

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**BONITA BRADSHAW, et al.,
Grievants,**

v.

Docket No. 2018-2017-CONS

**OFFICES OF THE INSURANCE COMMISSIONER,
Respondent, and**

**NANCY WORKMAN AND JACALYN HESLEP,
Intervenors.**

DECISION

On March 29, 2018, Grievants, Bonita Bradshaw, Kimberly Carper, Sandra Craft, Tammy Frazie, Telitha Hughes, Lois Joslin, and Joe Turner, by counsel, filed the instant grievance. Grievants alleged that Nancy Workman and Jackie Heslep harassed them and created a hostile work environment.

On April 3, 2018, Nancy Workman, who was the subject of the allegations in the instant grievance, filed a separate grievance, alleging retaliation and hostile actions by Rebecca Roush, Kristin Halkias, and Teresa Baker because of a previous grievance filing. Ms. Workman further alleged that these actions created a hostile work environment that caused hostility between Ms. Workman and co-workers. On April 9, 2018, Teresa Baker and Kristin Halkias filed separate forms requesting to intervene in Ms. Workman's grievance. On May 30, 2018, Ms. Workman filed a form requesting to intervene in the instant grievance and was granted intervenor status by the chief administrator on May 31, 2018.

Following a Level One conference on May 3, 2018, in the instant case and on May 4, 2018, in Ms. Workman's grievance, on July 2, 2018, Chief Administrator J. Rudy Martin issued a *Level One Informal Consolidated Recommendations of the Chief Administrator* addressing both grievances. These recommendations were accepted for administrative purposes as a Level One Decision. Due to the identical subject matter, the grievances were consolidated.

Grievants filed an appeal to Level Two on July 10, 2018. A mediation session was conducted on October 18, 2018. On October 26, 2018, Grievants perfected their appeal to Level Three. The undersigned conducted an evidentiary hearing in the matter on April 11, 2019, and August 1, 2019. Grievants appeared in person and by counsel, John Everett Roush, American Federation of Teachers - WV, AFL-CIO. Intervenor, Jacalyn Heslep, appeared *pro se*. Respondent appeared by its counsel, William C. Ballard, Assistant Attorney General. This matter became mature for consideration upon receipt of the last of the parties' fact/law proposals on September 23, 2019.

Synopsis

Grievants are employed by the Offices of the Insurance Commissioner in the Workers' Compensation Office of Judges in various capacities. What can only be described as an unfortunate event took place in their office on March 9, 2018. Intervenors and another employee tore down the signs and balloons welcoming back the Chief Administrative Law Judge which were placed in a common area by one of the Grievants. While unfortunate, it was a single occurrence by a co-worker. Grievants allege harassment. Hostile workplace harassment requires repeated and unwelcome mistreatment, and a single incident cannot be defined as harassment. The record did not

support a finding that a hostile work environment existed given the totality of the circumstances. Accordingly, this grievance is denied.

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

Findings of Fact

1. Grievants are employed by the Offices of the Insurance Commissioner in the Workers' Compensation Office of Judges in various capacities.

2. The West Virginia Workers' Compensation Office of Judges is a department within the Offices of the Insurance Commissioner.

3. Nancy Workman and Jacalyn Heslep, Intervenors, were employed by the Offices of the Insurance Commissioner in the Office of the Workers' Compensation Office of Judges. Ms. Heslep still works at the site. Ms. Workman no longer works for the agency.

4. Rebecca Roush, Esquire, is employed as the Chief Administrative Law Judge and acts as the Administrator of the Office of Judges where Grievants and Intervenors work. On or about December 22, 2017, Ms. Roush was removed from her position. This created a division among the employees at the Office of Judges.

5. Grievants were perceived as supportive of Ms. Roush's return to her position.

6. Intervenors and several other employees at the Office of Judges were perceived as not supporting Ms. Roush and against her return to her position. Ms. Workman accused Ms. Roush of taunting her over a failed grievance on a social media platform. Ms. Heslep was a friend of Ms. Workman. Intervenors actually celebrated Ms. Roush's removal.

7. Prior to the events of March 9, 2018, Tammy Frazie had some problems with Ms. Workman and, to a lesser extent, with Ms. Heslep, but nothing major.

8. After some investigation and a hearing before the Industrial Counsel on March 8, 2018, Ms. Roush was restored to her position as Chief Administrative Law Judge. Ultimately, Ms. Workman admitted that she sent the Facebook Messenger communication in question to herself. She entered into a plea agreement with the Kanawha County Prosecutor's Office pleading guilty to a misdemeanor, which resulted in the dismissal of several felony charges. Ms. Workman separated from her employment with Respondent in August 2018.

9. Ms. Roush was scheduled to return to work in the late morning of March 9, 2018.

10. In anticipation of Ms. Roush's return to work on March 9, 2018, Ms. Frazie put up some signs and balloons welcoming Ms. Roush back to work that morning. The signs were placed in common areas of the office. They were cheerful and positive with a greeting card sentiment. The signs did not mention the circumstances that had resulted in Ms. Roush's removal from her job or her more than three-month absence.

11. Putting up such signs was not out of character for Ms. Frazie. Posting signs congratulating fellow employees for some achievement or wishing them well on a special occasion is something Ms. Frazie has been doing at the office for years. Prior to March 9, 2018, no one had taken offense to Ms. Frazie's posting of such signs or advised that these efforts were inappropriate or unwelcome.

12. Sometime on the morning of March 9, 2018, Intervenors and another employee tore down the signs and balloons. Mayhem ensued. Ms. Heslep confronted

Ms. Frazie in the hallway. Ms. Frazie walked away from the confrontation and went to her cubicle. Ms. Heslep followed her and continued to berate her in a contentious fashion.

13. Ms. Frazie retreated to the office of Kristin Halkias in tears. When Ms. Frazie returned to her cubicle, she discovered that it was in disarray, her belongings disturbed and the contents of her purse dumped out.

14. Ms. Frazie was upset by the sequence of events and at one point tried to obtain security to handle the situation.

15. Kristin Halkias, Deputy Chief Administrative Law Judge of the Office of Judges, essentially acted as chief judge in Ms. Roush's absence. Ms. Halkias continued that role on March 9, 2018, and attempted to defuse the situation when she realized that a problem was occurring that morning.

16. Ms. Halkias contacted Debbie Hughes at the Offices of the Insurance Commissioner. The employees at the office gathered into a conference room with Ms. Halkias, Human Resources Director Debbie Hughes and Commissioner Allan McVey. Mr. McVey spoke to them and attempted to restore order to the situation. To Grievants, the actions of Mr. McVey, in his greeting of Ms. Workman, seemed to give approval to the events of that morning.

17. As a result of the March 9, 2018 argument between Ms. Frazie and Ms. Heslep, the Offices of the Insurance Commissioner gave Ms. Heslep a verbal reprimand. Ms. Heslep was remorseful for the incident and she was told to first come to a supervisor if a similar incident happened in the future.

18. Ms. Halkias has received no further complaints about Ms. Heslep, other than her not speaking to other employees or not holding the door open for other employees. Ms. Halkias believes that the office atmosphere is better.

19. Ms. Heslep chose to stop communicating with Grievants after they initiated grievances against her. Ms. Heslep does not harass or bully anyone, and simply comes to work to do her job. Ms. Heslep wishes to avoid unnecessary contact with the Grievants.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018); *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).

Grievants alleges workplace harassment and a hostile work environment. WEST VIRGINIA CODE § 6C-2-2(l) defines "harassment" as "repeated or continual disturbance, irritation or annoyance of an employee that is contrary to the behavior expected by law, policy and profession." What constitutes harassment varies based upon the factual

situation in each individual grievance. *Sellers v. Wetzel County Bd. of Educ.*, Docket No. 97-52-183 (Sept. 30, 1997). "Harassment has been found in cases in which a supervisor has constantly criticized an employee's work and created unreasonable performance expectations, to a degree where the employee cannot perform her duties without considerable difficulty. See *Moreland v. Bd. of Trustees*, Docket No. 96-BOT-462 (Aug. 29, 1997)." *Pauley v. Lincoln County Bd. of Educ.*, Docket No. 98-22-495 (Jan. 29, 1999).

The Grievance Board has long stated that "[t]o create a hostile work environment, inappropriate conduct must be sufficiently severe or pervasive to alter the conditions of an employee's employment." *Napier v. Stratton*, 204 W. Va. 415, 513 S.E.2d 463, 467 (1998). See *Hanlon v. Chambers*, 195 W. Va. 99, 464 S.E.2d 741 (1995). Whether a working environment is hostile or abusive can be determined only by looking at all of the circumstances. Certainly any act might be construed by someone as harassing, hostile, disruptive, or offensive. In determining whether a hostile environment exists, the totality of the circumstances must be considered from the perspective of a reasonable person's reaction to a similar environment under similar or like circumstances. *Lanehart v. Logan County Bd. of Educ.*, Docket No. 97-23-088 (June 13, 1997).

Grievants claim that Ms. Heslep's behavior toward them constitutes harassment and a hostile work environment. Grievants seek to have Ms. Heslep physically removed from the Office of Judges. Grievants all acknowledged that Ms. Heslep caused no workplace disturbances prior to March 9, 2018. Grievants also all acknowledged that no incidents similar to the March 9, 2018, incident have occurred since that date. Grievants introduced no evidence that they suffered any repeated disturbance, irritation or annoyance that is contrary to law, policy or profession. Hostile workplace harassment

requires repeated and unwelcome mistreatment, and a single incident cannot be defined as harassment.

The only factual basis in the record for Grievants' harassment claims is that Ms. Heslep does not speak to them in non-work settings and does not hold the door for them in the hallways. These actions are not sufficient to establish by a preponderance of the evidence that harassment has occurred under West Virginia law. Failure to speak in the hallways or failure to hold the door open for others does not rise to behavior required for a harassment claim. The single incident on March 9, 2018, while unfortunate, cannot be viewed as creating a hostile work environment when considered from the perspective of a reasonable person's reaction to a similar environment under similar or like circumstances.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018); *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. WEST VIRGINIA CODE § 6C-2-2(l) defines "harassment" as "repeated or continual disturbance, irritation or annoyance of an employee that is contrary to the behavior expected by law, policy and profession."

3. What constitutes harassment varies based upon the factual situation in each individual grievance. *Sellers v. Wetzel County Bd. of Educ.*, Docket No. 97-52-183

(Sept. 30, 1997). "Harassment has been found in cases in which a supervisor has constantly criticized an employee's work and created unreasonable performance expectations, to a degree where the employee cannot perform her duties without considerable difficulty. See *Moreland v. Bd. of Trustees*, Docket No. 96-BOT-462 (Aug. 29, 1997)." *Pauley v. Lincoln County Bd. of Educ.*, Docket No. 98-22-495 (Jan. 29, 1999).

4. "To create a hostile work environment, inappropriate conduct must be sufficiently severe or pervasive to alter the conditions of an employee's employment." *Napier v. Stratton*, 204 W. Va. 415, 513 S.E.2d 463, 467 (1998). See *Hanlon v. Chambers*, 195 W. Va. 99, 464 S.E.2d 741 (1995).

5. Grievants failed to meet their burden of proof. Hostile workplace harassment requires repeated and unwelcome mistreatment, and a single incident cannot be defined as harassment. In addition, the single incident on March 9, 2018, while unfortunate, cannot be viewed as creating a hostile work environment.

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 also 156 C.S.R. 1 § 6.20 (eff. July 7, 2018).

Date: October 25, 2019

A handwritten signature in black ink, appearing to read 'R. L. Reece', written over a horizontal line.

**Ronald L. Reece
Administrative Law Judge**