

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**PAULA PERRY,**  
**Grievant,**

**v.**

**Docket No. 2017-1077-DHHR**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES/  
BUREAU FOR PUBLIC HEALTH,**  
**Respondent.**

**DECISION**

Grievant, Paula Perry, was employed by Respondent, Department of Health and Human Resources/Bureau for Public Health as a probationary employee. On October 7, 2016, Grievant filed this grievance against Respondent stating, "Dismissal without good cause. Retaliation."<sup>1</sup> For relief, Grievant seeks reinstatement with back pay, interest, and benefits restored.

The grievance was properly filed directly to level three pursuant to W. VA. CODE § 6C-2-4(a)(4). A level three hearing was held on February 9, 2017 and April 20, 2017, before the undersigned at the Grievance Board's Charleston, West Virginia office. Grievant was represented by Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent was represented by counsel, Michael E. Bevers, Assistant Attorney General. This matter became mature for decision on June 7, 2017, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law ("PFFCL").

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<sup>1</sup> This allegation is deemed abandoned as it was not discussed in Grievant's PFFCL.

## **Synopsis**

Grievant was employed by Respondent as a probationary customer service representative in the Vital Registration Office of the Bureau of Public Health. Grievant was dismissed from her probationary employment for unsatisfactory performance and misconduct. Respondent proved the misconduct occurred. Grievant failed to prove her performance was satisfactory. Accordingly, 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 was employed by Respondent as a probationary customer service representative in the Vital Registration Office of the Bureau of Public Health.
2. Grievant began employment on April 18, 2016.
3. Grievant's immediate supervisor was Donald Burress, Jr., who reported to Raymond Douglas "Doug" Thompson, Deputy State Registrar, who reported to Gary L. Thompson, Health Statistics Center Associate Director.
4. Mr. Burress assigned Elizabeth McFarland, a fellow customer service representative, to begin training Grievant. Grievant refused to follow instructions and when Ms. McFarland attempted to show Grievant how to use the required computer program, Grievant asserted she already knew and could do it faster than the way Ms. McFarland was training.
5. On April 19, 2016, Ms. McFarland reported to Mr. Burress the above and that she was not sure she would be able to train Grievant as a result.

6. On April 22, 2016, Grievant approached Mr. Burress and Ms. McFarland, who were speaking, and interrupted saying, "Can you both just shut up so I can talk?"

7. On April 25, 2016, Grievant requested Ms. McFarland no longer train her, criticizing her, calling her unprofessional, and saying she did not think she could work with her.

8. On April 27, 2016, Mr. Doug Thompson and Mr. Burress met with Ms. McFarland and Grievant separately. Grievant complained about Ms. McFarland at length. Ms. McFarland denied the allegations and repeated that Grievant refused to take instruction in training. Mr. Doug Thompson and Mr. Burress decided to assign Grievant a new trainer, Rae Rodak.

9. On May 5, 2016, Ms. Rodak reported to Mr. Burress that she was having difficulty training Grievant because she would not listen to instruction and wanted to do things her own way. On that day specifically, Ms. Rodak had instructed Grievant not to hand-write addresses on envelopes. Grievant said she had already started that way and would finish them handwriting. Mr. Burress instructed Ms. Rodak to go back and tell Grievant to print the addresses instead. Later in the day, Grievant handed Mr. Burress an envelope to mail that was handwritten. When Mr. Burress confronted Grievant on this issue, Grievant said that Ms. Rodak had instructed her to hand-write all return envelopes.

10. On May 18, 2016, the customer service representative lead worker, Sue Wood, advised Mr. Burress she did not believe she would be able to effectively train Grievant because of Grievant's insistence on doing things "her way."

11. On May 19, 2016, while being trained on the cash drawer, Grievant left the key in the cash drawer when she left the area. When Ms. Rodak advised Grievant not to

leave the key in the drawer, Grievant stated that, since Ms. Rodak had been signed into the drawer as the trainer, the key was Ms. Rodak's responsibility and not Grievant's.

12. Ms. Rodak continued to have difficulty training Grievant and her attempt at training finally ended when Grievant repeatedly told Ms. Rodak to go away because she didn't need training. On May 23, 2016, Ms. Rodak asked to no longer train Grievant because of Grievant's behavior.

13. Similar behavior continued in which Grievant made numerous mistakes, refused direction, was rude to coworkers, blamed her mistakes on other employees, and complained about coworkers repeatedly to management.

14. Grievant received repeated coaching and counseling regarding her performance and behavior.

15. In meetings with management regarding allegations of performance deficiencies, Grievant complained at length about unrelated supposed misbehavior of coworkers and Grievant alternately denied the deficiencies, blamed them on coworkers, or asserted she had been trained incorrectly on purpose in order to make her look bad.

16. Grievant secretly recorded twenty-four conversations and meetings. The recordings do not show evidence of bias against Grievant by her coworkers and contain very little evidence that Grievant's performance was satisfactory.

17. On June 28, 2016, Mr. Burress met with Mr. Gary Thomspson and Human Resources Director Justin Cherry to discuss the ongoing issues with Grievant's performance and behavior and they determined to move forward with a predetermination conference.

18. The scheduling of the predetermination conference was delayed due to summer vacations and multiple revisions to the predetermination notice.

19. On August 4, 2016, Doug Thompson and Gary Thompson had a conversation discussing Grievant's pending predetermination conference, which had been tentatively scheduled for August 12, 2016, upon Mr. Burress' return from vacation.

20. On August 5, 2016, Grievant met with Director of Health Statistics, Daniel M. Christy, asserting that on August 4, 2016, she had overheard Doug Thompson and Gary Thompson discussing her. Grievant stated that Mr. Gary Thompson had called her sister a "bitch," said that Grievant was just like her sister, that they needed to get rid of Grievant, and that "we just need to catch her doing something, so we can write her up for it."

21. On September 15, 2016, Mr. Burress and Mr. Doug Thompson met with Human Resources Director Cherry regarding the latest revised predetermination letter. Mr. Cherry requested further changes to the letter. Mr. Burress continued to work on the letter that afternoon, and when he had to leave his cubicle, he placed the letter face down on his desk with a notebook on top of it. When Mr. Burress returned to his office, Grievant was standing in Mr. Burress' cubicle, reading the letter.

22. On September 23, 2016, a predetermination conference was held with Grievant, her representative, Mr. Doug Thompson, and Mr. Burress. Grievant generally denied wrongdoing, blamed her coworkers, and asserted she was being retaliated against for complaining about Mr. Burress's criminal history and her coworkers.

23. By a detailed, eight-page letter dated October 3, 2016, Respondent dismissed Grievant from her probationary employment stating "you have not made a

satisfactory adjustment to the demands of your position, nor have you met the required standards of work.” The letter details sixteen specific instances of misconduct or performance deficiency spanning the entirety of Grievant’s employment, along with a summary of Grievant’s responses to the allegations from the predetermination conference.

24. Grievant had received no discipline prior to her termination and did not receive an employee performance appraisal.

### **Discussion**

When a probationary employee is terminated on grounds of unsatisfactory performance, rather than misconduct, the termination is not disciplinary, and the burden of proof is upon the employee to establish that his services were satisfactory. *Bonnell v. W. Va. Dep’t of Corrections*, Docket No. 89-CORR-163 (Mar. 8, 1990); *Roberts v. Dep’t of Health and Human Res.*, Docket No. 2008-0958-DHHR (Mar. 13, 2009). Grievant “is required to prove that it is more likely than not that her services were, in fact, of a satisfactory level.” *Bush v. Dep’t of Transp.*, Docket No. 2008-1489-DOT (Nov. 12, 2008). If a probationary employee is terminated on the grounds of misconduct, the termination is disciplinary, and the Respondent bears the burden of establishing the charges against the Grievant by a preponderance of the evidence. See *Cosner v. Dep’t of Health and Human Resources/William R. Sharpe, Jr. Hospital*, Docket No. 08-HHR-008 (Dec. 30, 2008); *Livingston v. Dep’t of Health and Human Res.*, Docket No. 2008-0770-DHHR (Mar. 21, 2008). See also W. VA. CODE ST. R. § 156-1-3 (2008). See also *Lott v. Div. of Juvenile Serv.*, Docket No. 99-DJS-278 (Dec. 16, 1999). “However, the distinction is one that only affects who carries the burden of proof. As a practical matter, an employee who

engages in misconduct is also providing unsatisfactory performance.” *Livingston v. Dep’t of Health and Human Res.*, Docket No. 2008-0770-DHHR (Mar. 21, 2008) (citing *Johnson v. Dep’t of Transp./Div. of Highways*, Docket No. 04-DOH-215 (Oct. 29, 2004)). “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). If the evidence is equally balanced, the party with the burden of proof has not met that burden. See *Leichliter v. W. Va. Dep’t of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

The Division of Personnel’s administrative rule discusses the probationary period of employment, describing it as “a trial work period designed to allow the appointing authority an opportunity to evaluate the ability of the employee to effectively perform the work of his or her position and to adjust himself or herself to the organization and program of the agency.” W. VA. CODE ST. R. § 143-1-10.1(a) (2008). The same provision goes on to state that the employer “shall use the probationary period for the most effective adjustment of a new employee and the elimination of those employees who do not meet the required standards of work.” *Id.* A probationary employee may be dismissed at any point during the probationary period that the employer determines his services are unsatisfactory. *Id.* at § 10.5(a). Therefore, the Division of Personnel’s administrative rules establish a low threshold to justify termination of a probationary employee. *Livingston v. Dep’t of Health and Human Res.*, Docket No. 2008-0770-DHHR (Mar. 21, 2008).

A probationary employee is not entitled to the usual protections enjoyed by a state employee. The probationary period is used by the employer to ensure that the employee will provide satisfactory service. An employer may decide to

either dismiss the employee or simply not to retain the employee after the probationary period expires.

*Hammond v. Div. of Veteran's Affairs*, Docket No. 2009-0161-MAPS (Jan. 7, 2009) (citing *Hackman v. W. Va. Dep't of Transp.*, Docket No. 01-DMV-582 (Feb. 20, 2002)).

This case involves a combination of both alleged misconduct and alleged unsatisfactory performance. Therefore, it is Respondent's burden to prove the alleged misconduct occurred and Grievant's burden to prove that her services were satisfactory. Respondent asserts that, despite coaching and counseling, Grievant's performance did not improve or meet expectations. Respondent asserts that Grievant's reading of confidential documents from her supervisor's desk was misconduct. Grievant asserts that Respondent failed to follow guidelines to appraise Grievant's performance, that the allegation of unsatisfactory performance is not supported by the evidence, and that Respondent failed to prove the allegation of misconduct.

There are disputed facts, accordingly, the undersigned must make credibility determinations. In assessing the credibility of witnesses, some factors to be considered ... are the witness's: 1) demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and 5) admission of untruthfulness. HAROLD J. ASHER & WILLIAM C. JACKSON, REPRESENTING THE AGENCY BEFORE THE UNITED STATES MERIT SYSTEMS PROTECTION BOARD 152-153 (1984). Additionally, the ALJ 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. *Id.*, *Burchell v. Bd. of Trustees, Marshall Univ.*, Docket No. 97-BOT-011 (Aug. 29, 1997).



Grievant argues the testimony of Respondent's witnesses is not credible due to the leading questions asked by Respondent's counsel. The prohibition on leading questions in direct examination of a witness arises from Rule 611 of the West Virginia Rules of Evidence. The Rules of Evidence do not apply to grievance proceedings.<sup>2</sup> Leading questions may be permitted, but may impact the weight given to a witness' testimony if the witness' response does not provide enough detail regarding disputed facts. In this case, while witnesses' simple "yes" responses to questions regarding disputed facts had little probative value, details were provided by the witnesses in the remainder of their testimony sufficient to find them credible.

Elizabeth McFarland<sup>3</sup> was credible. Her demeanor was appropriate, her answers to most questions were direct, and she appeared to have good recall. Ms. McFarland did appear to be reluctant to answer a series of questions on cross examination relating to her denial that she had called Mr. Burress a pervert. The questions were stated very broadly, and Ms. McFarland seemed frustrated by the questions. She testified that she

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<sup>2</sup> While the current grievance procedure statute only specifically states that formal rules of evidence do not apply in level one hearings, predecessor statutes stated that formal rules of evidence did not apply to any grievance proceeding. W. VA. CODE § 6C-2-4(a)(3) (2015); W. VA. CODE § 29-6A-6(e) (repealed 2007); W. Va. Code § 18-29-6 (repealed 2007). In discussing these predecessor statutes, the West Virginia Supreme Court of Appeals stated that they "indicate that formal rules of evidence do not apply to grievance hearings." *W. Va. Div. of Transp. v. Litten*, 231 W. Va. 217, 222 744 S.E.2d 327, 332 n.6 (2013) (*per curiam*). Grievance Board decisions under the current grievance procedure have consistently stated that formal rules of evidence do not apply to level three hearings. *Kennedy v. Dep't of Health and Human Res.*, Docket No. 2009-1443-DHHR (Mar. 11, 2010), *aff'd*, Circuit Court of Kanawha County, No. 10-AA-73 (Jun. 9, 2011); *Stump v. Div. of Veterans Affairs*, Docket No. 2011-0127-MAPS (Mar. 8, 2013); *Lunsford and Kelly v. Reg'l Jail and Corr. Facility Auth.*, Docket No. 2016-1368-CONS (Sept. 28, 2016); *Mucklow v. Div. of Juvenile Serv.*, Docket No. 2017-0903-MAPS (March 9, 2017).

<sup>3</sup> Ms. McFarland is often referred to as "Libby" in testimony and documents.

had only discussed Mr. Burress as being a good supervisor. This seems unlikely, and casts some doubt on her denial that she called Mr. Burress a pervert. However, whether or not Ms. McFarland actually called Mr. Burgess a pervert is only a tangential consideration, and it does not impact her credibility regarding the allegations against Grievant.

Rae Rodak was credible. Her testimony was mostly calm, quiet, and she maintained good eye contact. While Ms. Rodak did appear confused by some questions on cross examination, she appeared to take questions seriously and do her best to answer them. Although Ms. Rodak was confused about some details, her testimony regarding the specific allegations against Grievant were certain.

Donald Burress, Jr. was credible. His demeanor was quiet and serious. He was responsive to questions and his answers were detailed. He appeared to have a good memory of events and his version of events was plausible and supported by the detailed notes in his administrative file and the testimony of other witnesses. While Grievant asserts Mr. Burress is not credible due to his past criminal conviction, Mr. Burress' conviction was not one involving truthfulness, and does not negate his otherwise credible testimony.

Raymond Douglas Thompson, Deputy State Registrar, was credible. His demeanor was professional, respectful, and direct. He maintained good eye contact and was forthright in his answers to questions.

Grievant was not credible. Her demeanor appeared insincere. Although her language was respectful, Grievant was very difficult in cross examination. She failed to answer simple questions, quibbled with unimportant wording, and her answers were

frequently not responsive to the questions asked. This behavior during her testimony is consistent with the accusations of her behavior as an employee. She very noticeably broke eye contact when denying three of the key allegations, that she refused her trainers' instructions saying her way was faster and better, that she told coworkers to "shut up," and that she read the draft predetermination document from Mr. Burress' desk. In her recorded meetings, the predetermination, and in her hearing, Grievant continually deflected any allegation of her wrongdoing by talking about alleged wrongdoing of others, often alleged wrongdoing completely unrelated to the original allegation.

Grievant asserts that all of the witnesses are biased against her. There is no evidence of bias other than Grievant's testimony. Although Grievant secretly recorded many conversations in the office, none of the recordings contain any of the inappropriate comments Grievant asserts were made to her. In fact, several recordings show Grievant's repeated unsubstantiated accusations against her co-workers and her refusal to cooperate in Mr. Doug Thompson's request to investigate her claims. Grievant's story that she overheard a discussion between Gary Thompson and Raymond Thompson on August 4, 2016, in which she asserts Gary Thompson called her sister a "bitch" and said that they needed to set Grievant up to be fired because she was just like her sister is not credible. Mr. Doug Thompson credibly testified that he and Mr. Gary Thompson had a conversation on that date to discuss Grievant's predetermination and the need to treat her properly and not cut corners. Discussions between Mr. Bures, Mr. Cherry and Gary and Doug Thompson about a predetermination for Grievant began on June 28, 2016. By August 4, 2016, when Gary and Doug Thompson had this conversation, a draft predetermination notice had already been circulated, multiple discussions had been held

about the predetermination notice, and the predetermination meeting was in tentatively scheduled. The predetermination was placed on hold when Grievant met with Mr. Christy on August 5, 2016, to raise the above accusation against Gary and Doug Thompson. There was no reason for Gary and Doug Thompson to discuss setting Grievant up to be dismissed, when they had been discussing predetermination since June 28<sup>th</sup>, and a predetermination notice was already drafted. In order to believe Grievant's assertion of bias, one must believe that Ms. McFarland, Ms. Rodak, Mr. Burress, and Mr. Doug Thompson are all lying, that, from within days of meeting her, both Ms. McFarland and Ms. Rodak trained her incorrectly on purpose to make her look bad, and that Mr. Burress' detailed documentation is a fiction. This is simply not plausible.

Respondent is not required to prove it was justified in dismissing Grievant from employment. Respondent is only required to prove the misconduct occurred. Respondent has met this burden. It is more likely than not that Grievant went through the papers on her supervisor's desk to read her confidential predetermination draft, which had not been left in plain sight. Even what Grievant admitted to, that she was looking on her supervisor's desk for something else and she picked up the document because it was in plain sight and had her name on it, was misconduct, as Grievant should not have been looking through her supervisor's papers at all.

It is Grievant's burden to prove her performance was satisfactory despite her misconduct. Grievant asserts that her performance was satisfactory and that any failure in performance was due to Respondent's failure to properly evaluate her.

While Respondent failed to formally notify Grievant of her progress through the Employee Performance Appraisal process, there is no question Grievant had been

counseled repeatedly about problems with her performance, and had ample opportunity to correct her performance. The only evidence of her satisfactory performance Grievant provided is Grievant's own testimony denying all wrongdoing, which is not credible, and two isolated comments from Mr. Burress in June and July from the recorded conversations. Regardless of the isolated positive comment from Mr. Burress, the June meeting clearly illustrates the problems with Grievant's behavior as an employee. She constantly interrupted and talked over Mr. Thompson and Mr. Burress. She would not accept direction. The meeting went on for over an hour due to her numerous complaints and insistence on talking about minutia. In addition, the meeting was for the purpose of getting Grievant's side of the story, and she had denied the allegations. When Mr. Burress made his one positive comment, he had not yet determined that Grievant was at fault, and was simply trying to coach and encourage a new employee. Further, even though Mr. Thompson was very careful not to assign blame, as the allegations on both sides had not been investigated, he clearly expressed his displeasure of the constant complaints and "drama" that had begun only after Grievant became employed. In the July conversation, Grievant was asking Mr. Burress questions as he was closing out her cash drawer and processing "write-ups."<sup>4</sup> Mr. Burress seemed distracted throughout. While Mr. Burress was distracted, Grievant asked if there was anything else they needed to discuss from her EPA-1, which she had received at the end of the previous day. Mr. Burress informed her it was what was on the EPA-1. Grievant next asked "So, how do

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<sup>4</sup> Although Grievant asserts Mr. Burress was conducting personal business and ignoring her, the sounds of a calculator can be heard, and then Mr. Burress asked Grievant to get change from the credit union. As Mr. Burress was asking for change immediately after the sound of the calculator stopped, it is more likely than not that Mr. Burress was using the calculator in closing out the cash drawer.

you think I am doing right now?" To which Mr. Burress replied, "You're doing good," but then immediately began discussing a problem that had arisen that day. This comment was made in answer to the question of "right now" while Mr. Burress was distracted. It is certainly not a comment on her complete performance, especially since in the EPA-1 just the day before Mr. Burress had stated as an additional expectation to "treat all customers and co-workers with respect."

Grievant cannot show her performance was satisfactory. She was difficult and rude from the beginning of her employment. She refused training and direction. When issues were discussed with her, even when she corrected the problem, she spent an inordinate amount of time blaming others for her deficiencies, going so far as to accuse coworkers of training her incorrectly on purpose to make her look bad. In interactions with management in which her performance was discussed, Grievant deflected such discussion by complaining about alleged bad actions from her co-workers unrelated to the original discussion. Yet, despite numerous attempts by management for Grievant to provide information for investigation of these alleged actions, Grievant did not cooperate and simply complained again the next time her own failings were brought to her attention. Although Grievant would correct mistakes when brought to her attention, she would continue to make a different mistake the next time, including making mistakes on tasks she had been trained on and had previously performed correctly. Grievant has failed to prove her services were satisfactory.

The following Conclusions of Law support the decision reached.

## Conclusions of Law

1. When a probationary employee is terminated on grounds of unsatisfactory performance, rather than misconduct, the termination is not disciplinary, and the burden of proof is upon the employee to establish that his services were satisfactory. *Bonnell v. W. Va. Dep't of Corrections*, Docket No. 89-CORR-163 (Mar. 8, 1990); *Roberts v. Dep't of Health and Human Res.*, Docket No. 2008-0958-DHHR (Mar. 13, 2009).

2. If a probationary employee is terminated on the grounds of misconduct, the termination is disciplinary, and the Respondent bears the burden of establishing the charges against the Grievant by a preponderance of the evidence. See *Cosner v. Dep't of Health and Human Resources/William R. Sharpe, Jr. Hospital*, Docket No. 08-HHR-008 (Dec. 30, 2008); *Livingston v. Dep't of Health and Human Res.*, Docket No. 2008-0770-DHHR (Mar. 21, 2008). See also W. VA. CODE ST. R. § 156-1-3 (2008). See also *Lott v. Div. of Juvenile Serv.*, Docket No. 99-DJS-278 (Dec. 16, 1999). If the evidence is equally balanced, the party with the burden of proof has not met that burden. See *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

3. “However, the distinction is one that only affects who carries the burden of proof. As a practical matter, an employee who engages in misconduct is also providing unsatisfactory performance.” *Livingston v. Dep't of Health and Human Res.*, Docket No. 2008-0770-DHHR (Mar. 21, 2008) (citing *Johnson v. Dep't of Transp./Div. of Highways*, Docket No. 04-DOH-215 (Oct. 29, 2004)).

4. “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). If the evidence is equally balanced, the party with the burden of proof has not met that burden. See *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

5. The Division of Personnel's administrative rules establish a low threshold to justify termination of a probationary employee. *Livingston v. Dep't of Health and Human Res.*, Docket No. 2008-0770-DHHR (Mar. 21, 2008).

A probationary employee is not entitled to the usual protections enjoyed by a state employee. The probationary period is used by the employer to ensure that the employee will provide satisfactory service. An employer may decide to either dismiss the employee or simply not to retain the employee after the probationary period expires.

*Hammond v. Div. of Veteran's Affairs*, Docket No. 2009-0161-MAPS (Jan. 7, 2009) (citing *Hackman v. W. Va. Dep't of Transp.*, Docket No. 01-DMV-582 (Feb. 20, 2002)).

6. Respondent proved the charge of misconduct.

7. Grievant failed to prove her services were satisfactory.

Accordingly, 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 Civil Action number should be



included so that the certified record can be properly filed with the circuit court. See *also* W. VA. CODE ST. R. § 156-1-6.20 (2008).

**DATE: September 25, 2017**

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**Billie Thacker Catlett**  
**Chief Administrative Law Judge**