THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

ROBIN SHARP,
Grievant,

v. **Docket No. 2021-2475-TayED**

TAYLOR COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Grievant, Robin Sharp, was employed by Respondent, Taylor County Board of Education when dismissed. On May 28, 2021, Grievant grieved her dismissal directly to level three pursuant West Virginia Code § 6C-2-4(a)(4). The grievance states: "Grievant was regularly employed by Respondent as a bus operator. Respondent has unlawfully terminated Grievant in violation of W. Va. Code 18A-2-8." "Grievant seeks extraordinary relief through a more proportional form of discipline due to mitigating circumstances, reinstatement, back pay with interest, and the restoration of seniority and any and all benefits lost as a result of the termination."

On September 8, 2021, a level three hearing was held before the undersigned at the Grievance Board's Westover office. Grievant appeared in person and was represented by Gordon Simmons, West Virginia School Service Personnel Association. Respondent appeared by Superintendent Christine Miller and was represented by Denise Spatafore, Esq., Dinsmore & Shohl, LLP. This matter became mature for decision on October 20, 2021. Each party submitted written proposed findings of fact and conclusions of law.

Synopsis

While employed as a bus driver for Respondent, Grievant drag raced a school bus through a busy school parking lot. Grievant was dismissed for willful neglect of duty in knowingly endangering students. Grievant contends she was punished twice, and her dismissal arbitrary, because the superintendent initially recommended a 30-day unpaid suspension. Grievant claims she was denied due process because, even though she participated in the hearing where the board of education considered dismissal, she was not present when it rejected the recommended suspension. She asserts her conduct is correctable and her dismissal warrants mitigation. Respondent proved that Grievant knowingly endangered students and engaged in willful neglect of duty that was not correctable. Grievant did not prove she was disciplined twice, denied due process, or that mitigation of her dismissal is warranted. Accordingly, this 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, Robin Sharp, was employed for four years as a bus operator by Respondent, Taylor County Board of Education, prior to her dismissal.

2. Respondent never performed an evaluation of or ride along with Grievant.

3. Prior to her time with Respondent, Grievant was a bus operator for Head Start and always received good evaluations.

4. Grievant was never disciplined prior to her dismissal.

5. During the 2020-2021 school year, Grievant operated Bus 97 and transported students from Anna Jarvis Elementary School back to their homes.

6. The assigned loading and departure order from Anna Jarvis placed Grievant's bus in front of Bus 76 driven by Bus Operator Debbie McKinney.

7. On March 19, 2021, Grievant was loading students onto her bus in the school parking lot when Bus Operator McKinney began to edge her bus around Grievant's bus in an attempt to exit the parking lot before Grievant.

8. Grievant told Bus Operator McKinney on the radio not to go around her because she was still loading students. Grievant then activated her red flashing hazard lights and stop sign to indicate her bus was still loading.

9. Bus Operator McKinney continued to slowly creep around Grievant's bus and the extended stop sign.

10. Once Grievant finished loading students, she rapidly accelerated her bus to prevent Bus Operator McKinney from passing her. The two buses briefly engaged in a side-by-side high speed race through the school parking lot, nearly colliding together before Bus Operator McKinney slammed her brakes to avoid a head on collision with an oncoming car. Grievant sped on as students walked to other vehicles.

11. On April 12, 2021, Superintendent Christine Miller sent Grievant a letter requiring her to attend a meeting on April 20, 2021, to discuss the incident with her. The letter notified Grievant that this meeting would provide her the opportunity to discuss her version of events and potential discipline. The letter referenced not only the March 19, 2021 incident, but also stated, "The following Monday, March 22, 2021, you and that driver were involved in an altercation at the bus garage, which may have involved both physical and verbal violence." (Respondent's Exhibit 2)

12. Respondent's policy governing notice of discipline to employees, Policy 4140, states:

> Prior to any recommendation to the Board that an employee be suspended or terminated, the Superintendent shall provide the employee with notice of the grounds for the proposed recommendation and afford the employee with an opportunity to respond to the charges. The opportunity to respond shall be offered in the form of an informal meeting. ...

(Grievant's Exhibit 4)

13. At their April 20, 2021 meeting, Superintendent Miller informed Grievant she would be recommending at the upcoming board of education meeting that Grievant receive a 30-day unpaid suspension. Grievant agreed that the recommended penalty was appropriate and thus declined to have a hearing before the board on the recommended suspension.

14. Respondent's policy on suspension of employees, Policy 4139.01, states:

> The Superintendent, subject only to approval of the Board of Education, shall have the authority to suspend school personnel. The suspension may be with or without pay.
>
> The superintendent's authority to suspend school personnel shall be temporary only pending a hearing upon charges filed by the Superintendent with the Board of Education and such period of suspension shall not exceed thirty (30) days unless extended by order of the Board.

(Grievant's Exhibit 3)

15. At the April 27, 2021 board meeting, Superintendent Miller recommended that Grievant be suspended without pay for 30 days. Grievant did not appear before the board to argue against the recommended 30-day suspension because she did not contest the recommended punishment.

16. After reviewing the video evidence at its April 27, 2021 meeting, the board voiced concern that a suspension was insufficient and told Superintendent Miller it wanted to discuss the incident with Grievant before determining her discipline.

17. Respondent's policy on termination of employees, Policy 4140, states:

> An employment contract may be terminated at any time, upon a majority vote of the Board, for: Immorality, incompetence, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the Department of Health and Human Services in accordance with WV Code 49-1-1 et seq.; conviction of a misdemeanor or a guilty plea or a nolo contendere plea to a misdemeanor charge that has a rational nexus between the conduct and the performance of the employee's job the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge. A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation.

(Grievant's Exhibit 4)

18. On May 12, 2021, Superintendent Miller notified Grievant by letter that the board would meet on May 26, 2021 to hear her side before deciding on discipline. Superintendent Miller informed Grievant that she was changing her recommendation from a 30-day suspension to dismissal and that Grievant would have an opportunity to argue against dismissal. The letter further notified Grievant, "You are hereby suspended without pay, effective immediately, pending approval of your suspension and termination by the board on May 26." (Respondent's Exhibit 2)

19. On May 26, 2021, the board conducted a hearing to determine the discipline it would impose on Grievant and Bus Operator McKinney. Grievant was present in person and by a representative. All parties presented witnesses and evidence. The board concluded that Grievant and Bus Operator McKinney violated West Virginia Code § 18A-

2-8 through a willful neglect of duty and voted unanimously to terminate their employment. (Respondent's Exhibit 1 & Grievant's Exhibit 2)

20. On May 27, 2021, Superintendent Miller sent Grievant a letter informing her that she was dismissed effective May 28, 2021. The letter did not state a basis for the dismissal either in fact or in policy. (Respondent's Exhibit 6)

Discussion

In disciplinary matters, the burden of proof rests with the employer to prove that the action taken was justified, and the employer must prove the charges against an employee by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3. "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.*

The authority of a county board of education to suspend or terminate an employee's contract must be based on one or more of the causes listed in West Virginia Code § 18A-2-8 and must be exercised reasonably, not arbitrarily or capriciously. Syl. Pt. 2, *Parham v. Raleigh County Bd. of Educ.*, 192 W. Va. 540, 453 S.E.2d 374 (1994); Syl. Pt. 3, *Beverlin v. Bd. of Educ.*, 158 W. Va. 1067, 216 S.E.2d 554 (1975); *Bell v. Kanawha County Bd. of* Educ., Docket No. 91-20-005 (Apr. 16, 1991). The causes are:

> Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

W. VA. CODE § 18A-2-8(a).

Grievant was dismissed for willful neglect of duty in endangering students by racing another bus through a busy school parking lot. Willful neglect of duty "encompasses something more serious than 'incompetence,' which is another ground for teacher discipline ... The term 'willful' ordinarily imports a knowing and intentional act, as distinguished from a negligent act." *Bd. of Educ. of the County of Gilmer v. Chaddock, 183 W.Va. 638,* 640, 398 S.E.2d 120, 122 (1990).

Grievant admits her conduct was wrong but contends her dismissal warrants mitigation because she had never been disciplined and her behavior was correctable. She also asserts she was improperly punished twice and that her dismissal was arbitrary and capricious because the superintendent first recommended a 30-day unpaid suspension before changing it to dismissal. Grievant contends she was denied due process because, even though she was given notice of the change in recommended punishment and allowed to participate in the hearing before the board of education on the recommended dismissal, she was not present when the board initially considered and rejected the recommended suspension. She claims that the meeting with the superintendent on April 20, 2021 was fundamentally unfair because the superintendent misrepresented the severity of her recommendation by later changing it.

Grievant implies that she should have first been placed on an improvement plan and given an opportunity to improve her performance rather than being dismissed. Before dismissing Grievant, Respondent was only required to determine whether Grievant's conduct was correctable if it related to her performance rather than willful neglect of duty. West Virginia Code Section 18A-2-8(b) provides that "[a] charge of unsatisfactory

performance shall not be made except as the result of an employee performance evaluation pursuant to § 18A-2-12 of this code."

> [A] board must follow the § 5300(6)(a) procedures if the circumstances forming the basis for suspension or discharge are "correctable. " The factor triggering the application of the evaluation procedure and correction period is "correctable" conduct. What is "correctable" conduct does not lend itself to an exact definition but must, in view of the nature of the conduct examined in *Trimboli [v. Board of Education of the County of Wayne*, 163 W.Va. 1, 254 S.E.2d 561 (1979)], and in *Rogers [v. Board of Education*, 125 W.Va. 579, 25 S.E.2d 537 (1943)], be understood to mean an offense or conduct which affects professional competency.

Mason County Bd. of Educ. v. State Superintendent of Sch., 165 W. Va. 732, 739; 274 S.E.2d 435 (1980). The provisions of Policy 5300 referred to by the Court have since been codified in West Virginia Code § 18A-2-12a, which provides as follows:

> (6) All school personnel are entitled to know how well they are fulfilling their responsibilities and should be offered the opportunity of open and honest evaluations of their performance on a regular basis and in accordance with the provisions of section twelve [§ 18A-2-12] of this article. All school personnel are entitled to opportunities to improve their job performance prior to termination or transfer of their services. Decisions concerning the promotion, demotion, transfer, or termination of employment of school personnel, other than those for lack of need or governed by specific statutory provisions unrelated to performance, should be based upon the evaluations, and not upon factors extraneous thereto. . . .

Concerning what constitutes "correctable conduct, the Court in *Mason County Bd. of Educ.* noted that:

> it is not the label given to conduct which determines whether § 5300(6)(a) procedures must be followed but whether the conduct forming the basis of dismissal involves professional incompetency and whether it directly and substantially affects the morals, safety, and health of the system in a permanent, non-correctable manner.

Id.

Respondent had the burden of proving that Grievant's behavior was not correctible. "[T]he factor which distinguishes willful neglect of duty and insubordination from unsatisfactory performance is that the employee knows [his] responsibilities, and is competent to perform them, but elects not to complete them. When an employee's performance is unacceptable because [he] does not know the standard to be met, or what is required to meet the standards, and [his] behavior can be corrected, the behavior is unsatisfactory performance. *Bierer v. Jefferson County Bd. of Educ.*, Docket No. 01-19-595 (May 17, 2002)." *Waggoner v. Cabell County Bd. of Educ.*, Docket No. 2008-1570-CabED (Oct. 31, 2008).

It is clear that Grievant knew that it was wrong to drag race her school bus through a crowded school parking lot at a high rate of speed. If Grievant did not initially realize the danger this posed, she should have grasped the gravity of her behavior once the bus she was racing slammed its brakes to avoid colliding with another vehicle. Instead, Grievant did not slow down but used the opportunity to continue distancing her bus at a high rate of sped through the busy parking lot.

Grievant argues that her dismissal was arbitrary and capricious because the superintendent initially recommended a 30-day suspension. An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996) (*citing Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner

contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. *See Bedford County Memorial Hosp. v. Health and Human Serv.,* 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997).

Grievant's job is to safely transport students. The board of education viewed the video of the incident and concluded that Grievant's conduct was willful neglect of duty. This conclusion was not unreasonable, given that the conduct directly and substantially jeopardized the safety of children and others on the bus and in the school parking lot. Respondent proved by a preponderance of the evidence that Grievant's action was sufficiently knowing and intentional to conclude that Grievant's actions were not correctable.

Grievant implies that her claims of being punished twice and denied due process are affirmative defenses.[1] "Any party asserting the application of an affirmative defense bears the burden of proving that defense by a preponderance of the evidence." W. VA. CODE ST. R. § 156-1-3 (2018). Grievant acknowledges that the Grievance Board does not recognize a "double jeopardy" rule in reviewing the propriety of an employee being disciplined twice for the same infraction. Grievant argues that the Grievance Board has, however, deemed such discipline to be arbitrary and capricious.[2] In an attempt to push for a "double jeopardy" rule in grievance proceedings before the Grievance Board,

---

[1]An affirmative defense, if proven, will defeat allegations even if they are true. BLACK'S LAW DICTIONARY 451 (8th ed. 2004).

[2]*Paxton v. Bureau of Senior Services*, Docket No. 2010-1035-BSS (June 30, 2010).

Grievant cites case law from other jurisdictions that use "double jeopardy" to bar disciplining an employee twice for a single infraction.

However, these arguments are premature.[3] The evidence shows that Superintendent Miller simply told Grievant she was going to recommend as punishment a 30-day unpaid suspension for the board's approval. After the board decided that it needed to talk to Grievant before determining her punishment, Superintendent Miller changed her recommendation to dismissal. Superintendent Miller then informed Grievant by letter on May 12, 2021, that she had changed her recommendation and that the board would determine her punishment after hearing from Grievant on May 26, 2021. This second letter also informed Grievant that she was immediately suspended pending the determination of her punishment on May 26. This suspension pending discipline is different from the 30-day suspension recommended by Superintendent Miller. The Grievance Board has treated suspensions pending discipline as non-disciplinary. Grievant failed to prove by a preponderance of the evidence that she was disciplined twice for a single infraction.

As for the lack of due process claim, "[t]he Due Process Clause, Article III, Section 10 of the West Virginia Constitution, requires procedural safeguards against State action which affects a liberty or property interest." Syl. Pt. 1, *Waite v. Civil Serv. Comm'n*, 161 W. Va. 154, 241 S.E.2d 164 (1977), overruled in part on other grounds by *W. Va. Dep't of Educ. v. McGraw*, 239 W. Va. 192, 201, 800 S.E.2d 230, 239 (2017). "A State civil

[3]The Grievance Board will not decide matters that are "speculative or premature, or otherwise legally insufficient." *Pascoli & Kriner v. Ohio County Bd. of Educ.*, Docket No. 91-35-229/239 (Nov. 27, 1991); *Dooley v. Dept. of Trans./Div. of Highways*, Docket No. 94-DOH-255 (Nov. 30, 1994).

service classified employee has a property interest arising out of the statutory entitlement to continued uninterrupted employment." *Id.* at Syl. Pt. 4. "'The constitutional guarantee of procedural due process requires "'some kind of hearing' prior to the discharge of an employee who has a constitutionally protected property interest in his employment.' *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 [84 L. Ed. 2d 494, 105 S. Ct. 1487] (1985)." Syl. Pt. 3, *Fraley v. Civil Service Commission*, 177 W.Va. 729, 356 S.E.2d 483 (1987). "The pretermination hearing does not need to be elaborate or constitute a full evidentiary hearing. The essential due process requirements, notice and an opportunity to respond, are met if the tenured civil service employee is given 'oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story' prior to termination." *Id.* at 732, 356 S.E.2d at 486.

Grievant argues that she was denied due process when Superintendent Miller misrepresented the severity of her recommendation. The evidence shows that before Superintendent Miller presented her recommendation of a 30-day suspension to the board, Grievant agreed that she deserved a 30-day suspension and waived her right to a hearing before the board. After reviewing the video evidence, the board rejected the suspension as too light and asked to hear from Grievant directly so it could determine the appropriate punishment. Superintendent Miller then sent a letter informing Grievant she was changing her recommendation to dismissal and that Grievant would have the opportunity to tell her story to the board at a hearing on May 26. Grievant was represented by counsel at that hearing and presented her evidence. Grievant thus received the essential due process requirements of notice and an opportunity to respond.

Grievant failed to prove by a preponderance of the evidence that she was denied due process.

Lastly, Grievant argues that dismissal is severe given her lack of prior discipline. "[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).

As previously discussed, Respondent's determination that Grievant's conduct was willful neglect of duty is reasonable. Respondent also dismissed the other driver, Bus Operator McKinney, for engaging in the same conduct. Grievant had not received any evaluations during her time with Respondent and there was no evidence that Grievant had been advised against the manner of driving she engaged in. Even so, dismissal was appropriate given the severity of her actions. Grievant has not proven by a preponderance of the evidence that mitigation is warranted.

Accordingly, the grievance is DENIED. The following Conclusions of Law support the decision reached.

Conclusions of Law

1. In disciplinary matters, the burden of proof rests with the employer to prove that the action taken was justified, and the employer must prove the charges against an employee 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.*

2. The authority of a county board of education to suspend or terminate an employee's contract must be based on one or more of the causes listed in West Virginia Code § 18A-2-8 and must be exercised reasonably, not arbitrarily or capriciously. Syl. Pt. 2, Parham v. Raleigh County Bd. of Educ., 192 W. Va. 540, 453 S.E.2d 374 (1994); Syl. Pt. 3, Beverlin v. Bd. of Educ., 158 W. Va. 1067, 216 S.E.2d 554 (1975); Bell v. Kanawha County Bd. of Educ., Docket No. 91-20-005 (Apr. 16, 1991). The causes are:

> Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

W. VA. CODE § 18A-2-8(a).

3. West Virginia Code Section 18A-2-8(b) provides that "[a] charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to § 18A-2-12 of this code."

4. Willful neglect of duty "encompasses something more serious than 'incompetence,' which is another ground for teacher discipline ... The term 'willful' ordinarily imports a knowing and intentional act, as distinguished from a negligent act." Bd. of Educ. of the County of Gilmer v. Chaddock, 183 W.Va. 638, 640, 398 S.E.2d 120, 122 (1990).

5. "[T]he factor which distinguishes willful neglect of duty and insubordination from unsatisfactory performance is that the employee knows [his] responsibilities, and is competent to perform them, but elects not to complete them. When an employee's performance is unacceptable because [he] does not know the standard to be met, or what is required to meet the standards, and [his] behavior can be corrected, the behavior is

unsatisfactory performance. *Bierer v. Jefferson County Bd. of Educ.*, Docket No. 01-19-595 (May 17, 2002)." *Waggoner v. Cabell County Bd. of Educ.*, Docket No. 2008-1570-CabED (Oct. 31, 2008).

6. Respondent proved by a preponderance of evidence that Grievant's conduct was willful neglect of duty justifying dismissal and that Grievant was not entitled to an opportunity to improve.

7. Grievant did not prove by a preponderance of the evidence that she was punished twice for her action or that she was denied due process.

8. "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).

9. Grievant did not prove by a preponderance of the evidence that mitigation is warranted.

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* W. VA. CODE ST. R. § 156-1-6.20 (2018).

DATE: November 15, 2021

Joshua S. Fraenkel
Administrative Law Judge