

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

GEORGETTA A. BRADSTREET,

Grievant,

v.

Docket No. 2019-0391-WVU

WEST VIRGINIA UNIVERSITY,

Respondent.

DECISION

Grievant, Georgetta Bradstreet, was employed by Respondent, West Virginia University (WVU). On September 21, 2018, Grievant filed a level one grievance against Respondent stating, "As defined in WV Code 6-C-2-3: I was subjected to repeated and continual intimidation and harassment; Superiors purposely placed barriers and obstacles to deter my work efforts and sabotaged my work product; As retaliation and revenge for questioning patient care and speaking to legal authorities, I was terminated on 8-31-18." For relief, Grievant sought, "Financial compensation for loss of wages and benefits and/or re-instatement to my position."

A level one hearing was conducted on October 29, 2018. On November 20, 2018, Grievant received a dismissal order from the level one examiner dated November 12, 2018. Grievant appealed to level two on December 4, 2018. On January 7, 2019, Respondent filed a Motion to Dismiss Grievance as untimely. A mediation session was held on June 18, 2019.

Grievant filed an appeal to level three of the grievance process on June 8, 2019, alleging, "Complete failure for WVU to provide any supervision and/or performance management for entire of employment (9.5 years);" "Age Discrimination – Terminated

due to my age;” “Harassment and Retaliation – Retaliation for reporting unethical practices and harassment of staff.” For relief, Grievant sought, “Reinstatement of employment with back pay for year 2018-2019” and “Payment for employment from September 1, 2018 to July 8, 2020.”

On September 20, 2019, Respondent filed a Renewed Motion to Dismiss Grievance, alleging untimely filing. On October 9, 2019, Grievant filed Response to Respondent’s Renewed Motion to Dismiss. On October 10, 2019, a hearing was held on the motion and the undersigned decided to go forward with the level three hearing.

A level three hearing was held on December 12, 2019, before the undersigned at the Grievance Board’s Westover office. Grievant appeared in person and by counsel Scott Kaminski, Kaminski Law, PLLC. Respondent appeared by Dr. Haut and counsel Samuel Spatafore, Assistant Attorney General. The undersigned kept the record open to permit Respondent to submit a legible copy of Respondent’s Exhibit 1.¹ This matter became mature for decision on January 21, 2020. Each party submitted written Proposed Findings of Fact and Conclusions of Law (PFFCL).

Synopsis

Grievant was employed by WVU in a non-tenure track position for nine years through annual contracts. Each annual contract ended on June 30th. On July 3, 2018, WVU informed Grievant it was not renewing her contract but that it was extending her employment until August 31, 2018. Grievant waited until after her final day to file this grievance. WVU alleges untimely filing, asserting that Grievant should have determined the filing deadline using the day she was informed of her non-renewal rather than her final

¹Respondent submitted a legible copy of Respondent’s Exhibit 1 with its PFFCL.

day of employment. Grievant counters that she thought it was possible WVU would reverse her non-renewal before her final day. Grievant further contends she experienced harassment, retaliation, and discrimination between the day she was informed of her non-renewal and her final day. Grievant asserts that this entitles her to reinstatement and renewal for public policy reasons. She also claims that WVU failed to adequately supervise her over the course of her employment, did not inform her of her non-renewal before her contract expired, and caused her to lose COBRA coverage by processing her as retired. WVU proved untimely filing on all claims except as pertaining to processing Grievant as retired. Grievant failed to prove a proper basis to excuse her untimely filing and failed to prove loss of COBRA coverage. Accordingly, this grievance is DENIED, in part, and DISMISSED, in part.

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, West Virginia University (WVU), in a non-tenure track appointment as a State Forensic Coordinator through an annual contract known as a Notification of Appointment (NOA).
2. Grievant was employed pursuant to an agreement between WVU and the West Virginia Department of Health and Human Resources (DHHR) to provide services at William R. Sharpe, Jr. Hospital (Sharpe).
3. Sharpe operates under the direction of DHHR.

4. Grievant's NOA explained that her appointment was "for only the period and purpose specified, with no interest or right obtained by virtue of the appointment" and that "Your employment is otherwise at will ...". (Respondent's Exhibit 1)

5. Grievant's NOA expired on June 30th of each year and was renewed eight times. (Respondent's Exhibit 1)

6. Grievant's NOA states that it is subject to the provisions of WVU Faculty Handbook and West Virginia University Board of Governors Policy 2.

7. West Virginia University Board of Governors (WVUBOG) Policy 2 provides:

Clinical-track, librarian-track, and term faculty hold appointments that are not subject to consideration for tenure, regardless of the number, nature, or time accumulated in such appointments. Clinical-track, librarian-track, and term faculty appointments are only for the periods and for the purposes specified, with no other interest or right obtained by the person appointed by virtue of such appointment.

(Respondent's Exhibit 2 - Section 3.6)

8. WVUBOG Policy 2 provides that, "[a]ppointment or reappointment to a non-tenure-track full-time faculty position shall create no right or expectation of continued appointment beyond the one-year period of appointment or reappointment." (Respondent's Exhibit 2 - Section 3.12.6)

9. When the June 30, 2018, end date passed without a new contract, Grievant raised her concern with Dr. John Justice, the Clinical Director at Sharpe.

10. For the past four years, Ms. Debbie Bellisario has been the Administrator of Behavioral Medicine at WVU and, even though stationed at WVU, oversees WVU employees over an hour away at Sharpe. Thus, she was Grievant's supervisor. (Ms. Bellisario's testimony)

11. At some point, Grievant was informed that Ms. Bellisario was her supervisor. Grievant had much autonomy in her position and had not been informed who her supervisor was for some time. (Grievant's testimony)

12. On July 3, 2018, Dr. John Justice informed Grievant in person that she was being terminated without cause. (Grievant's testimony)

13. On July 3, 2018, Dr. Justice also emailed Grievant, stating, "your job position will be terminated at the end of the current contract with DHHR and West Virginia University which expires 08-31-2018. As a result, your last day of employment will be in 08-31-2018. The remaining time on the contract is to be used to formulate a successful plan of transition." (Grievant's Exhibit 1)

14. Grievant has, in the past, been provided annual contracts a month or even six months after the previous contract expired. Some years, she has never received an annual contract. Thus, over her nine years with WVU, there were many periods that Grievant worked without a contract. (Respondent's Exhibit 1 & Grievant's testimony)

15. WVU acknowledges that it has, on occasion, extended annual contracts for employees for an additional month or two past their expiration date. (Ms. Bellisario's testimony)

16. A determination was made that Grievant's position was no longer needed and it was therefore eliminated at the conclusion of Grievant's employment on August 31, 2018. The position has not been resurrected.

17. Sometime at the end of July or the beginning of August 2018, Grievant had a conversation with a Kanawha County Circuit Court Judge about Grievant's knowledge of possible illegal conduct. The judge directed Grievant to the Kanawha County

Prosecutor. The next day, Dr. Justice demanded to know what Grievant said to the prosecutor and judge. (Grievant's testimony)

18. On August 3, 2018, Grievant emailed Dr. Justice over concerns that staff were harassing her and the resulting effect on her health.

19. On August 8, 2018, Grievant was permanently removed from her office at Sharpe, but was still paid through August 31, 2018. (Grievant's testimony)

20. At the end of August 2018, Grievant was processed as retired, even though she did not make such a request. Multiple emails were exchanged between WVU and Grievant showing confusion over whether to process Grievant as retired at the conclusion of her employment with WVU. Grievant told WVU that she feared losing COBRA coverage if she was processed as retired. WVU reassured Grievant she would still be eligible for COBRA coverage if she was processed as retired but was concerned she would lose other retirement benefits if she was not processed as retired. (Grievant's testimony & Grievant's Exhibit 2)

21. Grievant is 64 years old. Grievant trained someone significantly younger than her in the performance of her job duties. Even though Grievant's position was eliminated, at least some of her job duties were assumed by the younger employee while Grievant was still at the office. (Grievant's testimony)

Discussion

Respondent asserts that the grievance was not filed within the time period allowed by W. Va. Code § 6C-2-4 and that it must be dismissed without addressing the claims therein. "[When an] employer seeks to have a grievance dismissed on the basis that it was not timely filed, the employer has the burden of demonstrating such untimely filing

by a preponderance of the evidence. Once the employer has demonstrated a grievance has not been timely filed, the employee has the burden of demonstrating a proper basis to excuse his failure to file in a timely manner. *Sayre v. Mason County Health Dep't*, Docket No. 95-MCHD-435 (Dec. 29, 1995), *aff'd*, Circuit Court of Mason County, No. 96-C-02 (June 17, 1996). See *Ball v. Kanawha County Bd. of Educ.*, Docket No. 94-20-384 (Mar. 13, 1995); *Woods v. Fairmont State College*, Docket No. 93-BOD-157 (Jan. 31, 1994); *Jack v. W. Va. Div. of Human Serv.*, Docket No. 90-DHS-524 (May 14, 1991).” *Higginbotham v. Dep't of Pub. Safety*, Docket No. 97-DPS-018 (Mar. 31, 1997).

While the burden is on Respondent to prove the grievance was filed untimely, the code requires that “[a]ny assertion that the filing of the grievance at level one was untimely shall be made at or before level two.” W. VA. CODE § 6C-2-3(c)(1). WVU properly asserted prior to level two and again at level three that the grievance was filed untimely.

WVU contends that the grievance was untimely because Grievant did not file within fifteen working days of being notified of her non-renewal. An employee is required to “file a grievance within the time limits specified in this article.” W. VA. CODE § 6C-2-3(a)(1).

The Code further sets forth the time limits for filing a grievance as follows:

Within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing

W. VA. CODE § 6C-2-4(a)(1).

“‘Days’ means working days exclusive of Saturday, Sunday, official holidays and any day in which the employee's workplace is legally closed under the authority of the

chief administrator due to weather or other cause provided for by statute, rule, policy or practice.” W. VA. CODE § 6C-2-2(c).

Grievant asserts that she did not unequivocally know whether WVU would follow through on its decision not to renew her contract until her last day of employment. Grievant reasoned that WVU could have reversed its non-renewal decision at any point through her final day of employment two months later. The time period for filing a grievance ordinarily begins to run when the employee is “unequivocally notified of the decision being challenged.” *Harvey v. W. Va. Bureau of Empl. Programs*, Docket No. 96-BEP-484 (Mar. 6, 1998); *Whalen v. Mason County Bd. of Educ.*, Docket No. 97-26-234 (Feb. 27, 1998). Grievant claims she was justified in waiting until her last day of August 31, 2018, to be certain of her non-renewal, and then timely filed on September 21, 2018, which was within fifteen working days of her last day.

Grievant further contends she did not unequivocally know she was non-renewed until her last day because WVU had not timely provided her with annual contracts over her nine years with WVU. She therefore could not rely on WVU’s failure to timely provide her an annual contract as a basis to file a grievance. Rather, she argues, the August 31, 2018, date of dismissal was an unequivocal point of demarcation after which she knew there was no possibility of renewal. WVU counters that Grievant was unequivocally notified that she was not renewed when it told her as much on July 3, 2018. WVU contends that the fact it extended Grievant’s employment for another two months did not justify her delay in filing because her contract had already expired and WVU had already unequivocally told her she was not being renewed.

Grievant alleges that she is entitled to reinstatement and renewal of her contract for public policy reasons, as well as compensation for lost wages and benefits, because her non-renewal was motivated by retaliation and discrimination. She also claims that WVU harassed her, failed to adequately supervise her, failed to inform her of her non-renewal prior to the expiration of her contract, and processed her as retired.

There are many considerations to sort through in determining the timeliness of this grievance. While WVU's claim of untimely filing is premised on the assumption that all incidents raised in this grievance proceeding occurred prior to July 3, 2018, that is clearly not the case. Some of Grievant's allegations of harassment, discrimination, retaliation, and post-employment processing occurred after Grievant was notified of her non-renewal on July 3, 2018. While Grievant has the right to grieve incidents which occurred after she was notified of her non-renewal, Grievant did not timely grieve even these later incidents, with the exception of her post-employment processing.

Grievant alleges that she was escorted from her workplace on August 8, 2018, never to return. Even using August 8, 2018, as the most recent occurrence of harassment, retaliation, or discrimination (which Grievant alleges occurred while she was still working from her office at Sharpe), Grievant did not file her grievance within fifteen working days. Fifteen working days from August 8, 2018, is the end of August, which is well short of when Grievant filed on September 21, 2018.

Regarding her discrimination claim, Grievant alleges that she was required to train a much younger coworker who then replaced Grievant. The evidence shows that Grievant's position was eliminated. Nevertheless, it is likely that WVU or Sharpe reassigned some or all of Grievant's duties to other employees. However, Grievant did

not present any evidence as to when it was that her coworker assumed her duties and precisely which duties her coworker assumed. Nevertheless, Grievant testified that her coworker assumed her duties when she was still in the office. Therefore, any assignment of Grievant's duties occurred, at the latest, by Grievant's last day in the office, August 8, 2018.

The only evidence of an incident after Grievant's last day in the office involves Grievant being processed as retired, which she claims resulted in her being ineligible for COBRA. Otherwise, with the exception of a claim for this incident, WVU proved Grievant filed untimely. Grievant now has the burden of proving a proper basis to excuse her untimely filing. Grievant argues that the West Virginia Supreme Court has stressed that grievance procedures are to be given a flexible interpretation so the grievance process does not become a procedural quagmire where the merits are forgotten. Grievant claims that it was only after her final day of employment that she unequivocally knew she would not be renewed. Grievant also contends that she should be given deference because she did not have an attorney.

Grievant's contract had already expired when WVU unequivocally informed Grievant of its decision not to renew her. Grievant then waited two and a half months before filing this action. Grievant's reliance on the remote possibility that Respondent might reconsider its non-renewal decision was unreasonable. It is true that the grievance process is not "to be a procedural quagmire where the merits of the cases are forgotten." *Spahr v. Preston County Bd. of Educ.*, 182 W. Va. 726, 730, 391 S.E.2d 739, 743 (1990). The Supreme Court has repeatedly instructed the lower courts to uphold the legislative intent of simple, expeditious and fair grievance procedures, and to give such procedures

flexible interpretation in order to carry out the legislative intent. See *Duruttya v. Board of Educ.*, 181 W.Va. 203, 382 S.E.2d 40 (1989) (finding a grievant had substantially complied with the grievance process although the grievance had been filed with the incorrect entity), *Spahr v. Preston County Bd. of Educ.*, 182 W. Va. 726, 391 S.E.2d 739 (1990) (applying a flexible interpretation to find a grievance timely filed several months after the challenged grievable event), *Hale v. Mingo County Bd. of Educ.*, 199 W. Va. 387, 484 S.E.2d 640 (1997) (holding an intervenor may make affirmative claims for relief as well as asserting defensive claims). "[A] tribunal must apply . . . the principles of substantial compliance and flexible interpretation to achieve the legislative intent of a simple and fair grievance process, as free as possible from unreasonable procedural obstacles and traps." *Hale*, n.10, 199 W. Va. at 393, 484 S.E.2d at 646.

Nevertheless, Grievant does not make a case for any principal which would excuse her untimeliness. "The time periods in the grievance procedure are not jurisdictional in nature and are subject to equitable principles of tolling, waiver, and estoppel. *Jackson, supra*; *Gaskins v. W. Va. Dep't of Health*, Docket No. 90-H-032 (Apr. 12, 1990). This Grievance Board has frequently applied such principles, specifically estoppel, to toll the time for filing a grievance. See, e.g., *Lilly v. Raleigh County Bd. of Educ.*, Docket No. 94-41-195 (Nov. 28, 1994). In order to prevail in a claim of estoppel, a party must show that there was a representation made or information given by the opposing party which was relied upon, causing an alteration of conduct or change of position to the first party's detriment. *Ara v. Erie Insurance Co.*, 182 W. Va. 266, 387 S.E.2d 320 (1989). *Rhodes v. Randolph County Bd. of Educ.*, Docket No. 00-42-233D (Jan. 17, 2001)." *Kanehl v. Dep't of Env't'l Protection*, Docket No. 2011-0133-DEP (Dec. 7, 2010). "Estoppel is an

equitable remedy available only when the untimely filing ‘was the result either of a deliberate design by the employer or actions that an employer should have unmistakably understood would cause the employee to delay filing this charge.’ *Naylor v. W.Va. Human Rights Comm’n*, 180 W.Va. 634, 378 S.E.2d 843 (1989). (citing, *Price v. Litton Business Systems, Inc.*, 694 F.2d 963, 965 (4th Cir. 1982).” *Wolford v. Hampshire County Board of Education*, Civil Action No. 19-AA-35 (Kanawha Cnty. Cir. Ct. Oct. 11, 2019).

“‘[T]wo general types of equitable modification are generally recognized: “(1) equitable tolling, which often focuses on the plaintiff’s excusable ignorance of the limitations period and on lack of prejudice to the defendant and (2) equitable estoppel, which usually focuses on the actions of the defendant.”’ *Naylor*, 378 S.E.2d at 846 (citing *Naton v. Bank of California*, 649 F.2d 691, 696 (9th Cir. 1981) (citations omitted).” *Wolford*. “Among other factors, the granting of equitable estoppel should be premised upon (1) ‘a showing of the plaintiff’s actual and reasonable reliance on the defendant’s conduct or representations’ and (2) ‘evidence of improper purpose on the part of the defendant or of the defendant’s actual or constructive knowledge of the deceptive nature of its conduct.’ *Id.* at 846-847 (citing, *Naton*, 649 F.2d at 696[] (Footnote omitted).” *Id.*

There was insufficient evidence to establish estoppel. Grievant showed that Respondent had over the years consistently waited weeks, and sometimes many months, before even telling her that her contract was being renewed. While this could otherwise be strong grounds for estoppel, WVU negated estoppel when it informed Grievant, just a few days after her contract expired, that she was not being renewed. The other scenario to establish estoppel would have been if WVU had deliberately extended Grievant’s employment for two months, hoping that this would delay her filing. There was, however,

no allegation or evidence of nefarious motive for the two-month extension of Grievant's employment.

While Grievant testified that she figured it was possible Respondent would reverse her non-renewal prior to the expiration of her two-month extension of employment, she did not show how probable she thought this scenario was. Nor did she show that Respondent gave her any reason to think it would reconsider. Grievant did not show that her reliance on the possibility of reversal was reasonable. Neither did Grievant make any allegation or present any evidence that she was ignorant of the filing deadline, let alone that any ignorance was excusable. The only allusion Grievant made to ignorance was her lack of legal representation at filing. Most grievants are not represented when they file. Lack of representation is not in and of itself evidence of ignorance of the filing deadline.

WVU proved that, except for Grievant's allegation that she was improperly processed as retired, Grievant did not timely file her grievance. Grievant did not prove a proper basis to excuse her untimely filing. "If proven, an untimely filing will defeat a grievance, in which case the merits of the case need not be addressed. *Lynch v. W. Va. Dep't of Transp.*, Docket No. 97-DOH-060 (July 16, 1997)." *Carnes v. Raleigh County Bd. of Educ.*, Docket No. 01-41-351 (Nov. 13, 2001). Thus, nearly all of Grievant's claims must be dismissed as untimely.

The undersigned will address the merits of Grievant's remaining claim: that WVU improperly processed her as retired, resulting in her inability to continue her health insurance through COBRA. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her 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.*

WVU does not contest that it processed Grievant as retired. However, the evidence is murky as to whether this actually resulted in a lapse of COBRA coverage for Grievant, as Grievant claims. Multiple emails were exchanged between WVU and Grievant showing confusion over whether to process Grievant as retired at the conclusion of her employment with WVU. They show that Grievant expressed concern to WVU that she would lose COBRA coverage if she was processed as retired. They reveal WVU’s concern that Grievant would lose other retirement benefits if she was not processed as retired. They confirm that WVU reassured Grievant she would still be eligible for COBRA coverage if she was processed as retired. The only evidence that touches on loss of coverage is Grievant’s testimony. However, Grievant did not indicate how long this lapse of coverage lasted. Grievant did not prove by a preponderance of evidence that she lost COBRA coverage in any meaningful way. Even if WVU’s actions caused Grievant to lose COBRA coverage for any period of time, Grievant does not cite any law, rule, or policy that was violated in processing Grievant as retired.

Accordingly, this grievance is DENIED, in part, and DISMISSED, in part. The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. When an employer seeks to have a grievance dismissed on the basis that it was not timely filed, the employer has the burden of demonstrating such untimely filing by a preponderance of the evidence. Once the employer has demonstrated a grievance has not been timely filed, the employee has the burden of demonstrating a proper basis to excuse his failure to file in a timely manner. *Higginbotham v. W. Va. Dep't of Pub. Safety*, Docket No. 97-DPS-018 (Mar. 31, 1997); *Sayre v. Mason County Health Dep't*, Docket No. 95-MCHD-435 (Dec. 29, 1995), *aff'd*, Circuit Court of Mason County, No. 96-C-02 (June 17, 1996). See *Ball v. Kanawha County Bd. of Educ.*, Docket No. 94-20-384 (Mar. 13, 1995); *Woods v. Fairmont State College*, Docket No. 93-BOD-157 (Jan. 31, 1994); *Jack v. W. Va. Div. of Human Serv.*, Docket No. 90-DHS-524 (May 14, 1991). “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 employee is required to “file a grievance within the time limits specified in this article.” W. VA. CODE § 6C-2-3(a)(1). The Code further sets forth the time limits for filing a grievance as follows:

“Within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing. . . .”

W. VA. CODE § 6C-2-4(a)(1).

3. “Days’ means working days exclusive of Saturday, Sunday, official holidays and any day in which the employee's workplace is legally closed under the authority of the chief administrator due to weather or other cause provided for by statute, rule, policy or practice.” W. VA. CODE § 6C-2-2(c).

4. The time period for filing a grievance ordinarily begins to run when the employee is “unequivocally notified of the decision being challenged.” *Harvey v. W. Va. Bureau of Empl. Programs*, Docket No. 96-BEP-484 (Mar. 6, 1998); *Whalen v. Mason County Bd. of Educ.*, Docket No. 97-26-234 (Feb. 27, 1998).

5. “If proven, an untimely filing will defeat a grievance, in which case the merits of the case need not be addressed. *Lynch v. W. Va. Dep't of Transp.*, Docket No. 97-DOH-060 (July 16, 1997).” *Carnes v. Raleigh County Bd. of Educ.*, Docket No. 01-41-351 (Nov. 13, 2001).

6. With the exception of Grievant’s claim that she was processed as retired at the conclusion of her employment with WVU, Respondent proved by a preponderance of evidence that the grievance was not timely filed.

7. Grievant did not prove by a preponderance of evidence a proper basis to excuse her untimely filing.

8. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018).

9. Grievant did not prove by a preponderance of evidence that she lost COBRA coverage or that WVU violated any law, rule, or policy in processing Grievant as retired.

Accordingly, the grievance is DENIED, in part, and DISMISSED, in part.

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: February 26, 2020

Joshua S. Fraenkel
Administrative Law Judge