked-in on Monday, January 3, 2017. That same morning, the Grievance Board emailed counsel for Respondent and Grievant's representative, informing both that the motion to dismiss would be denied at that time, but that the undersigned would allow both to make their arguments on the record at the commencement of the level three hearing, the next morning, but that both parties should be prepared to present their cases as scheduled.

The level three hearing was conducted on January 4, 2017, by the undersigned administrative law judge at the Raleigh County Commission on Aging in Beckley, West Virginia. Respondent appeared by counsel, Mark S. Weiler, Assistant Attorney General. Grievant appeared in person, and with her representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union. At which time, Grievant's representative informed the undersigned that Grievant's claim regarding pay had been resolved, but that she had amended her claim orally at level one to include a claim challenging her accrued sick leave balances, and such was the only remaining claim. At the commencement of the hearing, the undersigned heard the Respondent's "Renewed" Motion to Dismiss and Grievant's response to the same. The undersigned held this motion in abeyance, allowing the parties time to address it further in their post-hearing submissions, and proceeded to hear evidence in this action. This matter became mature for decision on February 10, 2017. Both parties submitted proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant initially grieved a pay issue, but such was resolved prior to the level three hearing. Grievant argued that she orally amended her grievance at level one to include

a claim that her accrued sick leave balance was incorrect as it did not reflect credits she should have received for buying back sick leave used while she was on workers' compensation in the early 1990s. Respondent asserted that the grievance had not been amended to include the claim regarding the leave balance, and that the same was untimely. Respondent further asserted that Grievant's accrued sick leave balance was correct. Grievant orally amended her grievance at level one to include the claim regarding her accrued sick leave balance. Respondent failed to prove by a preponderance of the evidence that this grievance was untimely. Grievant failed to prove her claims regarding her accrued sick leave balance by a preponderance of the evidence. Therefore, the grievance is DENIED.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

Findings of Fact

1. Grievant began working for the State of West Virginia in on or about June 19, 1978, at the Division of Natural Resources ("DNR"). In 1981, Grievant was transferred to DNR's Water Resources Division. In August 1992, her section was transferred to the newly formed Department of Environmental Protection ("DEP").

2. During the level one hearing on March 11, 2015, Grievant raised the issue that her leave balances were incorrect and that her records were missing. There was much discussion on this issue, and evidence regarding such was admitted to the record.

3. In or about November 2013, Grievant attended a co-worker's retirement party at which she learned the co-worker's accumulated sick leave balances. Thereafter, someone suggested to Grievant that she should check her sick leave records.

4. Following the retirement party, Grievant began making inquiries to verify her sick leave balances. Grievant checked with Melinda Campbell at DEP's personnel office first, but her accrued sick leave balance at the time she transferred from DNR could not be found. Subsequently, Grievant made further inquiry about her transferred accrued sick leave balance with Charles Carl, former DEP Leave Coordinator, David Kersey, DEP's Payroll Supervisor. Grievant was informed that there were no leave records for her before the mid-1990s, even though she began working for the State in 1978.

5. Grievant delayed retirement because her sick leave balance was in question, and she would be using her unused accrued sick leave hours to pay for health insurance.

6. DEP Payroll Supervisor David Kersey contacted DNR to try to find out if DNR had credited Grievant with the workers' compensation buyback. In response, DNR sent Mr. Kersey a card that indicated Grievant had bought back the sick leave she used while she had been on workers' compensation from October 20, 1990 to February 4, 1991.[1] DNR did not answer the question as to whether Grievant's sick leave balance was credited following the buyback.

7. Upon information and belief, Charles Carl also made requests of DNR for information pertaining to Grievant's leave balances at the time of her transfer, but the same were not provided to him.

8. While several people at DEP were trying to help Grievant find her leave records, and looking into the matter, no records regarding her sick leave balance at the time of her transfer to DEP could be found.

[1] *See*, Respondent's Exhibit 2, buyback card.

9. In or about 2014, Grievant eventually requested the help of DEP's cabinet secretary, Randy Huffman.[2] It appears that Mr. Huffman, or someone on his behalf, also requested the leave balance information from DNR. Nonetheless, the older records were not sent to Secretary Huffman or DEP.

10. Grievant personally contacted DNR in or about 2013 regarding her sick leave balances and the buyback credit. At that time, she was told that DNR does not keep records back that far, but if they did, the records would probably be in a storage building at some public wildlife area.[3] Grievant did not indicate to whom she spoke at DNR in 2013.

11. During the level one hearing, Debbie Hughes, then DEP Director of Human Resources, asked a number of questions about the leave balances and records, and indicated that that she would try to help Grievant following the level one proceeding. Ms. Hughes indicated that she would research the matter, and, if needed, contact DNR, as she knew their human resources person, and DOP. Ms. Hughes stated that the missing records had to be somewhere. Therefore, at the end of the level one proceeding, there was a plan to take action to address the leave balance issue.[4] However, the level one

[2] It is noted that in an email to Grievant, Secretary Huffman suggested that she may need to "grieve in order to get [DNR's] attention," and that "we will support a grievance that is intended to compel a state agency to supply information related to leave balances. Wish I could do more." *See*, Respondent's Exhibit 1. Grievant did not attempt such a grievance. Further, Grievant could not file a grievance against DNR because she is not employed by that agency. "The grievance procedure is only available to the Grievant to challenge the actions taken by his employer. *Posey v. W. Va. Univ.*, Docket No. 2009-0745-WVU (Apr. 10, 2009); *Narkevic v. Div. of Corr. and Dep't of Health & Human Res.*, Docket No. 2009-0846-MAPS (Apr. 29, 2009)." *Mullins v. Division of Personnel*, Docket No. 2014-1328-DOA (May 15, 2014).

[3] *See*, testimony of Grievant; Respondent's Exhibit 1, 2014 email thread with Randy Huffman.

[4] *See*, level one hearing transcript.

hearing examiner noted that the issue was raised at level one, that Respondent suggested that Grievant file a grievance regarding the leave issue, and ruled that "Grievant's issue as to her leave balance was not raised in her grievance and cannot therefore be addressed in this matter." Ms. Hughes was not called as a witness by either party at the level three hearing.

12. Various employees at DEP attempted to obtain the information from DNR to determine if Grievant received the buyback credit to her sick leave balances in the following years: 2013, 2014, 2015, and 2016.

13. Grievant did not file a separate grievance regarding the sick leave balance issue either before or after the level one hearing on March 11, 2015. However, DEP employees who worked in human resources and personnel, as well as others, have been actively attempting to gather information to resolve this matter since 2013.

14. DEP has leave records for Grievant going back to 1997. DEP has no leave records for Grievant prior to 1997. The DEP leave records are maintained on their computer system. There is a starting balance of sick leave hours for Grievant in 1997, but there are no paper or other computer records to explain that balance. DEP maintains that the balances from 1997 forward are correct and have been checked manually to be sure. However, Mr. Kearsey and Mr. Carl admitted that they do not know if the starting balance is correct. Such is because there are no records prior to 1997, even though Grievant started working for DEP at its inception in 1992, and started her employment with the State in 1978.

15. Grievant has had the ability to review her accrued leave balances, including sick leave balances, in various ways while employed with the State. Since 2006, Grievant

has had the ability to review her accrued leave balances through the ERIS computer system. Employees at DEP had daily access to their leave balances.

16. Grievant and her representative proffered that Grievant's accrued sick leave balance is 1080 hours short. Grievant testified that she bought back 608 hours of sick leave from the time she was on workers' compensation from October 20, 1990, to February 4, 1991, while employed by DNR, and that the remaining 472 hours were bought back from other times she was on workers' compensation at DNR and after she became a DEP employee. There is documentary evidence of the first workers' compensation buyback.[5] However, the only evidence of the other buybacks was Grievant's limited testimony presented at level three. Grievant testified that there were other times at DNR and that she was off work in the early 1990s for spider bites and had to be hospitalized, and that she was off work in 1993 while an employee of DEP. It does not appear from the level one transcript that the later workers' compensation buybacks were discussed during the level one hearing.

17. For many years during the early part of her career with the State, Grievant consciously tried to limit her use of sick leave in order to save her hours to use for the payment of health insurance during her retirement. Despite this, Grievant did not regularly check her balances. In the later years of her employment, Grievant, admittedly, used a great deal of sick leave.

18. Grievant retired from employment on or about November 13, 2015.

[5] *See*, Respondent's Exhibit 2, buyback card/form.

Discussion

Motion to Dismiss

Respondent has moved to dismiss the grievance as untimely because Grievant learned of the discrepancy in her accrued sick leave balance in 2013, but did not attempt to pursue a grievance until 2015, when she orally raised the issue during the level one hearing on the pay issue.[6] Respondent further asserts that Grievant did not amend her claim at level one. Grievant denies Respondent's allegation of untimeliness, and asserts that she orally amended her claim at level one to address her challenge to her sick leave balances.

First, the undersigned will address whether Grievant orally amended her claim at level one. Neither Grievant nor Respondent was represented by counsel at the level one hearing. Grievant appeared with her union representative, and Debbie Hughes, DEP Human Resources, appeared for Respondent. A review of the level one hearing transcript reveals that Grievant did not specifically ask to amend her claim. Instead, Grievant raised the issue that her accrued sick leave balance was incorrect because she had not been credited with the hours she bought back in 1990-1991. Grievant also discussed the missing records and the efforts made to locate them during her testimony. There was significant discussion of the balances and the missing records among those

[6] In its original Motion to Dismiss, Respondent argued that the grievance was also untimely because Grievant appealed the level one decision four months after its issuance, and that the grievance is moot because Grievant retired before the appeal to level two was filed. Respondent has apparently abandoned those claims in its proposed Findings of Fact and Conclusions of Law as they are not mentioned. The only timeliness argument made is that Grievant learned of the leave discrepancy in 2013, but first raised the issue at the level one hearing in 2015. Accordingly, the undersigned considers all arguments not addressed in the proposed Findings of Fact and Conclusions of Law abandoned, and will not be addressed further herein.

in attendance. Debbie Hughes argued that such was not part of the grievance, but engaged in the discussion, and made statements indicating that she would take action to attempt to locate the missing records to help Grievant. Further, the level one hearing examiner accepted into the record the document indicating that Grievant bought back the sick leave that she had used while she was on workers' compensation in 1990-1991. The level one hearing examiner concluded in his decision that the leave balance issue could not be addressed because it had not been raised in the statement of grievance

The West Virginia Supreme Court of Appeals has stated that "[t]he grievance process is intended to be a fair, expeditious, and simple procedure, and not a procedural 'quagmire.'" *Harmon v. Fayette County Bd. of Educ.*, Docket No. 98-10-111 (July 9, 1998), citing *Spahr v. Preston County Bd. of Educ.*, 182 W. Va. 726, 393 S.E.2d 739 (1990), and *Duruttya v. Bd. of Educ. of County of Mingo*, 181 W. Va. 203, 382 S.E.2d 40 (1989). *See Watts v. Lincoln County Bd. of Educ.*, Docket No. 98-22-375 (Jan. 22, 1999). As stated in *Duruttya, supra*, "the grievance process is for "resolving problems at the lowest possible administrative level." Additionally, *Spahr, supra,* indicates the merits of the case are not to be forgotten. *Id.* at 743. *See Edwards v. Mingo County Bd. of Educ.,* Docket No. 95-29-472 (Mar. 19, 1996).

While Grievant did not orally ask to amend her claim, or file a written motion to amend, Grievant raised the issue of her sick leave balance during the level one hearing during her testimony. Ms. Hughes objected to this issue being discussed, but the hearing examiner did not rule on the objection, and allowed the testimony, discussion, and accepted a copy of the buyback form and emails into the record. The issue was discussed at length during the hearing, and Ms. Hughes asked Grievant questions about the same.

Given the events at level one, and given that the Supreme Court has stated that the grievance process is intended to be a fair, expeditious, and simple procedure, and not a procedural quagmire, the undersigned concludes that Grievant orally amended her claim at level one to include her claim that her sick leave balance was incorrect.

"Each administrative law judge has the authority and discretion to control the processing of each grievance assigned such judge and to take any action considered appropriate consistent with the provisions of W. VA. CODE § 6C-2-1 *et seq*." W. VA. CODE ST. R. § 156-1-6.2 (2008). WEST VIRGINIA CODE § 6C-2-3(a)(1) requires an employee to "file a grievance within the time limits specified in this article." W. VA. CODE § 6C-2-3(a)(1). Further, WEST VIRGINIA CODE § 6C-2-4(a)(1) sets forth the time limits for filing a grievance, stating as follows:

> Within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing . . . .

W. VA. CODE § 6C-2-4(a)(1). The time period for filing a grievance ordinarily begins to run when the employee is "unequivocally notified of the decision being challenged." *Harvey v. W. Va. Bureau of Empl. Programs*, Docket No. 96-BEP-484 (Mar. 6, 1998); *Whalen v. Mason County Bd. of Educ.*, Docket No. 97-26-234 (Feb. 27, 1998). *See Rose v. Raleigh County Bd. of Educ*., 199 W. Va. 220, 483 S.E.2d 566 (1997); *Naylor v. W. Va. Human Rights Comm'n*, 180 W. Va. 634, 378 S.E.2d 843 (1989).

Timeliness is an affirmative defense, and the burden of proving the affirmative defense by a preponderance of the evidence is upon the party asserting the grievance

was not timely filed. Once the employer has demonstrated a grievance has not been timely filed, the employee has the burden of demonstrating a proper basis to excuse his failure to file in a timely manner. *See Higginbotham v. W. Va. Dep't of Pub. Safety*, Docket No. 97-DPS-018 (Mar. 31, 1997); *Sayre v. Mason County Health Dep't*, Docket No. 95-MCHD-435 (Dec. 29, 1995), *aff'd*, Circuit Court of Mason County, No. 96-C-02 (June 17, 1996). *See also Ball v. Kanawha County Bd. of Educ.*, Docket No. 94-20-384 (Mar. 13, 1995); *Woods v. Fairmont State College*, Docket No. 93-BOD-157 (Jan. 31, 1994); *Jack v. W. Va. Div. of Human Serv.*, Docket No. 90-DHS-524 (May 14, 1991). If proven, an untimely filing will defeat a grievance and the merits of the grievance to be addressed. *Lynch v. W. Va. Dep't of Transp.,* Docket No. 97-DOH-060 (July 16, 1997), *aff'd,* Circuit Court of Kanawha County, No. 97-AA-110 (Jan. 21, 1999).

The parties do not dispute that Grievant was informed of her accrued sick leave balance in 2013, at which time she learned of the discrepancy. Further, it is undisputed that DEP employees, including then-Secretary Huffman, tried to resolve this matter on numerous occasions by obtaining the missing records from DNR since 2013. In fact, DEP had been working with Grievant to try to find the missing records until she retired in November 2015. During this time, Grievant was informed that DNR did not and/or could not produce the missing records. Based on the evidence presented, it appeared that DEP was helping Grievant and that DNR was not cooperating. Secretary Huffman even suggested in 2014 that Grievant file a grievance against DNR, but as DNR was not her employer, she could not do that. Given the evidence, it is understandable that Grievant would not file a grievance before March 2015 when she raised the issue at the level one hearing, because DEP had been helping her and actively searching for the information.

Given the unique facts of this case, the undersigned cannot conclude that this grievance is untimely. Therefore, Respondent's Motion to Dismiss is denied.

Merits

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (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). "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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant argues that her accrued sick leave balance is incorrect in it does not reflect the buyback of the sick leave she used when she was off work on workers' compensation in the 1990s. Grievant argues that her former employer, the West Virginia Division of Natural Resources, did not properly credit her balance. Therefore, when she and her co-workers were all transferred to the newly-created Department of Environmental Protection in 1992, her start balance was incorrect. DEP's leave records and calculations begin with a balance in 1997, but have no records to show how that start balance was determined. Respondent argues that Grievant's accrued sick leave balance as calculated is correct, but two of its human resources employees who testified at level three acknowledge that they have no way to determine if the start balance is correct. Further, both parties acknowledge that Grievant, DEP administration, and DEP employees have tried to obtain the missing records from DNR since 2013 without

success. The parties appear to believe that the records would be in paper form only, and not maintained in any computer system.

Grievant alleges that based upon her recollection, her practice of using her accrued sick leave balance sparingly, and the one buyback form, her accrued sick leave balance is short 1080 hours. However, Grievant has no other evidence to support this allegation. Such is the problem major problem in this matter. Both Respondent and Grievant attempted to obtain the old DNR records to see if she had been properly credited the hours that she "bought back." However, those records have not been found. The parties do not suggest that any other state agency, office, or agency would have maintained those records. The records at issue are over twenty years old, and are not known to be on any computer system. Both Respondent and Grievant seem to agree that there is evidence that Grievant "bought back" a certain amount of sick leave in or about 1991. However, there are no records to demonstrate whether her balances were credited with the sick leave hours she "bought back." The old records cannot be found, and no other evidence to verify whether the credit was given was presented.

Grievant also testified that there were other times when she bought back sick leave she used while on workers' compensation when she was employed at both DNR and DEP which are not included on the one buyback form presented at level three. Grievant did not give specific dates for these other instances, but testified that they total 472 hours. However, no evidence other than Grievant's testimony was presented with respect to this allegation. "Mere allegations alone without substantiating facts are insufficient to prove a grievance." *Baker v. Bd. of Trustees/W. Va. Univ. at Parkersburg*, Docket No. 97-BOT-359 (Apr. 30, 1998)(citing *Harrison v. W. Va. Bd. of Directors/Bluefield State College*,

Docket No. 93-BOD-400 (Apr. 11, 1995)). While the undersigned is sympathetic, Grievant has failed to present sufficient evidence to prove her claim by a preponderance of the evidence. Therefore, this grievance must be denied.

The following Conclusions of Law support the decision reached:

1. "Each administrative law judge has the authority and discretion to control the processing of each grievance assigned such judge and to take any action considered appropriate consistent with the provisions of W. VA. CODE § 6C-2-1 *et seq*." Rules of Practice and Procedure of the West Virginia Public Employees Grievance, 156 C.S.R. 1 § 6.2 (2008).

2. "The grievance process is intended to be a fair, expeditious, and simple procedure, and not a procedural 'quagmire.'" *Harmon v. Fayette County Bd. of Educ.*, Docket No. 98-10-111 (July 9, 1998), citing *Spahr v. Preston County Bd. of Educ.*, 182 W. Va. 726, 393 S.E.2d 739 (1990), and *Duruttya v. Bd. of Educ. of County of Mingo*, 181 W. Va. 203, 382 S.E.2d 40 (1989). *See Watts v. Lincoln County Bd. of Educ.*, Docket No. 98-22-375 (Jan. 22, 1999).

3. Timeliness is an affirmative defense, and the burden of proving the affirmative defense by a preponderance of the evidence is upon the party asserting the grievance was not timely filed. Once the employer has demonstrated a grievance has not been timely filed, the employee has the burden of demonstrating a proper basis to excuse his failure to file in a timely manner. *See Higginbotham v. W. Va. Dep't of Pub. Safety*, Docket No. 97-DPS-018 (Mar. 31, 1997); *Sayre v. Mason County Health Dep't*, Docket No. 95-MCHD-435 (Dec. 29, 1995), *aff'd*, Circuit Court of Mason County, No. 96-C-02 (June 17, 1996). *See also Ball v. Kanawha County Bd. of Educ.*, Docket No. 94-20-

384 (Mar. 13, 1995); *Woods v. Fairmont State College*, Docket No. 93-BOD-157 (Jan. 31, 1994); *Jack v. W. Va. Div. of Human Serv.*, Docket No. 90-DHS-524 (May 14, 1991).

4. Respondent failed to prove by a preponderance of the evidence that this grievance is untimely.

5. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (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). "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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

6. "Mere allegations alone without substantiating facts are insufficient to prove a grievance." *Baker v. Bd. of Trustees/W. Va. Univ. at Parkersburg*, Docket No. 97-BOT-359 (Apr. 30, 1998)(citing *Harrison v. W. Va. Bd. of Directors/Bluefield State College*, Docket No. 93-BOD-400 (Apr. 11, 1995)).

7. Grievant failed to prove by a preponderance of the evidence her claim that her accrued sick leave balance was short 1080 hours as a result of a failure to credit her balance with the hours of sick leave she bought back while on workers' compensation in the early 1990s.

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 (eff. July 7, 2008).

DATE: May 11, 2017.

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Carrie H. LeFevre
Administrative Law Judge