

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**DIANE GAY BLANKENSHIP,  
Grievant,**

v.

**Docket No. 2017-2370-DHHR**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES/  
MILDRED MITCHELL-BATEMAN HOSPITAL,  
Respondent.**

**DECISION**

Grievant, Diane Gay Blankenship, is employed by Respondent, Department of Health and Human Resources/Mildred Mitchell-Bateman Hospital. On June 15, 2017, Grievant filed this grievance against Respondent protesting various actions of Respondent's chief financial officer, alleging those actions constituted a hostile work environment and nepotism. For relief, Grievant sought to have the chief financial officer removed as supervisor of Central Receiving or for the chief financial officer's brother to be reassigned to another department.

Following the October 16, 2017 level one hearing, a level one decision was rendered on November 13, 2017, denying the grievance. Grievant appealed to level two on November 13, 2017. Following mediation, Grievant appealed to level three of the grievance process on May 22, 2018. On September 28, 2018, Respondent, by counsel, filed *Respondent's Motion to Dismiss* alleging the grievance to be moot and that the Grievance Board lacked authority to grant the relief requested. On October 4, 2018, Grievant, by representative, by email, responded opposing the motion to dismiss. The motion to dismiss was denied by order entered November 7, 2018, finding that although Grievant's relief requested regarding the chief financial officer's brother was moot, as he was no longer employed by Respondent, that Grievant could be granted

relief in the form of an order to stop harassing behavior or to remove Grievant from the chief financial officer's supervision. A level three hearing was held on March 25, 2019, 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, Brandolyn N. Felton-Ernest, Assistant Attorney General. This matter became mature for decision on May 13, 2019, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law ("PFFCL"), after a request for extension of time was requested by Grievant without objection.

### **Synopsis**

Grievant is employed by Respondent as an Accounting Technician 3. Grievant asserts nepotism, favoritism, and discrimination by Respondent's Chief Financial Officer. The issue of nepotism is moot as the employee at issue is no longer employed by Respondent. Grievant failed to prove she was the victim of discrimination or favoritism as Grievant failed to prove she and the compared employee were similarly situated. 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 is employed by Respondent as an Accounting Technician 3 and has been so employed by Respondent for fourteen years. Grievant has been assigned to the Central Receiving Unit since 2011.

2. The Central Receiving Unit is managed by Lucille Gedies, Respondent's Chief Financial Officer ("CFO").

3. The Central Receiving Unit is directly supervised by Pamela Stamper, who reports to CFO Gedies.

4. Ms. Stamper is Grievant's current direct supervisor. At the time of the grieved events, Henry Dunfee served as Grievant's direct supervisor under a temporary upgrade.

5. Respondent's previous chief financial officer also managed the Central Receiving Unit but took a less active role in its management than CFO Gedies.

6. At the time of filing of the grievance, Ms. Gedies' brother, Tony Pack worked as a Storekeeper 1 in the Central Receiving Unit but prior to the level three hearing left employment with Respondent.

7. Although the immediate supervisor signs employees' timesheets, as part of her management of the Central Receiving Unit, CFO Gedies reviews the paper timesheets for approval and enters the same in the state timekeeping system.

8. On June 5, 2017, CFO Gedies determined that, in the prior week, Grievant had worked two nine-hour days and then left early on Friday. Because Grievant had worked nine-hour days during the week to leave early on Friday, in three weeks out of the preceding month, CFO Gedies called Grievant to request documentation regarding why Grievant was not working her regular schedule. During the telephone call CFO Gedies told Grievant that working over and then leaving early on another day without prior approval could be considered abandonment of position.

9. CFO Gedies followed-up from the telephone conversation with an email on the same date, responding to Grievant's accusations of nepotism, reiterating that prior approval must be given to work outside of scheduled hours, and explaining that the supervisor will approve leave requests but that she must be copied on the leave request so that she can approve the timecards.

10. Grievant responded by email of the date stating that she was unaware she was required to request prior approval to work outside of scheduled work hours or to provide a copy of her timesheet to CFO Gedies. Regarding the instruction to request prior approval, Grievant stated that the justification for overtime was simply to be listed on "the overtime sheet" and stated, "This is how it has always been justified in the past and if it has recently changed please let me know where the changes to the policy is located."

11. CFO Gedies responded that overtime must be approved to ensure that overtime was being used in a responsible manner, that she would seek guidance from human resources regarding her understanding of abandonment of position, and provided the specific dates from the proceeding month that were of concern.

12. Grievant responded providing reasons for her Friday absences and stated, "I don't work overtime to adjust it off, I work it because I need the money. As you are aware we haven't had a raise in 7 years, and I figure if other employees are "ok" to work 20 and 30 hours over every week, a few hours for me won't hurt."

### **Discussion**

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 (2018). “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. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff’d*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

Grievant asserts nepotism, favoritism, and discrimination by Respondent’s Chief Financial Officer (“CFO”), Lucille Gedies. Respondent asserts the issue of nepotism is moot because CFO Gedies’ brother is no longer employed by Respondent. In the original grievance statement, Grievant asserted that CFO Gedies’ was creating a hostile work environment and hostile work environment was the legal theory discussed in the order denying the motion to dismiss, thus, Respondent argued CFO Gedies did not create a hostile work environment. In her PFFCL, Grievant did not argue that CFO Gedies created a hostile work environment but rather argued that CFO Gedies showed favoritism towards her brother and discriminated against Grievant. As Grievant did not argue hostile work environment, the same will not be addressed in this decision. Respondent’s PFFCL will be understood to deny favoritism and discrimination based on the same facts and argument Respondent made regarding hostile work environment. In addition, Grievant presented some evidence and argument regarding circumstances that occurred after the filing of her grievance, which cannot be considered as a part of the instant grievance and will not be discussed in this decision.

“Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not properly cognizable [issues].” *Burkhammer v. Dep’t of Health & Human Res.*, Docket

No. 03-HHR-073 (May 30, 2003) (citing *Pridemore v. Dep't of Health & Human Res.*, Docket No. 95-HHR-561 (Sept. 30, 1996)). "Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the [Grievance Board]." *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993). Whether CFO Gedies violated the administrative rule prohibiting nepotism while her brother was employed is a moot issue as CFO Gedies' brother is no longer employed by Respondent.

"'Discrimination' means any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees." W. VA. CODE § 6C-2-2(d). "'Favoritism' means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of a similarly situated employee unless the treatment is related to the actual job responsibilities of the employee or is agreed to in writing by the employee." W. VA. CODE § 6C-2-2(h).

It is clear, especially from the lower level record, that Grievant's goal was to have CFO Gedies removed from command of the Central Receiving Unit because Grievant disagreed with the way CFO Gedies was managing the unit. The prior CFO did not take such a hands-on approach to the unit as CFO Gedies has chosen to do to the extent that Grievant asserts she was unaware the previous CFO actually did manage the unit. When asked about the relief being sought at level one, Grievant testified she wanted CFO Gedies removed because "she had too much influence over" the decisions of the direct supervisor of the unit, that CFO Gedies is intimidating, which "might interfere in

[the supervisor's] supervising, that she micromanages, and that it would be "in the best interest" of the storeroom if CFO Gedies stepped down. "A grievant's belief that his supervisor's management decisions are incorrect is not grievable unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to or interference with the employee's effective job performance or health and safety." *Ball v. Dep't of Transp.*, Docket No. 96-DOH-141 (July 31, 1997); *Mickles v. Dep't of Env'tl. Prot.*, Docket No. 06-DEP-320 (Mar. 30, 2007), *aff'd*, Fayette Cnty. Cir. Ct. Docket No. 07-AA-1 (Feb. 13, 2008). "Management decisions are to be judged by the arbitrary and capricious standard." *Adams v. Reg'l Jail & Corr. Facility Auth.*, Docket No. 06-RJA-147 (Sept. 29, 2006); *Miller v. Kanawha County Bd. of Educ.*, Docket No. 05-20-252 (Sept. 28, 2005).

Although Grievant presented some troubling evidence regarding the alleged nepotism, which, as stated, is moot, Grievant failed to prove she was the victim of discrimination or favoritism because she did not prove that she and Mr. Pack were similarly situated. Grievant is an Accounting Technician 3 and Mr. Pack was a Storekeeper 1. While Grievant presented some evidence regarding her own duties, she provided almost no evidence regarding Mr. Pack's duties other than that the stated justification for Mr. Pack starting his schedule at 6 a.m. was because of newspaper delivery. As Grievant and Mr. Pack held completely unrelated classifications they cannot be similarly situated without clear evidence that their duties somehow made them similarly situated.

Further, Grievant provided no evidence that she was entitled to adjust her schedule or why Grievant needed to work overtime to perform her job duties. In fact,

based on Grievant's email, it appears there was no legitimate need for her to work overtime; she simply felt she should be allowed to do so because she needed the money and because other employees were working overtime. Further, CFO Gedies never stated that Grievant could not adjust off or get overtime if the job required it, she simply required Grievant to submit the same to her for prior approval. CFO Gedies review of her employees' timesheets and requirement that she approve overtime or adjustment of schedules in advance are reasonable management practices.

The following Conclusions of Law support the decision reached.

### **Conclusions of Law**

1. 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 (2018). "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. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff'd*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

2. "Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not properly cognizable [issues]." *Burkhammer v. Dep't of Health & Human Res.*, Docket No. 03-HHR-073 (May 30, 2003) (citing *Pridemore v. Dep't of Health & Human Res.*, Docket No. 95-HHR-561 (Sept. 30, 1996)).

3. "Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory,



and unavailable from the [Grievance Board].” *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993).

4. The issue of nepotism is moot as the employee at issue is no longer employed by Respondent.

5. “‘Discrimination’ means any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees.” W. VA. CODE § 6C-2-2(d).

6. “‘Favoritism’ means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of a similarly situated employee unless the treatment is related to the actual job responsibilities of the employee or is agreed to in writing by the employee.” W. VA. CODE § 6C-2-2(h).

7. “A grievant’s belief that his supervisor’s management decisions are incorrect is not grievable unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to or interference with the employee’s effective job performance or health and safety.” *Ball v. Dep’t of Transp.*, Docket No. 96-DOH-141 (July 31, 1997); *Mickles v. Dep’t of Env’tl. Prot.*, Docket No. 06-DEP-320 (Mar. 30, 2007), *aff’d*, Fayette Cnty. Cir. Ct. Docket No. 07-AA-1 (Feb. 13, 2008). “Management decisions are to be judged by the arbitrary and capricious standard.” *Adams v. Reg’l Jail & Corr. Facility Auth.*, Docket No. 06-RJA-147 (Sept. 29, 2006); *Miller v. Kanawha County Bd. of Educ.*, Docket No. 05-20-252 (Sept. 28, 2005).

8. Grievant failed to prove she was the victim of discrimination or favoritism as Grievant failed to prove she and the compared employee were similarly situated.

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 (2018).

**DATE: August 13, 2019**

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