WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

RICHARD VANCE,
Grievant,

v. **Docket No. 2019-1632-CONS**

DEPARTMENT OF ENVIRONMENTAL PROTECTION,
Respondent.

D E C I S I O N

Richard Vance, Grievant filed grievances against his employer the Department of Environmental Protection ("DEP"), Respondent protesting his suspension and ultimate dismissal. An original grievance (2019-1390-DEP) was filed on April 4, 2019, which provides, "Suspension without good cause." The relief sought states, "To be made whole in every way including back pay with interest." Then a second grievance (2019-1583-DEP) was filed on May 6, 2019, which provides, "Dismissal without good cause, retaliation, discrimination." The relief sought states, "To be made whole in every way including back pay with interest and all benefits restored." As authorized by W. VA. CODE § 6C-2-4(a)(4), the grievances were filed directly to level three of the grievance process.[1]

In accordance with Grievant's May 21, 2019, request and Respondent providing there was no objection, the grievances were consolidated by a May 24, 2019 Order. A level three hearing was held before the undersigned Administrative Law Judge on June 21, 2019, at the Grievance Board's Charleston office. Grievant appeared in person, and with his representative Gordon Simmons, UE Local 170, West Virginia Public Workers Union. DEP appeared by its Human Resources Manager Chad Bailey, and with counsel

[1] W. VA. CODE § 6C-2-4(a)(4), provides that an employee may proceed directly to level three of the grievance process upon agreement of the parties, or when the grievant has been discharged, suspended without pay, demoted or reclassified resulting in a loss of compensation or benefits.

Anthony D. Eates II, Deputy Attorney General. At the conclusion of the level three hearing, the parties were invited to submit written proposed fact/law proposals. Both parties submitted Proposed Findings of Fact and Conclusions of Law, and this matter became mature for decision on July 22, 2019, on receipt of the last of these proposals.

Synopsis

Respondent argues that Grievant was properly disciplined for failure to meet the minimum qualifications of his classification. After an extended period Grievant lost his driver's license convicted of driving under the influence of alcohol. Grievant asserts Respondent can and should allow him to work in an alternative position, where the status of his license was not an issue. Grievant argues that he was treated differently than other employees, who have been allowed to work at desk duties for the periods of their license revocation and were not dismissed from employment by Respondent.

Grievant was employed as an Environmental Inspector. One of the specific qualifications of the position is "[m]ust be eligible for license to operate a motor vehicle in West Virginia." Respondent proved by a preponderance of the evidence that Grievant no longer met the minimum qualifications for his classification and position. It was not persuasively demonstrated that Respondent is obligated to provide Grievant with alternative employment position until such time as his ability to lawfully operate a motor vehicle is restored. Accordingly, this grievance is DENIED.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant was employed by Respondent as an Environmental Inspector in the Division of Mining and Reclamation Logan County office since approximately December 2010.

2. During a time period relevant to this matter Harold Ward was the Director of the Division of Mining and Reclamation. Mr. Ward has worked for DEP for approximately 30 years and is currently also the Deputy Cabinet Secretary for Operation.

3. On April 15, 2016, Grievant was arrested in Logan County for driving reckless causing bodily injury, DUI causing bodily injury, open container, driving left of center, and obstructing an officer. R Ex 7

4. The minimum qualifications for the position of Environmental Inspector include, among other things the eligibility for license to operate a motor vehicle in West Virginia. R Ex 6

5. Grievant informed Respondent of his April 15, 2016 arrest.

6. Grievant appealed the revocation of his license to the West Virginia Department of Transportation's Office of Administrative Hearings ("OAH"), which stayed the revocation and allowed Grievant to maintain his driving privileges.

7. On April 27, 2016, Director Ward reassigned Grievant to desk duties in the Logan Office involving permit review. *See* R Ex 1. The April 27, 2016 correspondence signed by Director Harold Ward in part notified Grievant that he would be temporarily reassigned to permit review and prohibited from using a State vehicle. It was further noted in according to DEP policy, major violations of the law, like a DUI, may be considered

grounds for "dismissal from employment with DEP." *Id*. The document was direct and did not seem ambiguous in any way.[2] "Again, please be advised that DEP's action to reassign you to permit review function is only temporary in nature." R Ex 1

8. On May 4, 2016, Grievant gave written acknowledgement of his April 27, 2016 reassignment. Grievant accepted his reassignment to temporary desk duty specifically Grievant provided:

> In regard to your letter received May 3, 2016 regarding the temporary reassignment of my job duties with the Division of Mining and Reclamation pending the legal allegations from events occurring April 15, 2016, I wish to inform you that I will accept the temporary reassignment of permit review duties until further notice. Should the agency require any additional information from me regarding this matter, please notify me of your request and I will ensure a response is delivered to you with priority.

R Ex 2

9. As a result of Grievant's DUI arrest and his refusal to submit to the secondary chemical test, DMV notified Grievant of its decision to revoke his license effective June 3, 2016. R Ex 7 Grievant indicated his desire to appeal. Grievant's license revocation was stayed.

10. On September 29, 2016, Grievant, with counsel, appeared before the OAH for an evidentiary hearing to challenge the revocation of his license. R Ex 7 Grievant had a valid driver's license, Grievant still met the minimum requirements for his position during the time his DMV appeal was pending.

[2] "At this time, DEP is considering all disciplinary options up to and including termination regarding your future employment with this agency as a Mining and Reclamation Environmental Inspector." R Ex 1

11. Beginning on or about April 30, 2018, approximately two years after the reassignment to desk duties, Grievant was returned to field duties. R Ex 3

12. The OAH issued a Final Order on March 20, 2019, upholding the revocation of Grievant's license based on (1) driving under the influence, and (2) refusing a secondary chemical test. The Order was to take effect 10 business days later and provided Grievant 30 days to appeal the decision to circuit court. R Ex 7

13. Grievant informed Respondent that his driver's license "would be revoked effective Wednesday April 3, 2019, for a period of 14 months" R Ex 4

14. On April 3, 2019, Respondent placed Grievant on a 30-day unpaid suspension. Respondent indicated that, should Grievant appeal to circuit court and retain his driving privileges, the suspension would end early. Respondent provided that Grievant's employment status after the 30 day period would depend on the status of his driver's license. R Ex 4

15. Grievant filed a grievance challenging Respondent's decision to suspend him without pay for 30 days.

16. Grievant elected not to appeal the OAH's Order revoking his driver's license to circuit court, resulting in the revocation of his driver's license.

17. On May 6, 2019, a predetermination meeting was conducted with Grievant. In attendance along with Grievant was Respondent's Human Resources Director Harriet Fitzgerald, Human Resources Supervisor Chad Bailey and Director Ward.

18. By a correspondence dated May 6, 2019, signed by Director Ward, Respondent terminated Grievant's employment on the basis that Grievant no longer

possessed a valid driver's license and no longer met the requirements of the position of Environmental Inspector. R Ex 5

19. Grievant was not offered the option of an alternative employment position which did not require a driver's license, post the April 3, 2019, revocation of his license.

20. Grievant filed a grievance challenging his termination, which was consolidated with his previous grievance on the suspension.

Discussion

In disciplinary matters, the employer bears the burden to prove by a preponderance of the evidence that the disciplinary action taken was justified. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018).

> . . . *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). In other words, [t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not. *Leichliter v. W. Va. Dep't of Health & Human*

Res., Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. *Id.*

State employees who are in the classified service can only be dismissed for "good cause," meaning "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 & 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). Additionally, Division of Personnel Rule 3.40 defines "Fitness" as "suitability to perform all essential duties of a position by virtue of meeting the established minimum qualifications and being otherwise qualified."

The issue presented is whether Respondent violated any statutes, policies, rules, or regulations in terminating Grievant's employment. The evidence presented by Respondent was clear; Grievant was employed as an Environmental Inspector and one of the specific minimum qualifications of the position is "[m]ust be eligible for license to operate a motor vehicle in West Virginia." An encapsulating review of Respondent's highlighted information reads in part:

> Grievant was arrested and charged with, among other offenses, driving under the influence ("DUI") causing injury. As a result of the arrest, the Division of Motor Vehicles ("DMV") revoked Grievant's driver's license. Grievant appealed DMV's revocation, which allowed him to maintain his driving privileges pending administrative proceedings. DEP did not terminate him at that time. Instead, Respondent assigned Grievant to "desk duty," and then allowed him to return to the field to conduct inspections in April of 2018, albeit with restrictions. The DMV revocation appeal proceeding took a considerable amount of time to complete. Grievant maintained his eligibility to legally drive during the appeal proceedings. On March 20, 2019, the Department of Transportation's

> Office of Administrative Hearings issued its decision upholding the revocation of Grievant's driver's license. The decision provided Grievant a 30-day period to appeal to the circuit court. At that time, Respondent suspended Grievant for 30 days, but indicated that if Grievant appealed during that time and his revocation was stayed, it would end the suspension and return Grievant to work. Grievant elected not to appeal the revocation decision. Respondent terminated Grievant's employment.

See Respondent's Proposed FOF/COL.

Grievant's driver's license was revoked effective Wednesday, April 3, 2019, for a period of 14 months (R Ex 4), Grievant no longer met the minimum qualifications for his classification. Respondent credibly maintains it is lawful to terminate Grievant's employment. An employee assigned to a classification which requires the possession of a valid driver's license as a minimum qualification has been found to be unable to perform the essential duties of the position, and, therefore, did not meet the definition of fitness as stated by the Division of Personnel, and the termination was upheld. *Elmore v. Dep't of Transp.*, Docket No. 2010- 1042-DOT (May 26, 2010); *Loudermilk v. Div. of Highways,* Docket No. 2010-0558-DOT (Oct. 8. 2010). Another state agency has consistently been dismissing employees who lose their driver's licenses if their positions require the employee to hold such a license. The Grievance Board has upheld such dismissal actions. *See Rockwell v. Dep't of Transp./Div. of Highways*, Docket No. 2010-1070-DOT (June 25, 2010); *Smith v. Dep't of Transp./Div. of Highways*, Docket No. 2010-0972-DOT (June 17, 2010); *Reed v. Dep't of Transp./Div. of Highways*, Docket No. 07-DOH-023 (May 16, 2007); *Loudermilk v. Div. of Highways,* Docket No. 2010-0558- DOT (Oct. 8. 2010). It is not determined that Grievant was improperly suspended after the decision in 2019 to revoke Grievant's driver's license but informed that if his revocation

was stayed, it would end the suspension and return Grievant to work.

Grievant does not dispute the revocation of his driver's license, his failure to appeal that revocation, or that his position with Respondent required that he be eligible to operate a motor vehicle. Rather, Grievant asserts that Respondent has allowed other employees who have been arrested for driving under the influence to keep their jobs. Grievant avers that Respondent has a significant number of other duties that Grievant could have performed without a driver's license and Respondent's failure to allow Grievant to perform those tasks rather than dismiss him from employment is discrimination. "Any party asserting the application of an affirmative defense bears the burden of proving that defense by a preponderance of the evidence." 156 C.S.R. 1 § 3. Grievant asserts that he was treated differently than similarly situated employees.

This Grievance Board is authorized by statute to provide relief to employees for discrimination, and favoritism as those terms are defined in W. VA. CODE § 6C-2-2. "Discrimination" is defined by statute as "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). "Favoritism" is defined as "unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of a similarly situated employee" unless agreed to in writing or related to actual job responsibilities. W. VA. CODE § 6C-2-2(h). In order to establish either a discrimination or favoritism claim asserted under the grievance statutes, an employee must prove:

> (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., 655 S.E.2d 52 (2007); *See Bd. of Educ. v. White*, 216 W.Va. 242, 605 S.E.2d 814 (2004); *Chadock v. Div. of Corr.,* Docket No. 04-CORR-278 (Feb. 14, 2005); *Harris v. Dep't of Transp.*, Docket No. 2008-1594-DOT (Dec. 15, 2008).

Grievant argues that previous employees with suspended licenses, were permitted to perform alternative work duties until they successfully reinstated their driver's license. However, Grievant provided little factual information about these situations. Grievant argued that Respondent has previously continued to employ others who had lost their drivers' license. Grievant offered the names Michael Gillum and Kenneth Marcum. However, other than stating their names, Grievant could provide little detail about the nature of these employees' arrests or their consequent license revocations to establish that he is similarly situated to them.[3] Grievant did not testify definitively whether or why either of these employees actually had their licenses revoked; whether either of them had evidentiary hearings before the OAH; or whether either of them possibly prevailed at such hearing. Grievant did not establish a *prima facie* case of discrimination or favoritism.

[3] Further, Deputy Cabinet Secretary Ward (a 30-year DEP employee) denied having specific knowledge about Michael Gillum or Kenneth Marcum being allowed to keep their positions after allegedly having being arrested for DUI or losing their respective driver's licenses. Additionally, Respondent's Human Resource Manager, Chad Bailey, testified that he was unaware of Respondent allowing employees whose job required a valid license to keep their job after his or her license was revoked.

Put in a best case scenario, Grievant basically established that Respondent has some discretion with regard to employee assignments and that it did not choose to exercise such an option with regard to Grievant. Grievant addresses the alternative duties proposition as if Respondent "must" provide him with alternative duties. Grievant presents this alleged option as a mandatory duty that Respondent is required to provide. This is not established to be accurate. Discretion is optional not mandatory. The record before the undersigned does not support a finding that Respondent has abused its discretion in not providing Grievant with the proposition he seeks.

Respondent demonstrated by a preponderance of the evidence that Grievant no longer met the minimum requirements for his inspector position, and, thus, identifying cause for his termination. Grievant could point to no law, rule, regulation, or policy that required Respondent to continue to employ an employee who was not qualified for his or her position. Nevertheless, Grievant presents for consideration that Respondent didn't offer him the opportunity to perform alternative duties (as it had for two years previously) was due to a change in Respondent's attitude toward him. Grievant notes that he had filed a grievance in February 2019 regarding not having received inspector pay progression, and he believes because of that grievance Respondent acted in a retaliatory manner against him.

For purposes of the grievance procedure, WEST VIRGINIA CODE § 6C-2-2(o) defines reprisal as "the retaliation of an employer toward a grievant, witness, representative or any other participant in the grievance procedure either for an alleged injury itself or any

lawful attempt to redress it." To demonstrate a *prima facie* case of reprisal, Grievant must establish by a preponderance of the evidence the following elements:

> (1) that he engaged in protected activity (i.e., filing a grievance);
>
> (2) that he was subsequently treated in an adverse manner by the employer or an agent;
>
> (3) that the employer's official or agent had actual or constructive knowledge that the employee engaged in the protected activity; and
>
> (4) that there was a causal connection (consisting of an inference of a retaliatory motive) between the protected activity and the adverse treatment.

Carper v. Clay County Health Dep't, Docket No. 2012-0235-ClaCH (July 15, 2013); *Cook v. Div. of Natural* Res., Docket No. 2009-0875-DOC (Jan. 22, 2010); *Vance v. Jefferson County Bd. of Educ.,* Docket No. 02-19-272 (Oct. 31, 2002); *Conner v. Barbour County Bd. of Educ*., Docket Nos. 93-01-543/544 (Jan. 31, 1995). *See also Frank's Shoe Store v. W. Va. Human Rights Comm'n*, 179 W. Va. 53, 365 S.E.2d 251 (1986). There is no question that filing a grievance and making an EEO complaint are protected activities. W.VA. CODE § 6C-2-3 (h) prohibits retaliation against anyone participating in the grievance process and the Division of Personnel ("DOP") *Prohibited Workplace Harassment Policy* Section V (4) states that it is every employee's responsibility to "Not retaliate against those who participate in the complaint and/or investigation process." *Id.* "[T]he critical question is whether the grievant has established by a preponderance of the evidence that his protected activity was a factor in the personnel decision. The general rule is that an employee must prove by a preponderance of the evidence that his protected activity was a 'significant,' 'substantial' or 'motivating' factor in the adverse personnel action." *Conner v. Barbour County Bd. of Educ*., Docket No. 93-01-154 (Apr. 8, 1994).

Grievant engaged in the protected activity of filing a grievance. Subsequently, within a reasonable short period of time (months) Grievant experienced an adverse employment action, he was dismissed from employment. Respondent does not dispute its agents have constructive notice of Grievant's progressive pay grievance. The first three elements for reprisal have been met leaving only the issue of a causal connection between the protected activity and the adverse action(s). Grievant, however has failed to establish that there was any causal connection between the filing of the grievance and his dismissal. The sum total of Grievant's evidence in support of his retaliation claim was that he filed a grievance in February of 2019 regarding pay progression. It is doubtful Grievant is the only DEP employee dissatisfied with Respondent's pay scale. Grievant presented no evidence whatsoever that his grievance played into Respondent's decision to suspend or terminate him. The evidence in this case clearly demonstrated that Respondent suspended Grievant after the OAH issued its decision upholding Grievant's license revocation, and terminated Grievant after that revocation became final. Grievant has not established a case of retaliation.

Respondent demonstrated by a preponderance of the evidence that Grievant no longer met the minimum requirements for his inspector position, and, thus, proved good cause for his termination. Grievant could point to no law, rule, regulation, or policy that required Respondent to continue to employ an employee who was not qualified for his position. Grievant did not demonstrate that Respondent abused its discretion when it decided Grievant should be dismissed from employment. An employee assigned to a classification which requires the possession of a valid drivers' license as a minimum

qualification for the classification/position can lawfully be found to be unfit for the position if he or she is not eligible for licensure.

The following conclusions of law are appropriate in this matter:

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. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2018). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not. *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. *Id.*

2. Permanent state employees who are in the classified service can only be dismissed for "good cause," meaning "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); *See also* W. VA. CODE ST. R. § 143-1-12.2.a. (2016).

3. Division of Personnel Rule 3.40 defines "Fitness" as "suitability to perform all essential duties of a position by virtue of meeting the established minimum qualification and being otherwise qualified." *Elmore v. Dep't of Transp.*, Docket No. 2010- 1042-DOT (May 26, 2010); R*eed v. DOH*, Docket No. 07-DOH-023 (May 16, 2007). An employee assigned to a classification which requires the possession of a valid drivers' license as a minimum qualification has been found to be "unable to perform the essential duties of the position, and, therefore, did not meet the definition of fitness as stated by the Division of Personnel," and the termination was upheld. *Elmore v. Dep't of Transp.*, Docket No. 2010-1042-DOT (May 26, 2010)

4. This Grievance Board has held that termination is proper when an employee's driver's license is revoked and the employee's position requires possession of a license as a specific minimum qualification. *Jones v. DOH*, Docket No. 2009-0830-DOT (March 11, 2008).

5. Grievant's driver's license was revoked. Grievant was unfit to perform the essential duties of an Environmental Inspector because one of the specific qualifications of the position is "[m]ust be eligible for license to operate a motor vehicle in West Virginia."

6. "Any party asserting the application of an affirmative defense bears the burden of proving that defense by a preponderance of the evidence." 156 C.S.R. 1 § 3.

7. In order to establish a claim of discrimination, an employee must establish a *prima facie case* of discrimination by a preponderance of the evidence. In order to meet this burden, the Grievant must show:

> (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.

The Board of Education of the County of Tyler v. White, 216 W. Va. 242, 605 S.E.2d 814 (2004); *Frymier v. Glenville State College*, Docket No. 03-HE-217R (Nov. 16, 2004).

8. Grievant failed to demonstrate that he was being treated differently from one or more similarly situated employees therefore, he failed to establish discrimination.

9. Grievant did not establish a *prima facie* case of discrimination or favoritism.

10. To demonstrate a *prima facie* case of reprisal, Grievant must establish by a preponderance of the evidence the following elements:

(1) that he engaged in protected activity (i.e., filing a grievance);

(2) that he was subsequently treated in an adverse manner by the employer or an agent;

(3) that the employer's official or agent had actual or constructive knowledge that the employee engaged in the protected activity; and

(4) that there was a causal connection (consisting of an inference of a retaliatory motive) between the protected activity and the adverse treatment.

Carper v. Clay County Health Dep't, Docket No. 2012-0235-ClaCH (July 15, 2013); *Cook v. Div. of Natural* Res., Docket No. 2009-0875-DOC (Jan. 22, 2010); *Vance v. Jefferson County Bd. of Educ.,* Docket No. 02-19-272 (Oct. 31, 2002); *Conner v. Barbour County Bd. of Educ*., Docket Nos. 93-01-543/544 (Jan. 31, 1995). *See also Frank's Shoe Store v. W. Va. Human Rights Comm'n*, 179 W. Va. 53, 365 S.E.2d 251 (1986). "The filing of grievances and EEO complaints is a protected activity." *Poore v. W. Va. Dep't of Health and Human Resources/Bureau for Children and Families,* Docket No. 2010-0448-DHHR (Feb. 11, 2011). "[T]he critical question is whether the grievant has established by a

preponderance of the evidence that his protected activity was a factor in the personnel decision. The general rule is that an employee must prove by a preponderance of the evidence that his protected activity was a 'significant,' 'substantial' or 'motivating' factor in the adverse personnel action." *Conner v. Barbour County Bd. of Educ*., Docket No. 93-01-154 (Apr. 8, 1994).

11. Grievant has not established a case of unlawful retaliation.

12. Legitimate, non-retaliatory reasons exist for Respondent to terminate Grievant's employment. Respondent demonstrated good cause for dismissal of Grievant from his employment.

13. Respondent met its burden in this disciplinary matter demonstrating that the termination of Grievant's employment was lawful.

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 (2018).

Date: August 21, 2019

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Landon R. Brown
Administrative Law Judge