THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

BENJAMIN M. LOWMAN,
Grievant,

v. **Docket No. 2018-1225-DEP**

DEPARTMENT OF ENVIRONMENTAL PROTECTION,
Respondent.

DECISION

Grievant, Benjamin M. Lowman, was employed by Respondent, Department of Environmental Protection. On May 21, 2018, Grievant filed this grievance against Respondent protesting the termination of his employment. Grievant did not complete the portion of the grievance form requesting relief.

The grievance was properly filed directly to level three pursuant to W. VA. CODE § 6C-2-4(a)(4). A level three hearing was held on January 11, 2019, before the undersigned at the Grievance Board's Charleston, West Virginia office. During the hearing Grievant clarified that he was seeking reinstatement and back pay as relief. Grievant appeared in person and *pro se*[1]. Respondent appeared by Chad Bailey and by counsel, Anthony D. Eates II, Deputy Attorney General. This matter became mature for decision on February 13, 2019, upon final receipt of Respondent's written Proposed Findings of Fact and Conclusions of Law ("PFFCL"). Grievant did not file written PFFCL.[2]

[1] For one's own behalf. BLACK'S LAW DICTIONARY 1221 (6th ed. 1990).

[2] In its PFFCL, Respondent stated Grievant had been arrested six days after the level three hearing and remained incarcerated through the time of filing of the PFFCL. The Grievance Board has received no communication from Grievant.

Synopsis

Grievant was employed by Respondent as an Environmental Resources Analyst in the Division of Mining and Reclamation. Grievant was terminated by Respondent for threatening two members of management following a time-period of escalating erratic behavior and ongoing serious attendance problems. Respondent proved the charges against Grievant and that it was justified in terminating Grievant's employment. Grievant failed to prove mitigation of the punishment was warranted. Accordingly, the grievance is denied.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

Findings of Fact

1. Grievant was employed by Respondent as an Environmental Resources Analyst in the Division of Mining and Reclamation and had been so employed since sometime prior to 2010.

2. Grievant's immediate supervisor was Charles Sturey, Assistant Deputy Director. Harold Ward was the Director of the Division of Mining and Reclamation and Deputy Cabinet Secretary.

3. Prior to late 2017, Grievant's work performance had been good and he had not received any discipline but in late 2017 Grievant's demeanor, appearance, and performance began to decline.

4. Grievant lost a large amount a weight and, although he had previously been meticulous regarding his clothing, began to appear at work disheveled. Grievant began reporting late to work, would disappear during the workday such that he could

not be located by supervisors and co-workers, and his productivity declined. As time passed, Grievant's behavior became increasingly more confrontational and volatile.

5. In December 2017, Grievant was placed on a Performance Improvement Plan ("PIP") due to his attendance problems and was placed on leave restriction. Grievant's attendance continued to worsen.

6. As a result, on April 16, 2018, Director Ward, Human Resources Manager Chad Bailey, and Assistant Director Sturey held a predetermination conference with Grievant.

7. By letter dated April 16, 2018, Assistant Deputy Director Sturey issued a written reprimand for Grievant's failure to improve his attendance and reporting under the PIP. Assistant Deputy Director Sturey provided multiple detailed examples of Grievant's repeated failures to abide by the terms of the PIP. The April 16, 2018 letter also served as a second PIP, outlining in detail Assistant Deputy Director Sturey's expectations. The letter also referred Grievant, if his conduct was as a result of a medical or personal problem, to several resources for employee assistance.

8. Assistant Deputy Director Sturey also met with Grievant in person on April 23, 2018, to review the expectations outlined in the PIP. Assistant Deputy Director Sturey documented the meeting in an email to Grievant on the same date, which included Assistant Deputy Director Sturey's determination that Grievant was absent without leave for over two hours on April 20th, and that Grievant's pay would be docked for the time.

9. In response, although Grievant's behavior had clearly violated the terms of his PIP, Grievant replied to Assistant Deputy Director Sturey as follows, "I did attempt to

contact you on Friday, April 20, but you had informed me that you would be out drinking beginning at 2. I had to make a quick decision, knowing that I had plenty of annual leave and was up to date in all other matters. I strongly request you reconsider your denial of the 2 hours of annual leave."

10. Assistant Deputy Director Sturey was properly on annual leave at a cookout but was available by telephone.

11. By letter dated May 2, 2018, delivered to Grievant by email, Grievant's pay was docked for the unauthorized leave.

12. Upon receipt of the letter, Grievant went to Assistant Deputy Director Sturey's office and confronted him. Grievant asked Assistant Deputy Director Sturey, "What the fuck you trying to do?" Assistant Deputy Director Sturey reported that Grievant had "cursed at" him to the Human Resources department by email of the same date.

13. The next morning, on May 3, 2018, Grievant came to Assistant Deputy Director Sturey's office to request annual leave, which he denied pursuant to the terms of the PIP. In response, Grievant leaned over, placed his hands on Assistant Deputy Director Sturey's desk, and said, "The next time my pay is docked there'll be two stumps in the parking lot – you and Harold." Grievant then left Assistant Deputy Director Sturey's office.

14. Assistant Deputy Director Sturey perceived this statement as a threat and was "worried and scared." His fear was heightened due to the history of Grievant's increasingly confrontational behavior and because he knew that Grievant was a martial artist; a "good fighter" that had participated in tough man competitions.

15. Assistant Deputy Director Sturey took this as a serious threat and immediately called HR Director Bailey to report the threat.

16. Sometime during the same morning, Grievant went to the office of a co-worker with whom Grievant was friendly, Kevin Seagle. Grievant was agitated and also stated to Mr. Seagle that if, referring to Harold and Charlie, they were to "mess with" Grievant's pay again that "they would be stumps out in the parking lot." As it was out of character for Grievant to be so upset and Mr. Seagle considered Grievant a friend, Mr. Seagle was confused and unsure what to do. However, within approximately a half an hour, after Assistant Deputy Director Sturey's secretary, Yvonne, came to Mr. Seagle very upset and on the verge of tears stating that she was afraid Grievant was going to harm someone, Mr. Seagle decided he should report to HR Director Bailey what Grievant had said.

17. At some point after issuing the threat to Assistant Deputy Director Sturey and repeating the threat to Mr. Seagle, Grievant left the building without notifying anyone.

18. Considering the threat and that Grievant could not be located, Grievant's security access to the building was deactivated.

19. When Grievant returned to the building and discovered his security access had been deactivated, he made no effort to contact management but, instead, improperly gained access to the building by grabbing the door as another employee entered the building and following her into the building.

20. Once Grievant was located in the building, Deputy Cabinet Secretary Ward, Director Human Resources Director Melinda Campbell, HR Manager Bailey, and

Assistant Deputy Director Sturey, with members of the Capitol police force in attendance, met with Grievant. Grievant was calm and denied that he had made the threat to Assistant Deputy Director Sturey. Grievant was orally informed that he was being suspended pending investigation and was removed from the premises by Capitol police.

21. By letter dated May 7, 2018, Director Ward terminated Grievant's employment for gross misconduct for the threat made against himself and Assistant Deputy Director Sturey. In explaining why a lesser penalty was not selected, Director Ward stated that, prior to the threat, he was already considering suspending Grievant for his failure to abide by the terms of the PIP and insubordination and that Grievant's "repeated repudiation of [Grievant's] supervisor's authority disrupted and undermined the employee-employer relationship and eliminated any likelihood that a lesser penalty would cause you to change your conduct and behavior."

22. Sometime after Grievant was terminated, he called and asked to meet with Christopher Harvey, a previous co-worker. The conversation mostly revolved around Grievant's efforts to find other employment. However, during their conversation Grievant also told Mr. Harvey, "Guess [I] shouldn't have said [I] was gonna cut Charlie or Harold's head off and bury them in the parking lot."

23. Although Grievant did not admit to any of the behavior of which he is accused, he asserted during the hearing that he had struggled with grief following the death of his brother and had developed migraines as a result which lead him to an addiction to Fentanyl. Grievant asserts that he did seek accommodation to be allowed to lie down in the floor and was denied. However, Grievant did not disclose his

addiction in response to any of the disciplinary action taken against him. Grievant did disclose his drug addiction to his supervisor sometime in October 2017 but asked for his supervisor to keep the information confidential. Grievant did not provide any documentation of his medical condition to Respondent for consideration in response to either his discipline or in response to his informal request for accommodation.

Discussion

The burden of proof in disciplinary matters rests with the employer to prove by a preponderance of the evidence that the disciplinary action taken was justified. 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. W. Va. Dep't of Health & Human Res*., Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. *Id*.

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. § 143-1-12.2.a. (2016). "'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*).

"The term gross misconduct as used in the context of an employer-employee relationship implies a willful disregard of the employer's interest or a wanton disregard of standards of behavior which the employer has a right to expect of its employees." *Graley v. Parkways Econ. Dev. & Tourism Auth*., Docket No. 91-PEDTA-225 (Dec. 23, 1991) *(citing Buskirk v. Civil Serv. Comm'n*, 175 W. Va. 279, 332 S.E.2d 579 (1985) and *Blake v. Civil Serv. Comm'n*, 172 W. Va. 711, 310 S.E.2d 472 (1983)); *Evans v. Tax & Revenue/Ins. Comm'n*, Docket No. 02-INS-108 (Sep. 13, 2002); *Crites v. Dep't of Health & Human Res*., Docket No. 2011-0890-DHHR (Jan. 24, 2012).

Grievant disputes the alleged conduct. In situations where "the existence or nonexistence of certain material facts hinges on witness credibility, detailed findings of fact and explicit credibility determinations are required." *Jones v. W. Va. Dep't of Health & Human Res.*, Docket No. 96-HHR-371 (Oct. 30, 1996); Young v. Div. of Natural Res., Docket No. 2009-0540-DOC (Nov. 13, 2009); *See also Clarke v. W. Va. Bd. of Regents*, 166 W. Va. 702, 279 S.E.2d 169 (1981). In assessing the credibility of witnesses, some factors to be considered ... are the witness's: 1) demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and 5) admission of untruthfulness. HAROLD J. ASHER & WILLIAM C. JACKSON, REPRESENTING THE AGENCY BEFORE THE UNITED STATES MERIT SYSTEMS PROTECTION BOARD 152-153 (1984). Additionally, the ALJ should consider: 1) the presence or absence of bias, interest, or motive; 2) the consistency of prior statements; 3) the existence or nonexistence of any fact testified to by the witness; and 4) the plausibility of the

witness's information. *Id.*, *Burchell v. Bd. of Trustees, Marshall Univ.*, Docket No. 97-BOT-011 (Aug. 29, 1997).

Grievant was not credible. Grievant's demeanor was poor. Grievant made poor eye contact. Grievant fidgeted throughout the day, which increased as the day progressed, increasing to the point that he stood from his chair and paced, although Grievant attributed this to the room being cold when the room was not cold. Grievant also did not have an appropriate attitude towards the proceeding. Grievant arrived a half-hour late to the level three hearing and only after being contacted by Grievance Board staff as to his failure to appear. Grievant returned late from lunch and then requested an additional amount of time for lunch, supposedly to take medicine for a migraine. Grievant's behavior and appearance were not consistent with that of any other migraine sufferer the undersigned has observed. It appears to the undersigned more likely than not that Grievant was untruthful about suffering a migraine during lunch. Grievant was also late returning from the extended lunch and had to be physically directed from his vehicle back into the building. Grievant had motive to be untruthful to be reinstated to his job. Grievant's denial of making the threat was further inconsistent with the credible testimony of three other witnesses.

Assistant Deputy Director Sturey was credible. His demeanor was appropriate. He was thoughtful in answering questions and appeared to have a good memory of the incident and of the history leading up to the incident. Mr. Sturey's testimony was consistent with what Mr. Seagle and Mr. Harvey testified Grievant stated about the incident.

Mr. Seagle and Mr. Harvey are disinterested parties to this action. Mr. Seagle specifically had considered Grievant to be a friend and Grievant and Mr. Harvey were friendly enough that they met for lunch after Grievant was terminated. Both had serious and appropriate demeanors. Mr. Seagle seemed quite saddened by the situation. Neither appeared to have any motive to be untruthful. Both appeared to have a firm recollection of the events. Both relayed statements by Grievant that were consistent. Both are credible.

Respondent proved Grievant threatened Assistant Deputy Director Sturey and Deputy Cabinet Secretary Ward by stating, "The next time my pay is docked there'll be two stumps in the parking lot – you and Harold" by which Grievant meant that he would cut off their heads. Based on the language of the termination letter, it appears Respondent terminated Grievant's employment both for the threat and for his previous behavior. As to the previous behavior, Grievant appears to deny the behavior, but also appears to argue that the behavior should be excused or the punishment mitigated due to Grievant's drug addiction and alleged medical condition of migraine headaches.

Grievant cannot dispute the facts of the written reprimand. "If an employee does not grieve specific disciplinary incidents, he cannot place the merits of such discipline in issue in a subsequent grievance proceeding. *Jones v. W. Va. Dept. of Health & Human Resources,* Docket No. 96-HHR-371 (Oct. 30, 1996); *See Stamper v. W. Va. Dept. of Health & Human Resources*, Docket No. 95-HHR-144 (Mar. 20, 1996); *Womack v. Dept. of Admin.*, Docket No. 93-ADMN-430 (Mar. 30, 1994). In such cases, the information contained in prior disciplinary documentation must be accepted as true. *See Perdue v. Dept. of Health & Human Resources*, Docket No. 93-HHR-050 (Feb. 4,

1994)." *Aglinsky v. Bd. of Trustees*, Docket No. 97-BOT-256 (Oct. 27, 1997), ***aff'd***, Monongalia Cnty. Cir. Ct. Docket No. 97-C-AP-96 (Dec. 7, 1999), *appeal refused*, W.Va. Sup Ct. App. Docket No. 001096 (July 6, 2000). Therefore, Grievant had exhibited serious attendance issues through the time of the reprimand. Grievant's denial of the subsequent attendance issues and denial of his initial confrontation with his supervisor is not credible. Grievant's assertion that he had sought some accommodation for his alleged migraines is supported by the documentary evidence. However, the evidence also shows that Assistant Deputy Director Sturey instructed Grievant to provide documentation of Grievant's alleged medical condition, which Grievant failed to provide. The documentation also shows that Grievant was directed to two different employment resources for assistance with any medical or personal problem he might have been experiencing. Grievant failed to avail himself of those resources.

Grievant further argued that the penalty of termination was too harsh. "[A]n allegation that a particular disciplinary measure is disproportionate to the offense proven, or otherwise arbitrary and capricious, is an affirmative defense and the grievant bears the burden of demonstrating that the penalty was 'clearly excessive or reflects an abuse of agency discretion or an inherent disproportion between the offense and the personnel action.' *Martin v. W. Va. Fire Comm'n,* Docket No. 89-SFC-145 (Aug. 8, 1989)." *Conner v. Barbour County Bd. of Educ*., Docket No. 94-01-394 (Jan. 31, 1995), ***aff'd***, Kanawha Cnty. Cir. Ct. Docket No 95-AA-66 (May 1, 1996), *appeal refused*, W.Va. Sup. Ct. App. (Nov. 19, 1996). "Mitigation of the punishment imposed by an employer is extraordinary relief, and is granted only when there is a showing that a particular

disciplinary measure is so clearly disproportionate to the employee's offense that it indicates an abuse of discretion. Considerable deference is afforded the employer's assessment of the seriousness of the employee's conduct and the prospects for rehabilitation." *Overbee v. Dep't of Health and Human Resources/Welch Emergency Hosp.*, Docket No. 96-HHR-183 (Oct. 3, 1996); *Olsen v. Kanawha County Bd. of Educ.*, Docket No. 02-20-380 (May 30, 2003), *aff'd*, Kanawha Cnty. Cir. Ct. Docket No. 03-AA-94 (Jan. 30, 2004), *appeal refused*, W.Va. Sup. Ct. App. Docket No. 041105 (Sept. 30, 2004). "When considering whether to mitigate the punishment, factors to be considered include the employee's work history and personnel evaluations; whether the penalty is clearly disproportionate to the offense proven; the penalties employed by the employer against other employees guilty of similar offenses; and the clarity with which the employee was advised of prohibitions against the conduct involved." *Phillips v. Summers County Bd. of Educ.*, Docket No. 93-45-105 (Mar. 31, 1994); *Cooper v. Raleigh County Bd. of Educ.*, Docket No. 2014-0028-RalED (Apr. 30, 2014), *aff'd*, Kanawha Cnty. Cir. Ct. Docket No. 14-AA-54 (Jan. 16, 2015).

Grievant's drug addiction and alleged medical condition are not mitigating factors in this case. While it appears Grievant's drug addiction was the root cause of his transformation from a good employee to a problematic employee, which is a tragic circumstance, it cannot be a mitigating factor because Grievant refused to confront his own misconduct or avail himself of the resources offered by his employer. The penalty was not disproportionate given the seriousness of the conduct. Further, considering Grievant's erratic and escalating behavior, and his denial of any misconduct, Deputy

Cabinet Secretary Ward's assessment that rehabilitation was not possible was reasonable.

Grievant's threat, coupled with his escalating erratic behavior, constituted gross misconduct warranting termination of Grievant's employment to ensure safety in the workplace. Grievant failed to prove mitigation of the punishment is warranted.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. The burden of proof in disciplinary matters rests with the employer to prove by a preponderance of the evidence that the disciplinary action taken was justified. 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. W. Va. Dep't of Health & Human Res*., Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. *Id*.

2. 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. § 143-1-12.2.a. (2016). "'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*).

3. "The term gross misconduct as used in the context of an employer-employee relationship implies a willful disregard of the employer's interest or a wanton disregard of standards of behavior which the employer has a right to expect of its employees." *Graley v. Parkways Econ. Dev. & Tourism Auth*., Docket No. 91-PEDTA-225 (Dec. 23, 1991) *(citing Buskirk v. Civil Serv. Comm'n*, 175 W. Va. 279, 332 S.E.2d 579 (1985) and *Blake v. Civil Serv. Comm'n*, 172 W. Va. 711, 310 S.E.2d 472 (1983)); *Evans v. Tax & Revenue/Ins. Comm'n*, Docket No. 02-INS-108 (Sep. 13, 2002); *Crites v. Dep't of Health & Human Res.*, Docket No. 2011-0890-DHHR (Jan. 24, 2012).

4. "If an employee does not grieve specific disciplinary incidents, he cannot place the merits of such discipline in issue in a subsequent grievance proceeding. *Jones v. W. Va. Dept. of Health & Human Resources,* Docket No. 96-HHR-371 (Oct. 30, 1996); *See Stamper v. W. Va. Dept. of Health & Human Resources*, Docket No. 95-HHR-144 (Mar. 20, 1996); *Womack v. Dept. of Admin.*, Docket No. 93-ADMN-430 (Mar. 30, 1994). In such cases, the information contained in prior disciplinary documentation must be accepted as true. *See Perdue v. Dept. of Health & Human Resources*, Docket No. 93-HHR-050 (Feb. 4, 1994)." *Aglinsky v. Bd. of Trustees*, Docket No. 97-BOT-256 (Oct. 27, 1997), ***aff'd***, Monongalia Cnty. Cir. Ct. Docket No. 97-C-AP-96 (Dec. 7, 1999), *appeal refused*, W.Va. Sup Ct. App. Docket No. 001096 (July 6, 2000).

5. Respondent proved it was justified for terminating Grievant's employment for threatening two members of management following a time-period of escalating erratic behavior and ongoing serious attendance problems.

6. “[A]n allegation that a particular disciplinary measure is disproportionate to the offense proven, or otherwise arbitrary and capricious, is an affirmative defense and the grievant bears the burden of demonstrating that the penalty was ‘clearly excessive or reflects an abuse of agency discretion or an inherent disproportion between the offense and the personnel action.’ *Martin v. W. Va. Fire Comm'n,* Docket No. 89-SFC-145 (Aug. 8, 1989).” *Conner v. Barbour County Bd. of Educ*., Docket No. 94-01-394 (Jan. 31, 1995), ***aff’d***, Kanawha Cnty. Cir. Ct. Docket No 95-AA-66 (May 1, 1996), *appeal refused*, W.Va. Sup. Ct. App. (Nov. 19, 1996). “Mitigation of the punishment imposed by an employer is extraordinary relief, and is granted only when there is a showing that a particular disciplinary measure is so clearly disproportionate to the employee's offense that it indicates an abuse of discretion. Considerable deference is afforded the employer's assessment of the seriousness of the employee's conduct and the prospects for rehabilitation.” *Overbee v. Dep't of Health and Human Resources/Welch Emergency Hosp*., Docket No. 96-HHR-183 (Oct. 3, 1996); *Olsen v. Kanawha County Bd. of Educ.*, Docket No. 02-20-380 (May 30, 2003), ***aff’d***, Kanawha Cnty. Cir. Ct. Docket No. 03-AA-94 (Jan. 30, 2004), *appeal refused*, W.Va. Sup. Ct. App. Docket No. 041105 (Sept. 30, 2004). “When considering whether to mitigate the punishment, factors to be considered include the employee's work history and personnel evaluations; whether the penalty is clearly disproportionate to the offense proven; the penalties employed by the employer against other employees guilty of similar offenses; and the clarity with which the employee was advised of prohibitions against the conduct involved.” *Phillips v. Summers County Bd. of Educ.*, Docket No. 93-45-105 (Mar. 31, 1994); *Cooper v. Raleigh County Bd. of Educ.*, Docket No. 2014-0028-

RalED (Apr. 30, 2014), *aff'd*, Kanawha Cnty. Cir. Ct. Docket No. 14-AA-54 (Jan. 16, 2015).

7. Grievant failed to prove mitigation of the punishment was warranted.

Accordingly, the grievance is **DENIED.**

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* W. VA. CODE ST. R. § 156-1-6.20 (2018).

DATE: March 26, 2019

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Billie Thacker Catlett
Chief Administrative Law Judge