

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**CHARLES STEVEN TROUT II,
Grievant,**

v.

Docket No. 2018-0030-DHHR

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

DECISION

Grievant, Charles S. Trout II, was employed by Respondent, Department of Health and Human Services (“DHHR”), in the Bureau for Children and Families call center. Mr. Trout filed an expedited grievance¹ dated July 5, 2017, contesting the termination of his employment and seeking reinstatement to his prior position with back pay and benefits.² A level three hearing was conducted at the Charleston office of the West Virginia Public Employees Grievance Board on September 26, 2017. Grievant appeared *pro se*.³ Respondent was represented by James “Jake” Wegman, Assistant Attorney General. This matter became mature for decision on November 3, 2017, upon receipt of the last Proposed Findings of Fact and Conclusions of Law submitted by the parties.

¹ See W. VA. CODE § 6C-2-4(a)(4).

² Grievant filed a five-page typed statement with his grievance form detailing the incidents leading to his dismissal and his belief that it should not be upheld. The statement is part of the record and incorporated herein by reference.

³ “*Pro se*” is translated from Latin as “for oneself” and in this context, means one who represents oneself in a hearing without a lawyer or other representative. *Black’s Law Dictionary*, 8th Edition, 2004 Thompson/West, page 1258.

Synopsis

Grievant was employed by DHHR as an Economic Service Worker in the Bureau for Children and Families call center. He also receives SNAP⁴ benefits through the federally funded program administered by the West Virginia DHHR. The DHHR Office of Inspector General conducted a quality control review of Grievant's benefit file, and concluded that Grievant had falsely and intentionally inflated his actual living expenses to increase the SNAP benefits received for himself and his children. Respondent terminated Grievant's employment based upon that report. Grievant claims that he did not inflate his expenses and that he was extremely careful not to receive benefits for which he was not entitled. Respondent did not prove that Grievant falsified his living expenses on his SNAP applications.

The following facts are found to be proven by a preponderance of the evidence based upon an examination of the entire record developed in this matter.

Findings of Fact

1. Grievant has been employed by the DHHR since January 2012, most recently as an Economic Service Worker in the Bureau for Children and Families. He was assigned to the Bureau's central call center which provides information and explanations about benefits, and assists clients with finding services.

2. Grievant receives SNAP benefits through a federally funded program administered by the West Virginia DHHR. The benefits provide supplemental food allowances for Grievant and his three young children.

⁴ SNAP is the acronym for the Supplemental Nutrition Assistance Program which helps qualifying households purchase food. This program was previously known as Food Stamps.

3. The Investigations and Fraud Management Unit of the DHHR Office of Inspector conducted a quality control review of Grievant's SNAP benefits records for the period of September 2015 through February 2017. DHHR Criminal Investigator, Addison Hamilton, conducted the inquiry and produced a thirteen-page report with twenty-six exhibits attached. (Resp't Ex. 1).

4. On the SNAP applications, the applicant must list all sources of income for the household, any checking or savings account balances, tangible assets such as automobiles, and everyone who is living in the household. The applicants must also list living expenses including housing costs, utilities, and child care. All these items are factored into a formula to determine eligibility and levels of benefits.

5. Grievant completed an application for SNAP benefits on August 15, 2015. The application was for Grievant and his three young children. For his mortgage payment,⁵ Grievant listed \$330 per month, and he listed \$100 per month for electricity. The house is heated with electricity. Grievant listed \$35 per month for homeowner's insurance on this application. (Resp't Ex. 1).

6. On Grievant's September 9, 2016, application he listed his child care expenses for his three children to be \$121.00 per week. The child care services were furnished by a DHHR sanctioned provider, Morris Enrichment Center. For his mortgage payment, he listed \$400 per month, and he listed \$250 per month for electricity. Grievant did not list any amounts for property taxes or homeowner's insurance on this application. (Resp't Ex. 1).

⁵ Grievant has a lease purchase agreement for purchasing his residence.

7. Inspector Hamilton interviewed Grievant's estranged wife, Maegan Trout, on May 4, 2017. In her statement, Ms. Trout noted that she and Grievant had been separated for two years and that she is the mother of the three children for whom Grievant receives SNAP benefits. She confirmed that the children attend day care at the Morris Enrichment Center. She also stated that Grievant receives CONNECT benefits that help with the tuition. She pays the day care costs and Grievant reimburses her. She does not provide Grievant with a receipt. Ms. Trout estimated that their child care costs were, "around \$150.00 per month."

8. Maegan Trout testified at the level three hearing by telephone. When asked about the child care payments she stated "this is all an estimation." Mr. Trout testified that the payments vary from \$150 per month to \$300 per month. She went on to state that there were months where the cost was \$600 or \$700 per month and months where they had to pay \$1200 to \$1500 per month.⁶

9. Karen Foster is the person from whom Grievant is purchasing his house. She provided a letter to the DHHR verifying that Grievant pays \$344 per month on his land contract.

10. Mr. Hamilton interviewed Grievant on May 23, 2017. Grievant was confronted with documents compiled over the course of the investigation. Grievant stated:

I do admit the oversight of not reporting twenty-five dollars a month child support arrears for one of the four foster children I had several years ago, on my SNAP application, this is my fault. I also falsified the amount of rent mortgage I pay on my application as well. I really pay \$344.00 a month, I'm on a land contract, I don't pay \$400.00 a month. I also falsely reported

⁶ Level three testimony of Maegan Trout. When asked if she provided Grievant with receipts from the Morris Center, Ms. Trout testified that she and Grievant did not have the type of relationship which requires such things.

my child care expenses to the WV Department of Health and Human Resources. I don't pay \$121.00 a week for child care, I have CONNECT child care which helps subsidize my child care cost.⁷

11. Grievant considered Mr. Hamilton to be a close friend because they had worked on the same floor for years. They once had a long conversation at a bar where Grievant discussed domestic difficulties and Mr. Hamilton discussed his recent pay increase. After the discussion, they exchanged telephone numbers. They also occasionally exchanged greetings while passing on a jogging trail.⁸

12. The Investigations and Fraud Management unit determined that Grievant violated, W. VA. CODE §9-5-4, Welfare Fraud, and DHHR Policy Memorandum 2108 – Employee Conduct in three ways:

1. Failing to report unearned income from child support arrearages;
2. Over reporting his child care expenses; and,
3. Over reporting his mortgage expenses.

The Report also concluded that Grievant had received \$3,324.00 in SNAP benefits over the eighteen-month period. Most of this amount was based upon the investigators calculations regarding Grievant's child care cost reporting. (Resp't Ex. 1).

13. The child care expenses were assumed to be \$150 per month as reported by Ms. Trout, rather than \$121 per week reported on Grievant's September 9, 2016, application. *Id.*

14. The mortgage payment paid by Grievant was found to be \$344 per month, rather than \$330 per month Grievant reported on his August 15, 2015, application, or \$400 per month he reported on his September 6, 2016, application.

⁷ Grievant's written statement. (Resp't Ex. 1).

⁸ Mr. Hamilton however felt they were merely acquainted, rather than friends.

15. In September 2016, Grievant began receiving twenty-five dollars per month as child support arrears payments related to a child he provided foster care to several years ago. He did not report that income on his September 9, 2016, application.

16. Phyllis Boner is a DHHR Economic Service Supervisor. She was the person who worked with Grievant on completing his SNAP applications and verifying all the information Grievant provided through other sources.⁹

17. On Grievant's August 15, 2015, application Grievant listed his mortgage payment as \$330 per month and his homeowner's insurance at \$35 per month. Supervisor Boner verified these numbers with documents from the seller and documents submitted by Grievant.¹⁰

18. On Grievant's September 6, 2016, application he listed his mortgage payment as \$400 per month, but did not list an amount for homeowner's insurance or property taxes. The mortgage number is different from the number provided the previous year. Supervisor Boner verified Grievant's mortgage payment with the seller, and verified the property taxes and homeowner's insurance from other documents. She then combined all those payments into one housing expense of \$400 dollars rather than listing them separately. This resulted in the difference between the two applications. Grievant's application was accurate on all these expenses.¹¹

⁹ Whenever possible, a supervisor handles the assistance applications for DHHR employees to ensure accuracy and avoid conflicts of interest.

¹⁰ Level three testimony of Phyllis Boner.

¹¹ Level three testimony of Phyllis Boner. Supervisor Boner is charged with checking and verifying applications taken by ESWs under her supervision. Combining the mortgage payment with the property taxes and homeowners insurance to come up with one housing expense entry is a common and appropriate practice as long as the expenses are verified by the Worker taking the application.

19. On Grievant's September 6, 2016, SNAP application, Grievant listed his child care as costing \$121 per week. Supervisor Boner compared this estimate with the child care cost documents provided by Grievant from CONNECT and the care provider. She found that Grievant's estimate of \$121 per week was lower than the actual average cost. The amount that she entered into the official form was different from Grievant's estimate and was based upon the documents rather than Grievant's initial estimate.¹² Grievant provided documentation for every item on the application and the actual numbers were entered from that documentation.¹³

20. Grievant was issued a notice of eligibility for SNAP benefits on September 12, 2016, based upon the application completed by him and Supervisor Boner. This document indicated that Grievant received a \$520.26 per month Dependent Care Deduction from his Gross Income to calculate his Net Adjusted Income which was the basis for his benefit. This amount was based upon the figures entered into the application program by Supervisor Boner, not the estimate of \$121.00 per week estimate of Grievant initially entered on the written application.

21. No evidence was in the report, nor offered by either party regarding the actual child care number Supervisor Boner entered into the application program. The only evidence was Ms. Boner's testimony that she entered the correct amount based upon the documentation from the child care providers.

22. Grievant testified that he based his child care figures on the Child Care Certificate issued by DHHR for the provider. Grievant provided a Certificate issued for his

¹² *Id.*

¹³ *Id.*

children on July 3, 2017, as an example. (Gr. Ex.2). The Certificate lists a rate and fee equal to twenty-nine dollars per day for each child. At five days per week, that amounts to \$436 per week for total child care. The certificate provides:

Providers must submit monthly bills to the issuing agency. **The parent is responsible for paying the fee directly to the provider.** The issuing agency will be responsible for the balance of the cost of care up to the provider's usual rate or the State's maximum pay rate, . . . whichever is less. . .

Id. (Emphasis in Original).

The document does not indicate what part of the daily rate is paid by the agency or the remainder to be paid by the parent.¹⁴ This is an example of one type of documentation provided to Supervisor Boner by Grievant which she used to determine the amount to be entered on Grievant's Snap applications for child care costs.

23. Grievant received a benefit letter dated August 19, 2015, stating that he would receive SNAP benefits starting September 1, 2015. In that letter, Grievant received a \$680.73 per month Dependent Care Deduction from his Gross Income to calculate his Net Adjusted Income. Grievant received the same Dependent Care Deduction in the SNAP benefit letter he received on September 12, 2016. (Resp't Ex. 1).

24. The investigation of Grievant's SNAP benefits covered the eighteen-month period of September 2015 through February 2017. The investigation report synopsis states Grievant's child care expenses to be \$11,290.37 over that period. This appears to be based upon the Dependent Care Deductions listed in the three benefit letters covering the eighteen-month period. The report synopsis stated that Grievant was only eligible for a \$2,700 for child care deductions which was based solely upon the estimate of \$150 per

¹⁴ No testimony was provided to clarify that issue.

month provided by Maegan Trout. Using that information, Investigator Hamilton concluded Grievant received “an excess [child care] deduction of \$8,590.37.” (Resp’t Ex. 1, BP 4).¹⁵

25. In Grievant’s benefit letters for August 19, 2015, January 21, 2016, and September 12, 2016, Grievant received monthly Shelter/Utility Deductions of \$232.07, \$14.88 and \$0.00 respectively. (Resp’t Ex. 1, BPs 82, 85, and \$93).

26. The investigative report synopsis states that Grievant reported his shelter expenses to be \$6,780 but the verified total expenses were \$6,192. Based upon those figures Investigator Hamilton concluded that Grievant received an excess of \$588.00 in shelter deductions. However, the benefit letters state that Grievant actually received around \$1,482 in Shelter/Utility deductions during the eighteen-month period, which is more than \$4,000 lower than either of the numbers assumed in the report.¹⁶ Grievant did not receive an excessive deduction for Shelter/Utilities.¹⁷ Grievant’s statement of his mortgage and utilities on the September 2016 application was not inaccurate and did not result in him receiving an unauthorized amount of SNAP benefits.

27. Grievant provided foster services to four children in the past. Starting on September 6, 2016, monthly checks of twenty-five dollars were sent to Grievant as arrears child support for one of the children he fostered. Grievant received a twenty-five

¹⁵ “BP” is an abbreviation for the Bates Page Number where a discrete item may be found in Resp’t Ex. 1.

¹⁶ The inspector’s numbers assume Grievant inaccurately reported his expense to be \$400 dollars per month on the September 2016 application. However, Supervisor Boner explained that assumption was flawed. FOF 17, *supra*. The actual deductions are much lower based upon standard deductions allowed for Shelter/Utility Deductions.

¹⁷ Level three testimony of Phyllis Boner.

dollar check each month for nine months from September 2016 through May 2017. (Resp't Ex. 1, BN 99).

28. The first check was listed as processed on September 6, 2016 and Grievant signed his SNAP application on September 9, 2016. It is more likely than not that Grievant had not received the first check through the mail before he filled out his SNAP application.

29. DHHR has implemented a process called Simplified Reporting for economic services benefits. Through this process a recipient does not have to report minor changes to their circumstances which occur after one application is completed until the next application is completed, usually six months later. Since Grievant began receiving the child support checks after he completed his September 2016 application, he was not required to report this income until he submitted his next application.¹⁸ This income was not listed as a source of unauthorized SNAP benefits in the investigation report synopsis. (Resp't Ex. 1 BN 4).

30. Grievant's SNAP applications have been subjected to quality control reviews by the Investigations and Fraud Management unit on three previous occasions. No irregularities were found in those reviews. Because of those reviews, and Grievant's cautious nature, he has been very careful about accurately reporting his income and expenses when filling out his SNAP applications.¹⁹ On two occasions he self-reported issues which might affect his benefits, to his case worker: August 18, 2015, he reported a change in payment of child care expenses. (Gr. Ex. 1); On September 14, 2015, he

¹⁸ Level three testimony of Investigator Hamilton during cross examination. Grievant testified without contradiction that he reported the checks as unearned income on his next application.

¹⁹ Level three testimony of Grievant and Phyllis Boner.

reported as income SSI benefits paid on behalf of one of his children, after he discovered he had access to the account into which the benefits were deposited. (Gr. Ex. 3).

31. Grievant's employment was terminated for alleged gross misconduct by letter dated June 26, 2017. The letter was signed by Deputy Commissioner, Tina Mitchell, and hand-delivered to Grievant the same day. The dismissal was based upon the Office of Inspector General's investigation report determination that Grievant had violated W. VA. CODE § 9-5-4 related to obtaining benefits "by means of a willfully false statement or misrepresentation," and Policy Memorandum 2108 – Employee Conduct. Specifically Grievant was alleged to have violated the Policy admonitions to "comply with Federal, State and local laws" as well as "refrain from illegal and immoral acts." (Resp't Ex. 2).

Discussion

This grievance involves a disciplinary matter. Consequently, Respondent bears the burden of establishing the charges by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008).

. . . See [*Watkins v. McDowell County Bd. of Educ.*, 229 W.Va. 500, 729 S.E.2d 822] at 833 (The applicable standard of proof in a grievance proceeding is preponderance of the evidence.); *Darby v. Kanawha County Board of Education*, 227 W.Va. 525, 530, 711 S.E.2d 595, 600 (2011) (The order of the hearing examiner properly stated that, in disciplinary matters, the employer bears the burden of establishing the charges by a preponderance of the evidence.). See also *Hovermale v. Berkeley Springs Moose Lodge*, 165 W.Va. 689, 697 n. 4, 271 S.E.2d 335, 341 n. 4 (1980) ("Proof by a preponderance of the evidence requires only that a party satisfy the court or jury by sufficient evidence that the existence of a fact is more probable or likely than its nonexistence.") . . .

W. Va. Dep't of Trans., Div. of Highways v. Litten, No. 12-0287 (W.Va. Supreme Court, June 5, 2013) (memorandum decision). Where the evidence equally supports both sides,

a party has not met its burden of proof. *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant was a permanent State employee with several years of service when his employment was terminated. 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); See also W. VA. CODE ST. R. § 143-1-12.02 and 12.03 (2012).

Respondent terminated Grievant's employment for gross misconduct for allegedly violating W. VA. CODE § 9-5-4 and DHHR Policy Memorandum 2108. The Policy provisions state that DHHR employees are expected to comply with federal and state statutes and policies, as well as refrain from "illegal or immoral acts" while on State property or working. *Id.* The Code provision relates to what is commonly referred to as welfare fraud and states:

Any person who obtains or attempts to obtain, or aids or abets an applicant or recipient in obtaining or attempting to obtain, by means of a willfully false statement or misrepresentation or by impersonation of any other fraudulent device:

(1) Any class of welfare assistance to which the applicant or recipient is not entitled; or

(2) Any class of welfare assistance in excess of that to which the applicant or recipient is justly entitled; shall upon conviction be punished as follows:

W. VA. CODE § 9-5-4. Respondent based its allegations on the findings of the investigation conducted by the Office of Inspector General's Investigations and Fraud Management unit. The investigator concluded that Grievant had violated the applicable statute by: 1) over reporting his mortgage expenses; 2) over reporting his child care expenses; and, 3) failing to report unearned income from child support arrearages.

Grievant argues that he carefully provided all information related to his SNAP applications, and did not knowingly falsify any forms or documents, or provide false information to improperly increase his SNAP benefits.

Grievant reported his Mortgage to be \$330 per month on his August 2015 application and \$400 per month on the September 2016 application. The documentation provided by the seller shows that the actual mortgage payment is \$334. The investigator concluded that Grievant inflated his Mortgage payment in 2016 to improperly increase his SNAP benefits. That is erroneous.

Supervisor Boner demonstrated that Grievant's Mortgage and Homeowners Insurance were listed separately on the 2015 application but were combined on the 2016 application. This is an acceptable procedure and did not result in Grievant misstating his Mortgage payment. Additionally, both Grievant and Phyllis Boner pointed out on the benefit letters that no increase in benefits would have occurred if Grievant had misstated his mortgage payment by \$67 per month.

Grievant estimated on his September 2016 application that his child care expenses would be \$121 per week. Supervisor Boner noted that Grievant provided appropriate documentation for all his expenses including his child care costs when they completed this application. She did not utilize the estimate Grievant put on the form because the

documentation she examined from the child care provider and CONNECT demonstrated that the cost would be greater than Grievant estimated. Since the estimate was not used Grievant did not falsify his child care cost by giving a false estimate. Respondent provided no evidence regarding the actual number which was entered on into the program by Ms. Boner.²⁰

More importantly, Respondent relied upon the statement of Maegan Trout to determine what the actual child care expenses were. In her statement, Ms. Trout estimated that the expenses were around \$150 per month. Investigator Hamilton appears to have projected that figure over the eighteen-month period, compared it to the deductions found on the benefit notice letters, and concluded that Grievant intentionally over stated his expenses by more than \$8500. This is the main source of the finding that Grievant received more than \$3000 in excessive SNAP benefits over the eight-month period.

Reliance upon the estimation made by Ms. Trout in her statement to reflect that true and accurate amount of child care paid for the three children was a mistake. The full extent of this mistake became evident when Ms. Trout testified. She began by noting that her statement to Mr. Hamilton was just an estimate. She then testified that for most months the costs ranged for \$150 to \$300 per month. As the questioning by Respondent's counsel continued, Ms. Trout stated that there were some months where the fees were as high as \$600 to \$700 per month, and there were some months where they had to pay

²⁰ There was no indication that Supervisor Boner was questioned during the investigation. This is unfortunate since she worked with Grievant in completing the SNAP applications and could provide insight into how they were completed, as well as why certain figures were utilized.

\$1200 to \$1500 per month. The testimony and statement of Maegan Trout is not a credible source of confirmation of the true and accurate child care costs.²¹ The numbers she provided varied widely from one statement to the next, and were, by her own admission, estimations. Ms. Trout obviously did not know with any certainty what amounts the parents were paying for child care. Use of Maegan Trout's estimates did not provide any proof that Grievant intentionally inflated his child care expenses to increase his SNAP benefits.

Conversely, Supervisor Boner was a very credible witness. She had no stake in the outcome of the grievance. She was calm and straight forward when testifying and maintained good eye contact. She did not hesitate in her answers and asked for clarification when any question was unclear. She has significant experience and expertise in the SNAP application process and explained her answers fully without unnecessary opinions or bias. She testified unequivocally that the amount she entered for child care on Grievant's September 2016 application was accurate based upon the documents provided by the child care providers. Respondent did not prove that Grievant inflated his child care expenses to gain SNAP benefits that he and his children were not entitled to receive.

²¹ 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' information. *Yerrid v. Div. of Highways*, Docket No. 2009-1692-DOT (Mar. 26, 2010); *Shores v. W. Va. Parkways Econ. Dev. & Tourism Auth.*, Docket No. 2009-1583-DOT (Dec. 1, 2009); *Elliott v. Div. of Juvenile Serv.*, Docket No. 2008-1510-MAPS (Aug. 28, 2009); *Holmes v. Bd. of Directors/W. Va. State College*, Docket No. 99-BOD-216 (Dec. 28, 1999).

Finally, Respondent did not prove that Grievant intentionally failed to list child support arrears payments on his September 9, 2016, SNAP application. It is more likely than not that Grievant received the first \$25 monthly check after he completed the SNAP application as he testified. Furthermore, it is undisputed that under the simplified reporting procedures Grievant was not required to report this income until his next SNAP application was completed. Grievant has claimed that income.

The most troubling evidence is Grievant's statement in which he admits to all the charges brought by Inspector Hamilton. Grievant had known Mr. Hamilton for some time since they worked on the same floor. Additionally, the two men had a lengthy conversation at a bar where Mr. Hamilton shared the news of a pay raise he had received and Grievant opined on the difficulty of maintaining marital bliss. They shared telephone numbers, and an occasional greeting on a jogging route they both utilized. After this, Grievant regarded Mr. Hamilton as a close friend. When confronted with what appeared to be incorrect Mortgage amounts, and his estranged wife's statement about child care, Grievant felt he must have made mistakes which would result in a small overpayment. He admitted to the allegations to get the problems behind him. He felt that if there were major problems, Mr. Hamilton would have alerted him because Grievant viewed him as a friend. When he was informed that the allegations amounted to a felony it was too late.

Considering Grievant's payments of child care to Ms. Trout without any questions and his behavior in his interview, it appears that Grievant avoids confrontations to his detriment and may be overly trusting. For whatever reason, the statement Grievant gave to Inspector Hamilton is simply not supported by the evidence produced at the hearing.

Ultimately, Respondent did not prove the reasons for terminating Grievant's employment by a preponderance of the evidence and the grievance is GRANTED.

One additional issue needs to be addressed. Grievant appeared at the grievance hearing *pro se*. As the undersigned was discussing preliminary matters with the parties, including Grievant's options regarding testifying at a disciplinary hearing, Grievant stated that, upon advice of counsel, he had pled to a misdemeanor charge related to these allegations in Circuit Court. Respondent's counsel was unaware of this development and it occurred after Grievant's employment was terminated. Accordingly, it played no role in the decision to dismiss Grievant. In the post hearing fact/law submission, Respondent argued that this plea agreement should be taken into account. The plea had not occurred at the time of Grievant's dismissal, and was not the basis for the decision to terminate his employment. Therefore, it is not relevant to this proceeding and is not considered. Additionally, Grievant was not under oath when he revealed his plea and there was no sworn or documentary evidence proffered at the hearing to prove the plea's existence.

Conclusions of Law

1. This grievance involves a disciplinary matter. Consequently, Respondent bears the burden of establishing the charges by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008). Where the evidence equally supports both sides, a party has not met its burden of proof. *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Id.*

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); See also W. VA. CODE ST. R. § 143-1-12.02 and 12.03 (2012).

3. W. VA. CODE § 9-5-4, states the following:

Any person who obtains or attempts to obtain, or aids or abets an applicant or recipient in obtaining or attempting to obtain, by means of a willfully false statement or misrepresentation or by impersonation of any other fraudulent device:

(1) Any class of welfare assistance to which the applicant or recipient is not entitled; or

(2) Any class of welfare assistance in excess of that to which the applicant or recipient is justly entitled; shall upon conviction be punished as follows:

4. Respondent did not prove the reasons for termination Grievant's employment by a preponderance of the evidence.

Accordingly, the grievance is GRANTED.

Respondent is Ordered to immediately reinstate Grievant to his employment in the position he held prior to being dismissed from employment, and remove all reference to this disciplinary action from Respondent's records. Respondent is Ordered to pay Grievant back pay plus statutory interest from the date he was initially separated from employment until the date he is reinstated and to restore all benefits he lost resulting from the dismissal.

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

DATE: November 16, 2017.

WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE