

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**MONICA CHURCH,**  
**Grievant,**

**v.**

**Docket No. 2022-0411-DHHR**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES/  
BUREAU FOR MEDICAL SERVICES,**  
**Respondent.**

**DECISION**

Grievant, Monica Church, was employed by Respondent, Department of Health and Human Resources, within the Bureau for Medical Services as a probationary employee. On November 16, 2021, Grievant filed this grievance against Respondent stating, “Performance Appraisal Violation, Non-Discriminatory Hostile Workplace Harassment, Termination Without Good Cause, Opportunity to Respond, Progressive Corrective and Disciplinary Action Were Not Followed, and Job Specific Training.” For relief, Grievant seeks “[b]ackpay up to the date of a favorable decision less severance pay, continued insurance, tenure restored, 24 hours of Covid Administrative Leave – was only given 56 hours but had over 80, and restore leave used.”

The grievance was properly filed directly to level three pursuant to W. VA. CODE § 6C-2-4(a)(4). A level three hearing was held on March 10, 2022, before the undersigned at the Grievance Board’s Charleston, West Virginia office. Grievant appeared *pro se*<sup>1</sup>. Respondent appeared by Deputy Commissioner Becky Manning and was represented by counsel, Mindy Marie Parsley, Assistant Attorney General. This matter became mature

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<sup>1</sup> For one’s own behalf. BLACK’S LAW DICTIONARY 1221 (6<sup>th</sup> ed. 1990).

for decision on April 11, 2022, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law ("PFFCL").

### **Synopsis**

Grievant was a probationary employee employed by Respondent within the Bureau for Medical Services' Finance Division as an Administrative Services Manager III serving as the Director of Finance. Grievant protests the termination of her employment for unsatisfactory performance. Grievant failed to prove that her services were satisfactory or that Respondent's decision to terminate her employment was arbitrary and capricious. 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, Department of Health and Human Resources ("DHHR"), within the Bureau for Medical Services' Finance Division as an Administrative Services Manager III serving as the Director of Finance.
2. Grievant was hired as a probationary employee on July 6, 2021, and was still within her probationary period when her employment was terminated on November 2, 2021.
3. Grievant was hired from the private sector. She had no prior experience working for the State of West Virginia or with the law and policy specifically related to the Bureau for Medical Services ("BMS") but had fifteen years of experience as a supervisor in finance.

4. Grievant's position as the Director of Finance was a high-level management position requiring her to plan and direct the work of the unit and supervise professional staff.

5. Although Grievant could not have been and was not expected to immediately know and apply BMS-specific law and policy, her prior experience should have enabled her to oversee financial reporting and to manage her staff and projects while gaining BMS-specific knowledge.

6. Grievant's immediate supervisor was Mandy Carpenter, Chief Financial Officer ("CFO"). Grievant's second-level supervisor was Becky Manning, Deputy Commissioner of Finance and Administration.

7. The parties presented voluminous and duplicative documentary evidence regarding Grievant's job performance, mostly in the form of emails between the parties, which has all been reviewed and considered, but will be only summarized below.

8. As Grievant's position is unique, there is no job-specific training for Grievant's position beyond the general training provided to all DHHR employees. Grievant was expected to learn the BMS-specific duties of her job through on-the-job training with CFO Carpenter and Grievant's subordinates.

9. Grievant was responsible for a mix of both large and small projects. Because many of the projects were time-sensitive, organization and time-management were key to the position.

10. CFO Carpenter communicated frequently with Grievant through email, instant messaging, and regular meetings. At times, email strings that appear incomplete are because the conversation is also ongoing through instant messaging.

11. Throughout July, CFO Carpenter trained Grievant by meeting with her, providing written resources and expectations for her, directing her to other subject-matter experts, and quickly and patiently answering Grievant's questions through email and instant messaging. CFO Carpenter's tone in their written communications was friendly, encouraging, and helpful. In their instant messaging, their communications were also casual and personal.

12. As time went on, CFO Carpenter observed that she would have conversations with Grievant regarding assignments, the assignment would not get completed, and then Grievant would deny that she had been given the assignment or would say that there had been a miscommunication. Further, Grievant did not appear to be demonstrating the professionalism and ownership of her position that would be expected of the director of a unit in her communications with CFO Carpenter and in organizing her work.

13. For one example, on August 20, 2021, CFO Carpenter emailed Grievant as a follow-up to several assignments that had already been discussed with Grievant that Grievant should have been managing. CFO Carpenter stated, "Can you begin training Melody on the pay estimate/pay run? Also, where do we stand on the written instructions? Monica, have you been able to develop an SOP for both?" Grievant's entire response to the email was, "sure" which was, of course, completely unprofessional and not responsive to the email. CFO Carpenter was then yet again forced to email Grievant to get answers to her question on projects that Grievant should have been managing without the need for CFO Carpenter's supervision in the first place.

14. Also, in the middle of August, Grievant missed the first deadline that would later be cited as one of the fourteen reasons for the termination of her employment. One of Grievant's duties was to oversee the budget. A relatively simple project relating to the budget was CFO Carpenter's request for Grievant to submit a monthly report for BMS leadership that compared the monthly budget to actual expenses.

15. Grievant had been apprised of this project in early July and, on August 2, 2021, CFO Carpenter instructed her to produce a final product appropriate for distribution to BMS leadership by the middle of the month. Grievant took no action to complete the project and presented an incomplete product when CFO Carpenter requested the status of the project on August 16<sup>th</sup>. This project would then drag on through the month of September with multiple incorrect submissions. Although Respondent asserts the project was never completed, Grievant did submit a final product on September 15, 2021.

16. Concerned with Grievant's lack of progress and consistent denials that live conversations had taken place, in late August, CFO Carpenter changed her approach to communicating more by email and, on August 25, 2021, she issued Grievant an *Employee Performance Appraisal Form EPA-1* ("EPA-1") more formally outlining the responsibilities, performance standards, and expectations of the position.

17. The EPA-1 should have been completed within the first thirty days of Grievant's employment but was completed twenty days late.

18. In response, Grievant contacted the Division of Personnel's customer service line to complain. There is no evidence CFO Carpenter or Deputy Commissioner Manning were aware of this complaint nor would either be subject to any negative consequence regarding such a complaint.

19. The next serious problem arose in early September when Grievant failed to properly review the work of her subordinate resulting in the underpayment of a provider by \$18,000. Grievant had previously been trained on the review process, CFO Carpenter had assisted her and made herself available for questions, and Grievant had been reviewing these payments each week for a month and a half. The underpayment was as a result of a typographical error that required no BMS-specific knowledge to catch. Grievant failed to ensure that her subordinate provided her with the proper information to perform an adequate review.

20. As September progressed, Grievant failed to make satisfactory progress or complete work by established deadlines on multiple projects, which came to a head the week of September 27<sup>th</sup>. Grievant had two overdue projects that had to be completed that week, plus several additional projects. Added to that, the weekly payment to providers for that week was of crucial importance because the Governor had promised small providers that their payments would be sent that week and the federal funds to make the payments had already been received and had to be disbursed.

21. Cognizant of the difficulty in accomplishing all these tasks, CFO Carpenter reached out to Grievant by text over the weekend and Deputy Commissioner Manning also held planning meetings each morning that week. Deputy Commissioner Manning even took on tasks personally.

22. On September 29, 2021, the day the day documents had to be submitted to the fiscal agent to ensure timely payment to providers, Grievant failed to effectively manage the payment process, keep CFO Carpenter and Deputy Commissioner Manning apprised of her progress, or request assistance. Instead, Grievant went around CFO

Carpenter and Deputy Commissioner Manning to email the fiscal agent directly to state the documents would be late.

23. When Deputy Commissioner Manning learned of this later in the evening, after Grievant had failed to respond to CFO Carpenter and Deputy Commissioner Manning's attempts to contact her, Deputy Commissioner Manning directed Grievant to forward the necessary documents to her. CFO Carpenter also requested the documents by text message. Grievant made excuses and further wasted time without providing the documents.

24. Deputy Commissioner Manning and CFO Carpenter were therefore required to start over from the beginning to recreate documents and complete the work so that the payments could be made on time. This required Deputy Commissioner Manning and CFO Carpenter to work until almost 2:00 a.m.

25. Grievant also failed to satisfactorily complete the other tasks that were to be completed for that week.

26. The next week, Grievant and her daughter became ill and Grievant was absent from work for the majority of October on approved leave.

27. On October 25, 2021, Deputy Commissioner Manning issued a predetermination conference notice to Grievant providing a detailed list of alleged policy violations, including the dates and specific examples of the violations with numerous pages of supporting documentation. The notice listed eight instances of failure to follow directives as follows:

- 9/7 – Partner short paid due to lack of review of weekly adpays.

- 9/29 – Directive to forward adpays [additional payments] for completion by alternate employee. Adpays were never forwarded.
- 9/29 – Review of adpays due for pay run was never completed. Assignment was pulled and Chief Financial officer and Deputy Commissioner had to complete after hours.
- 9/30 – Directive to meet MOM<sup>2</sup> grant submission deadline. Deadline not met. Assignment was pulled and assigned to alternate employee.
- 9/30 – Presentation slides to be prepared for Deputy Commissioner. Multiple inaccurate submissions. Assignment never completed.
- 9/30 Multiple inaccurate submissions of MOM GTAP. Assignment never completed and forwarded to alternate employee for submission.
- 9/30 – Directive to accumulate data to be accumulated for SPA. Multiple inaccurate submissions. Assignment was pulled and completed by Deputy commissioner.
- 10/13 – Directive to accumulate data to be accumulated for lawsuit against Agency. Multiple inaccurate submissions. Assignment never completed.
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The notice further listed six incomplete assignments as follows:

- 7/6 – Directive to develop monthly budget versus actual expense reporting. Multiple incorrect submissions. Assignment not complete.
- 8/25 – Directed to develop federal grant financial reporting timeline. Assignment not complete.
- 9/15 – Directed to develop APD documentation listing. Assignment not complete.
- 9/16 – Directive to develop budget checklist. Multiple incorrect submissions. Assignment not complete.
- 9/16 – Directive to develop waiver rate reporting document. Multiple incorrect submissions. Assignment not complete.
- 9/29 – Directive to develop a process for updating/maintaining CR log. Assignment not complete.

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<sup>2</sup> This and the other acronyms used in this document and in the exhibits were not clearly explained by the parties.



28. On November 1, 2021, Deputy Commissioner Manning and CFO Carpenter met with Grievant to allow her the opportunity to respond to the allegations. Grievant refused to comment other than to state that the allegations in the predetermination notice were a “misrepresentation of events.”

29. By letter dated November 2, 2021, Deputy Commissioner Manning terminated Grievant’s probationary employment for failure to satisfactorily adjust to her position and effectively perform the duties of her position. Deputy Commissioner Manning cited the specific instances that had been previously cited in the predetermination notice and Grievant’s failure to meaningfully respond to the allegations in the predetermination conference.

### **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). When a probationary employee is terminated on grounds of unsatisfactory performance, rather than misconduct, the termination is not disciplinary, and the burden of proof is upon the employee to establish that his services were satisfactory. *Bonnell v. W. Va. Dep’t of Corrections*, Docket No. 89-CORR-163 (Mar. 8, 1990); *Roberts v. Dep’t of Health and Human Res.*, Docket No. 2008-0958-DHHR (Mar. 13, 2009).

Grievant argues Respondent's allegations of unsatisfactory performance were false and were motivated by ongoing bullying and harassment. Grievant asserts Respondent acted arbitrarily and capriciously in terminating her probationary employment. Grievant asserts Respondent violated the Division of Personnel's performance evaluation policy and failed to train her or provide appropriate coaching. Respondent asserts Grievant was provided appropriate training and coaching and that Grievant's work was not satisfactory.

Grievant "is required to prove that it is more likely than not that her services were, in fact, of a satisfactory level." *Bush v. Dep't of Transp.*, Docket No. 2008-1489-DOT (Nov. 12, 2008). "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 testified on her own behalf and Grievant's supervisors, CFO Mandy Carpenter and Deputy Commissioner Becky Manning testified on Respondent's behalf. Grievant and Respondent dispute each other's offered testimony. In situations where "the existence or nonexistence of certain material facts hinges on witness credibility, detailed findings of fact and explicit credibility determinations are required." *Jones v. W. Va. Dep't of Health & Human Res.*, Docket No. 96-HHR-371 (Oct. 30, 1996); *Young v. Div. of Natural Res.*, Docket No. 2009-0540-DOC (Nov. 13, 2009); *See also Clarke v. W. Va. Bd. of Regents*, 166 W. Va. 702, 279 S.E.2d 169 (1981). In assessing the credibility of witnesses, some factors to be considered ... are the witness's: 1) demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and 5) admission of untruthfulness. HAROLD J. ASHER & WILLIAM C. JACKSON, REPRESENTING THE AGENCY BEFORE THE UNITED STATES MERIT SYSTEMS PROTECTION BOARD 152-153 (1984). Additionally, the ALJ should consider: 1) the presence or absence of bias, interest, or motive; 2) the consistency of prior statements; 3) the existence or nonexistence of any fact testified to by the witness; and 4) the plausibility of the witness's information. *Id.*, *Burchell v. Bd. of Trustees, Marshall Univ.*, Docket No. 97-BOT-011 (Aug. 29, 1997).

Grievant's demeanor was professional and appropriate. She displayed a serious and respectful attitude towards the proceeding. She testified with an appropriate level of detail and readily answered questions on cross examination. However, as will be discussed more fully in the examples below, Grievant's testimony on key issues is

contradicted by the documentary evidence or is not plausible. While this appears to be caused by the same lack of organization and attention to detail that had led to her termination from employment, rather than untruthfulness, the result is the same that Grievant's testimony is unreliable. Grievant is not credible.

CFO Carpenter's demeanor was pleasant and appropriate. She provided detailed and forthright answers to questions and appeared to have a good memory of events. She appeared very knowledgeable regarding the work of the agency and communicated BMS-specific information in a clear manner during her testimony. Her testimony was supported by the documentary evidence. Although there is no clear record of the live meetings CFO Carpenter asserts she held with Grievant, references in the emails and instant messages support that these were occurring. CFO Carpenter's repeatedly demonstrated patience and punctuality in answering Grievant's questions in email and instant messaging supports CFO Carpenter's testimony regarding the coaching, training, and instructions she gave Grievant during live meetings.

Grievant alleges CFO Carpenter was biased against her for her "complaint to Human Resources" but that allegation is not supported by the record. Contrary to her characterization, Grievant did not make a formal complaint but rather called the Division of Personnel's customer service. There is no evidence CFO Carpenter was even aware this occurred. Further, Grievant's call to the Division of Personnel's customer service would have no negative consequences for CFO Carpenter that could motive her to retaliate against Grievant.

Grievant alleged CFO Carpenter's demeanor towards her changed after her call; however, this also coincided with Grievant's own change in demeanor after CFO

Carpenter met with her regarding the EPA-1. To the extent that CFO Carpenter became somewhat less casual and jovial with Grievant, at no time was CFO Carpenter inappropriate. This slight change is explained by CFO Carpenter's testimony that she felt it necessary to change her approach because of Grievant's continued assertions that CFO Carpenter was failing to communicate to her things that CFO Carpenter knew she had communicated. CFO Carpenter is credible.

Deputy Commissioner Manning's demeanor was professional and straight forward. She appeared to have a good memory of events and provided an appropriate level of detail in her answers. Deputy Commissioner Manning seemed genuinely bewildered by Grievant's refusal to provide any response to the allegations in the predetermination letter. As with CFO Carpenter, Grievant appears to allege Deputy Commissioner Manning was biased against her for her "complaint" but Grievant has failed to provide evidence of this as discussed above. Deputy Commissioner Manning is credible.

Respondent determined Grievant's performance was unsatisfactory because she failed to follow directives, failed to complete work thoroughly and accurately, and failed to complete assignments. Respondent provided Grievant with notice of these deficiencies with fourteen examples in the predetermination letter. Grievant failed to respond to Respondent's concerns other than to state that the examples misrepresented facts. The fourteen examples were then the basis for termination of Grievant's employment. At level three, Grievant asserted she did satisfactorily complete some assignments and that her fault can be "explained away" on other assignments. It is Grievant's burden to prove that her work was satisfactory. Respondent does not hold the burden of proof but also

provided voluminous documentation at level three of the fourteen specific examples that were the basis of its decision to terminate Grievant's employment.

Grievant asserts that CFO Carpenter and Deputy Commissioner Manning harassed and bullied her, and her termination was the culmination of that harassment and bullying. Grievant asserts CFO Carpenter failed to provide adequate training and directions and failed to make herself available to assist Grievant. To support these arguments, Grievant pulled out sections of the parties' communications. To refute, Respondent provided the same plus additional communications. Both parties provided voluminous documentation<sup>3</sup>, which the undersigned has reviewed in full, although only a representative portion will be discussed in this decision. Viewing the emails and messages in the record chronologically and as a whole reveals a different story than the one Grievant has set forth in her allegations.

The emails and instant messages between the parties show that CFO Carpenter consistently and repeatedly provided clear expectations, guidance, and support. She was unfailingly helpful and constantly asked Grievant if she had any questions or needed help. CFO Carpenter generally responded to Grievant's questions very quickly. Several times when Grievant had asked a question in an email that did not appear to be answered, it was because they were also communicating by instant message and CFO Carpenter answered there. In addition, CFO Carpenter credibly testified that she also frequently met with Grievant and provided expectations, training, and guidance during those

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<sup>3</sup> To her credit, Grievant's exhibits are well organized. It is unfortunate that the same level of organization was not present in her work for Respondent. Respondent's exhibits were not well-organized but were comprehensive, once read as a whole, and were sufficient to show that Grievant's exhibits did not tell the whole story. Neither party appropriately explained the extensive jargon contained in the documents.

meetings. In contrast, in the emails and messages, Grievant does not appear to take ownership of her own duties and staff. It was CFO Carpenter moving projects forward, requesting status from Grievant and others, and reminding the team of deadlines. Those were all Grievant's duties as the director of the unit that did not require any BMS-specific knowledge.

The record shows Grievant was aware of deadlines for herself and staff and took little accountability for them. It was CFO Carpenter tracking and ensuring things got done rather than Grievant. Even with CFO Carpenter's consistent reminders, projects frequently came down to the last minute, requiring CFO Carpenter to step in to assist and correct errors. While some of Grievant's issues may have been because of legitimate difficulty understanding BMS-specific information, most of the failures were that of general management duties or expected standards of work. Grievant failed to follow instructions, failed to track and meet deadlines for herself and her staff, failed to appropriately review the work of her staff, and failed to appropriately respond to inquiries. Overall, Grievant's performance, as illustrated by the record, shows a general inattention to detail, lack of organization, and lack of accountability.

Grievant's deficiencies relate to her failure to organize and plan the work of herself and her staff. Grievant occupied a demanding position that operated under constant time pressure. Grievant was given a list of tasks at the very beginning of her employment. It was Grievant's responsibility to come up with a plan to accomplish those tasks within the deadlines set by CFO Carpenter and to seek resources and help when she needed. The problems snowballed when Grievant continually missed deadlines and projects that



should have been completed dragged on. Grievant failed to prioritize her own work and that of her staff and proactively keep CFO Carpenter apprised of her progress.

It is not necessary or practical to evaluate in this decision all fourteen examples that Respondent identified in the termination letter. The examples that will be discussed below illustrate Grievant's performance deficiencies and the unreliability of her narrative. These examples also show that Grievant's belief that she was harassed and bullied was unreasonable.

There were two instances regarding "adpays" listed in the examples under the dates of September 7<sup>th</sup> and September 29<sup>th</sup>. "Adpays" are additional payments Respondent pays to providers of services that are processed manually. This process requires Grievant's subordinate to receive and compile information to complete an internal summary spreadsheet of all payments that will be requested for the week and to complete forms to be submitted to Respondent's fiscal agent for payment to each provider. Grievant was responsible for reviewing the work of her subordinate prior to submitting the documents to the fiscal agent to request that payment be issued to the providers. This submission and review process must be completed by Wednesday of each week as the payments are "run" on Thursdays. These payments often involved large sums of money and mistakes resulting in underpayment or failure to pay could have a serious negative impact on a provider.

Regarding the September 7<sup>th</sup> incident, the pay run completed on September 3, 2021, resulted in an underpayment to a provider of \$18,000. September 7<sup>th</sup> is when the underpayment was discovered. The underpayment was caused by a typographical error in the form that Grievant's subordinate submitted and Grievant reviewed. Grievant

asserts this error was a result of CFO Carpenter's failure to communicate and failure to train Grievant properly on how to review the forms.

A review of the entire record related to adpays shows that CFO Carpenter worked with Grievant on the adpays from the beginning of Grievant's employment in early June. CFO Carpenter turned over responsibility for the adpay review to Grievant on July 16, 2021, and made herself available to assist Grievant as she needed. As the reviews continued each week, CFO Carpenter was continually answering Grievant's questions through instant messaging and was understanding and reassuring when Grievant make mistakes, including the failure to timely submit a payment request that resulted in an emergency payment run. At the time of the error for the September 3<sup>rd</sup> pay run, Grievant had been reviewing adpays each week for a month and a half. If Grievant had any confusion or questions regarding the process, CFO Carpenter had continually made herself available.

Most importantly, in her testimony and exhibits Grievant asserted that CFO Carpenter had not provided her with an existing written procedure for this process. This was false. While Grievant did later admit in her PFFCL that her testimony on this issue was mistaken, this instance perfectly illustrates the difficulties CFO Carpenter experienced with Grievant and why Grievant's assertions in this grievance regarding the supposed lack of direction and training are not reliable. It is not necessarily that Grievant is being untruthful in her assertions – she appears to genuinely believe them – it's that Grievant was so disorganized and disconnected from her job that she did not appear to remember the directions and training she received.

After several instances in which CFO Carpenter spent most of the day in instant messaging with Grievant assisting her and answering questions, Grievant was still confused about how to get information and what to do. By instant message on August 3<sup>rd</sup>, Grievant requested guidance regarding her to do list and CFO Carpenter immediately made herself available for Grievant to call. Either during the call or directly afterwards, CFO Carpenter emailed Grievant the written procedure that Grievant insisted she was never provided. Based on CFO Carpenter's testimony, this procedure would have also previously been provided to Grievant in person at the beginning of her employment and the August 3<sup>rd</sup> email was the second time she provided it to Grievant.

Based on the experience Grievant should have gained during the six weeks she had already been responsible for the adpays and the written procedure Grievant had been provided, Grievant should have known what emails and information she needed to review and when she should have received them. If Grievant did not receive the information she needed, then it was her responsibility as the director of the unit to get that information. Reviewing a form to ensure that the numbers are correctly entered does not require any special knowledge. Grievant should have made sure she had the correct documents to review and caught her subordinate's mistake. As Deputy Commissioner Manning so aptly put: that is the whole point of requiring the director to review the forms. Grievant's assertion then and now that she is blameless is disingenuous and demonstrates her lack of accountability regarding her job duties.

Grievant's continual failure to effectively manage projects came to a head with the next adpay incident on September 29<sup>th</sup>. Grievant had several outstanding projects that had not been timely completed that then reached a crisis point the week of the 27<sup>th</sup>. Of

particular importance was an outstanding request by Paul Teti from the federal Centers for Medicare & Medicaid Services for documentation. Grievant was to provide the documentation by September 24, 2021. On September 22, 2021, Grievant emailed Mr. Teti stating that the last two outstanding documents would be provided by September 24<sup>th</sup>.

However, Grievant failed to provide the documentation when she had promised or to contact Mr. Teti to explain the delay. When CFO Carpenter asked Grievant about it by text message that weekend, Grievant said she did not recall the assignment. CFO Carpenter also sent an email to Grievant instructing her to make the matter a priority on Monday because “we have other work to get out this week and need to move on.” Grievant responded that the information that was needed to complete the documentation was due on Friday and that her subordinate would follow up that morning. Yet again, Grievant had failed to effectively manage a project to ensure that a deadline was met. In response, and of particular importance to what would happen just two days later, CFO Carpenter stated, “Going forward, you need to verify we meet our deadlines or provide explanations and status updates when we don’t.”

That week the regular weekly adpay also was of particular importance because, over the weekend, the Governor had promised smaller providers in a press conference that they would be paid these additional payments the following week. The federal funds that would be used to pay the providers had already been received and had to be disbursed. Smaller providers were in danger of shutdown without these payments. In addition, there were several other time-sensitive projects due that week on top of the overdue projects.

Because of this, Deputy Commissioner Manning became directly involved. She held meetings with CFO Carpenter and Grievant each morning on Monday, Tuesday, and Wednesday. Also, in advance of the week, on Sunday, CFO Carpenter texted Grievant to remind her of the projects and to state that she could pull in extra people if necessary. As the week progressed, as per usual, CFO Carpenter was on top of the deadline and emailed on Tuesday morning that they would be waiting on Brandon Payne to send the necessary files for the adpay process on Wednesday and that the payments had to be made that week. CFO Carpenter directed Grievant to review the adpays once completed by her staff and then forward to her for a second review to double check for accuracy.

On the 29<sup>th</sup>, the day the adpays had to be submitted to the fiscal agent to ensure timely payment, Deputy Commissioner Manning met with CFO Carpenter and Grievant that morning. Grievant assured Deputy Commissioner Manning that the adpays would be completed but stated she would have to leave for a doctor's appointment for her daughter in the afternoon. By 11:09 a.m., Mr. Payne had sent the files to Grievant's subordinate, Susan Carrow, copying only CFO Carpenter. However, at 11:36 a.m., Ms. Carrow forwarded the same to Grievant, saying, "The adpays will definitely be late." Grievant acknowledges she received the email and asserts she printed the files out to review before she left. At 11:55 a.m. Grievant emailed Deputy Commissioner Manning to tell her that she would be going to a doctor in Huntington but would "be on as soon as I can." Grievant did not respond to Ms. Carrow's email stating that the adpays were going to be late or inform CFO Carpenter or Deputy Commissioner Manning that there was a problem.

While Grievant asserts that she attempted to log on to her computer that afternoon and could not, the obvious thing for Grievant to do would be to call by telephone to ensure the work was being done and to keep CFO Carpenter and Deputy Commissioner Manning apprised of the progress or to request assistance if her circumstances had changed such that she would not be able to complete her duties. Instead, at 5:07 p.m., Grievant went around CFO Carpenter and Deputy Commissioner Manning to email the fiscal agent directly to state that they were still working on the adpays and, "If we do not have to you this evening, we will have to you first thing tomorrow morning."

Meanwhile, as the afternoon progressed into evening with no word from Grievant, CFO Carpenter and Deputy Commissioner Manning attempted to contact Grievant multiple times through multiple methods, and she failed to respond. At 6:41 p.m., Deputy Commissioner Manning emailed Grievant regarding Grievant's email to the fiscal agent, telling Grievant that she had instructed Grievant to complete the adpays by the end of day. She further informed Grievant that she and CFO Carpenter would complete the adpays themselves that evening. At that point, multiple conversations ensued by email and text message. At level three, neither party clearly explained what is involved in the process and it is sometimes unclear exactly to what documents the parties refer.

Grievant asserts that CFO Carpenter already had the files that Deputy Commissioner Manning was trying to get from Grievant that evening. Whether the parties are referring to different documents or whether CFO Carpenter did not know she had the documents at the time is ultimately irrelevant. What is clear is that Grievant was repeatedly asked for documents and she failed to provide them. She was instructed not to come to the office but to email the documents and Grievant came to the office anyway.

While Deputy Commissioner Manning clearly instructed her by email to send the “final adpays” and CFO Carpenter repeatedly requested the same in text messages, Grievant’s responses were to waste time making excuses while failing to provide the information requested or state when it would be available. Since Grievant failed to provide the same, CFO Carpenter and Deputy Commissioner Manning were required to start the process over from scratch to send the forms to the fiscal agent for payment themselves. This took approximately five hours, requiring them to work well into the night. They sent the last email to the fiscal agent for payment at 1:44 a.m. in the morning. Regardless of what confusion ensued that evening, the situation arose because Grievant failed in her duty as the director and owner of the process to manage the process and make sure it was completed on time.

Grievant attempts to excuse her failure on this assignment by asserting it was not possible to complete the assignment and that Deputy Commissioner Manning had told her that a late emergency run could be done. She also cites the unexpected doctor’s appointment and her allegation that CFO Carpenter and Deputy Commissioner Manning had refused to let her in the building that night. Grievant’s assertion that the assignment was impossible is clearly false as CFO Carpenter and Deputy Commissioner Manning were required to start over from scratch at 8:00 p.m. and still accomplished the task. Grievant’s assertion that Deputy Commissioner Manning told her a late emergency run would be done is not plausible. The Governor had instructed that the payments be made, and Deputy Commissioner Manning had been personally involved all week to ensure that it and the other important tasks were done. If a late payment were possible, Deputy Commissioner Manning certainly would not have worked until nearly two in the morning

herself to get the payments out on time, so it makes no sense why Deputy Commissioner Manning would have said that.

Regarding the doctor's appointment, the project was Grievant's responsibility. If the doctor's appointment was going to prevent her from completing the assignment it was her responsibility to communicate that to CFO Carpenter who had previously said that other help would be available if necessary. Instead, Grievant assured Deputy Commissioner Manning that she would complete the project, failed to return to the office after the appointment, failed to stay in contact, and went around CFO Carpenter and Deputy Commissioner Manning to tell the fiscal agent that it would be late. Although the documentary evidence is not completely clear about the sequence of events regarding their alleged failure to let her into the building, it is clear that CFO Carpenter told her not to come to the building and to just email them what they needed. None of these things excuse Grievant's failure to manage her responsibility effectively.

The last example is the "budget versus actuals" report. Grievant does prove that Respondent's allegation that she failed to ultimately complete the project was false. Even so, Grievant cannot demonstrate that her performance was satisfactory regarding this project. The project entailed creating a monthly report that compared budgeted expenses to actual expenses so would require very little BMS-specific knowledge to ensure that the project was completed. Grievant should have been able to accomplish this project with her existing management skills and it does not appear that the project should have required much time as it was a report that Grievant's subordinate had been working on prior to Grievant's arrival.



It is unclear when the project was first assigned to Grievant, but she was at least initially aware of it when her subordinate sent her a version of the report on July 22, 2021, for her approval to be sent to CFO Carpenter. In response to the draft report, on August 2, 2021, CFO Carpenter responded by asking Grievant to work with her subordinate to “develop some budget versus actual reporting we can forward to BMS Leadership.” She stated that the report would need formatting changes and suggested additional items that should be included in the report. She further stated that she wanted the “final product to be completed by the middle of the month” so that it could be used with the beginning of the fiscal year. Two days later, the report was also clearly listed as a goal for Grievant’s position in CFO Carpenter’s August 4, 2021 “Finance Goals” email.

In her exhibit, Grievant indicates that she timely submitted the report on August 18, 2021. However, this is not an accurate representation of the sequence of events and is not proof of successful completion of the project regardless. Respondent’s exhibits regarding this project provide additional detail clearly showing Grievant did not appropriately manage the project. There is no evidence that Grievant took any action after CFO Carpenter’s August 4, 2021 email. To deliver a “final product” by the middle of the month, Grievant would have needed to provide CFO Carpenter with the second draft for her review prior to the middle of the month to allow time for any additional revisions before the report would go live in the middle of the month. Instead, having received nothing from Grievant, CFO Carpenter had to request the status of the project on August 16, 2021. At that time, CFO Carpenter also invited Grievant to request a call to discuss the project if Grievant needed. It does not appear Grievant took advantage of CFO Carpenter’s offer to assist. Instead, Grievant requests the status of the report from her

subordinate, and then forwards the report to CFO Carpenter. It does not appear that Grievant adequately reviewed the report before forwarding it because CFO Carpenter responded that it looked like the same report that was initially submitted without the changes that she had previously requested.

The next day, Grievant responds, “she added the descriptions and things noted.” CFO Carpenter again replies that she does not see the changes and asks that Grievant highlight them. It is only after this exchange that, on August 18, 2021, Grievant’s subordinate forwarded the draft report with some changes. In her email, Grievant’s subordinate states, “I think I got everything this time.” It is more likely than not, based on these emails, that the report Grievant submitted to CFO Carpenter August 16, 2021, did not have the changes CFO Carpenter previously requested. At this point, Grievant had failed to properly manage the assignment twice: first, she failed to manage the process to deliver a final product by the deadline, and then she forwarded the report without proper review and without the changes CFO Carpenter required.

After reviewing the draft report Grievant’s subordinate submitted on August 18, 2021, on August 23, 2021, CFO Carpenter emailed that she had made some changes to the document. She further requested an additional change and instructed them to revise the font of the “expenses” to be uniform because some were in all capital letters and some were not. While it is not clear that the other changes CFO Carpenter had to make could be considered a mistake on Grievant’s part, the inconsistent font is an obvious error that Grievant should have caught. It had been clear from the previous emails that this document was meant for BMS leadership and that the formatting was important. Further, the project should no longer be in draft form because it was already late. After some

email discussion regarding the font, Grievant emailed another draft of the document on August 24, 2021.

This draft also did not meet with CFO Carpenter's approval, and she requested changes to the draft by email dated September 13, 2021, with a deadline for response of September 15, 2021. Grievant asserts that CFO Carpenter's requests were unreasonable and regarding the continued saga of the all caps font, she may correct. However, as Grievant did not provide copies of the actual report as evidence, it is not clear that Grievant and CFO Carpenter were actually referring to the same fields as CFO Carpenter's original request was regarding "expenses" and the last request was regarding "expense descriptions." Regardless, CFO Carpenter's request to reformat the document "so the subtotals/totals aren't broken up from the appropriate units" appears to be a real and obvious problem with the document.

However, contrary to Respondent's assertion, it does appear that Grievant then completed the assignment when she forwarded a revised version of the document to CFO Carpenter on September 15, 2021. Respondent does not acknowledge the receipt of this revision in it exhibits so, if CFO Carpenter or Deputy Commissioner Manning believed there were additional problems with the document that is not contained in the record. Nevertheless, even though Grievant proved she eventually completed the project the record as described above does not support her contention that she did so successfully given her repeated errors, failure to review, failure to respond, and failure to deliver the project on time.

Although Grievant asserts that her performance overall was satisfactory, which she has failed to prove, she also argues any failure to perform should be excused.

Grievant offers as a defense to her performance that CFO Carpenter failed to properly evaluate her performance and provide required correction and that CFO Carpenter and Deputy Commissioner Manning harassed and bullied her.

Grievant asserts that Respondent was required to issue a performance evaluation within thirty days, that it should have listed any deficiencies, and it should have provided coaching and feedback. Grievant further asserts that she was entitled to a corrective action plan. CFO Carpenter completed Grievant's *Employee Performance Appraisal Form EPA-1* on August 25, 2021. Grievant correctly asserts that this was twenty days late. However, Grievant incorrectly asserts that the document was required to list deficiencies or provide coaching and feedback. The document is clearly marked as the initial planning document. This was not a coaching document to list deficiencies. It was to ensure Grievant understood her responsibilities and the applicable performance standards and expectations.

Grievant was not harmed by the preparation of this document twenty days late. Grievant had already received the information in this document through emails and meetings with CFO Carpenter. To the extent she was not aware, Grievant had over a month thereafter to demonstrate that she was making progress meeting the performance standards. Further, Grievant provided no evidence that she was entitled to a formal corrective action plan. As a probationary employee, Grievant was not entitled to civil service protections. The Division of Personnel's administrative rule makes clear that an agency may terminate a probationary employee's employment at any time for unsatisfactory performance. W. VA. CODE ST. R. § 143-1-10.5.a. It was Grievant's

responsibility to adjust herself to her position. Despite Grievant's assertions, it is clear that CFO Carpenter put forth substantial effort to help her do so.

Throughout the grievance, Grievant attempts to characterize CFO Carpenter and Deputy Commissioner Manning's responses to Grievant's failures as harassment and bullying. Grievant has failed to prove this assertion. While it is true that CFO Carpenter's interactions with Grievant became somewhat less friendly and casual as Grievant's unsatisfactory performance continued, this was not inappropriate. CFO Carpenter continued to fulfill her duties as Grievant's supervisor and provide her guidance and assistance. She was not overly critical but appropriately critical when Grievant made mistakes.

Grievant pointed to various instances of alleged harassment and bullying in her testimony, PFFCL, and exhibits. She included in her exhibits a *Workplace Harassment Complaint Form* with attached emails. Reviewing the attached emails, as a whole, does not reveal harassment or bullying but rather administration's dissatisfaction with a manager's sub-par performance. As with the instances of unsatisfactory performance, it is not necessary to evaluate every example Grievant provided to support her claims. A discussion of several of these representative examples will demonstrate Grievant's failure to prove the alleged harassment and bullying and that Grievant was unreasonably sensitive to criticism.

Grievant particularly emphasizes two emails from September 2, 2021: Deputy Commissioner Manning's comments regarding a spreadsheet Grievant provided and CFO Carpenter's email regarding the adpay review. Grievant cites these instances as clear examples of bullying and harassment and asserts that the same were in retaliation

for Grievant's call to the Division of Personnel. What actually occurred is that CFO Carpenter, because of Grievant's continual excuses that she had not been given directions or that there had been miscommunications, had issued the EPA-1 and met with Grievant to document Grievant's understanding of her duties and responsibilities. Rather than taking the EPA-1 as the clarification of her responsibilities that Grievant had asserted she still needed, in response, Grievant contacted the Division of Personnel to complain. There is no evidence CFO Carpenter or Deputy Commissioner Manning were even aware that Grievant had complained.

Deputy Commissioner Manning's September 2, 2021 email was not inappropriate. Deputy Commissioner Manning oversees a four-billion-dollar budget. She does not have time to receive unprofessional documents with typographical errors from her high-level management team. Her response to Grievant wasting her time was not even particularly harsh, merely direct. As to Grievant's argument that Deputy Commissioner Manning was inconsistent in that she had previously commented that the document was "good;" it was not the same document. Deputy Commissioner Manning had requested additional information be added in addition to her comment that the first draft was good. It appears more likely than not that making those changes caused the problems that Deputy Commissioner Manning discussed in the email at issue. Instead of proving harassment and bullying as Grievant alleged, this incident illustrates Respondent's assertion that Grievant lacked attention to detail and accountability.

It is the same with CFO Carpenter's September 2, 2021 email regarding the adpays. That email was not inappropriate. According to CFO Carpenter's credible testimony and the documentation already discussed above regarding this adpay, CFO

Carpenter had already provided repeated guidance and information about the adpay review process. When Grievant asked CFO Carpenter to review the adpays, CFO Carpenter followed up with relevant questions regarding whether Grievant had reviewed properly herself. Grievant responded by again denying that CFO Carpenter had previously instructed her to review these things and asserting she was not qualified to review them. CFO Carpenter's response simply refutes Grievant's claim and again clarifies her expectations. This was not bullying or harassing but rather providing the very direction and training that Grievant claimed she did not receive.

Grievant has failed to demonstrate that her work was satisfactory or that her failures should be excused. Grievant demonstrated no ownership of her position as would be expected of a high-level member of management. She failed to perform the tasks she should have been able to perform based on her prior experience, such as ensuring her employees met deadlines, ensuring the quality of their work, and reporting the status of projects to her own supervisor. She demonstrated no initiative to obtain the necessary competency in Respondent's specific subject matters. When CFO Carpenter did attempt to correct Grievant's performance, she became defensive. When Deputy Commissioner Manning gave Grievant one more chance to explain herself in the predetermination conference, Grievant refused to provide any explanation. That was her opportunity to address her supervisor's concerns and provide documentation if she believed that the allegations were incorrect. Faced with Grievant's inexplicable refusal to address her concerns, Deputy Commissioner Manning had no choice but to terminate her probationary employment.

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. When a probationary employee is terminated on grounds of unsatisfactory performance, rather than misconduct, the termination is not disciplinary, and the burden of proof is upon the employee to establish that his services were satisfactory. *Bonnell v. W. Va. Dep't of Corrections*, Docket No. 89-CORR-163 (Mar. 8, 1990); *Roberts v. Dep't of Health and Human Res.*, Docket No. 2008-0958-DHHR (Mar. 13, 2009).

3. Grievant "is required to prove that it is more likely than not that her services were, in fact, of a satisfactory level." *Bush v. Dep't of Transp.*, Docket No. 2008-1489-DOT (Nov. 12, 2008). 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).

4. "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).

5. The probationary period of employment is “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 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.*

6. A probationary employee may be dismissed at any point during the probationary period that the employer determines his services are unsatisfactory. W. VA. CODE ST. R. § 143-1-10.5(a).

7. 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. 2009-0161-MAPS (Jan. 7, 2009) (citing *Hackman v. W. Va. Dep’t of Transp.*, Docket No. 01-DMV-582 (Feb. 20, 2002)).

8. “[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).

9. 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).

10. Grievant failed to prove that her services were satisfactory or that the decision to terminate her employment was otherwise arbitrary and capricious.

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: May 24, 2021**

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**Billie Thacker Catlett**  
**Chief Administrative Law Judge**