

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

RHONDA R. FARLEY,
Grievant,

v.

Docket No. 2019-0448-DHHR

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

DECISION

Grievant, Rhonda Farley, was a Child Protective Service Worker employed by Respondent, Department of Health and Human Services (“DHHR”), in the Logan office. Ms. Farley filed an expedited grievance form directly to Level Three¹ dated October 3, 2018, challenging her dismissal from employment alleging that it was based upon inaccurate and unreliable information. Grievant seeks to be reinstated with backpay plus interest and benefits restored. She also seeks all record of the disciplinary action removed from her employment files.

A Level Three hearing was conducted on January 10, 2019, in the Charleston office of the West Virginia Public Employees Grievance Board. Grievant personally appeared *pro se*.² Respondent was represented by Mindy M. Parsley, Assistant Attorney General. This matter became mature for decision on February 19, 2019, upon receipt of the last of the parties, Proposed Findings of Fact and Conclusions of Law.

¹ See W. VA. CODE § 6C-2-4(a)(4).

² “*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

Respondent terminated Grievant's employment after serious incidents at her home led to an investigation by the CPS unit of Boone County. The Boone County CPS workers found impending dangers to the child living in Grievant's home. Respondent based Grievant's dismissal upon a violation of the statute which identifies Grievant as a mandatory reporter of suspected child abuse and neglect and DHHR policy against conflicts of interest between an employee's personal life and their professional responsibilities.

Grievant argued that she was at work when the incidents took place and they were reported by her supervisor before Grievant found out about them. Respondent proves that the incidents were emblematic of impending dangers in Grievant's home and dismissal was justified.

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, Rhonda Farley, was employed by Respondent, DHHR, in the Bureau for Children and Families office in Logan, West Virginia. Grievant was a Child Protective Services Worker ("CPSW") working in the intake services division. She had been employed by the DHHR for approximately three years.

2. On July 25, 2018, events occurred at Grievant's home while she was at work. The State Police responded to the home to serve a warrant on a person alleged to be living there. Upon arriving, they witnessed another person with a pending warrant who fled into Grievant's home. The officers followed the suspect into the home and found

syringes in the pockets of individuals³ and needles in the house “that were in reach of the family.”⁴ There were five adults at the home who did not live there and were part of the incidents leading to the police and domestic violence reports. At least two of them had outstanding warrants related to drug charges.

3. On the same day the DHHR received a call from a domestic violence advocate regarding a person in their office seeking a Domestic Violence Petition (“DVP”) related to a physical altercation which occurred that morning at Grievant’s home. Grievant’s husband, Joshua Farley, allegedly brandished a firearm to stop the fight.

4. Grievant was at work and unaware of these incidents until she was informed that something had happened at her home.

5. During these incidents a minor child was present in the home. The minor child is Grievant’s granddaughter. Grievant’s adult son lives in the house, as well as his girlfriend. The police found a “pot can” and a needle in the drawer of the bedroom shared by the son and his girlfriend.

6. Grievant was given a Notice of Suspension Pending Investigation dated July 26, 2018, the letter noted that the DHHR Logan District had received “allegations that you (Grievant) were under investigation for child neglect and determined that an investigation into the matter [was] warranted.” The notice referred to the incidents which occurred at Grievant’s home the previous day. (Respondent Exhibit 1).

7. Christa Kovach is a Child Protective Service Supervisor (“CPSS”) in the DHHR Logan Office. She received the initial call from Trooper Honaker about the arrests

³ The State Police officers reported that most of the adults in the home had “Meth sores” on their faces.

⁴ Respondent Exhibit 2, DHHR *Crisis Response Worksheet*.

and incidents at Grievant's home. She also received the call regarding the person seeking a DVP related to the physical altercation which occurred at the home.

8. CPSS Kovach is required to report and start an investigation regarding allegations of suspected abuse and neglect of children when she becomes aware of them. All the CPSW, including Grievant are under the same obligation.

9. Ms. Kovach reported the incidents that occurred at Grievant's home while the minor was present to the Community Service Manager ("CSM") Jeffery Dean. They referred the matter to the Boone County CPS office for an investigation.⁵

10. Boone County CPSS Markisha Cottrell and CPSW Samina Fowler, along with Trooper Honaker, attempted to visit Grievant's home on July 27, 2018. But no one was there. These CPS workers began interviewing family members on August 1, 2018.⁶

11. CPSS Cottrell spoke with Josh Farley's half-sister on August 1, 2018. She told the CPSS that Josh is in "bad shape" and struggling with addiction to drugs. She reported that Josh was banned from her parent's home for stealing from them, but she did not give a time frame for when these thefts allegedly occurred.

12. CPSS Cottrell, CPSW Fowler, and Trooper Honaker, went to Grievant's home on August 1, 2018, and meet with her. Grievant asked for and received from Trooper Honaker a complete rundown of the events of July 25, 2018. She told Trooper Honaker she had asked Jacob why there was a needle in his dresser drawer, and he

⁵ Since the allegations involved a CPS Worker in the Logan office the investigation had to be referred to a separate unit to avoid any actual, or the appearance of, conflict of interest.

⁶ Respondent Exhibit 2.

answered that he was using it to give penicillin to chickens.⁷ The needle was no longer in the drawer on that date.

13. Grievant had sought a domestic violence petition against Joshua in early July 2018. The petition was dropped after Grievant failed to pursue it. When interviewed on August 3, 2018, Mr. Farley told the CPS workers that the fight had occurred “up the road” and not in front of any of the children. Grievant reported the domestic violence petition to her supervisors when it took place as a possible indication of abuse or neglect. Nothing came of the report and brief investigation.

14. Mr. Farley told the CPS investigators that he was no longer using drugs but was going into a treatment program to “make Rhonda happy.”

15. Grievant has a minor daughter who mostly stays with her grandmother. The daughter was interviewed by the Boone County CPSW on August 3, 2018. The child stated that she prefers to stay with her grandmother because the road to her mother’s home makes her car sick. She also stated that she is not fearful of anything in her mother’s house and no abuse or neglect was occurring in the home.

16. Jacob, his girlfriend Jessie,⁸ and their infant child “A” live at Grievant’s home. Jacob admitted to occasionally smoking marijuana at Grievant’s residence, but he always did so outside and never around “A.”

17. The CPS investigators also spoke with Grievant’s son “C” who is a minor. “C” reported that he sometimes stays with his grandparents and sometimes with Grievant

⁷ There were no chickens at the residence but Grievant indicated that they had chickens at another location.

⁸ at one point, “A” was placed with Grievant as her guardian because Jessie was addicted to opioids. However, the court returned custody to Jessie in March 2018 after having a negative drug screen.

[Mom]. He reported that he had everything he needs and feels safe in his mother's home. He also reported that no one fights at the house and no one takes any medication.

18. At the end of the *Crisis Response Worksheet* the CPS workers are required to answer eleven questions in a section titled IMPENDING DANGERS. In answering these questions, the CPS workers identify areas in the family and household environment which indicate potential dangers for child abuse and neglect. CPSS Cottrell and CPSW Fowler identified the following four areas which presented impending dangers to the minor grandchild who regularly lives in Grievant's home and the other children who live there periodically.

- **Living arrangements seriously endanger a child's physical health – Yes.**
 - [The] home confinement officer stated that when he [performed] a home check, he found questionable men inside the house that appeared to be intoxicated who were around "A". Recently there was a fight that broke out at the home in which weapons were used while "A" was present inside the house.
- **One or both caregivers lack parenting knowledge, skills, or motivation which affects child safety – Yes.**
 - Josh placed his needs above the child's needs as evidenced by him allowing people into the home around his step-granddaughter who were intoxicated. There have also been people in the home that have been under the influence while the child, "A", has been present. Josh and Jacob have been home and have been aware and let it occur.
- **The caregiver's drug and/or alcohol use is pervasive and threatens child safety. – Yes.**
 - Josh has failed a drug screen for Methamphetamines and Oxymorphone.⁹ Josh stated that his "anger took over" when he decided to use. Josh allowed people to

⁹ There was no evidence presented about when this failed drug test occurred. But the context indicates that it was in the late Spring or early Summer of 2018.

come into the home that are known drug users and people that also carry needles and have meth sores on them according to police. Josh and Jacob subject the children to these types of people causing a chaotic home environment. There have also been drug paraphernalia such as needles in the home that are in rooms that you have to go through to get to a's room.

- **One or both caregivers are violent; this includes domestic violence. – Yes.**
 - The home environment is chaotic as evidenced by the company that Josh and Jacob keep around that recently resulted in a fight to occur at the home with weapons.¹⁰

19. Grievant's job as a CPSW in the intake unit required her to respond to reports any allegations of abuse and/or neglect of children in the agency's coverage area. Such workers are required to complete crisis assessments and initiate corrective action with various resources to insure the safety of children. One important part of the job is to work with law enforcement officers and testify about the condition and safety of home environments of children and families that are in the worker's caseload.

20. Grievant received a notice for a predetermination conference dated August 24, 2018. The following allegations and policy violations were identified for discussion at the meeting:

DHHR Policy 2108- Employee Conduct:

Employees are expected to avoid conflicts of interest between their personal life and their employment.

While off the job conduct of employees is generally not subject to the Department's scrutiny, it should not reflect adversely upon the ability to perform their job, nor should it impair the efficient operation of the Department.

¹⁰ Grievant's Exhibit 2.

- A Child Protective Service investigation determined that children in your care were placed in impending danger by the actions of adults either living or visiting your home.
- Child Protective Services will be opening a case and placing protective services in your home.
- Your decisions related to the assessment of children safety may be called into question during legal proceedings, resulting in a negative outlook on the West Virginia Department of Health and Human Resources.
- The actions call into question your ability to perform your Child Protective Services duties.

The predetermination conference was held on August 29, 2019. (Respondent Exhibit 3).

21. Grievant's employment was terminated by letter from Tina Mitchell, DHHR Deputy Commissioner, date September 26, 2018. The reasons cited for the termination included the following:

- The findings of impending danger to a child set out in the *Crisis Response Worksheet* completed during the investigation by the Boone County CPS workers. (See, FOF 18, *supra*).
- Violation of *DHHR Policy 2108 – Employee Conduct*. (See, FOF 20 *supra*).
- Violation of W. VA. CODE § 49-2-803.¹¹ as a mandatory reporter, failing to report possible child abuse or neglect which may have been occurring in her home.¹²

¹¹ This statute requires in part that, any social service worker, who has reasonable cause to suspect that a child is neglected or abused, shall immediately, and not more than 24 hours after suspecting this abuse or neglect, report the circumstances to the Department of Health and Human Resources.

¹² Respondent Exhibit 4. Regarding the last charge Deputy Commissioner Mitchell wrote, "You are a mandatory reporter by law and there were safety concerns in your own home, and you failed to report them."

Discussion

As this grievance involves a disciplinary matter, 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 regular, full-time, classified employee of a State agency. Permanent State employees who are in the classified service can only be dismissed “for good cause, which means 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); *Sloan v. Dep’t of Health & Human Res.*, 215 W. Va. 657, 600 S.E.2d 554 (2004) (*per curiam*). See also W. VA.

CODE ST. R. § 143-1-12.02 (2016). “Although it is true that dismissal is inappropriate when the employee's violation is found to be merely a technical one, it is also true that seriously wrongful conduct can lead to dismissal even if it is not a technical violation of any statute. . . The test is not whether the conduct breaks a specific law, but rather whether it is potentially damaging to the rights and interests of the public.” *W. Va. Dep't of Corr. v. Lemasters*, 173 W. Va. 159, 162, 313 S.E.2d 436, 439 (1984). “Good cause for dismissal will be found when an employee's conduct shows a gross disregard for professional responsibilities or the public safety.” *Drown v. W. Va. Civil Serv. Comm'n*, 180 W. Va. 143, 145, 375 S.E.2d 775, 777 (1988) (*per curiam*).

Grievant was dismissed from her position as a CPSW for the DHHR after incidents at her home led to an investigation by the Boone County CPS office. The investigation resulted in finding that there were conditions in Grievant's home which presented “impending danger” to a child living in her home. Those findings related to the presence of drug paraphernalia, intoxicated people with outstanding drug warrants present, a chaotic home environment evidenced by the incidents of the group of people gathered at Grievant's home on the day of the incident, as well as an altercation which included the brandishing of a firearm and the presence in the home of at least two adults who were involved in active use of illegal drugs.

Respondent argues that as a mandatory reporter of suspected child abuse or neglect under W. VA. CODE § 49-2-803, Grievant had a mandatory duty to report the conditions in her home related to her granddaughter to the DHHR. Her failure to do so, created serious issues of trust regarding how she might perform her job in general.

Grievant counters that she was at work when the major incidents happened, and

her supervisor knew about them before she did. Since her supervisor had already reported the problems, Grievant did not need to duplicate the report. Additionally, by all accounts, she was considered an effective and conscientious worker.

Unfortunately, in addition to the findings of pending danger related to the household situation in general, Grievant's husband had recently tested positive for the highly addictive drugs of Methamphetamines and Oxymorphone and was described by the police officers involved as a known drug user. The presence of intoxicated people at Grievant's house who had outstanding warrants for drug related offenses while she was at work has implications beyond that single incident. It indicates a disregard for the child's welfare by the step-grandfather especially when Grievant was not present to intervene, because she appears to be the only responsible adult in the household. Additionally, Respondent's concern that these findings could cause concern related to Grievant's ability to assess conditions in the households of others in any legal dispute is reasonable under the circumstances. These issues demonstrate a conflict between Grievant's personal life and her professional life as a CPSW in violation of *DHHR Policy 2108 - Employee Conduct*. Respondent has proven by a preponderance of the evidence that the termination of Grievant's employment as a CPSW was justified. Accordingly, the grievance is DENIED.

Conclusions of Law

1. As this grievance involves a disciplinary matter, 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.”). . .

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2. Grievant was a regular, full-time, classified employee of a state agency. Permanent state employees who are in the classified service can only be dismissed “for good cause, which means 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); *Sloan v. Dep’t of Health & Human Res.*, 215 W. Va. 657, 600 S.E.2d 554 (2004) (*per curiam*). See also W. VA. CODE ST. R. § 143-1-12.02 (2016).

3. “Although it is true that dismissal is inappropriate when the employee’s violation is found to be merely a technical one, it is also true that seriously wrongful conduct can lead to dismissal even if it is not a technical violation of any statute. . . The test is not whether the conduct breaks a specific law, but rather whether it is potentially

damaging to the rights and interests of the public.” *W. Va. Dep't of Corr. v. Lemasters*, 173 W. Va. 159, 162, 313 S.E.2d 436, 439 (1984).

4. Respondent has proven by a preponderance of the evidence that the termination of Grievant’s employment as a CPS Worker was justified.

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* 156 C.S.R. 1 § 6.20 (2008).

DATE: March 15, 2019.

WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE