

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

ROBERT BRYAN STOLLINGS,
Grievant,

v.

Docket No. 2021-1076-DOT

DIVISION OF HIGHWAYS,
Respondent.

DECISION

Robert Bryan Stollings, Grievant, filed this grievance against his employer the West Virginia Division of Highways ("DOH"), Respondent, protesting his dismissal from employment. The original grievance was filed on October 26, 2020, the grievance statement provides: "[t]he Grievant was dismissed from his position without just cause." For relief sought, Grievant requested "[t]o be made whole in every way, including, but not limited to, removal of disciplinary action from all files, reinstatement of position, as well as reimbursement of any lost pay with interest, including any applicable benefits and tenure."

As authorized by W. VA. CODE § 6C-2-4(a)(4), the grievance was filed directly to level three of the grievance process.¹ A level three hearing was held before the undersigned Administrative Law Judge on September 20, 2021, at the Grievance Board's Charleston office. Grievant appeared in person and was represented by Michael Hanson, field organizer assisting UE Local 170, who appeared by Zoom video conferencing. Respondent appeared by Kathryn Hill, Employee Relations Manager for DOH's Human Resources Division, and by its counsel, Jesseca R. Church, Esquire, DOH

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.

Legal Division. At the conclusion of the level three hearing, the parties were invited to submit written proposed fact/law proposals. This matter became mature for consideration upon receipt of the last of the parties' fact/law proposals, an extension of time was granted upon request and on or about October 22, 2021, the parties' submissions were received. Both parties submitted written fact/law proposals.

Synopsis

Grievant was employed as a Highway Systems Analyst Senior with the West Virginia Division of Highways, Respondent, at the time of his termination. Grievant was terminated on or about October 26, 2020, for falsifying information on his application for employment, and alleged failure to meet DOH's standards of workplace conduct. Not all of Respondent's conclusions regarding Grievant's actions are found to be feasible, however Respondent has established by a preponderance of the evidence sufficient credible facts to demonstrate Grievant was aware of his representations, statements, and intended to mislead a prospective employer. Respondent met its burden of proof justifying disciplinary action. Sufficient mitigating factors are not found present in the instant matter to mandate overriding the disciplinary actions of Respondent. 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. Robert B. Stollings, Grievant was employed by Respondent as a Highway Systems Analyst Senior² for Division of Highways (“DOH”) Programming Division working in Building 5 of the Capitol Complex in Charleston, WV.

2. Kathryn Hill is the Employee Relations Manager for DOH's Human Resources Division. Ms. Hill reviews documents from districts and divisions regarding personnel problems and implements appropriate discipline according to policy for employment issues. Level three (L3) Testimony.

3. Kenneth Pinnell is the Human Resources Director for the Office of Constituent Services for Department of Health and Human Resources (DHHR). Mr. Pinnell has been with the Office of Constituent Services for eight (8) years. Grievant's supervisor reported to Mr. Pinnell at the time that Grievant worked for DHHR's Office of Constituent Services. L3 Testimony Pennell and R Ex 3.

4. Monica Price is the Human Resources Manager for the DMV and has been in this position for ten (10) years. In her position, Ms. Price has access to employment records of DMV employees including Grievant's past DMV employment records. L3 Testimony Price and R Ex 10.

5. Stacy Jacques is an Attorney 3, in the litigation section of the Legal Division for DOH. Ms. Jacques encountered Grievant when he visited the Legal Division on or around September 14, 2020. L3 Testimony Jacques, Grievant, R Ex 8 and G Ex 2.

² On or around October 2020, Grievant's job titled was changed from Transportation Systems Analyst III to Highway Systems Analyst Senior, as part of the roll out of the new Classification, Compensation, and Career Plan (“CCCP”). See G Ex 5.

6. Rebecca Kelly is a Division Manager 2 over Classification and Compensation Transactions for DOH's Human Resource Division. Ms. Kelly had an encounter with Grievant in her office on or about September 30, 2020. L3 Testimony Kelly, Grievant, and R Ex 9.

7. Kandice Beane is a Highway Business Operations Assistant 1, DOH's Programming Division working in Building 5 of the Capitol Complex in Charleston, WV. Ms. Beane and Grievant were co-workers.

8. Brandy Patterson is the section head of the Federal Aid Section of the Programming Division for DOH. Ms. Patterson was Grievant's direct supervisor during his employment with DOH.

9. Grievant was interviewed for a Transportation System Analyst 3 position on May 23, 2019. Grievant was awarded the position on September 3, 2019.

10. Grievant indicated on his application for the Transportation Systems Analyst 3 position that he "officially supervised" four Economic Service Workers when he worked for DHHR. R Ex 3 at p. 3.

11. Further, Grievant indicated on his application that he "officially supervised" two Office Assistant 3's when he was a Customer Service Representative with the DMV (*Id.* at p. 4); three Office Assistants when he was an Office Assistant 2 with the DMV (*Id.* at p. 6); two Office Assistant 2's when he was an Office Assistant 2 with the DMV (*Id.* at p. 7); and again two Office Assistant 2's when he was an Office Assistant 2 with the DMV (*Id.* at p. 8).

12. Grievant received a termination letter dated October 26, 2020, stating: "The reason for termination is your falsification of your employment application and failure to meet DOH standards of work performance and conduct." The letter continues:

Due to your inability to learn and perform the duties of the position for which you were hired, your application for employment was reviewed. It was determined that while you indicated you supervised several employees at several previous jobs, a review revealed you in fact did not. The supervisory experience was a deciding factor in your selection for the position. Additionally, on September 14, 2020, you forced an interaction with an employee in the legal section that led to the employee to complain that she felt threatened and intimidated and was frightened by the interaction. Similar reports have been made by your coworkers and supervisors. R Ex 1.

13. Agents of Respondent contacted the appropriate personnel within both DHHR and DMV and inquired about Grievant's claimed supervisory experience as purported on his application. Respondent received confirmation that Grievant had not supervised any employees during his time working for either DHHR or DMV. See L3 Testimony Pinnell, Price, Hill; R Ex 3; and R Ex 10.

14. The information Grievant placed on his application contradicts his L3 testimony. Grievant testified that the "only supervisory experience I have is cross training fellow employees and checking their work. That's my answer in all the interviews when asked that question." Grievant also testified, "I'm not claiming to be a supervisor in no way no form." L3 Testimony of Grievant.

15. Grievant was specifically asked in his interview for the position of Transportation System Analyst 3, "Do you have any experience supervising employees? If so, please explain." L3 Testimony Patterson and R Ex 4.

16. Grievant answered by listing the people he had previously supervised at the Diamond Building, DMV, and a law firm. Grievant did not clarify his answer to the interviewers and explain that he never officially supervised anyone. *Id.*

17. The interview panel consisting of Brady Patterson (Grievant's direct supervisor) and former Director for the Programming Division, Eva Melancon, who recommended Grievant for the position of Transportation System Analyst 3. Grievant's claim of past supervisory experience was an important factor in selecting him for the position. L3 Testimony Patterson, R Ex 4, and R Ex 1.

18. The West Virginia Division of Highways Administrative Operating Procedures Section III, Chapter 6: Disciplinary Action Policy, specifically provides "Examples of poor performance or misconduct that may warrant dismissal in response to a single performance issue or instance of misconduct include but are not limited to [. . .] c. Theft or **dishonesty** [. . .]." [emphasis added]. See R Ex 7 at p. 5 of 9.

19. Grievant falsified information on his application, did not provide clarification or explanation of his claimed "supervisory" experience to his interviewers. Kathryn Hill, Employee Relations Manager for DOH's Human Resources Division testified that it is the policy and practice of DOH that if an employee lies on their application for employment, then the disciplinary response is the immediate dismissal of that employee. L3 Testimony Hill, R Ex 1 and Ex 7.

20. Respondent is keeping with its professed policies, procedures and past practices by dismissing Grievant from employment for his misrepresentation of facts on his employment application.

21. In addition to falsely claiming to have official supervisory experience in his application, Respondent alleges that Grievant also exhibited behavioral issues that were in violation of DOH's standards of work performance and conduct. L3 Testimony Hill, Jacques, Kelly; R Exs 1, 7, 8, and 9.

22. Through multiple reports of other DOH employees who had interactions with Grievant, Respondent introduced into the record that Grievant exhibited behavior that Respondent interpreted as problematic and violations of the standards of work performance and conduct.

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). This grievance involves a disciplinary matter, Respondent bears the burden of establishing the charges by a preponderance of the evidence.

. . . 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, the party bearing the burden has not met its burden. *Id.*

Grievant was terminated on or about October 26, 2020, for falsifying information on his application for employment, as well as allegedly failure to meet Respondent's standards of work performance and conduct. DOH's Disciplinary Action Policy sets out certain standards of work performance and conduct that Respondent expects its employees to meet including but not limited to the following:

3. Maintenance of a high standard of personal conduct and courtesy in dealing with the public, fellow employees, subordinates, supervisors, and officials;

8. Performance of assigned duties in accordance with the standards and instructions given by an appropriate supervisor; Compliance with accepted safe working practices;

9. Observance of and respect for the chain of command;

10. Refusal to engage in insulting, abusive, threatening, offensive, defamatory, harassing, or discriminatory conduct or language and prompt reporting of the same to the appropriate authority;

Division of Highways Administrative Operating Procedures, Disciplinary Action, § 2, Ch. 6, II.A.3, 8, & 10. R Ex 7 at p. 2 of 9.

In a nutshell, employees are to perform assigned duties in an efficient and qualified manner and shall not engage in a disruptive and/or threatening behavior. In addition to highlighting dishonesty and falsifying information on his application for employment,

which will be addressed later, Respondent maintains Grievant exhibited behavior that Respondent interpreted as problematic and violations of the standards of workplace conduct. Grievant denies his workplace behavior is threatening and in violation of applicable employee standards of conduct. The grievance at hand is not necessarily easily discerned. Grievant's behavior must be evaluated based upon what would be considered offensive to a reasonably prudent person. This Administrative Law Judge is in review of the instant dismissal and the rationale Respondent proclaims for its actions.

Respondent did not persuasively establish by a preponderance of the evidence that Grievant's interactions with fellow DOH employees violated a readily enforceable standard of work conduct that all DOH employees can be duly measured.³ Being

³ On or around September 14, 2020, Grievant attempted to enter the offices of the Legal Division of DOH. Attorney Stacey Jacques encountered Grievant as she was attempting to exit the main door of the Legal Division. She informed Grievant that he could not be in the Legal Division offices and asked how she could help him. L3 Testimony, R Ex 8 and G Ex 2. Ms. Jacques re-entered the Legal Division offices to write down Grievant's information. He followed her into the office. Ms. Jacques described Grievant as being "quite agitated." Attorney Jacques testified that she was "honestly pretty terrified" from her interaction with Grievant. Grievant did not make any threats or use any threatening gesture; nevertheless, she reported the encounter to Nate Tawney, General Counsel for DOH, and Jill Dunn, Director of Legal Division. Attorney Jacques also provided a written statement of the encounter via email upon request from DOH's Human Resources Division. See L3 Testimony Jacques and R Ex 8.

Rebecca Kelly, a Division Manager 2 over Class and Compensation Transactions, described an encounter with Grievant in her office of the Human Resources Division ("HR Division"). On or about September 30, 2020, Grievant was seeking out Matt Ball in DOH's HR Division. Mr. Ball was not in his office at that time. Grievant was somehow advised to go to Ms. Kelly's office. L3 Testimony Kelly and R Ex 9. Ms. Kelly and Grievant had not previously met. Grievant entered Ms. Kelly's office and shut the door. Grievant expressed complaints and issues he had with others in his department. Grievant stated that "he felt like he was going to snap anytime." Ms. Kelly was not comfortable being alone in her office with Grievant due to the content of the complaints he was sharing and Grievant's agitated demeanor. Ms. Kelly explained to Grievant that she was not the person to bring these complaints to; however, her attempts to end the conversation and redirect of Grievant to the appropriate personnel did not inspire Grievant to vacate Ms. Kelly's Office. Ms. Kelly contacted and met with responsible management personnel of Respondent to report her interaction with Grievant after he left her office. *Id.*

disturbed and wanting someone to address your concerns is not a temperament this trier of fact is ready to label as impermissible workplace conduct. It is acknowledged that Grievant's conduct had a less than desirable way of interacting with others from time to time. This is problematic, but less than desirable is not necessarily in violation of recognized and enforceable standards of employee conduct. There are standards of acceptable workplace communication that every employee is expected to maintain; however, these standards cannot be an arbitrary set of reactions to everyday interaction.

With regard to alleged violation of workplace performance and conduct, the undersigned is not convinced that Grievant's behavior was much beyond that of a disturbed employee seeking assistance. While Grievant had an encounter or two with fellow DOH employees that made one or more uncomfortable, it is not established that Grievant's demeanor and/or actions were so extreme as to constitute threatening and/or hostile. Respondent did not establish by a preponderance of the evidence that Grievant's interactions with fellow DOH employees violated Division of Highways Administrative Operating Procedures regarding intimidating and/or threatening behavior at the workplace. Nevertheless, Respondent has established sufficient credible facts to justify disciplinary action on other grounds.

Grievant was specifically asked in his interview for the position of Transportation System Analyst 3, "Do you have any experience supervising employees? If so, please explain." L3 testimony Patterson and R Ex 4. Grievant answered by listing the people he had previously supervised at the Diamond Building, DMV, and a law firm. Grievant did not clarify his answer to the interviewers and explain that he never officially supervised

anyone. *Id.* The information Grievant placed on his application contradicts his L3 testimony. Grievant testified that the “only supervisory experience I have is cross training fellow employees and checking their work. That’s my answer in all the interviews when asked that question.” Grievant also testified, “I’m not claiming to be a supervisor in no way no form.” Grievant’s testimony was not persuasive.⁴

Grievant’s claim of past supervisory experience was an important factor in selecting him for the position. L3 Testimony Patterson, R Ex 4, and R Ex 1. Grievant now claims that he never falsified anything on his application, and that when he “cross-trained” fellow employees then he believed that could be used as supervisory experience. Some of Respondent’s conclusions regarding Grievant’s actions are not necessarily shared by this ALJ; however, Respondent has established sufficient credible facts to demonstrate Grievant was aware of his representations, statements, and intended to mislead a prospective employer. The information Grievant placed on his application contradicts his L3 testimony.

Respondent’s Disciplinary Action Policy specifically provides that “[a]n employee may be dismissed for cause” for a single issue of poor performance or misconduct such

⁴ An Administrative Law Judge is charged with assessing the credibility of the witnesses. See *Lanehart v. Logan County Bd. of Educ.*, Docket No. 95-23-235 (Dec. 29, 1995); *Perdue v. Dep’t of Health and Human Res./Huntington State Hosp.*, Docket No. 93-HHR-050 (Feb. 4, 1994). The Grievance Board has applied the following factors to assess a witness’s testimony: 1) demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and 5) admission of untruthfulness. Additionally, the administrative law judge 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. See *Holmes v. Bd. of Directors/W. Va. State College*, Docket No. 99-BOD-216 (Dec. 28, 1999); *Perdue, supra*. Not every factor is necessarily relevant to every credibility determination. In this situation, relevant factors include motive, consistency, and plausibility.

as “dishonesty.” See R Ex 7, p. 5 of 9. Grievant falsified information on his application, did not provide clarification or explanation of his claimed “supervisory” experience to his interviewers. Kathryn Hill, Employee Relations Manager for DOH’s Human Resources Division, testified it is the policy and practice of Respondent that if an employee lies on their application for employment, then the disciplinary response is the immediate dismissal of that employee. See L3 Testimony Hill, R Ex 1 and R Ex 7. Further, it is recognized that misrepresentation (false statement or omission of material fact) on an application for employment by a candidate for employment is recognized by DOP as a disqualification offence. See § 143-1-6.4.a.4. Disqualification of Applicants.

Grievant falsified information on his application, did not provide clarification, or explanation of his claimed “supervisory” experience to his interviewers. Intentionally misrepresenting one’s experience on an application for employment is dishonest behavior. This infraction can be viewed as proper grounds to discipline Grievant, up to and including dismissal from employment. In the fact pattern of this matter, Respondent has seen fit to sever Grievant’s employment and this is recognized as being within Respondent’s spectrum of discretion.

“[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). "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). See *Austin v. Kanawha County Bd. of Educ.*, Docket No. 97-20-089 (May 22, 1997). Mitigation of a penalty is considered on a case-by-case basis. *Conner v. Barbour County Bd. of Educ.*, Docket No. 95-01-031 (Sept. 29, 1995); *McVay v. Wood County Bd. of Educ.*, Docket No. 95-54-041 (May 18, 1995). A lesser disciplinary action may be imposed when mitigating circumstances exist. Mitigating circumstances are generally defined as conditions which support a reduction in the level of discipline in the interest of fairness and objectivity, and also include consideration of an employee's long service with a history of otherwise satisfactory work performance. *Pingley v. Div. of Corrections*, Docket No. 95-CORR-252 (July 23, 1996).

Sufficient mitigating factors are not found present in the instant matter to mandate overriding the action of Respondent. In the circumstances of this matter Grievant did not demonstrate that the penalty imposed was clearly excessive and/or an abuse of discretion. It is not determined that Respondent abused its discretion in the circumstances of this case. Respondent met its burden of proof justifying disciplinary action. Respondent established that Grievant falsified his application by claiming multiple times to have "officially" supervised employees when he had in fact never officially supervised anyone during his tenure with any State agency.

With regard to alleged violation of workplace performance and conduct, the undersigned is not convinced Grievant's behavior was not that of a disturbed employee seeking assistance. Not all Grievant's conduct is found to be as disturbing as Respondent would have this trier of fact believe. Nevertheless, Respondent has established sufficient credible facts to justify disciplinary action. Proper disciplinary action is determined by the severity of a violation. In this case, Grievant did not establish abuse of discretion or persuasively present any argument that Respondent's disciplinary action was unreasonable. Respondent demonstrated by a preponderance of the evidence that Grievant violated applicable Division of Highways Administrative Operating Procedures.-In the circumstances of this matter mitigation of this dismissal is not deemed warranted.

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). “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 party bearing the burden has not met its burden. *Id.*

2. 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)).

3. West Virginia Department of Transportation, Division of Highways has established and recognized standards of workplace performance and conduct that an employer can reasonably expect its employees to meet. Division of Highways Administrative Operating Procedures, Disciplinary Action, § 2, Ch. 6, II.A.3, 8, & 10.

4. Respondent’s Disciplinary Action Policy specifically provides that “[a]n employee may be dismissed for cause” for a single issue of poor performance or misconduct such as “dishonesty.” Division of Highways Administrative Operating Procedures, Disciplinary Action.

5. Respondent proved by a preponderance of the evidence that Grievant falsified and/or misrepresented facts on his employment application and in his interview. Respondent established by a preponderance of the evidence that Grievant violated DOH's Disciplinary Action Policy.

6. The Grievance Board has held that "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. Dept of Health and Human Res./Welch Emergency Hosp.*, Docket No. 96-HHR-183 (Oct. 3, 1996); *Hoover v. Wirt County Bd. of Educ.*, Docket No. 2008-1482-WirED (Feb. 12, 2009).

7. In assessing the penalty given, "[w]hether to mitigate the punishment imposed by the employer depends on a finding that the penalty was clearly excessive in light of the employee's past work record and the clarity of existing rules or prohibitions regarding the situation in question and any mitigating circumstances, all of which must be determined on a case-by-case basis." *McVay v. Wood County Bd. of Educ.*, Docket No. 95-54-041 (May 18, 1995) (citations omitted).

8. Grievant failed to demonstrate the penalty levied was clearly excessive or reflects an inherent disproportion between the offense and the personnel action. Sufficient mitigating factors are not found present in the instant matter to mandate overriding the

action of Respondent. In the circumstances of this matter Grievant did not demonstrate that the penalty imposed was clearly excessive and/or an abuse of discretion.

9. Respondent met its burden of proof justifying disciplinary action. It is not determined that Respondent abused its discretion in the circumstances of this case. Mitigation of this dismissal is not deemed 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 156 C.S.R. 1 § 6.20 (2018).

Date: November 30, 2021


Landon R. Brown
Administrative Law Judge