THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

CHERYL GOODNIGHT,

Grievant,

v. **Docket No. 2018-0372-DHHR**

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

Respondent.

DECISION

Grievant, Cheryl Goodnight, filed a level one grievance dated September 12, 2017,[1] against her employer, Respondent, Department of Health and Human Resources (DHHR), Bureau for Children and Families (BCF), stating as follows: "Grievant was denied overtime that had already been scheduled for her to work." As the relief sought, Grievant asks "[t]o be made whole in every way including back pay with interest."

A level one hearing was scheduled to be conducted on five separate occasions, and Grievant's representative requested continuances for each of those hearings. In November 2017, the level one hearing was scheduled to be conducted on January 10, 2018. Grievant's representative again requested a continuance, but level one grievance evaluator denied his request. Thereafter, on November 20, 2017, Grievant appealed to level two of the grievance process. By Order entered January 10, 2018, the Chief Administrative Law Judge remanded the matter to level one as the appeal concluding that the appeal to level two was premature because a level one decision had not been rendered and the Grievant had not alleged default.

[1] This grievance form was hand-delivered to the Grievant's Board office on September 13, 2017. Accordingly, such is considered its filing date.

After the remand to level one, the level one hearing was again scheduled to be held on April 20, 2018. In the January 16, 2018, notice of hearing for the same, Respondent's level one grievance evaluator stated the following in underlined bold print: "Please note that this is the fifth time the above-styled matter has been scheduled for Hearing. The Level 1 Hearing will not be continued again. Failure to appear at the scheduled hearing could result in Dismissal of the grievance." Grievant's representative again asked for a continuance, and the level one grievance evaluator again denied the same. The April 20, 2018, hearing proceeded as scheduled. Neither Grievant nor Grievant's representative appeared. The matter was then dismissed at level one by Order issued May 11, 2018, for Grievant's failure "to meet the burden of proof in this matter. Moreover, this matter has been substantially delayed, and Grievant failed to pursue this matter or to show good cause for a continuance."

Grievant appealed to level two on March 15, 2018. A level two mediation was conducted on August 20, 2018. Grievant perfected her appeal to level three on August 20, 2018. The level three hearing was conducted on February 26, 2019, before the undersigned administrative law judge at the Grievance Board's Charleston, West Virginia, office.[2] Grievant appeared in person and by her representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent appeared by counsel, Brandolyn N. Felton-Ernest, Esquire, Assistant Attorney General. This matter became mature for decision on April 3, 2019, upon receipt of the last of the parties' proposed Findings of Fact and Conclusions of Law.

[2] The level three hearing was originally scheduled to be held on November 2, 2018. On November 1, 2018, Grievant, by her representative, requested a continuance. For good cause shown, the level three hearing was continued by Order entered November 2, 2018.

Synopsis

Grievant was employed as an Economic Services Worker for Respondent. Grievant volunteered to travel to another county office to work in a program designed to assist flood victims in applying for special supplemental nutritional assistance benefits following the declaration of a disaster, D-SNAP. Sixteen workers, including Grievant, were scheduled to work D-SNAP, and were scheduled to work their regular workday hours, plus additional hours, to assist the flood victims. However, there were not as many applicants for these benefits as had been expected. Respondent made the decision to send workers home earlier than anticipated because of lack of need. Grievant was sent home four days earlier than anticipated. Grievant asserts that the decision to send her home was discriminatory and arbitrary and capricious. Grievant also asserts that she is entitled to be paid for the overtime work she missed when she was sent home early. Respondent denies Grievant's claims, and asserts that its decision was proper. Grievant failed to prove her claims by a preponderance of the evidence. Therefore, 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 at the Bureau for Children and Families in Braxton County, West Virginia, as an Economic Services Worker (ESW). At the times relevant herein, Grievant had been so employed for about four years.

2. At the times relevant herein, Mark Paree was serving as the Interim Community Services Manager for Monongalia and Marion Counties. Mr. Paree was also employed as the Community Services Manager for Ohio, Brook, and Hancock Counties.

3. The Supplemental Nutrition Assistance Program (SNAP), commonly referred to as the "food stamp" program, is one of the programs administered by BCF. When the governor has declared a disaster, the Federal Emergency Management Agency (FEMA) can approve a budget for the issuance of SNAP benefits, designated in such circumstances as D-SNAP.

4. In the late summer of 2017, the governor declared disasters in Marshall, Wetzel, and Marion counties in West Virginia due to flooding.

5. On August 30, 2017, Delbert Casto sent the following email to certain supervisors regarding the D-SNAP program:

> Hello everyone. I was ask (sic) to send this out asking that we inquire with our IM and WV Works units about additional folks that would be interested in taking part in D-SNAP. The plan is to have a site at the offices in Marshall, Wetzel, and Marion Counties. Due to three sites it will require additional staff to function adequately beyond those on the D-SNAP team. Reach out today and respond by tomorrow say noon at the latest. The plan is training orientation next week on September 5 and starting the next day (6th) and running through the 12th which includes the weekend. Saturday may be a longer day to reach as many people as possible with Sunday being 1pm to 6pm at this point. It is an opportunity to make some extra wages and serve the community as well. Respond to Cree and cc Amber who you have. They are wanting folks that can do the entire time period at this point as we understand it. Questions or clarifications can be sent to Cree and cc Amber. Those CSM'S covering other areas make sure you reach out to them as well. Thank you.[3]

[3] *See*, Joint Exhibit 1, August 30, 2017, email thread.

6. The employees who worked the D-SNAP program would earn overtime pay, and be reimbursed for their travel, lodging, and meals, based upon the set per diem rate.

7. Jessica Loyd forwarded this email to Grievant and her coworkers, and stated therein, "Cheryl, I think you might already be listed on the team with me because you participated last year….but if anyone else is interested in working DSNAP[,] please let me know. You must be available to work the entire shifts." Grievant replied as follows to Ms. Loyd: "I don't have a problem doing it again unless someone else wants to do it."[4]

8. Sixteen employees were assigned to work D-SNAP at the Marion County DHHR office from September 5, 2017, through September 12, 2017. This time period included work on a Saturday and Sunday. The employees were assigned duties as greeters, screeners, eligibility, verification, financial, site supervisor, and runner.

9. Grievant was one of the employees assigned to work on the D-SNAP team at the Marion County DHHR office in Fairmont, West Virginia. Grievant was scheduled to work from September 5, 2017, through September 12, 2017. She was assigned the duty "verification."

10. Rick Post and Angela Greathouse were designated the site supervisors for the D-SNAP program at the Marion County DHHR office during the time at issue.

11. Grievant traveled to the Marion County DHHR office on September 5, 2017, which was a Tuesday, to begin training and working on D-SNAP. Grievant lodged at a hotel, and as she had expected to be there until Tuesday, September 12, 2017, she had purchased groceries to have in her hotel room, based upon her expected per diem, to last through that date.

[4] *See*, Joint Exhibit 1, August 30, 2017, email thread.

12. Employees working the D-SNAP event came from Wood County, Pleasants County, Doddridge County, Braxton County, Marion County, and Clay County. Several of the employees who worked the D-SNAP event were stationed in the Marion County office and did not have lodging expenses, mileage, or meal costs.

13. Grievant worked in her D-SNAP assignment from Tuesday, September 5, 2017, which was a training day, through Friday, September 8, 2017.

14. The D-SNAP program at the Marion County DHHR office that week had fewer applicants, or participants, than DHHR management had anticipated. The same was true at other D-SNAP sites. Given such, during a "leadership" telephone conference on Friday, September 8, 2017, attended by DHHR commissioners, directors, and community service managers, those management members decided that some of the D-SNAP workers needed to be sent home as there was more staff than was needed. Mr. Paree participated in this leadership telephone conference.[5]

15. Following the leadership telephone conference on Friday, September 8, 2017, Mr. Paree participated in a separate regional D-SNAP management telephone conference to relay what had been decided during the leadership telephone conference. Mark Paree, Kelly Fletcher, Cree Lemasters, Jondrea Nicholson, and John Dougan participated in this call. This regional D-SNAP management team, or panel, decided that two people needed to go home at the end of the workday on Friday and discontinue working on the D-SNAP program. Another two workers were to be sent home during the weekend if applicants did not increase.

[5] *See*, testimony of Mark Paree.

16. In deciding who to send home, Mr. Paree and the regional D-SNAP management team considered where the workers were traveling from, the size of the workers' home offices, which workers carpooled to the D-SNAP site, whether the workers were staying overnight in a hotel, their duties/assignments at the D-SNAP site, and "things like that."[6] After considering these factors, the regional management decided that Grievant and Lorintha Moore were going to be sent home.[7]

17. Lorintha Moore was regularly stationed in the Clay County DHHR office. During the D-SNAP event at the Marion County office, Ms. Moore was assigned the duty "eligibility."

18. Rick Post did not participate in the "leadership" telephone conference or the regional D-SNAP management telephone conference. However, after the regional D-SNAP management telephone conference, Mr. Post came into the room where Mr. Paree was, and Mr. Paree told Mr. Post that they were sending Grievant and Lorintha Moore home after work that day. Mr. Post then volunteered to go inform them, and left to do so.

19. When Mr. Post went to the D-SNAP team, he somehow wound up asking for volunteers to be sent home early. Also, Mr. Post asked two workers, who appear to have been from Pleasants County, if they would like to go home. Those workers told Mr. Post that they did. Thereafter, Mr. Post went to inform Mr. Paree that he had a different two workers who wanted to go home.

20. While Mr. Post was gone to Mr. Paree's office to tell him that he had two other workers who wanted to go home instead of Grievant and Ms. Moore, those two

[6] *See*, testimony of Mark Paree.
[7] *See*, testimony of Mark Paree; testimony of Joreatha Nicholson.

workers who had volunteered changed their minds, and informed Ms. Lemasters that they really didn't want to go home.

21. Mr. Paree was then informed that the two workers who said they would go home had changed their minds and wanted to stay. At that point, Mr. Paree addressed the D-SNAP workers at his site and explained that he had to send two workers home that day and asked for volunteers. There were no volunteers. As such, Mr. Paree decided to go back to the original plan of sending Ms. Moore and Grievant home, as was decided in the regional D-SNAP management telephone conference, and informed them of such. Grievant and Ms. Moore went home that day after work.

22. Two other D-SNAP workers were sent home early on Sunday, September 10, 2017, because the turnout of applicants did not pick up.

23. Grievant did not get to work the overtime hours on Saturday, September 9, 2017, Sunday, September 10, 2017, or Monday, September 11, 2017, or Tuesday, September 12, 2017.

24. Grievant was compensated for all of the hours she worked while she was working on D-SNAP. Grievant was also reimbursed mileage for her travel, up to the daily per diem for her meals, and her lodging was paid.

25. Grievant and Ms. Moore had not carpooled together. They did not stay at the same hotel while working D-SNAP. Grievant's regular work station was in the Braxton County office. Ms. Moore's regular work station was in Clay County. Ms. Moore was stationed farther away from Marion County than where Grievant was stationed.

26. Ms. Moore and Grievant worked different assignments while on the D-SNAP team. Ms. Moore was assigned the duty of "eligibility," and Grievant was assigned "verification."

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his 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 argues that the decision to send her home four days early from her volunteer D-SNAP work was discriminatory, and arbitrary and capricious; therefore, it improperly deprived her of overtime pay that she was supposed to have earned. Respondent asserts that the decision to send Grievant home on Friday, September 8, 2017, was proper in that Respondent did not have the need for all sixteen staff members because the turnout of applicants had been much lower than anticipated. Further, Respondent asserts that management made the decision of which workers to send home by considering several factors including, the job the worker was performing at D-SNAP, the distance the worker traveled, which workers carpooled, the size and location of the worker's regular work station, and whether the worker was staying at a hotel while working D-SNAP. Respondent asserts that based upon these factors, Grievant and Lorintha Moore were selected.

An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. *See Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), ***aff'd*** Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998).

"'[T]he "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. Syllabus Point 3, *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996).'" Syl. Pt. 1, *Adkins v. W. Va. Dep't of Educ.,* 210 W. Va. 105, 556 S.E.2d 72 (2001) (*per curiam*). "While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the employer]." *Trimboli v. Dep't of Health and Human Res.,* Docket No. 93-HHR-322 (June 27, 1997), ***aff'd*** Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998); *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001), ***aff'd*** Kanawha Cnty. Cir. Ct. Docket No. 01-AA-161 (July 2, 2002), *appeal refused*, W.Va. Sup. Ct. App. Docket No. 022387 (Apr. 10, 2003).

Discrimination for purposes of the grievance process has a very specific definition. "'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). Therefore, in order to establish a discrimination claim under the grievance statutes, an employee must prove the following by a preponderance of the evidence:

> (a) that he or she has been treated differently from one or more similarly-situated employee(s);
>
> (b) that the different treatment is not related to the actual job responsibilities of the employees; and,
>
> (c) that the difference in treatment was not agreed to in writing by the employee.

Frymier v. Higher Education Policy Comm'n, 655 S.E.2d 52, 221 W. Va. 306 (2007); *Harris v. Dep't of Transp.*, Docket No. 2008-1594-DOT (Dec. 15, 2008).

Grievant appears to argue that she was selected at random to go home early. Grievant also asserts she was performing more work that the other person who was working "verification" who was allowed to stay. Grievant argues that the other verifier was "not in the system" and could not do anything until she was added. Grievant contends that a "greeter" should have been sent home before she was because there were three greeters and only two were needed. For these reasons, Grievant argues that the decision to send her home early from D-SNAP work was arbitrary and capricious and discriminatory.

The evidence presented demonstrated that management had made the decision to staff the D-SNAP team with sixteen workers based upon the number of people who applied during a prior D-SNAP event. However, fewer applicants turned out to apply for

D-SNAP benefits in Marion County during the September 2017 event than had been anticipated. On Friday, September 8, 2019, management determined that it had more workers than needed to address the needs of the applicants. Based on the several factors Mr. Paree and Ms. Nicholson discussed during their testimonies, Grievant and Ms. Moore were chosen to be sent home early. While they did not carpool, Mr. Paree stated that other factors such as whether a worker was staying at a hotel was a consideration, as was the distance the workers had traveled. These are clearly financial considerations relevant to the operation of the D-SNAP event. The D-SNAP workers were being paid overtime, reimbursed their mileage, and had their lodging and meals paid for, up to the set per diem. This was an expensive operation, and Respondent found itself with more employees than it needed.

DHHR Policy Memorandum 2102, "Hours of Work/Overtime," states, in part, as follows:

> [w]age and Hour considerations should be included in planning for lecture, meetings, training programs, and similar activities. The scheduling of such activities should be arranged in the most economical and effective manner. . . There may be instances where it might become difficult to avoid evening sessions and travel that are outside of normal work hours. Again, the scheduling of such activities should be arranged in the most economical and effective manner. . . .[8]

Accordingly, given its responsibility to operate the D-SNAP in an economical and effective manner, DHHR '"leadership" made the decision that two people needed to be sent home at the end of Friday, September 8, 2017. The decision as to which two employees to send home that day was made during the regional D-SNAP management telephone

[8]*See*, Joint Exhibit 3, DHHR Policy Memorandum 2102.

conference attended by Mr. Paree and Ms. Nicholson, among others. The evidence presented demonstrated that management's decision was not random. While Mr. Paree stated that some of the factors considered were where the worker was traveling from and the size of their office, because a smaller office would be impacted by an absence more than a larger office, those were not the only factors considered. However, Mr. Paree went on to list other factors considered such as whether the workers carpooled, if they were staying overnight in a hotel to work D-SNAP, and their D-SNAP assignment.

Grievant and Ms. Moore had not carpooled to Marion County. They both stayed in hotels while working D-SNAP; however, they stayed at different hotels. Grievant and Ms. Moore were stationed at different home offices. However, both were more than fifty miles from the Marion County office. The Marion County employees working D-SNAP did not have travel, lodging, or meal expenses. The workers from Wood County and Doddridge County did not have to travel as far as Grievant and Ms. Moore to get to Marion County. The two workers from Pleasants County and Grievant had comparable distances to travel. It is unknown whether the two Pleasants County workers carpooled.

The evidence presented demonstrates that the decision to send Grievant home on Friday, September 8, 2017, was not random, arbitrary and capricious, or discriminatory. Management considered reasonable economic factors, as well as the assignments the workers held in making its decision on who to send home early. There were two "verification" workers and four "eligibility" workers. Sending one of each home was reasonable given the low number of applicants. While Grievant argues that she was working more than the other verification worker and was able to get into the computer system when the other could not, such does not matter. The duties could be covered by

one verification worker, and the decision reduced the costs to the agency to provide the D-SNAP services. Grievant presented no evidence to suggest that the other verification worker, or other D-SNAP worker, was being treated differently. In deciding who to send home early, management considered all employees using the same factors. As such, Grievant has failed to meet her burden of proving her claims by a preponderance of the evidence.

Grievant also argues that as she had been scheduled in advance to work overtime on September 9, 2017, through September 12, 2017, but was sent home beforehand, she is entitled to receive the overtime pay. Grievant cites the case of *Large v. Department of Health and Human Resources, William R. Sharpe, Jr. Hospital*, Docket No. 2014-1634-DHHR (Sept. 28, 2016) as support for her position. In *Large*, a grievant was suspended from work pending an investigation. After the investigation was completed, Grievant was reinstated to his position and reimbursed straight-time pay for the period of his suspension. However, Grievant asserted that he was also due compensation for the overtime work he had been scheduled to work during the period of his suspension. However, Respondent agreed that Grievant was due the overtime compensation, but they disagreed on how much. The Grievance Board concluded that "[e]mployees placed on an unpaid suspension pending investigation are entitled to unpaid scheduled overtime and shift differential in the event that the investigation does not substantiate the allegations, or that it does not result in an unpaid suspension as a result of the allegations." *Large v. Dep't of Health & Human Res., William R. Sharpe, Jr. Hospital*, Docket No. 2014-1634-DHHR (Sept. 28, 2016)(citing *Burrows v. W. Va. Dep't of Health*

& Human Res., Docket No. 2014-1784-CONS (Dec. 16, 2015). The Grievance Board then set the amount of back pay the grievant was due.

Large does not apply to the instant matter. The grievant in *Large* was scheduled as a regular part of his job to work overtime. He was prevented from doing such because he was suspended pending investigation. Following the investigation he was reinstated. The employer was to pay the grievant the wages he missed while suspended, and such included scheduled overtime. In this matter, Grievant was never suspended. She volunteered to work additional hours for a special program resulting from a disaster declaration. Such was not her regularly scheduled work or duties. Further, Grievant was not regularly scheduled this overtime work. This was a special program designed to assist flood victims. Such a program is based upon need. Respondent scheduled staff to meet an anticipated need that did not materialize. As such, Grievant's services were not needed. The Grievant is not entitled to the overtime compensation for Saturday, September 9, 2017, Sunday, September 10, 2017, Monday, September 11, 2017, or Tuesday, September 12, 2017. For the reasons set forth herein, this grievance is DENIED.

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 his 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. An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. *See Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff'd* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998).

3. "'[T]he "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. Syllabus Point 3, *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996).'" Syl. Pt. 1, *Adkins v. W. Va. Dep't of Educ.,* 210 W. Va. 105, 556 S.E.2d 72 (2001) (*per curiam*). "While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the employer]." *Trimboli v. Dep't of Health and Human Res.,* Docket No. 93-HHR-322 (June 27, 1997), *aff'd* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998); *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001), *aff'd*

Kanawha Cnty. Cir. Ct. Docket No. 01-AA-161 (July 2, 2002), *appeal refused*, W.Va. Sup. Ct. App. Docket No. 022387 (Apr. 10, 2003).

4. Discrimination for purposes of the grievance process has a very specific definition. "'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).

5. Grievant failed to prove by a preponderance of the evidence her claim of discrimination, and her claim that the Respondent's decision to send her home before the end of the D-SNAP program was arbitrary and capricious. Further, Grievant failed to prove that she was entitled to the overtime wages she could have earned had she not been sent home early.

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: May 15, 2019.

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Carrie H. LeFevre
Administrative Law Judge