HELENE M. UPHOLD

v. DOCKET NO. 93-BOT-472

WEST VIRGINIA BOARD OF TRUSTEES/
WEST VIRGINIA UNIVERSITY

DECISION

Grievant, Helene M. Uphold, employed as an Executive Secretary at the West Virginia University Physical Plant (WVU or Respondent), advanced a grievance to level four on November 16, 1993, in which she alleged that Respondent improperly charged 45.75 hours of requested sick leave to her annual leave. After several continuances, granted for good cause shown, an evidentiary hearing was conducted on August 29, 1994. Proposed findings of fact and conclusions of law were submitted by both parties on September 21, 1994, responses were filed on September 28, and a final statement from Respondent was received on October 6, 1994.
Based on a review of the record in its entirety the following findings of facts may be made.
1. Grievant has been employed by WVU since June 1987, and currently holds the position of executive secretary assigned to the associate director of the Physical Plant.
2. Grievant was absent from work on July 22, 23, 26, 27, 28, 29, and 30. After a one week vacation from August 2 through 6, Grievant returned to work on August 9 but was absent on August 11 and 13, 1993.
3. On July 27, 1993, Grievant completed Leave

Reporting Forms on which she claimed 1 hour of sick leave for July 22 and 3.75 hours of sick leave for July 23.

4. Grievant filed 3 additional forms on August 9, 1993, on which she claimed 7.50 hours of sick leave on July 26, 2.5 hours on July 27, and 22.5 hours on July 28, 29 and 30.

5. On August 16, 2993, Grievant filed sick leave forms for 1 hour on August 11 and 7.5 hours on August 13, 1993.

6. The same explanation was given on each leave form indicating Grievant was suffering from "acute stress due to a hostile work environment" created when another employee made "life threatening remarks to the Department of Public Safety."

7. Paul Walden, Assistant Director of the Physical Plant returned the leave forms to Grievant under cover memorandum of August 19, 1993. Mr. Walden advised Grievant that the forms could not be approved without a West Virginia Medical Leave Verification/Medical Release form, completed by a physician. He further advised that the 45.75 hours she was absent from work would be charged to annual leave until the proper verification was returned. On each of the leave forms Mr. Walden wrote "[a]s confirmed in the memo dated July 23, 1993 (our investigation) there is no life threatening working condition in the performances of your job duties."

8. A note from Grievant's physician excusing her from work July 28, 29 and 30 was apparently overlooked by Mr. Walden; however, Grievant complied with the directive and produced the Medical Leave Verification form for that period of time.

9. Grievant's annual leave for July 28, 29, and 30 was transferred to her sick leave account at the level two hearing, leaving only 23.25 hours of leave at issue.

10. At level four Grievant presented a memorandum establishing that grievant was seen by Jody Evans, L.P.C., L.C.S.W., a counselor at Respondent's Faculty/Staff Assistance Program on July 27, 1993. Respondent indicates this documentation is acceptable and 2.5 additional hours will be transferred from annual to sick leave.

11. Although at least one other leave form (August 11, 1993) indicates Grievant had an appointment with her physician, she declined an offer made at level four to further revise the leave upon production of a physician's statement.

Grievant asserts that during July and August she was experiencing extreme personal conflict with another employee of the Physical Plant. This situation apparently began when her spouse filed a sexual harassment claim against Ms. D.S. By letter dated June 21, 1993, Grievant advised Joe John, Assistant Director of the Physical Plant, that while walking laps around the Coliseum on June 3 she observed Ms. S. mowing the grass. When Ms. S. saw Grievant she allegedly "turned the power up" on the machine and began to "re-mow toward [Grievant] throwing grass everywhere." On another occasion, Grievant reported, Ms. S. had "flipped her middle finger" at her.

In response to Grievant's demand that something be done, Mr. Walden advised by letter dated July 6, 1993, that the proper operation of equipment with regard to pedestrians was discussed "not only with this individual, but with the

entire Roads and Grounds crew as a total follow-up to this type of situation involving the operation of equipment." He further advised that while he had been unable to verify the occurrence involving the gesture directed toward Grievant or any misconduct by the cited employee, he assured Grievant that verified acts of unprofessional conduct would be dealt with immediately.

On July 23, 1993, Grievant requested that her work schedule be changed from 8:15 a.m. - 4:45 p.m. to 6:45 a.m. - 3:15 p.m. "[d]ue to life threatening working conditions (i.e. hostile work environment) caused by the ongoing hostile actions and statements made by [D.S.], WVU Roads and Grounds Worker I." This request was denied by Mr. Walden for several reasons, the most pertinent of which were 1) that there was no verification of life threatening working conditions and 2) Grievant's duties were inside the main Physical Plant building, not in or around the Roads and Grounds area.1 Grievant concluded that she had investigated obtaining a peace bond and was "sick and tired of how this WVU employee is constantly 'running her mouth' and how her unprofessional conduct is totally ignored."

Grievant asserts that due to the stress she was experiencing as a result of this interaction with Ms. S. she attended counseling sessions provided by the WVU Faculty/Staff Assistance Program with a counselor, a psychologist, and his nurse. She was prescribed Lorazepam and rest to alleviate her anxiety. Grievant argues that she properly used accumulated sick leave and while Respondent may require evidence substantiating illness from an employee, such action is unwarranted in the present matter

because she did not request leave for more than five consecutive days and because Respondent has made no allegation of abuse. Grievant asserts that the physician's statement, provided together with the WVU Faculty/Staff Assistance Program Counselor's memo, provide satisfactory

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1Upon inquiry by the Senior Administrative Law Judge regarding the alleged "life threatening" statement, Grievant explained that Ms. S. had reported to Department of Public Safety that Grievant had tried to run her over in the parking lot. A Department of Public Safety representative appeared in Grievant's office to secure a written statement as a result of the charge. A subsequent investigation allegedly revealed that Ms. S. "was planning to do something severe, so severe that Department of Safety provided Grievant with the telephone number for the Rape and Domestic Violence office." Grievant did not state what this action was to be or whether she and her family sought refuge through the Rape and Domestic Violence office. There was no indication that Ms. S. had made any contact with Grievant at her worksite.

proof of illness, entitling her to charge the remaining 20.75 hours to sick leave.

Respondent asserts that of the total number of consecutive days Grievant invoked sick leave, together with the same reason being given for each absence, a reason which Respondent could not confirm, was adequate basis to require the verification of illness.2 Respondent cites Board of Trustees Policy Bulletin No. 35 as support for the course of

action taken. The relevant sections of that policy are as follows:

8.5 Sick leave for more than five consecutive days shall not be granted to an employee for illness without satisfactory proof of illness or injury, as evidenced by a statement of the attending physician or by other proof satisfactory to the institution. An employee having an extended illness or serious injury shall, before returning to duty, obtain medical clearance to help ensure adequate protection.

8.6 The institution may require evidence from an employee for verification of an illness or other causes for which leave may be granted under this policy, regardless of the duration of the leave.

This policy is also stated on page thirty-four of the WVU Classified Employee's Handbook:

Sick leave for more than five consecutive days cannot be granted to an employee without satisfactory proof of illness or injury as evidenced by a statement of the attending

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2Mary Steward, Employee Relations Representative, testified at level four that WVU does not interpret Policy Bulletin No. 35 to mean five entire days but that any period of time qualifies as sick leave usage for that day. Thus, if an employee uses one hour of sick leave daily for five consecutive days the provisions of Policy Bulletin No. 35

would be applicable.

physician or by other proof. An employee who has been absent from work for an extended period because of illness or injury must obtain medical clearance before returning to work.

The University may require evidence from an employee for verification of an illness or other causes for which leave may be granted under this policy regardless of the duration of the leave.

Finally, Respondent claims that charging the unaccounted for time to annual leave was the least onerous option for Grievant since the remaining alternative was to take her off the payroll inasmuch as W.Va. Code 12-3-13 prohibits an employee from being paid when no services have been rendered.3

Grievant correctly asserts that sick leave is an earned benefit which she is entitled to use but not abuse. However, sick leave, unlike annual leave, is subject to restrictions. Specifically, sick leave may only be used when the employee, or certain members of the employee's family, is ill. As a long-term employee Grievant knew, or should have known, that sick leave usage is subject to verification at Respondent's discretion.

Understandably, Grievant would not necessarily require medical attention each and every day she was suffering from stress; however, she offered no explanation at any level as to how or why she was suffering on the days in question.

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3W.Va. Code 12-3-13 provides in its entirety "[n]o money shall be drawn from the treasury to pay the salary of any office or employee before his services have been rendered."

Despite the claim on the leave form for August 11, 1993, that she had a doctor's appointment, Grievant has obstinately refused to provide confirmation for this absence. From the employer's viewpoint Grievant had used an extraordinary amount of sick leave in a short period of time. There was no indication of any events at work which caused Grievant such stress that she was forced to leave after the workday had begun, and she failed to offer a physician's statement to confirm her inability to work. Because the abusive use of sick leave disrupts the workplace, it cannot be determined that Respondent acted unreasonably when it invoked the Policy Bulletin No. 35 provisions which allows the employer to require verification of an illness regardless of the duration of the leave.

In addition to the foregoing findings of fact and discussion it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. The request for medical verification of illness when Grievant had utilized sick leave nine days within a period of approximately three weeks, seven days of which were consecutive, is consistent with Policy Bulletin No. 35, 8.5 and 8.6.

2. Grievant has failed to prove by a preponderance of the evidence that WVU violated any statute, regulation, or policy in the action taken regarding her claim for sick

leave during July and August 1993.

Accordingly, the grievance is DENIED.

DATE: October 31, 1994 Sue Keller, Senior Admn. Law Judge