THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

AARON CHARLES ENGLISH,
Grievant,

v. Docket No. 2020-1051-DHHR

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
BUREAU FOR CHILDREN AND FAMILIES,
Respondent.

DECISION

Grievant, Aaron Charles English, was employed by Respondent, Department of Health and Human Resources within the Bureau for Children and Families. On March 11, 2020, Grievant filed this grievance against Respondent alleging violation of the *Administrative Rule of the West Virginia Division of Personnel* Rule 12.2 and discrimination. Grievant failed to request specific relief in his filing although he clarified at the level three hearing that he sought reinstatement.

The grievance was filed directly to level three pursuant to W. VA. CODE § 6C-2-4(a)(4). A level three hearing was held on January 7, 2021, before the undersigned at the Grievance Board's Charleston, West Virginia office via video conference. Grievant appeared *pro se*. Respondent appeared by counsel, Mindy M. Parsley, Assistant Attorney General. This matter became mature for decision on March 12, 2021, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law ("PFFCL").[1]

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[1] Having received no PFFCL from Grievant, Grievance Board staff contacted Grievant to confirm he had declined to submit PFFCL. In response, on March 12, 2021, Grievant emailed a written argument and included a photograph of a certified mail receipt postmarked January 21, 2021. The receipt does not include the delivery address and, as the certified mail did not include return receipt, there is no record of who accepted delivery. As it appears Grievant previously attempted to timely file his PFFCL, Grievant's

Synopsis

Grievant was employed by Respondent as a probationary Economic Services Worker. Grievant's probationary employment was terminated for gross misconduct involving inappropriate contact with a client including the solicitation of nude photographs. Respondent proved Grievant committed gross misconduct and that its decision to terminate Grievant's employment for the same was not arbitrary and capricious. Grievant failed to prove he was entitled to more due process than that which he received post-termination. Accordingly, the 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 was employed by Respondent as a probationary Economic Services Worker.

2. On December 18, 2019, Grievant completed an expedited application for SNAP benefits for a nineteen-year-old homeless woman, A.M. During the application process Grievant learned A.M. had previously been employed as a stripper.

3. Grievant immediately began messaging A.M. on Facebook. Grievant's first message was directly related to A.M.'s case in that Grievant stated that he could not contact her by telephone because he had not updated her telephone number and Grievant offered to refer A.M. to a food bank. Immediately thereafter, Grievant's messaging became personal. Grievant apologized for "creeping on" A.M. and said he

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March 12, 2021 email has been accepted as his PFFCL and the mature date for decision is the same.

"wasn't trying to be like one of those creepy old guys at the strip club." Grievant referenced A.M. as a client, said he felt "like a creep tho seeing as how I'm old enough to be your dad" but then immediately said, "Well I did creep the one pic of you in like a bra or swimsuit top… lol" and "You kinda had me curious after saying you stripped."

4. Grievant contacted A.M. numerous times through Facebook messages over the course of a month asking for revealing pictures, saying that he "got turned on" by A.M. stripping, and "jokingly" asking for a "private at home show."

5. Despite A.M.'s obvious reluctance and Grievant's own reference to his behavior as "creepy," offensive, and making A.M. uncomfortable, Grievant continued to express sexual interest.

6. Grievant's conduct directly related to his position as an Economic Services Worker in that Grievant initially contacted A.M. regarding her case, referred to her as a client, and offered "to pull some strings" when A.M. stated she had unsuccessfully called other programs for assistance.

7. Directly after offering "to pull some strings" Grievant again referred to himself as a "creepy old guy" and saying, "I won't lie that you really drew my attention when you mentioned stripping but I will help if at all possible." Thereafter, Grievant continued to ask for naked pictures.

8. On February 11, 2020, A.M.'s mother contacted Respondent to protest Grievant's behavior and provided screenshots of the Facebook messages.

9. On the same date, Grievant was verbally suspended without pay pending investigation, which was memorialized by letter dated February 13, 2020, in which

Community Services Manager ("CSM") Janice McCoy notified Grievant that the allegations were of "inappropriate conduct with a client."

10. Deputy Commissioner Tina A. Mitchell conducted an investigation by reviewing the Facebook messages and interviewing A.M. Grievant was not interviewed as part of the investigation due to a miscommunication between Deputy Commissioner Mitchell and CSM McCoy.

11. Regional Director Lance Whaley terminated Grievant's probationary employment by letter dated March 4, 2020 for gross misconduct. Regional Director Whaley explained the reason for the termination to be Grievant's Facebook messages and quoted some of the messages. Regional Director Whaley determined Grievant's behavior had violated Respondent's employee conduct policy, *Policy Memorandum 2108*, and the Division of Personnel's *Prohibited Workplace Harassment* policy. Regional Director Whaley required Grievant's immediate separation from employment but notified Grievant that he could respond to the termination within fifteen days of the letter.

12. Grievant did not contact Regional Director Whaley following his receipt of the termination letter.

13. *Policy Memorandum 2108* states, in pertinent part, "Employees are expected to conduct themselves professionally in the presence of clients; exercise standard client management techniques' and to be ethical, alert, polite, sober, and attentive to the responsibilities associated with their jobs. Further employees are expected to refrain from . . . harassing or intimidating clients . . . ; engaging in sexual conduct while conducting activities related to their employment; and exploiting clients, including but not limited to, matters of an intimate, personal, emotional, or sexual nature."

Discussion

If a probationary employee is terminated on the grounds of misconduct, the termination is disciplinary, and the Respondent bears the burden of establishing the charges against the Grievant by a preponderance of the evidence. *See Cosner v. Dep't of Health and Human Resources/William R. Sharpe, Jr. Hospital*, Docket No. 08-HHR-008 (Dec. 30, 2008); *Livingston v. Dep't of Health and Human Res.,* Docket No. 2008-0770-DHHR (Mar. 21, 2008). *See also* W. VA. CODE ST. R. § 156-1-3 (2018). *See also Lott v. Div. of Juvenile Serv.*, Docket No. 99-DJS-278 (Dec. 16, 1999). "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). If the evidence is equally balanced, the party with the burden of proof has not met that burden. *See Leichliter v. W. Va. Dep't of Health and Human Res.,* Docket No. 92-HHR-486 (May 17, 1993).

The Division of Personnel's administrative rule discusses the probationary period of employment, describing it as "a trial work period designed to allow the appointing authority an opportunity to evaluate the ability of the employee to effectively perform the work of his or her position and to adjust himself or herself to the organization and program of the agency." W. VA. CODE ST. R. § 143-1-10.1.a. (2016). The same provision goes on to state that the employer "shall use the probationary period for the most effective adjustment of a new employee and the elimination of those employees who do not meet the required standards of work." *Id.* A probationary employee may be dismissed at any point during the probationary period that the employer determines his services are

unsatisfactory. *Id.* at § 10.5(a). Therefore, the Division of Personnel's administrative rules establish a low threshold to justify termination of a probationary employee. *Livingston v. Dep't of Health and Human Res.*, Docket No. 2008-0770-DHHR (Mar. 21, 2008).

> A probationary employee is not entitled to the usual protections enjoyed by a state employee. The probationary period is used by the employer to ensure that the employee will provide satisfactory service. An employer may decide to either dismiss the employee or simply not to retain the employee after the probationary period expires.

Hammond v. Div. of Veteran's Affairs, Docket No. 2009-0961-MAPS (Jan. 7, 2009) (citing *Hackman v. W. Va. Dep't of Transp.*, Docket No. 01-DMV-582 (Feb. 20, 2002)).

"[W]hile an employer has great discretion in terminating a probationary employee, that termination cannot be for unlawful reasons, or arbitrary or capricious. *McCoy v. W. Va. Dep't of Transp.*, Docket No. 98-DOH-399 (June 18, 1999); *Nicholson v. W. Va. Dep't of Health and Human Res.*, Docket No. 99-HHR-299 (Aug. 31, 1999*)." Lott v. W. Va. Div. of Juvenile Serv.*, Docket No. 99-DJS-278 (Dec. 16, 1999). 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), *aff'd* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998).

Grievant admits he sent the Facebook messages to A.M. but asserts that she flirted with him during the interview and that A.M. willingly participated in the Facebook messaging. Grievant asserts Respondent failed to give him an opportunity to respond to the charges and that Deputy Commissioner Mitchell discriminated against him and "tarnished [his] reputation and name among my friends, family, and coworkers." Respondent asserts it has proved Grievant committed gross misconduct and that its decision to terminate Grievant's employment was not arbitrary and capricious.

"The term gross misconduct as used in the context of an employer-employee relationship implies a willful disregard of the employer's interest or a wanton disregard of standards of behavior which the employer has a right to expect of its employees." *Graley v. Parkways Econ. Dev. & Tourism Auth.*, Docket No. 91-PEDTA-225 (Dec. 23, 1991) *(citing Buskirk v. Civil Serv. Comm'n*, 175 W. Va. 279, 332 S.E.2d 579 (1985) and *Blake v. Civil Serv. Comm'n*, 172 W. Va. 711, 310 S.E.2d 472 (1983)); *Evans v. Tax & Revenue/Ins. Comm'n*, Docket No. 02-INS-108 (Sep. 13, 2002); *Crites v. Dep't of Health & Human Res.*, Docket No. 2011-0890-DHHR (Jan. 24, 2012).

Respondent proved Grievant committed gross misconduct. Grievant admits he sent the Facebook messages and the messages clearly are an attempt to take advantage of a vulnerable client for Grievant's own sexual desires. This is a violation of Respondent's policy and an affront to Respondent's mission to assist the vulnerable. Grievant's attempt to blame his victim is offensive. Although he stated that he admitted to making "a mistake" he never articulated how his behavior was improper, accepted any

responsibility for his behavior, or acknowledged the harm he caused A.M. Grievant's testimony shows he knew how vulnerable A.M. was and his assertion that he was concerned for her and wanting to help her is not credible. Grievant specifically testified that he knew A.M. had been forced to strip and sell sexual favors, yet in his messages he glorified her stripping, focused on how much it "turned him on" and repeatedly asked her for revealing pictures. When A.M. did not acquiesce to his desires, he then used his supposed care for her situation and offers of help to attempt to get her compliance. Although Grievant did not specifically tie her compliance with her receipt of benefits, the implication was present . It is also clear A.M. had no desire to have a sexual relationship with Grievant. Grievant's own messages show he knew he was "just another creep" trying to get what he could from this vulnerable young woman.

Grievant next argues that Respondent failed to allow Grievant an opportunity to present his side of the story prior to his termination. Grievant did prove that he had no opportunity to respond to the charges until after his termination. Respondent failed to question Grievant during the investigation due to a miscommunication between Deputy Commissioner Mitchell and CSM McCoy. Respondent also did not provide Grievant with a predetermination hearing, stating that it was not required to do so pursuant to the *Administrative Rule of the West Virginia Division of Personnel*.

Permanent civil service employees have "a property interest arising out of the statutory entitlement to continued uninterrupted employment." Syl. Pt. 4, *Waite v. Civil Serv. Comm'n*, 161 W. Va. 154, 156, 241 S.E.2d 164, 166 (1977). That property interest "warrant[s] the application of due process procedural safeguards to protect against the arbitrary discharge of such employee under Article 3, Section 10 of our constitution."

Buskirk v. Civil Serv. Comm'n, 175 W. Va. 279, 283, 332 S.E.2d 579, 583 (1985) (*per curiam*) (citing *Waite*).

It is unclear if a probationary civil service employee would have a sufficient property interest to confer a constitutional right to due process. The statutory entitlement to continued employment for civil service employees springs from West Virginia Code Chapter 29, Article 6, which continues the civil service system, State Personnel Board, and Division of Personnel. In this article, the legislature tasked the State Personnel Board with promulgating rules to implement the provisions of the article, including for the discharge of employees as follows:

> For discharge or reduction in rank or grade only for cause of employees in the classified service. Discharge or reduction of these employees shall take place only after the person to be discharged or reduced has been presented with the reasons for such discharge or reduction stated in writing, and has been allowed a reasonable time to reply thereto in writing, or upon request to appear personally and reply to the appointing authority or his or her deputy: Provided, that upon an involuntary discharge for cause, the employer may require immediate separation from the workplace, or the employee may elect immediate separation. If separation is required by the employer in lieu of any advance notice of discharge, or if immediate separation is elected by an employee who receives notice of an involuntary discharge for cause, the employee is entitled to receive severance pay attributable to time the employee otherwise would have worked, up to a maximum of fifteen calendar days following separation. Receipt of severance pay does not affect any other right to which the employee is entitled with respect to the discharge. . . .

W.VA. CODE § 29-6-10(12). It is this section that confers the right to continued uninterrupted employment upon "employees in the classified service." Regarding probationary employees, the article provides "[f]or a period of probation not to exceed one

year before appointment or promotion may be made complete within the classified service." W.VA. CODE § 29-6-10(9).

This language indicates that a probationary employee is not in the classified service until the probationary period is successfully completed and would, therefore, not have a right to continued uninterrupted employment under the statute. The Administrative Rule of the West Virginia Division of Personnel provides, "If at any time during the probationary period, the appointing authority determines that the services of the employee are unsatisfactory, the appointing authority may dismiss the employee in accordance with subsection 12.2 of this rule." W.VA. CODE ST. R. § 143-1-10.5.a. (2016). Subsection 12.2 requires that the agency:

> 12.2.a.1. meet with the employee in a predetermination conference and advise the employee of the contemplated dismissal, provided that a conference is not required when the public interests are best served by withholding the notice or when the cause of dismissal is gross misconduct;
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> 12.2.a.2. give the employee oral notice confirmed in writing within three (3) working days, or written notice of the specific reason or reasons for the dismissal; and,
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> 12.2.a.3. give the employee a minimum of fifteen (15) days' advance notice of the dismissal to allow the employee a reasonable time to reply to the dismissal in writing, or upon request to appear personally and reply to the appointing authority or his or her designee. Provided, that fifteen (15) days' advance notice is not required when the public interests are best served by withholding the notice or when the cause of dismissal is gross misconduct.

W.VA. CODE ST. R. § 143-1-12.2.a. (2016).

Therefore, it is the administrative rule of the Division of Personnel that would confer a due process right upon a probationary employee and the rule does not confer that right in the case of gross misconduct. The West Virginia Supreme Court of Appeals does not

appear to have addressed the property right of probationary employees in the classified service but has evaluated the property right of other civil service employees based on the specific statutory or regulatory language applicable to that employment. *See Powell v. Brown*, 160 W. Va. 723, 726, 238 S.E.2d 220, 221 (1977) (probationary teacher entitled to due process as State Board of Education regulation stated "[e]very employee is entitled to 'due process' in matters affecting his employment); *Major v. De French*, 169 W. Va. 241, 246, 286 S.E.2d 688, 692 (1982) (probationary police officer entitled to due process as statute stated "at any time during the probationary period the probationer may be discharged for just cause, in the manner provided in section twenty [§ 8-14-20] of this article," with that section providing due process protections of notice and opportunity to be heard). Based on this framework, it would not appear that Grievant was entitled to pre-termination notice and opportunity to be heard. Respondent provided the post-termination notice and opportunity to be heard required by Rule 12.2.a.3. Given Grievant's status as a probationary employee, the nature of his misconduct, the short period of unpaid suspension proceeding his termination from employment, and the immediate opportunity to protest his termination to which he did not avail himself, Grievant's interest was adequately protected.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. If a probationary employee is terminated on the grounds of misconduct, the termination is disciplinary, and the Respondent bears the burden of establishing the charges against the Grievant by a preponderance of the evidence. *See Cosner v. Dep't of Health and Human Resources/William R. Sharpe, Jr. Hospital*, Docket No. 08-HHR-

008 (Dec. 30, 2008); *Livingston v. Dep't of Health and Human Res.,* Docket No. 2008-0770-DHHR (Mar. 21, 2008). *See also* W. VA. CODE ST. R. § 156-1-3 (2018). *See also Lott v. Div. of Juvenile Serv.*, Docket No. 99-DJS-278 (Dec. 16, 1999).

2. "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). If the evidence is equally balanced, the party with the burden of proof has not met that burden. *See Leichliter v. W. Va. Dep't of Health and Human Res.,* Docket No. 92-HHR-486 (May 17, 1993).

3. The Division of Personnel's administrative rule discusses the probationary period of employment, describing it as "a trial work period designed to allow the appointing authority an opportunity to evaluate the ability of the employee to effectively perform the work of his or her position and to adjust himself or herself to the organization and program of the agency." W. VA. CODE ST. R. § 143-1-10.1.a. (2016). The same provision goes on to state that the employer "shall use the probationary period for the most effective adjustment of a new employee and the elimination of those employees who do not meet the required standards of work." *Id.* A probationary employee may be dismissed at any point during the probationary period that the employer determines his services are unsatisfactory. *Id.* at § 10.5(a).

4. The Division of Personnel's administrative rules establish a low threshold to justify termination of a probationary employee. *Livingston v. Dep't of Health and Human Res.*, Docket No. 2008-0770-DHHR (Mar. 21, 2008).

> A probationary employee is not entitled to the usual protections enjoyed by a state employee. The probationary

> period is used by the employer to ensure that the employee will provide satisfactory service. An employer may decide to either dismiss the employee or simply not to retain the employee after the probationary period expires.

Hammond v. Div. of Veteran's Affairs, Docket No. 2009-0961-MAPS (Jan. 7, 2009) (citing *Hackman v. W. Va. Dep't of Transp.*, Docket No. 01-DMV-582 (Feb. 20, 2002)).

5. "[W]hile an employer has great discretion in terminating a probationary employee, that termination cannot be for unlawful reasons, or arbitrary or capricious. *McCoy v. W. Va. Dep't of Transp.*, Docket No. 98-DOH-399 (June 18, 1999); *Nicholson v. W. Va. Dep't of Health and Human Res.*, Docket No. 99-HHR-299 (Aug. 31, 1999*)."* *Lott v. W. Va. Div. of Juvenile Serv.*, Docket No. 99-DJS-278 (Dec. 16, 1999). 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)).

6. "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), *aff'd* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998).

7. "The term gross misconduct as used in the context of an employer-employee relationship implies a willful disregard of the employer's interest or a wanton

disregard of standards of behavior which the employer has a right to expect of its employees." *Graley v. Parkways Econ. Dev. & Tourism Auth*., Docket No. 91-PEDTA-225 (Dec. 23, 1991) *(citing Buskirk v. Civil Serv. Comm'n*, 175 W. Va. 279, 332 S.E.2d 579 (1985) and *Blake v. Civil Serv. Comm'n*, 172 W. Va. 711, 310 S.E.2d 472 (1983)); *Evans v. Tax & Revenue/Ins. Comm'n*, Docket No. 02-INS-108 (Sep. 13, 2002); *Crites v. Dep't of Health & Human Res*., Docket No. 2011-0890-DHHR (Jan. 24, 2012).

8. Respondent proved Grievant committed gross misconduct and that its decision to terminate Grievant's employment for the same was not arbitrary and capricious.

9. Permanent civil service employees have "a property interest arising out of the statutory entitlement to continued uninterrupted employment." Syl. Pt. 4, *Waite v. Civil Serv. Comm'n*, 161 W. Va. 154, 156, 241 S.E.2d 164, 166 (1977). That property interest "warrant[s] the application of due process procedural safeguards to protect against the arbitrary discharge of such employee under Article 3, Section 10 of our constitution." *Buskirk v. Civil Serv. Comm'n*, 175 W. Va. 279, 283, 332 S.E.2d 579, 583 (1985) (*per curiam*) (citing *Waite*).

10. The statutory entitlement to continued employment for civil service employees springs from West Virginia Code Chapter 29, Article 6, which continues the civil service system, State Personnel Board, and Division of Personnel. In this article, the legislature tasked the State Personnel Board with promulgating rules to implement the provisions of the article, including for the discharge of employees as follows:

> For discharge or reduction in rank or grade only for cause of employees in the classified service. Discharge or reduction of these employees shall take place only after the person to be discharged or reduced has been presented with the reasons

> for such discharge or reduction stated in writing, and has been allowed a reasonable time to reply thereto in writing, or upon request to appear personally and reply to the appointing authority or his or her deputy: Provided, that upon an involuntary discharge for cause, the employer may require immediate separation from the workplace, or the employee may elect immediate separation. If separation is required by the employer in lieu of any advance notice of discharge, or if immediate separation is elected by an employee who receives notice of an involuntary discharge for cause, the employee is entitled to receive severance pay attributable to time the employee otherwise would have worked, up to a maximum of fifteen calendar days following separation. Receipt of severance pay does not affect any other right to which the employee is entitled with respect to the discharge. . . .

W.VA. CODE § 29-6-10(12).

11. Regarding probationary employees, the article provides "[f]or a period of probation not to exceed one year before appointment or promotion may be made complete within the classified service." W.VA. CODE § 29-6-10(9).

12. "If at any time during the probationary period, the appointing authority determines that the services of the employee are unsatisfactory, the appointing authority may dismiss the employee in accordance with subsection 12.2 of this rule." W.VA. CODE ST. R. § 143-1-10.5.a. (2016). Subsection 12.2 requires that the agency:

> 12.2.a.1. meet with the employee in a predetermination conference and advise the employee of the contemplated dismissal, provided that a conference is not required when the public interests are best served by withholding the notice or when the cause of dismissal is gross misconduct;
>
> 12.2.a.2. give the employee oral notice confirmed in writing within three (3) working days, or written notice of the specific reason or reasons for the dismissal; and,
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> 12.2.a.3. give the employee a minimum of fifteen (15) days' advance notice of the dismissal to allow the employee a reasonable time to reply to the dismissal in writing, or upon request to appear personally and reply to the appointing

> authority or his or her designee. Provided, that fifteen (15) days' advance notice is not required when the public interests are best served by withholding the notice or when the cause of dismissal is gross misconduct.

W.VA. CODE ST. R. § 143-1-12.2.a. (2016).

13. Grievant failed to prove he was entitled to more due process than that which he received post-termination.

Accordingly, the 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: April 23, 2021

Billie Thacker Catlett
Chief Administrative Law Judge