

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**KEN SNIDER,
Grievant,**

v.

Docket No. 2017-1168-DHHR

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

DECISION

Grievant, Ken Snider, was employed as a Health Service Worker at the William R. Sharpe, Jr. Hospital. He filed this action on November 10, 2016, challenging his dismissal from employment. Grievant seeks to be made whole in every way including back pay with interest and all benefits restored. This grievance was filed directly to Level Three. The undersigned conducted an evidentiary hearing on July 20, 2017, at the Grievance Board's Westover office. Grievant appeared by his representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent appeared by its counsel, Michael E. Bevers, Assistant Attorney General. This matter became mature for consideration upon receipt of the last of the parties' fact/law proposals on August 28, 2017.

Synopsis

Grievant was employed as a Health Service Worker at the William R. Sharpe, Jr. Hospital, a state psychiatric facility. A patient grievance alleging physical abuse was filed against Mr. Snider in August 2016. Two co-workers reported that Grievant used a choke hold on a patient, and a doctor and nurse noted red marks on the patient's neck after the

event. Grievant was reassigned pending an investigation. Subsequently, it was substantiated that physical abuse had occurred, and Mr. Snider was dismissed. Respondent established by a preponderance of the evidence that good cause existed to terminate the employment of Grievant.

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

Findings of Fact

1. Grievant was employed as a Health Service Worker at Sharpe Hospital. On August 5, 2016, a patient grievance alleging physical abuse was filed against Mr. Snider.

2. The patient grievance alleged that Mr. Snider choked the patient during a support call. Red marks were noted on the left side of the patient's neck, and the patient complained of a sore throat.

3. Sharpe Hospital management transferred Grievant from his position of Health Service Worker to a position away from contact with patients pending an investigation into the allegation.

4. Amanda D. Childers has been a Behavioral Health Advocate with Legal Aid of West Virginia for two years. Ms. Childers is stationed at Sharpe Hospital, where she investigates allegations of abuse and neglect of patients.

5. Ms. Childers described the investigation into the allegations that Mr. Snider engaged in patient abuse. Ms. Childers interviewed several witnesses and obtained written statements. Of the eight people in the room during the crisis event, the two who were closest to the patient's head saw Grievant put the patient in a choke hold. Four witnesses saw red marks on the patient's neck after the crisis event.

6. Ms. Childers noted that Grievant admitted some of the allegations against him. He admitted grabbing the patient's collar bone, which is an improper hold. Grievant explained how he grabbed the patient at his collar bone and took him to the bed. Grabbing a patient's neck area is a violation of Title 64 that meets the definition of abuse.¹

7. Brandon Gray was a Sharpe Hospital Health Service Worker when the crisis event occurred on August 5, 2016. Mr. Gray was on the support team and helped the nurses with the daily activities.

8. Mr. Gray explained that he learned crisis intervention techniques when he was employed at Sharpe Hospital. This instruction teaches health care workers the proper holds to use and improper holds not to use in patient crisis events. Holding a patient's neck and choking a patient are not approved intervention techniques.

9. Mr. Gray testified that the Support Team was called on the day in question and they escorted the patient back to his room. They tried to get the patient to take a shot, but he refused. Mr. Gray recalled that Grievant was going back and forth with the patient and got him agitated. When the Support Team tried to hold the patient, Grievant used a reverse choke hold after the patient was on the bed and had his face down on the mattress. Mr. Gray described the reverse choke hold as Grievant having his arm around the patient's neck with the bend of his arm around the patient's throat.

10. Mr. Gray left the room, and when he returned, the patient was complaining to Nurse Paula Duffield that his neck hurt. Mr. Gray then noticed that the patient had a

¹Physical abuse is defined as the "use of physical force, body posture or gesture that inflicts or threatens to inflict pain on a client." 64 C.S.R. 59 § 3.13.

red ring around his neck. Mr. Gray testified that it was not necessary for anyone to hold the patient around the neck.

11. Paula Duffield has been a Licensed Practical Nurse at Sharpe Hospital for more than two years. Ms. Duffield was indirectly involved in the patient crisis event on August 5, 2016. She explained that she went into the patient's room after the event to get his vital signs and he told her that his throat hurt. When she asked him why, he told her that a Health Service Worker had choked him. Ms. Duffield noticed red marks on the patient's neck, around his throat, and in the front. Ms. Duffield then asked Dr. Paramjit Chumber to come and look at the patient.

12. Dr. Chumber has been a Staff Psychiatrist at Sharpe Hospital for twelve years. Dr. Chumber is the attending physician for the inpatient unit. He handles medication management for patients and psychiatric management of patients.

13. Dr. Chumber examined the patient after the crisis event. Dr. Chumber noted superficial red marks on the left side of the patient's neck. Dr. Chumber did not witness what caused the red marks, but he opined that they could have been consistent with pressure on the patient's neck.

14. Debra L. Quinn was the Sharpe Hospital Human Resources Director when the crisis event occurred. Ms. Quinn conducted the predetermination conference on September 1, 2016. The predetermination conference was an opportunity for Mr. Snider to give his side of events and answer any questions. Mr. Snider did not request a representative be present at the conference.

15. Patrick W. Ryan has been the Chief Executive Officer at Sharpe Hospital since August 2015. Mr. Ryan's decision to dismiss Mr. Snider was based on considering

all of the evidence. Mr. Snider admitted that his hold was on a body part that was not an approved restraint technique. The two staff members who saw the choke hold were contract employees who had no incentive to be dishonest. The patient had red marks on his neck consistent with an inappropriate restraint. Mr. Ryan felt that the choke hold met the level of Title 64 abuse.

16. By letter dated November 9, 2016, Mr. Ryan notified Grievant that he was dismissed from employment at Sharpe Hospital effective November 25, 2016. The letter sets out the reasons for dismissal as follows:

Your dismissal is the result of your inappropriate actions regarding a patient, which resulted in a substantiated patient abuse allegation. Specifically, the abuse was substantiated for an improper physical hold on a patient during a support call on August 5, 2016. During the investigation, you were removed from patient care and reassigned to another work area of the hospital.

Discussion

The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2008); *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). Where the evidence equally supports both sides, the employer has not met its burden. *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Permanent state employees who are in the classified service can only be dismissed for “good cause,” meaning “misconduct of a substantial nature directly affecting the rights and interest of the public, rather than upon trivial or inconsequential matters, or mere technical violations of statute or official duty without wrongful intention.” Syl. Pt. 1, *Oakes v. W. Va. Dep’t of Finance and Admin.*, 164 W. Va. 384, 264 S.E.2d 151 (1980); *Guine v. Civil Serv. Comm’n*, 149 W. Va. 461, 141 S.E.2d 364 (1965).

The record of this case is relatively undisputed. The undersigned long ago pointed out that Sharpe Hospital employees are expected to avoid physical abuse, harassment, exploitation or intimidation of patients and refrain from making unwanted or inappropriate verbal or physical contact with patients. Residents of health care facilities have the right to be free from any physical restraint imposed for purposes of discipline or convenience, and not required to treat the resident’s medical symptoms.

Respondent has met its burden of proof. Grievant did physically abuse the patient in question. Grievant’s admitted actions demonstrated a disregard for the resident, his employer’s policies, and resulted in harm. The reasons for Grievant’s dismissal meet the requirements outlined in *Oakes, supra*. Mr. Snider’s job performance and conduct were unacceptable. He committed patient abuse, and Sharpe Hospital was correct in terminating his employment.

Respondent is mandated to protect and care for a segment of the mentally challenged population of West Virginia. As a Health Service Assistant within Sharpe Hospital, Grievant is responsible for the care and protection of the residents. The misconduct was of such a nature to justify Respondent’s decision to terminate Grievant’s employment.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988).

2. Permanent state employees who are in the classified service can only be dismissed for “good cause,” meaning “misconduct of a substantial nature directly affecting the rights and interest of the public, rather than upon trivial or inconsequential matters, or mere technical violations of statute or official duty without wrongful intention.” Syl. Pt. 1, *Oakes v. W. Va. Dep’t of Finance and Admin.*, 164 W. Va. 384, 264 S.E.2d 151 (1980); *Guine v. Civil Serv. Comm’n*, 149 W. Va. 461, 141 S.E.2d 364 (1965).

3. Respondent has met its burden of proving that Grievant’s conduct was of a substantial nature directly affecting the rights and interest of the resident in question at Respondent’s facility. Grievant was dismissed for good cause.

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 *a/so* 156 C.S.R. 1 § 6.20 (2008).

Date: September 18, 2017

Ronald L. Reece
Administrative Law Judge