THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

RANDALL HAZLEWOOD,

Grievant,

v. **Docket No. 2017-2495-CONS**

GENERAL SERVICES DIVISION,

Respondent.

DECISION

Grievant, Randall Hazlewood, has been employed by Respondent, General Services Division ("GSD") for six years as a Facilities Equipment Maintenance Technician ("FEMT"). Mr. Hazlewood file a grievance to Level Three dated June 7, 2017, alleging that he was going to be dismissed if he did not reimburse the State $1,920 for stolen tools and that his State phone had been revoked without good cause. As relief grievant seeks, to have any discipline be reversed and to be returned to his previous assignment.

Respondent filed a motion to remand the grievance to Level One on June 14, 2017, and an order transferring the grievance to Level One was entered on August 25, 2017. Mr. Hazlewood filed a second grievance dated August 28, 2017, alleging that he had been issued a written reprimand. As relief he seeks the reprimand to be removed. The two grievances were consolidated by order of the chief administrator on September 13, 2017.

A Level One hearing was conducted on September 21, 2017. A decision was entered dated October 12, 2017, finding: (1) there was good cause for the written reprimand issued to Grievant for failing to safeguard his tools, (2) the removal of

Grievant's State cellphone was for good cause, (3) and there was good cause for Grievant's supervisor to tell him to quit wearing certain earrings.

Grievant appealed to Level Two on October 17, 2017. A mediation was conducted on December 13, 2017, and the matter was placed in abeyance. The abeyance was extended at the request of the parties by order dated, February 16, 2018. An Order of Unsuccessful Mediation was entered on June 11, 2018. Grievant appealed to Level Three two days later.

A Level Three hearing was held at the Charleston office of the West Virginia Public Employees Grievance Board on October 10, 2018. Grievant appeared personally and was represented by Gordon Simmons, UE Local 170, WVPWU.[1] Respondent was represented by Mark S. Weiler, Assistant Attorney General. At the level Three hearing, Respondent stated that they were no longer seeking reimbursement of $1,920.03 from Grievant. This matter became mature for decision on November 19, 2018, upon receipt of Respondents Reply to Grievant's Proposed Findings of Fact and Conclusions of Law.[2]

Synopsis

Grievant was given a written reprimand for failing to properly safeguard the tools which had been issued to him. The tools were stolen from the workplace. Grievant had taken very reasonable steps to safeguard the tools. Respondent did not prove by preponderance of the evidence that Grievant failed to safeguard his tools.

[1] West Virginia Public Workers Union.
[2] There was no evidence presented at the Level Three hearing regarding the revocation of Grievant's use of the State cell phone. Any claim related to the cell phone has been abandoned and will not be addressed.

Grievant was given a verbal reprimand for wearing earrings which resembled wood screws. The reason for the reprimand was that the earrings did not present a proper image to the public. Respondent did not prove the reason for the reprimand by a preponderance of the evidence. Additionally, both disciplinary actions are found to be arbitrary and capricious.

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. Randall Hazlewood, Grievant, is employed by Respondent General Service Division ("GSD") in the Facilities Equipment Maintenance Technician ("FEMT") classification. His duties generally include maintaining and repairing a variety of equipment used in heating, cooling, and more general operations in public facilities. He is occasionally required to do minor electrical work in completing his duties.

2. The performance standards and expectation for Grievant's position include complying with attendance policies, timely completion of work orders, informing supervisors of any problems or incidents, "100% accountability for tools," working safely, wearing uniforms and maintaining professional appearance and demeaner.[3]

3. GSD was charged with renovating a building on Smith Street in Charleston so that it could be utilized by State agencies. Grievant was assigned to the GSD crews who were involved with the renovation which took place between January and June 2016. The Building is designated Building 86.

[3] Respondent Exhibit 1, Employment Appraisal Form 3 ("EPA 3").

4. While the renovation of Building 86 was taking place, Grievant was assigned exclusively to that building for clean up duties. Those duties entailed performing a series of small tasks needed to complete projects like painting, switching door knobs, making adjustments to the heating and cooling systems, replacing equipment which was not properly functioning, etc. Grievant remained assigned to Building 86 throughout the Summer of 2016 after the building was occupied by State agencies. He was completing projects such as drywall installation and painting which had not been finished before the agencies moved in.

5. The agencies began moving in in July 2017 and migrated into Building 86 throughout the summer. Grievant continued doing varies tasks to complete the renovation including drywall installation and painting. There were six to eight GSD employees in the building on various jobs each day. Key pads had been assigned to most of the doors limiting entrance in the building,

6. Grievant was assigned a significant number of tools to use for completing the variety of tasks he needed to complete in Building 86. The building was occupied; it was constantly locked and entry could only be gained by use of a coded key pad. Grievant and others kept their tools in the building basement in the mechanical room. The mechanical room was locked. Inside the mechanical room was a storage locker where all the tools were kept. The door to the basement and the door to the mechanical room were both locked with a keypad.

7. Grievant arrived at the building at 7:00 a.m. on Monday, January 30, 2017, and discovered that his tools had been stolen over the weekend. Grievant had not been

at work since the previous Friday. He immediately reported the missing tools to his supervisor. Grievant also reported the theft to the Capitol Police.[4]

8. Capitol Police Corporal ("Cpl.") Richard Vinyard was assigned to investigate the theft. He met with Grievant at Building 86 between 8:00 a.m. and 8:30 a.m. on Monday, January 30, 2017.

9. Cpl. Vinyard determined that the keypads giving access to the basement and the mechanical room had not been tampered with. However, the hasp and lock used to close the "locker" holding the tools assigned to Grievant had been pried loose to gain entry, "and left hanging on the right locker door." (Respondent Exhibit 10). Cpl. Vinyard determined that there were about seventeen employees who had the codes to the keypads necessary to get to the tool locker.

10. Cpl. Vinyard also discovered that Building 86 has a side door that is locked with a key instead of a keypad. Since no keypad was on the door no record was available regarding when the door was opened. He determined that there were as many as thirty keys that had been distributed for that door. *Id.*

11. Cpl. Vinyard and Officer ("Ofc.") Mike Dibbs met with Grievant to question him about the incident and whether he stole the tools. Grievant cooperated and denied any complicity in the theft of the tools. Regarding this meeting, Cpl. Vinyard wrote in his report, "Both myself and Officer Dibbs felt as if Hazlewood was being truthful and not nervous at all or angry that he was being treated as a suspect."

[4] It was alleged that an audit of Grievant's tools had been scheduled but not yet conducted shortly before the theft. However Grievant told the Capitol Police that he had not been audited in five years. Further, the report of Corporal Vinyard stated that he had a meeting with Greg Melton and Bill Berry and they "both said that Hazlewood had never been scheduled for an audit." (Respondent Exhibit 10).

12. Cpl. Vinyard faxed the items stolen and their serial numbers to the Charleston Police to check if they had been pawned. There was no report that they had. He also faxed the information to the State Police, so they could enter the stolen items into NCIC.[5]

13. On June 5, 2017, Cpl. Vinyard met with GSD Director Greg Melton to tell him that no further action would be taken. He noted in his report, "At that point I assumed the incident was over.[6]

14. By letter dated June 5, 2017, Building and Maintenance Manager, David Parsons, issued a "written misconduct warning" to Grievant. The letter also contained a demand that Grievant pay $1,920.03 to the Department of Administration to cover the cost of the "items lost" meaning the tools which had been stolen. The reason stated for the warning was that Grievant failed to safeguard State property which was in his "care, custody and control." Manager Parsons further stated:

> As the State of West Virginia assumes no liability for lost or stolen property (see Department of Administration Employee Handbook, page 12), we now look to you to make full restitution for the value of the missing equipment which you had previously signed for and was in your care. The State makes no distinction in an alleged theft or negligence by an employee in safeguarding items entrusted to that employee.[7]

Following the incident Grievant's assignment was changed from Building 86 to the Capital Complex.

[5] National Crime Information Center.
[6] At that meeting, Cpl. Vinyard asked if Grievant's supervisor David Parson had a problem with Grievant. Director Melton replied that Parsons was mad at everyone.
[7] Respondent Exhibit 7, letter of reprimand issued by David Parsons.

15. The provision of the West Virginia Department of Administration Employee Handbook referred to by Manager Parsons is under the heading, THEFT and states the following:

> The Department is dedicated to providing a professional and safe workplace. The cooperation of each employee is imperative in avoiding threat at the worksite. As a precautionary measure, be sure your supplies, equipment, and personal property are properly stored and avoid bringing excessive amounts of money or valuables to work. Please report any suspected theft to your supervisor so that appropriate measures may be taken to investigate and to attempt to recover stolen items, prevent future theft, and report the theft to the appropriate law enforcement authorities. Theft by employees will not be tolerated. The department will not be responsible for stolen property.[8]

16. On August 7, 2017, Grievant was getting a box truck with coworker Joey Campbell from Lot 98 near Building 11, commonly called the Chiller Plant. While checking the lights on the box truck, Grievant noticed a ball hitch was missing from a nearby trailer. Grievant pointed out the missing hitch to Mr. Campbell, who reported it to supervisor Edelman.

17. The same day Manager Parsons reported to the Capital Police that a "traitor ball hitch" was missing from one of the night car trailers located in the fence of gated lot number 98 by inside the Chiller Plant. Ofc. John Workman was assigned to investigate the alleged theft. When he arrived at the Chiller Plant, the officer noted that there was no damage to the fence or gate and no sign of any force entry.[9]

18. Manager Parsons believed that Grievant had stolen the ball hitch because Grievant had told coworkers that he had been given a storage shed that he hoped to turn

[8] Respondent Exhibit 3, *West Virginia Department of Administration Employee Handbook*.
[9] Respondent Exhibit 11, Ofc. Workman's report.

into a trailer/camper. He also felt Grievant had no other reason to be in the area where the ball hitch went missing.

19. On August 10, 2018, Ofcs. Workman and Morris, as well as Sgt. Duff, met with Grievant at the Capital Police office. Grievant "was very cooperative and showed no signs of dishonesty or criminality."[10] Grievant denied any involvement in the theft of the ball hitch.

20. Grievant consented for the officers to search his home and property for items related to the theft of his tools as well as the hitch cover. Ofcs. Morris and Workman accompanied Grievant's to his residence and conducted the search. The area searched included Grievant's home as well as two utility buildings on Grievant's property.

21. A Dewalt rechargeable tool battery was discovered in Grievant's living room. This battery was part of a toolset which included an impact drill and another battery and was one of the items listed as stolen from Building 86. Neither the impact drill, or the other battery were found in Grievant's possession.

22. When Grievant was asked about the battery Grievant stated: "Oh, I forgot about that." Grievant acknowledged that he had not told Ofc. Vineyard or anyone else that he had located one of the missing items from the Building 86 theft.

23. The officers in both investigations asked Grievant if he was willing to take a polygraph examination and Grievant consented. No polygraph test was administered.

24. No further action was taken regarding the retired rechargeable battery, but the investigation report, dated August 7, 2017, states that it remains open.[11]

[10] *Id.*
[11] *Id.*

25. Gregory Edelman is a Supervisor for GSD. He is Grievant's immediate supervisor. Mr. Edelman reports to Manager Parsons.

26. Supervisor Edelman issued a "Documentation of a Verbal Reprimand" to Grievant dated August 21, 2017. In the Discussion section, Supervisor Edelman wrote: "that Randall's screw earring does not present a proper image to our customers." (Respondent Exhibit 12). Manager Parsons had instructed Edelman to issue the warning to Grievant because he believed the screw earrings were not professional. Grievant was instructed to not wear the earrings at work. He has continued to wear the earrings and has received no further discipline related thereto.

27. Supervisor Edelman attached the Division of Personnel "Agency Dress Codes" policy to the verbal reprimand documentation. He highlighted the following section of that policy:

> II. F. - Efforts to restrict or limit other forms of personal expression, which are commonly considered along with dressing grooming (e.g., Body piercing, tattooing, etc.) must also be job related and based on concerns of productivity, safety or public image.

Supervisor Edelman also attached a copy of the GSD policy entitled "Agency Dress Code Internal Policy GSD – P3." He highlighted a section of that policy which states:

> Hair links and facial hair will be neat and professional in appearance. It shall not interfere with the performance of job functions, or the wearing of any protective gear or device. Jewelry of any kind will not be allowed if it constitutes a safety issue, i.e., looser hanging type jewelry around moving machinery or metal around energized equipment.

No mention was made at that time by any of his supervisors that Grievant's earrings presented any safety concerns. Supervisor Edelman testified that he issued the verbal

reprimand as instructed by Manager Parsons and for the reason that he had been given by Manager Parsons.

28. Grievant was wearing the screw earrings at the hearing. They appear as if a small wood screw had been screwed through Grievant's earlobe. The earrings are not loose and do not dangle or hang from Grievant's earlobe. The screw extends from Grievant's earlobe by roughly half an inch.

29. At the Level Three hearing, Supervisor Edelman testified that the earrings could present a safety issue for Grievant.[12] He indicated that the earrings might be caught in moving equipment or could create an electrical shock if worn around energized equipment.

30. Supervisor Edelman acknowledged that the earrings did not dangle, and it is likely that Grievant's earlobe would get caught in moving equipment before his earring. He verified that Grievant did not typically work around high-voltage equipment. Supervisor Edelman also testified that it is not uncommon for workers to wear earrings in the workplace, and that those who were working around energized circuits took their jewelry off when performing those tasks.

31. Grievant has been wearing the screw earrings to work since June 2016. In mid-July Manager Parsons commented on them, but did not tell Grievant that they were inappropriate.

[12] Director Melton gave similar testimony regarding the safety of the earrings.

Discussion

As this grievance involves disciplinary actions, 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).

There are two remaining issues in this matter. Whether Respondent proved the written reprimand related to the tools assigned and whether the verbal reprimand given to Grievant regarding to his screw earrings was justified.

The written reprimand was issued to Grievant on June 5, 2017, by David Parsons. The stated reason for the reprimand was that Grievant had failed to safeguard State property which was in his "care, custody and control."[13] He went on to cite the provision of the Employee Handbook which indicated that that the State of West Virginia assumes no

[13] Respondent Exhibit 7.

liability for lost or stolen property.[14] This particular provision when read in context is a disclamer by the Department of Administration which warns employees who bring their own property to the worksite the department will not be responsible if it is lost or stolen. It has absolutely nothing to do with whether Grievant failed to safeguard tools which had been assigned to him. Mr. Parson's additional statement that, "The State makes no distinction in an alleged theft or negligence by an employee in safeguarding items entrusted to that employee," is not supported in any law or policy provided by the Respondent.

Grievant did have a duty to properly safeguard the valuable tools and equipment which had been provided to him by management to perform his job. Respondent did not prove that he failed to perform that duty. The undisputed testimony is that at the end of each day Grievant locked his tools in a storage locker, which was located in a locked mechanical room of a locked basement. At the time the reprimand was written and issued there was not proof that Grievant had any culpability in the theft of his equipment. It is hard to imagine any further actions Grievant could have taken to safeguard the equipment assigned to him.

It is also worth noting that Mr. Parsons was convinced that Grievant was responsible for the theft of the equipment. The break-in occurred on January 30, 2017, but the letter of reprimand was not issued until June 5, 2017. It seems hardly coincidental that the reprimand for failing to safeguard his tools was issued to Grievant on the same day

[14] The actual wording of the policy is, "The department will not be responsible for stolen property." The department referred to is the Department of Administration. Respondent Exhibit 3. *See* FOF 15, *supra*.

that management was informed that there was no evidence Grievant participated in the theft.

Respondent attempts to justify the written reprimand by the discovery of a tool battery at Grievant's house which was one of the items which was listed as stolen. However, this item was not discovered until August 10, 2017, during a search resulting from another theft of equipment (a ball hitch). The battery was found two months after the reprimand was issued and had no relevance to Grievant's efforts to safeguard his tools. The discovery of this item simply has no relevance to the prior discipline. Respondent seems to be implying that the discovery of the battery implicated Grievant in the original theft, but the police reports found that there was no evidence indicating that Grievant was involved in either theft. In fact, in both incidents the separate officers in each investigation indicated that Grievant, when questioned, was cooperative, calm and appeared to be truthful.[15] Respondent did not prove by a preponderance of the evidence that Grievant failed to take significant and reasonable steps to safeguard his tools, which was the basis of the reprimand. Accordingly, the reprimand may not stand.

The second police report indicating that there was no evidence that Grievant had participated in a theft of equipment was dated August 7, 2017, but indicated that investigations were still underway on August 11, 2017. The report was completed on or after that date. It was clear in the report that Mr. Parsons believed that Grievant was responsible for the theft. Within two weeks of the filing of the report indicating that there was no evidence that Grievant had stolen the ball hitch Mr. Parsons directed Supervisor Edelman to reprimand Grievant for wearing the screw earrings. The reason documented

[15] Respondent's Exhibits 10 & 11.

by Mr. Edelman for the verbal reprimand was, “That Randell’s screw earring does not present a proper image to our customers.” Mr. Edelman testified that was the reason given to him by Mr. Parsons and it was the reason he gave the verbal reprimand.

Grievant had been wearing the earrings on the job for over a year at that point. Mr. Parsons had been aware of the earrings for over a year as well. Yet he did not direct Mr. Edelman to reprimand Grievant until shortly after another police report found no evidence that Grievant participated in a theft that Mr. Parsons seemed sure he committed. No evidence was presented as to why the earrings were deemed to be improper, nor was there evidence that the earrings presented a worse image to the customers than other jewelry and tattoos openly displayed by other workers. The earrings were observed at the hearing. They were not large or offensive.[16]

Respondent tried to bolster this reprimand at the Level Three hearing by saying that the earrings presented a safety hazard around moving equipment and charged electrical circuits. Clearly this was not the reason for the reprimand and was merely a pretext developed after the fact. Additionally, Respondent failed to prove that the earrings which were neither excessively large, or dangling presented any hazard around moving equipment. Also, Mr. Edelman testified that other employees who work around charged electrical circuits wear jewelry unless they are going to work on that equipment. In which case they take it off.

Respondent has discretion to take disciplinary actions, but those actions must be reasonable and not arbitrary and capricious. *McDaniel v. Div. of Highways*, Docket No. 201701404-CONS, June 30, 2017. Generally, an agency's action is arbitrary and

[16] In fact, the earrings could be viewed as a small representation of Grievant’s job.

capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Eads, supra (citing Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982).

The only listed reason for the verbal reprimand was that Grievant's earrings do not present a proper image to the public. However, the only evidence to support that proposition was the vague assertions of Director Melton and Mr. Parson's delivered through Mr. Edelman. There was no reasoning given to support those assertions nor any explanation as to why the screw earrings presented a worse image than other jewelry or tattoos openly displayed by other employees. The Grievance Board has consistently held that "Mere allegations alone without substantiating facts are insufficient to prove a grievance." *Baker v. Bd. of Trustees/W. Va. Univ. at Parkersburg*, Docket No. 97-BOT-359 (Apr. 30, 1998) (citing *Harrison v. W. Va. Bd. of Directors/Bluefield State College*, Docket No. 93-BOD-400 (Apr. 11, 1995)); *Turner v. Div. of Corrections,* Docket No. 2018-0860-MAPS (June 19, 2018.

Respondent did not prove by a preponderance of the evidence that Grievant's earrings present an improper image to the public. Additionally, Respondent tried to offer

the pretextual reason of safety for the verbal reprimand which had nothing to do with the initial issuance thereof, cast additional doubt upon the true reason. More importantly Mr. Parsons knew about the earrings for a year and did not direct Mr. Edelman to issue the reprimand until it became apparent that there was no proof that Grievant committed thefts that Mr. Parsons believed he committed. Given all of the circumstances, the verbal reprimand was unreasonable and did not truly rely on the factors which were intended and considered. The same is true of the written reprimand related to the tools. Accordingly. the grievance is **GRANTED.**

Conclusions of Law

1. As this grievance involves disciplinary matters, 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).

2. Respondent did not prove by a preponderance of the evidence that Grievant failed to safeguard his tools which was the reason given for the written reprimand.

3. Given the totality of the evidence, Respondent did not prove by a preponderance of the evidence that the earrings Grievant was wearing presented an improper image to the GSD customers.

4. Respondent has discretion to take disciplinary actions, but those actions must be reasonable and not arbitrary and capricious. *McDaniel v. Div. of Highways*, Docket No. 201701404-CONS, June 30, 2017.

5. Generally, an agency's action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985).

6. Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Eads, supra (citing Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982).

7. Given all of the circumstances, the verbal reprimand as well as the written reprimand were unreasonable and did not truly rely on the factors which were intended and considered.

Accordingly, the Grievance is **GRANTED.**

The reprimands discussed herein are void. Respondent is Ordered to remove both reprimands and any reference thereto from all files related to Grievant as an employee of the General Service Division.

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: January 9, 2019.

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WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE