

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**CLIFFORD SUMMERFIELD,
Grievant,**

v.

Docket No. 2017-1363-DHHR

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

DECISION

Grievant, Clifford Summerfield, filed this action at against his employer, William R. Sharpe, Jr. Hospital, on December 7, 2016, after being dismissed from employment due to job abandonment. Grievant's Statement of Grievance alleges dismissal without good cause and without due process. Grievant seeks to be made whole in every way including back pay with interest and all benefits restored.

A Level Three hearing was held before the undersigned on March 16, 2018, in the Grievance Board's Westover office. Grievant did not appear in person, but appeared by his representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent appeared by its counsel, Mindy M. Parsley, Assistant Attorney General. This matter became mature for consideration upon receipt of the last of the parties' fact/law proposals on May 1, 2018.

Synopsis

Grievant was employed at Sharpe Hospital as a Health Service Worker. Respondent met its burden of proof and demonstrated by preponderance of the evidence

that Grievant was dismissed for good cause when he was absent from work for more than three consecutive workdays without notice. Grievant offered no explanation for why he had been absent without notice. Respondent relies on the Division of Personnel Administrative Rule providing that if an employee is absent from work more than three consecutive workdays without notice to the employer of the reason for the absence, the employer may dismiss the employee for job abandonment. This grievance is denied.

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

Findings of Fact

1. Grievant worked at Sharpe Hospital as a Health Service Worker. Sharpe Hospital is a State owned psychiatric hospital operated by the Department of Health and Human Resources. Patients at Sharpe Hospital suffer from medical conditions including mental illness.

2. Sharpe Hospital's direct care employees must report unscheduled absences to the switchboard, the Nurse Clinical Coordinator Office, and to their immediate supervisor at one hour prior to the start of their scheduled shift. Employees must report unscheduled absences each day they are unable to work.

3. Sharpe Hospital's Interim Nurse Manager/Lead Nurse, Shawna Huddle, coached Grievant in May of 2016 on the proper call-in procedure for unscheduled absences and the unscheduled absence call-in procedure was listed on the back of Grievant's work badge.

4. Ms. Huddle explained that Grievant worked night shift at Sharpe Hospital and failed to report for work or use the call-in for unscheduled absences procedure for his scheduled shifts on November 4, 5, 8, 9 and 10, 2016.

5. Grievant used the proper call-in procedure on November 11, 12 and 18. Grievant failed to report for work or use the proper call-in procedure for his scheduled shifts on November 15, 17, 19, 21, 22, 23, 24, 25, 26 and 28. Grievant called Ms. Huddle on November 18, 2016, and apologized for not calling into his immediate supervisor to report his unscheduled absences. Grievant stated that he was ill. Ms. Huddle directed Grievant to use the proper call-in procedure for unscheduled absences, encouraged him to seek medical treatment, and provide the necessary medical excuses.

6. Grievant also failed to report to work or use the proper call-in procedure on December 1 and 2, 2016.

7. Melanie McGhee, Sharpe Hospital's former Assistant Director of Nursing, informed Sharpe Hospital's Chief Executive Office Pat Ryan and the Acting Director of Nursing Archie Poling of Grievant's absences.

8. By letter dated December 6, 2016, Grievant was dismissed from employment because of "absences without or contact on November 5, 8, 9, 15, 17, 19, 21 through 26, and 28 through December 2, 2016." Respondent Exhibit No. 2.

9. The dismissal letter noted Grievant's prolonged absence "has placed an undue hardship on this facility as well as your co-workers who must assume your assigned duties during this period." The dismissal also noted that Grievant's absence "also interferes with your co-workers opportunities to schedule vacation days." *Id.*

10. Division of Personnel Administrative Rule provides that an appointing authority may dismiss an employee for job abandonment who is absent from work for more than three consecutive workdays without notice to the appointing authority of the reason

of the absence. The Rule also provides that job abandonment is synonymous with resignation, so a predetermination conference is not required.

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); *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). "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). In other words, "[t]he 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).

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 'term gross misconduct as used in the context of an employer-employee relationship implies a willful disregard of

the employer's interest or a wanton disregard of standards of behavior which the employer has a right to expect of its employees.' *Graley v. W. Va. Parkways Economic Dev. & Tourism Auth.*, Docket No. 91-PEDTA-225 (Dec. 23, 1991) (citing *Buskirk v. Civil Serv. Comm'n*, 175 W. Va. 279, 332 S.E.2d 579 (1985). See *Evans v. Tax & Revenue/Ins. Comm'n*, Docket No. 02-INS-108 (Sept. 13, 2002).” *Jaggers-Green v. Bur. of Empl. Programs*, Docket No. 03-BEP-026 (July 30, 2004).

It is undisputed that Grievant failed to report to work or call in to Sharpe Hospital on November 5, 8, 9, 17, 19, 21 through 26, and November 28 through December 2, 2016, for more than three consecutive days he was scheduled to work. Grievant failed to provide Respondent with notice as to why he was absent and failed to provide Respondent with notice as to why he was and failed to provide any documentation that he received medical attention. Employees are required to report to work as scheduled or to provide the necessary notice and documentation if they cannot report to work. *Brooks v. W. Va. Dep't of Health & Human Res.*, Docket No. 03-HHR-182 (Nov. 14, 2003). Employers have the right to expect employees to come to work on time and to follow orders that do not impinge on health and safety. *Id.* It is unfortunate that Grievant was suffering from a stomach illness; however, this does not amount to an excuse for failing to notify Respondent of his continued absences.

Respondent is correct to point out that Division of Personnel Rules provide that, “an appointing authority may dismiss an employee for job abandonment who is absent from work for more than three consecutive workdays without notice to the appointing authority of the reason for the absence as required by established agency policy.” Division of

Personnel Administrative Rule 143 C.S.R. § 12.2(c). That is what occurred in the instant case. Accordingly, dismissal was proper because Grievant failed to report to work for more than three consecutive days. In addition, the Division of Personnel Administrative Rule provides that a predetermination conference is not required in cases of job abandonment. A predetermination conference was not required in the instant matter because Grievant effectively resigned from his position. Respondent has met its burden of proof and established by a preponderance of the evidence that Grievant was terminated for good cause.

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 § 156-1-3 (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). "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). In other words, "[t]he 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).

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 proof and established by a preponderance of the evidence that Grievant had abandoned his job, which was good cause for the termination of his employment.

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: May 30, 2018

Ronald L. Reece
Administrative Law Judge