THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

JAMES BRIAN SMITH,
Grievant,

v. **Docket No. 2020-0541-MAPS**

DIVISION OF CORRECTIONS AND REHABILITATION/BUREAN OF PRISONS AND JAILS/MOUNT OLIVE CORRECTIONAL COMPLEX AND JAIL,
Respondent.

DECISION

Grievant James Smith was employed by Respondent, Division of Corrections and Rehabilitation ("DC&R"), as a Correctional Officer 5 ("CO 5"). He was assigned to the Mount Olive Correctional Complex and Jail ("Mount Olive"). Pursuant to W. VA. CODE § 6C-2-4(a)(4), CO Smith filed an expedited grievance directly to level three dated November 4, 2019, alleging that he was improperly dismissed from his job. He alleges that the penalty of dismissal was too severe and inconsistent with the penalty received by other Correctional Officers in similar circumstances. As relief, Grievant seeks: "1) To be reinstated to rank and position. 2) All leave (Annual and Sick) be reimbursed. 3) Wages from dismissal date to conclusion of hearing. 4) This action removed from file(s)."[1]

A level three hearing was conducted at the Charleston office of the West Virginia Public Employees Grievance Board on November 2, 2020. All witnesses appeared via the Zoom video conferencing platform. Grievant personally appeared and was represented by Scott Kaminski, Esquire. Respondent appeared in the person of Donnie

[1] The relief herein is set out as it appears on the level three grievance form.

Ames, Superintendent of Mount Olive, and was represented by Briana J. Marino, Assistant Attorney General. This matter became mature for decision on December 14, 2020, upon receipt of the Proposed Findings of Fact and Conclusions of Law submitted by the parties.[2]

Synopsis

Grievant, a Correctional Officer 5 with the rank of Lieutenant, was dismissed from employment for violations of DC&R policies resulting from striking a shackled and defenseless inmate twice in the face with no physical provocation. Grievant admitted to the misconduct but argues that the dismissal is too sever due to his long successful employment history, and his immediately self-reporting of the misconduct, and other employees receiving a lesser penalty for similar infractions. Respondent proved that mitigation was not justified because of the heinous nature of Grievant's action and, as a high-ranking supervisor, he was expected to be a role model and therefore held to a higher standard than subordinate officers.

The following facts are found to be proven by a preponderance of the evidence based upon an examination of the entire record developed in this matter.

Findings of Fact

1. James Smith, Grievant, was employed by Respondent, Division of Corrections and Rehabilitation ("DC&R"). He was assigned to the Mount Olive Correctional Complex and Jail.

[2] Counsel Kaminski certified that he caused the post-hearing submission to be placed in the United States mail December 14, 2020. However, the submission was not received by the Grievance Board but was submitted by Grievant's counsel on January 5, 2021, as an email attachment. Respondent did not to provide a post-hearing submission,

2. Grievant has been employed by DC&R as a Correctional Officer ("CO") since 1996 and has worked his way through the ranks to a CO 5 position with the rank of Lieutenant. He had a good record with no discipline within the last five years. Superintendent Ames characterized him as "a great lieutenant."

3. Grievant's last position was in administrative leadership. He was charged with scheduling the staff for the various shifts and supervising shift commanders. He had the authority to recommend discipline but generally did not have much contact with the prison population.

4. Crystal Critchley is a Licensed Practical Nurse ("LPN") who provides nursing services to Mount Olive through a contract with a separate employer. She is not an employee of DC&R. LPN Critchley has been engaged to Grievant for approximately two years. Their relationship is generally known by the employees at Mount Olive.

5. At around 5:00 p.m. on September 18, 2019, LPN Critchley was working in the "pill room" which faces into the dining hall. She was seated behind a window in the room separated from the population. There is a steel drawer in the window through which the nurse passes the medication to individual inmates. The inmates form a line in front of the window to receive their medication. Inmates must present their identification card before the medication may be dispensed to them.

6. One inmate was in the pill line on that date. When he came to the window, LPN Critchley ask him for his identification. The inmate said that he had forgotten it. LPN Critchley informed the inmate that he could not get his medication without his ID card.

7. The inmate became aggressive, cussed at Ms. Critchley, and slammed the steel drawer back on her fingers.

8. LPN Critchley's fingers immediately became discolored by the injury. When Ms. Critchley later went to a medical facility it was confirmed that she had a broken finger bone and extensive soft tissue injury.

9. Immediately after her fingers were smashed in the drawer, LPN Critchley contacted Corporal Heather Vest in the facility's Central Control and reported the incident.

10. CO 2 Crocker and Sergeant Miller were dispatched by Lieutenant David Cavendish to escort the inmate to the security wing on Mount Olive. The inmate was located in the recreation yard, placed in mechanical restraints, escorted to the facility's secure wing and placed in a chair. The inmate remained in mechanical restraints with his hands shackled behind his back. CO 2 Crocker, Sergeant Miller and Lieutenant Cavendish were in the room with the inmate.

11. Lieutenant Cavendish was the Assistant Shift Commander that evening. This was his first shift after being promoted to the rank of Lieutenant. He had worked under Grievant Smith for a long time and considered him a mentor.

12. Grievant Smith was in the Control Center preparing to leave for the day when he heard the call from the medical center regarding the incident where LPN Critchley fingers were smashed in the pill drawer.

13. Grievant Smith followed the officers into the security lock-up where the inmate was being held. He stated, "Congratulations you won yourself a free trip to lock up for assaulting a staff member." The inmate replied, "Fuck you, I didn't do anything wrong. I was having a bad day, no big deal."

14. Grievant immediately struck the inmate in the face twice and said, "having a bad day doesn't make it acceptable to assault staff members." The inmate was seated

in a chair with his hands cuffed behind him when he was struck. He made no aggressive gestures before being struck.

15. The inmate was escorted to the facility's medical section for medical assessment and pre-segregation screening. After being examined the inmate was placed in a cell in the infirmary. The examination revealed the inmate had a bruise causing discoloration around his eye and a swollen upper lip caused by being hit by Grievant.

16. Grievant went to the office of Executive Assistant ("Exec. Asst.") Cheryl Chandler. He explained the incident to her and reported that he struck the restrained inmate twice in the head. He also told her that he knew it was wrong, but he was proud of recovering his temper and stopping when he did.

17. Exec. Asst. Chandler called Superintendent ("Supt.") Donnie Ames and informed him of the incident and her conversation with Lieutenant Smith. Supt. Ames told Exec. Asst. Chandler to instruct Lieutenant Smith to prepare a confidential report regarding the incident, which she did.

18. On the morning of September 19, 2019, Supt. Ames instructed William Meadows, Investigator 2, to investigate the incident which occurred the previous day. Investigator Meadows interviewed all the people involved in the incident including Grievant Smith, LPN Critchley, Lieutenant Cavendish, Sergeant Miller, and the inmate. He also reviewed the statements and reports submitted by all the officers involved in the incident including Exec. Asst. Chandler.

19. Investigator Meadows submitted a Report of Investigation dated October 1, 2019, wherein he concluded that Lieutenant Smith's conduct violated the following policies:

- Policy Directive 100, relating to: the highest priority to the protection of the public, staff and offenders; as well as exhibiting the highest degree of professional behavior.
- Policy Directive 129, relating to: Conducting oneself in a manner that will not discredit the officer or other employees of the Division: Complying with Policy Directives and Operational Procedures; Unsatisfactory job performance; Unprofessional treatment of persons contrary; and, Physical Abuse on an inmate.

(Respondent Exhibit 1, Report of Investigation (redacted))[3]

20. The report did not make any recommendation regarding discipline. Investigator Meadows has conducted four or five previous investigations finding the officers had violated the Use of Force Policy. Some of the officers self-reported and some did not. Those officers were not dismissed. All the prior investigations occurred prior to the consolidation of the various correctional agencies being consolidated into the Division of Corrections and Rehabilitation on July 1, 2018.

21. Grievant Smith met with Supt. Ames on the morning of September 19, 2019 and told Supt. Ames about the incident. Supt. Ames suspended Grievant while the investigation was pending.[4]

22. A predetermination conference was held on October 30, 2019. Supt. Ames told Grievant the misconduct he was charged with and that dismissal was being considered. Grievant admitted that he made a mistake but felt that the facts that he self-reported his misconduct and had a long, successful employment record should result in discipline short of dismissal.

[3] Information regarding the inmate's identity and actions were redacted from the report by Respondent. Because the inmate's conduct was revealed by testimony Grievant did not object to any of the redaction.
[4] This was not a disciplinary suspension.

23. Supt. Ames gave Grievant a termination letter later that day. The letter reiterated uncontested facts of the incident and concluded, "Based on the facts, and by your own admissions, the allegations of inappropriate and unprofessional conduct relating to the physical assault of an inmate, were substantiated." The reasons for the dismissal were stated as follows:

> The State of West Virginia and its agencies have reason to expect their employees to observe a standard of conduct which will not reflect discredit of the abilities and integrity of their employees or create suspicion with reference to their employees' capability in discharging their duties and abilities. The nature of your misconduct demonstrated a willful disregard of the employer's interest or a wanton disregard of the standards of behavior which the employer has the right to expect of its employees. I believe the nature of your misconduct is sufficient to cause me to conclude that you do not meet an acceptable standard of conduct as an employee of Division of Corrections and Rehabilitation, Mount Olive Correctional Complex & Jail, thus warranting your dismissal.

(Respondent Exhibit 4)

24. Supt. Ames took into consideration Grievant's long and successful service as well as the fact that he self-reported. He concluded that these mitigating factors were overcome by the following factors:

- Grievant, as a high-ranking supervisor, is held to a higher standard and expected to set an example for his subordinates.
- Grievant indicated that he might repeat the misconduct to protect any female.
- Grievant's misconduct reflected poor leadership and decision making.
- The inmate was shackled rendering him defenseless and had not displayed any aggressive behavior other than his disrespectful words.
- Any demotion would have resulted in Grievant having more interaction with the inmate population making a repeat of similar misconduct more likely. [5]

[5] Testimony of Superintendent Donnie Ames.

Discussion

As this grievance involves a disciplinary matter, Respondent bears the burden of establishing the charges by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018).

> . . . *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). Where the evidence equally supports both sides, a party has not met its burden of proof. *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant was a permanent state employee in the classified service. Permanent state employees who are in the classified service can only be dismissed for "good cause," meaning "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). *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*).

The facts in this matter are not in dispute. The inmate slammed a metal door shut on LPN Critchley's fingers causing significant injury. Grievant was dismissed for striking the inmate twice in the face while the inmate was seated, shackled, and defenseless. The only provocation by the inmate was a disrespectful comment showing no remorse for his action.

Grievant does not deny that he struck the inmate as described and that his action was a serious violation of agency policy. He agrees that he deserves discipline for his misconduct. However, he argues that dismissal is too severe given the totality of the circumstances. To support this argument, Grievant notes that he has been a correctional officer for more than twenty years and has a record of successful evaluations and regular promotions. Grievant also believes that his immediate self-reporting of the incident along with taking responsibility for his actions should be counted in his favor. Finally, Grievant argues that other correctional officers who have violated the Use of Force policies have not been routinely dismissed.

Respondent proved by a preponderance of the evidence that Grievant violated Policy Directives 100 and 129 as set out in Investigator Meadows' Report of Investigation, specifically by physically abusing an inmate. Disciplinary action was appropriate. Grievant admitted to that much. The only remaining issue is whether the penalty was too severe under the totality of the circumstance and should be reduced.

"[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).

Respondent agrees that Grievant has a long and successful career with the agency. Supt. Ames took that into consideration when deciding what discipline to recommend. That record includes the fact that he is now a senior office. As such he is responsible for setting an example of proper and ethical conduct for the subordinate officers in the facility. The abuse of an inmate by such a senior officer sends a bad signal to all other officers at Mount Olive. Respondent felt that it was necessary to dismiss Grievant to signal that such conduct would not be tolerated by any officer, regardless of rank.

It has been consistently held that, "A supervisor is expected to set an example of appropriate behavior for subordinates and may be held to a higher standard of conduct." *Cobb v. Dep't of Admin./General Services Div.*, Docket No. 97-ADMN-404/455 (May 26, 1999); *Wiley v. Dept. of Natural Res*., Docket No. 96-DNR-515 (March 26, 1988); *Lilly v. Dep't of Transp.*, Docket No. 07-DOH-387 (June 30, 2008); *Henry v. Div. of Highways*, Docket No. 2011-0944-DOT (Aug. 31, 2011); *Vance v. Reg. Jail Auth.* Docket No. 2011-1705-MAPS (Feb. 22, 2012); *Bolen v. Div. of Highways,* Docket No. 2016-1198-DOT (Apr. 14, 2017).

Respondent also took into consideration that Grievant self-reported and took responsibility for his actions. Again, that factor was considered. Respondent concluded that reporting is the duty of all Correctional Officers. Grievant's proper performance of that duty does not make up for the serious and intentional violation of the obligation to keep inmates free from harm. Grievant points out that not mitigating the penalty due to

Grievant's self-reporting creates a disincentive for other officers to admit misconduct. To a certain extent this rings true. However, all officers have an affirmative duty to report misconduct and failure to do so only exacerbates any misconduct the officer may have already committed.

Finally, Grievant gave some examples of officers who had violated the use of force policy and had not been dismissed. "[T]he penalties employed by the employer against other employees guilty of similar offenses" is a factor to be considered in determining whether mitigation is appropriate. In this matter, Grievant testified that other officers had struck inmates and were not dismissed. Grievant did not have direct knowledge of these incidents but relied on what he was told by others, which constitutes hearsay.

Regarding the hearsay evidence, the issue is not admissibility but one of weight. An administrative law judge must determine what weight, if any, is to be accorded hearsay evidence in a proceeding. *Warner v. Dep't of Health and Human Resources*, Docket No. 07-HHR-409 (Nov. 18, 2008)*; Miller v. W. Va. Dep't of Health and Human Resources*, Docket No. 96-HHR-501 (Sept. 30, 1997); *Harry v. Marion County Bd. of Educ.*, Docket Nos. 95-24-575 & 96-24-111 (Sept. 23, 1996). That means that hearsay evidence, while generally admissible, will be subject to scrutiny because of its inherent susceptibility to being untrustworthy. *Lunsford and Kelly v. Reg. Jail and Corr. Facility Auth.,* Docket No. 2016-1388-CONS (Sept. 28, 2016).

The administrative law judge applies 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. *See, Kennedy v. Dep't of Health and Human Resources*, Docket No. 2009-1443-DHHR (March 11, 2010) (affirmed by the Circuit Court of Kanawha County, WV, June 9, 2011).

"'[T]he primary reason for the exclusion of hearsay is that there is no way for the trier of fact to judge the trustworthiness of the information.' *Handbook on Evidence for West Virginia Lawyers,* Vol. 2, 4th Edition, Franklin D. Cleckley, © 1994. The evidence is inherently unreliable because; it denies the accused the opportunity for cross examination of the speaker at the time it is being made, it often lacks the sanction of being made under oath, and it facilitates the use of perjured evidence." *Id. Lundsford and Kelly v. Reg'l Jail & Corr. Facility Auth.,* Docket No. 2016-1368-CONS (Sept. 28, 2016). *Clark v. Dep't of Health & Human Res.,* Docket No. 2017-2133-CONS (Nov. 1, 2017).

Grievant did not subpoena witnesses who could have given direct evidence of prior disciplinary actions. Unfortunately, not having direct evidence, not only left the actual occurrence of the events in question, but also the nature of the events. As Supt. Ames aptly noted, each use of force violation is unique and must be judged based upon the specific facts of that incident. Grievant was unable to directly testify to the specific nature of the incidents he cited nor whether the incidents involve physical provocation by the inmate or whether the inmates were rendered helpless by mechanical restraints. This

hearsay evidence is entitled to little weight because it is not reliable to prove that the other officers had committed similar offense to the charge facing Grievant and received a lesser penalty. Investigator Meadows testified that he had previously investigated four or five incidents involving officers violating the Use of Force policy and none of them had been dismissed. There was no evidence related to the circumstances of any of those investigations. It was not proved that any of the incidents were similar to Grievant's situation.

Ultimately, Grievant did not demonstrate that dismissal was clearly excessive or reflected an abuse of agency discretion or was inherently disproportionate to his misconduct. Grievant committed a very serious offense for which dismissal from employment was appropriate. Respondent could have given a less severe penalty but did not abuse its discretion by deciding not to.

Accordingly, the grievance is **DENIED.**

Conclusions of Law

1. As this grievance involves a disciplinary matter, Respondent bears the burden of establishing the charges by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018). Where the evidence equally supports both sides, a party has not met its burden of proof. *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. Respondent proved by a preponderance of the evidence that Grievant violated Policy Directives 100 and 129 as set out in Investigator Meadows' Report of Investigation, specifically by physically abusing an inmate. Discipline was appropriate.

3. “[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).

4. “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).

5. “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).

6. It has been consistently held that, "A supervisor is expected to set an example of appropriate behavior for subordinates and may be held to a higher standard of conduct." *Cobb v. Dep't of Admin./General Services Div.*, Docket No. 97-ADMN-404/455 (May 26, 1999); *Wiley v. Dept. of Natural Res*., Docket No. 96-DNR-515 (March 26, 1988); *Lilly v. Dep't of Transp.*, Docket No. 07-DOH-387 (June 30, 2008); *Henry v. Div. of Highways*, Docket No. 2011-0944-DOT (Aug. 31, 2011); *Vance v. Reg. Jail Auth.* Docket No. 2011-1705-MAPS (Feb. 22, 2012); *Bolen v. Div. of Highways,* Docket No. 2016-1198-DOT (Apr. 14, 2017).

7. Grievant did not prove by a preponderance of the evidence that dismissal was clearly excessive or reflects an abuse of agency discretion or was inherently disproportionate to his misconduct. Under the totality of the circumstances mitigation of the penalty is not appropriate.

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* 156 C.S.R. 1 § 6.20 (2018).

DATE: JANUARY 20, 2021

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WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE