THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

ASHLEY BERKLEY,
Grievant,

v. **Docket No. 2021-1866-MAPS**

DIVISION OF CORRECTIONS AND REHABILITATION/
BUREAU OF JUVENILE SERVICES/
KENNETH "HONEY" RUBENSTEIN CENTER,
Respondent.

DECISION

Grievant, Ashley Berkley, was employed by Respondent, the Division of Corrections and Rehabilitation (DCR), at the Kenneth "Honey" Rubenstein Center when dismissed. On November 19, 2020, Grievant grieved her dismissal directly to level three pursuant West Virginia Code § 6C-2-4(a)(4). Grievant seeks reinstatement and backpay.

A level three hearing was held before the undersigned on August 26, 2021, at the Public Employees Grievance Board office in Elkins. Grievant was self-represented. Respondent was represented by Philip Sword, Assistant Attorney General. The matter matured for decision on September 28, 2021. Each party submitted Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant was a counselor for the Division of Corrections and Rehabilitation (DCR) when DCR dismissed her for removing office name plates in front of residents, discarding the name plates, sharing coworkers' Facebook profile with residents, telling a resident that snitches get stitches, and lying to an investigator. Respondent had the burden of proof but simply relied on hearsay and failed to reveal the contents of the policies it claimed were violated. A hearsay analysis garnered no weight for Respondent's

evidence. Respondent failed to prove its allegations or good cause for dismissal by a preponderance of the evidence. Accordingly, the grievance is GRANTED.

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, Ashley Berkley, was employed as a Correctional Counselor II by Respondent, the Division of Corrections and Rehabilitation (DCR), at the Kenneth "Honey" Rubenstein Center at the time of her dismissal.

2. Kenneth "Honey" Rubenstein Center serves juvenile residents.

3. J.D. and S.L.[1] were juvenile residents counseled by Grievant.

4. Therapists Jim Wilson and Faith Wilson worked at the facility and had a turbulent relationship with Grievant.

5. Grievant was accused of removing name plates from the Wilsons' office door in J.D.'s presence, having J.D. dispose of the name plates, showing the Wilsons' Facebook page to S.L. in an apparent attempt to discredit the Wilsons, telling J.D. that "snitches get stiches," and providing false information.

6. In the ensuing investigation, Investigator William McCoy reviewed video evidence and interviewed J.D., S.L., Grievant, and Grievant's coworkers. (Investigator McCoy's testimony)

7. On August 25, 2020, Investigator McCoy issued an investigative report regarding the allegations against Grievant. (Respondent's Exhibit 1)

8. Investigator McCoy wrote in his investigative report and testified that he

[1]Initials are used in place of the names of juvenile residents.

watched a video of Grievant "remove something from the wall" in proximity to a resident.[2] The name of the resident is redacted in the report.[3] Investigator McCoy did not in his testimony identify the resident seen in the video.[4]

9. Investigator McCoy testified and wrote in his report that Grievant denied moving the name plates.

10. Grievant testified that she moved name plates to their correct place in conjunction with rearranging plates that were mixed up. Investigator McCoy did not deny that Grievant told him as much during the investigation.

11. Investigator McCoy testified that J.D. told him he saw Grievant remove the name plates, that Grievant had J.D. dispose of the name plates, and that Grievant accused J.D. of "snitching."

12. Investigator McCoy wrote in his investigative report and testified that Grievant told him she said "snitches get stitches" but that it was not in relation to the ongoing investigation.

13. Grievant testified that she said "snitches get stitches" and specified that it was not to J.D. and not in relation to the investigation.

14. Investigator McCoy wrote in his investigative report that the first resident (whose name is redacted but is obviously J.D.) told him he witnessed Grievant remove name plates, told him that Grievant had him throw the name plates away, said Grievant

---

[2]Respondent redacted the resident's name in the investigative report because the resident was a juvenile. Since it is alleged that both J.D. and S.L. were present, and because resident names are redacted, the identity of the resident in the video is not apparent.
[3]Respondent's Exhibit 1, page 4.
[4]Level three recording at position 29:08.

accused him of "snitching" on her, and said that a second resident (whose name is redacted but is apparently S.L.) also witnessed Grievant remove the plates.

15. Investigator McCoy wrote in his report that the second resident told him he had no knowledge of the name plates being removed but did witness Grievant pull up the Wilsons' Facebook profile.

16. Investigator McCoy did not write in his report that the first resident told him he saw Grievant pull up the Wilsons' Facebook profile or that Grievant showed him Facebook.

17. However, Investigator McCoy testified that J.D. said Grievant showed him Facebook (Level three recording at position 12:40) but did not testify that S.L. said Grievant showed him Facebook.

18. Investigator McCoy wrote in the investigative report that Grievant originally told him she had not accessed Facebook on her state computer; then (after being told her computer could be audited) "admitted to accessing the Wilsons' Facebook profile," but "denied doing this in front of the residents," and later emailed him that another staff member "shared the Facebook information with the residents."[5]

19. Investigator McCoy contradicted the report in testifying that Grievant told him she did access Facebook but not the Wilsons' profile (after being told that her work computer could be audited).[6] (Level three recording at position 16:10)

20. Investigator McCoy wrote in the ultimate findings of his report that Grievant knowingly provided false information during the investigation and that "[Grievant] on

[5]Respondent's Exhibit, end of page 5 and first half of page 6.
[6]Level three recording at position 16:30.

multiple occasions denied removing the name plates from the wall, however video footage clearly shows [Grievant] remove them."

21. Yet, Investigator McCoy testified and wrote more specifically in his report that the video shows Grievant removing "something," rather than name plates, from the wall.

22. On August 12, 2020, Respondent notified Grievant by letter that she was suspended pending an investigation into her alleged misconduct and that she had been advised of the allegations against her. (Respondent's Exhibit 2)

23. By letter dated October 1, 2020, Respondent notified Grievant that she would have an opportunity to respond to allegations of misconduct at a predetermination meeting on October 9, 2020.

24. Grievant attended the predetermination meeting on October 9, 2020.

25. Respondent dismissed Grievant by letter dated October 9, 2020. (Respondent's Exhibit 4)

26. The dismissal letter cites the following incidents as grounds for dismissal:

> On about Tuesday, 12 May 2020, there is video evidence that you removed the name plates from the doors of Therapists Jim and Faith Wilson with a screwdriver. You then disposed of same name plates. This was conducted in front of Resident J.D. of the Adolescent Substance Abuse Treatment Program. When the Investigator confronted you about removing these items, which are state property, you denied that you removed these items. In this action, you provided false information during an investigation as well as damage to state property.
>
> You showed Resident J.D. and Resident S.L. of the Adolescent Substance Abuse Treatment Program personal information on Facebook from your work computer pertaining to Therapists Jim and Faith Wilson in an effort to discredit them. When interviewed by the investigator about this incident, you denied it. When the investigator informed you

that an audit could be performed on your state issued computer which would show which programs you had searched, you told the investigator that this did occur but another staff, who you refused to name, actually shared this information with those residents from your work computer.

After the investigator interviewed Resident J.D. and Resident S.L., you stopped Resident J.D. while he was getting cleaning supplies from a closet and told him you gave him candy and now he is snitching on you. You admitted to the investigator that you told a resident "snitches get stiches." Due to the timeframe of the resident's interview and the statement you made, this is a threat toward and attempt to intimidate Resident J.D. for telling the truth to the investigator.

27. The letter cites the following policy violations as grounds for dismissal:

Further, your actions are in violation of the West Virginia Division of Personnel's (DOP) Prohibited Workplace Harassment policy (DOP-P6) and the West Virginia Division of Corrections and Rehabilitation Policy Directive 129.00 Code of Conduct and Progressive Discipline. You have previously attended a training on March 1, 2018 on Workplace Harassment which included a discussion of the DOP policy on Prohibited Workplace Harassment. This training explained how you are to adhere to the standards set forth within and were aware that with any violation of the policy you would be subject to disciplinary action, up to and including dismissal.

28. The letter concludes:

Your conduct and behavior have been judged to be inappropriate and unacceptable in that you have displayed unprofessional and bullying behavior and set a negative example for the residents on the program of which you are assigned in addition to damage to state property and inappropriate use of a state computer. An employer has the basic responsibility for maintaining order. Not only has your behavior disrupted our operations and good labor relations, but it has been destructive to the morale of your coworkers and the functioning of the program in general. No employer is expected to suffer the employment of an individual whose behavior is such that is prevents a harmonious working atmosphere.

> The State of West Virginia and its agencies have reason to expect their employees to observe a standard of conduct that will not reflect discredit on the abilities and integrity of their employees, or create suspicion with reference to their employees' capability in discharging their duties and responsibilities. I believe the nature of your inability to perform the functions of your positions compromises the safety of staff, residents and the public and is therefore sufficient to cause me to conclude that you did not meet a reasonable standard of conduct as an employee of the Division of Corrections and Rehabilitation, Bureau of Juvenile Services, thus warranting this dismissal.

29. Respondent did not submit into evidence the policies it accused Grievant of violating.

30. J.D. and S.L. were the only apparent eyewitnesses to the alleged incidents but were not called to testify or provide signed statements.

31. Respondent never submitted into evidence or shared with Grievant the video of Grievant apparently removing name plates in proximity to a resident.

32. Respondent never submitted into evidence the email from Grievant apparently stating that a coworker had viewed the Wilsons' Facebook page from her computer.

33. Respondent never provided a policy in support of its refusal to share video evidence with Grievant but simply alluded to the privacy of J.D. and S.L. as juveniles and residents and the need to redact their images. Respondent did not give the ages of J.D. or S.L. nor indicate whether they were under the age of 18 at the time of the hearing.

34. Investigator McCoy testified that he did not provide Grievant the video despite her multiple requests because he could not locate the video, but subsequently indicated that the video was not provided because such evidence is never provided to those under investigation. (Level three recording at position 24:50 and 26:00)

35. No evidence was presented regarding Grievant's post dismissal job status.

36. While Grievant testified that she did not want to work for Respondent again, she said she was not withdrawing her grievance due to her outstanding backpay request and wanting her name cleared. She indicated she may consider resignation if her grievance is granted. Respondent decided it did not have enough to move for dismissal.

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*).

Respondent dismissed Grievant for removing the Wilsons' name plates in the presence of resident J.D., discarding the name plates, showing personal information from the Wilsons' Facebook page to residents J.D. and S.L., attempting to intimidate J.D. by telling him "snitches get stiches," and lying to Investigator McCoy. Respondent contends this violated the Division of Personnel's Prohibited Workplace Harassment policy and DCR Policy Directive 129.00 Code of Conduct. As Respondent did not submit these policies into evidence, it failed to prove that Grievant violated any policy.

Nevertheless, the undersigned will evaluate the evidence to determine whether Respondent has proven any of its allegations of misconduct and, if so, whether these constitute good cause for dismissal. Even though Respondent claimed it had firsthand evidence of the allegations, it only provided secondary evidence in the form of Investigator McCoy's testimony and investigative report. Investigator McCoy was not an eyewitness to any of the incidents but testified that he viewed a video of Grievant removing "something" where name plates would have been while in proximity to a resident and that he talked with residents who witnessed the incidents. He testified that resident J.D. said Grievant removed the plates in J.D.'s presence, had J.D. get rid of the plates, and accused J.D. of snitching. While Investigator McCoy did not testify that anyone told him they saw Grievant access the Wilsons' Facebook page, his report indicates S.L. told him this.

Respondent did not submit video evidence and did not call J.D. or S.L. to testify. Instead, Respondent relied solely on hearsay[7] in the form of Investigator McCoy's testimony and investigative report. "Hearsay evidence is generally admissible in grievance proceedings. The issue is one of weight rather than admissibility. This reflects a legislative recognition that the parties in grievance proceedings, particularly grievants and their representatives, are generally not lawyers and are not familiar with the technical rules of evidence or with formal legal proceedings." *Gunnells v. Logan County Bd. of Educ*., Docket No. 97-23-055 (Dec. 9, 1997). The Grievance Board has applied the following factors in assessing hearsay testimony: 1) the availability of persons with first-hand knowledge to testify at the hearings; 2) whether the declarants' out of court statements were in writing, signed, or in affidavit form; 3) the agency's explanation for failing to obtain signed or sworn statements; 4) whether the declarants were disinterested witnesses to the events, and whether the statements were routinely made; 5) the consistency of the declarants' accounts with other information, other witnesses, other statements, and the statement itself; 6) whether collaboration for these statements can be found in agency records; 7) the absence of contradictory evidence; and 8) the credibility of the declarants when they made their statements. *Id*.; *Sinsel v. Harrison County Bd. of Educ*., Docket No. 96-17-219 (Dec. 31, 1996); *Seddon v. W. Va. Dep't of Health/Kanawha-Charleston Health Dep't*, Docket No. 90-H-115 (June 8, 1990).

In analyzing the hearsay factors, the undersigned notes that residents J.D. and

[7]"Hearsay includes any statement made outside the present proceeding which is offered as evidence of the truth of matters asserted therein." BLACK'S LAW DICTIONARY 722 (6th ed. 1990).

S.L. are purportedly the only eyewitnesses. While they apparently were available to testify, Respondent contends it did not call J.D. or S.L. because it never calls residents or juveniles to testify. It does not cite any authority for this practice. Nor did it provide their current age at time of the hearing. Respondent could have at least obtained their affidavits but did not provide an excuse for not doing so. As for J.D. and S.L.'s stake in this grievance, Grievant claims that J.D. had in the past manipulated her into getting his way by threatening to falsely accuse her and had gloated when she was dismissed by texting her a picture with drugs.

As for consistency, J.D.'s and S.L. contradicted each other on the one allegation they both covered. J.D. told Investigator McCoy that S.L. saw Grievant remove the name plates. S.L. denied the same to Investigator McCoy. A corroborating video supposedly shows Grievant remove name plates while in proximity to a resident. Respondent never submitted this video into evidence and did not provide it to Grievant. This video could have shown if either J.D. or S.L. was lying about S.L.'s presence or absence during the removal.

There is also evidence contradicting other apparent statements by J.D. and S.L. to Investigator McCoy. This includes Grievant's denial of saying "snitches get stitches" in J.D.'s presence, Investigator McCoy's testimony that Grievant told him she did access Facebook but not the Wilsons' profile, and Grievant's testimony that she moved the name plates to their correct place. Further, Investigator McCoy did not testify regarding all relevant statements he apparently received from J.D. and S.L. For instance, while Investigator McCoy wrote in his report that a resident said he witnessed Grievant pull up the Wilsons' Facebook profile, he did not testify that any

resident told him this. Thus, statements attributed to J.D. and S.L. by Investigator McCoy cannot be accorded any weight.

Next, the undersigned will weigh Investigator McCoy's testimony as to the contents of a video of Grievant removing "something" from the wall while in proximity to J.D. It is important to note that this does not refute Grievant's testimony that she simply rearranged name plates to their correct places. Regardless, the undersigned will assess Investigator McCoy's investigative report and video testimony under the hearsay factors. According to Investigator McCoy, J.D. had firsthand knowledge of the name plate removal and was apparently available to testify. Respondent failed to bring either the video or J.D. to corroborate Investigator McCoy's secondhand account and did not even obtain an affidavit from J.D.

As for contradictory evidence, Investigator McCoy did not testify to the identity of the resident he saw in the video. While he did identify the resident in his report, the identifying initials are redacted therein. The identity of the resident purportedly seen in the video could have been critical to assessing the credibility of J.D.'s affirmation and S.L.'s denial of S.L.'s presence. Due to these considerations, neither the investigative report nor Investigator McCoy's rendition of video evidence will be accorded any weight.

This leaves little probative evidence on the allegations against Grievant. Without J.D., there is no evidence that Grievant destroyed the name plates. The remaining evidence on the rest of the allegations is Grievant's testimony that she said "snitches get stitches" outside J.D.'s presence and not in the context of the investigation, Grievant's testimony that she moved name plates to the correct place,

and Investigator McCoy's testimony that Grievant told him she had accessed Facebook but not the Wilsons' profile. These supposed admissions by Grievant have no probative value because they do not recognize that either J.D. or S.L. was present during these incidents. Thus, Respondent failed to prove by a preponderance of the evidence that Grievant removed the Wilsons' name plates in the presence of J.D. or S.L., that Grievant destroyed the name plates, that Grievant viewed the Wilsons' Facebook page in the presence of J.D. or S.L., or that Grievant said "snitches get stitches" to J.D.

The remaining allegation is that Grievant provided false information during the investigation. The dismissal letter provides two instances: Grievant's denial of removing the name plates and Grievant's inconsistent statements on viewing the Wilsons' Facebook page. In the first instance, Grievant testified that she moved the name plates to their correct place and told Investigator McCoy the same multiple times during the investigation. Investigator McCoy testified that Grievant told him she did not remove the name plates. These two statements initially seem inconsistent. However, removing something is not necessarily the same as moving it to the correct place. Removing implies getting rid of something, which is different from moving something to its correct place. Further, Investigator McCoy did not deny that Grievant told him as much during the investigation. Admitting to one and not the other is not inconsistent. Thus, Respondent failed to prove this first allegation of lying by a preponderance of the evidence.

In the second instance, Investigator McCoy testified that Grievant made inconsistent statements about viewing the Wilsons' Facebook page at work.

Specifically, Investigator McCoy testified that Grievant originally told him she did not view Facebook at work, then said that she had accessed Facebook but not the Wilsons' profile (after she was told her work computer could be audited) before emailing him to say that a coworker had viewed the Wilsons' Facebook page from her computer. While Grievant did not testify about this allegation, she denied all allegations throughout the grievance process.

Thus, a credibility determination of Investigator McCoy is required. 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). Not every factor is necessarily relevant to every credibility determination. In this situation, the relevant factors include motive, the existence or

nonexistence of any fact testified to by the witness, and consistency of prior statements.

It is noteworthy that Investigator McCoy had no obvious motive to manufacture evidence against Grievant. Yet, his testimony was inconsistent. When cross examined by Grievant, Investigator McCoy at first testified that he did not provide Grievant the video in response to her multiple requests for it because he could not locate the video. But he then gave a different explanation, saying it was not provided because Respondent never provides video evidence of an infraction to those under investigation.

More concerningly, Investigator McCoy gave conflicting accounts of the inconsistent Facebook statements he accuses Grievant of providing him. In his investigative report, Investigator McCoy wrote that after being told her computer could be audited, Grievant "admitted to accessing the Wilsons' Facebook profile," but "denied doing this in front of the residents." However, Investigator McCoy testified that Grievant's admission in this regard was that Grievant had accessed Facebook but not the Wilsons' profile. Thus, neither Investigator McCoy's testimony nor investigative report can be accorded any weight. Respondent failed to prove by a preponderance of the evidence this second allegation of lying.

As Respondent failed to prove by a preponderance of the evidence that there was good cause to dismiss Grievant, this grievance is GRANTED. 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. "Hearsay evidence is generally admissible in grievance proceedings. The issue is one of weight rather than admissibility. This reflects a legislative recognition that the parties in grievance proceedings, particularly grievants and their representatives, are generally not lawyers and are not familiar with the technical rules of evidence or with formal legal proceedings." *Gunnells v. Logan County Bd. of Educ.*, Docket No. 97-23-055 (Dec. 9, 1997). The Grievance Board has applied the following factors in assessing hearsay testimony: 1) the availability of persons with first-hand knowledge to testify at the hearings; 2) whether the declarants' out of court statements were in writing, signed, or in affidavit form; 3) the agency's explanation for failing to obtain signed or sworn statements; 4) whether the declarants were disinterested witnesses to the events, and whether the statements were routinely made; 5) the consistency of the declarants' accounts with other information, other witnesses, other statements, and the statement itself; 6) whether collaboration for these statements can be found in agency records; 7) the absence of contradictory evidence; and 8) the credibility of the declarants when they made their statements.

Id.; *Sinsel v. Harrison County Bd. of Educ*., Docket No. 96-17-219 (Dec. 31, 1996); *Seddon v. W. Va. Dep't of Health/Kanawha-Charleston Health Dep't*, Docket No. 90-H-115 (June 8, 1990).

3. 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*).

4. Respondent failed to prove by a preponderance of the evidence any of its allegations against Grievant, that Grievant violated any policy, that Grievant acted in gross disregard of her professional responsibilities and the public interest, or that there was good cause for her dismissal.

Accordingly, the grievance is GRANTED. Respondent is ORDERED to reinstate Grievant and to provide her back pay from the date of her dismissal to the date she is reinstated, plus interest at the statutory rate; to restore all benefits, including seniority; and to remove all references to the dismissal from Grievant's personnel records maintained by Respondent.

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: November 5, 2021

_____

Joshua S. Fraenkel
Administrative Law Judge