PHYLLIS CARTMILL, .

Grievant, .

.

.

.

v. . Docket Number: 95-BEP-295

.

.

.

.

WEST VIRGINIA BUREAU OF EMPLOYMENT .

PROGRAMS / WORKERS' COMPENSATION .

DIVISION, .

Respondents. .

D E C I S I O N

Phyllis Cartmill (hereinafter "Grievant") filed this grievance on July 7, 1995, against her employer, the West Virginia Bureau of Employment Programs (hereinafter "the Bureau"), pursuant to the provisions of the Grievance Procedure for State Employees, West Virginia Code §§29-6A-1, et seq., challenging her termination from employment effective June 30, 1995. Because Grievant was terminated from her employment, this claim was expedited to level four of the grievance procedure pursuant to W. Va. Code §29-6A-4(e). An evidentiary hearing was held on September 20, 1995, at the Grievance Board's Charleston, West Virginia office, and the case became mature for decision on that date.

At the time Grievant was dismissed, she was employed by the Bureau within its Workers' Compensation Division (hereinafter "WCD") as a Medical Claims Analyst I. The Bureau contends that Grievant engaged in acts of gross misconduct and insubordination by gaining access to the WCD's

computer system for the purpose of updating pending/active workers' compensation claims for both herself and her daughter. It maintains that Grievant's actions were violative of its established policy which reads as follows:

> Employees are reminded that they are not permitted to participate in the handling or processing of a claim filed by a family member nor are they to be involved in the handling of an employer account for a family-related business.

Finally, the Bureau avers that Grievant's actions were not in keeping with the fiduciary duty she owed to the citizens of the State.

Grievant does not deny that she worked on pending workers' compensation claims for both herself and her daughter. However, she asserts that she should not have been dismissed because of her tenure (over seven years) and good service with the Bureau. She testified that she was never provided a written copy of the policy cited above; therefore, she was not aware that it was improper for her to work on her own claim. In the alternative, she does deny that she violated this policy as she did not work on a claim which had been "filed by a family member." Finally, Grievant attempted to justify why she had updated her own claim. She testified that she had received an order from the Office of Judges dated April 28, 1995, which determined she was entitled to benefits for an injuryshe suffered on the job on August 5, 1992. She stated that her office was behind in updating backlogged claims, partly due to the fact that it had recently been moved to a new location. Therefore, she updated her own claim because it had been idle for over six weeks.

Most of the facts are undisputed, and therefore, the following findings of fact have been properly deduced from the evidentiary record developed in the case.

Findings of Fact

1. On or about August 5, 1992, Grievant began suffering from carpal tunnel syndrome and impingement syndrome as a result of performing her day-to-day duties as a claims analyst.

2. On or about August 5, 1992, Grievant submitted an application to the WCD for temporary total disability benefits as a result of receiving the above-mentioned injuries.

3. Ultimately, the Office of Judges issued an Order dated April 28, 1995, finding that Grievant's claim was compensable and she should be paid benefits "as substantiated by proper medical evidence."

4. On June 6, 1995, Grievant, while at work, entered the workers' compensation computer system and updated her pending claim which directly resulted in her receiving a check in the amount of $1968.59 for payment of temporary total disability benefits for the period of September 9, 1992 through November 4, 1992.

5. As of June 6, 1995, Grievant was unaware that the benefits granted to her by the WCD were for the period of September30, 1992 through November 4, 1992. Therefore, the information Grievant entered into the computer resulted in her receiving an overpayment of benefits in the amount of $738.22.

6. On June 15, 1995, Grievant's supervisor, Betty McGhee, met with her and informed her that she was not permitted to work on her own claims. Grievant was also made aware of the fact that she had been overpaid. Thereafter, Grievant reimbursed the WCD for the amount of the overpayment.

7. In August 1994, Grievant was verbally warned not to work on claims for her relatives.

8. Prior to June 6, 1995, the Bureau had presented Grievant with a copy of the policy referred to above.

9. On June 16, 1995, Grievant entered the WCD computer system and updated a claim relating to her injury with regard to the payment of a physician's charges totaling $170.00. This update caused these charges to be approved in the amount of $139.98.

10. On June 23, 1995, Grievant entered the WCD computer system and updated an open claim of her daughter's, in an attempt to have travel expenses approved for reimbursement in the amount of $147.06.

11. Grievant was given written notice of her termination on June 30, 1995, based upon the charges of gross misconduct and insubordination, effective on that date.

Discussion

This case merits very little discussion. The Bureau has proven by a preponderance of the evidence that Grievant updatedpending workers' compensation claims not only for a member of her family but also for herself, after having been notified both orally and in writing that such was prohibited. Further, not only did Grievant work on claims for her family, but she negligently updated the claims resulting in either overpayment or the suspension of the claims for further review by other departments. At least one of Grievant's actions directly resulted in her receiving money from the

State. Grievant's actions were grossly negligent and insubordinate.

Grievant's argument that the WCD's policy only prohibits one from working on claims for family members and does not prohibit one from working on their own claim is entirely self-serving and unconscionable. Obviously, Grievant is a member of her family. Second, Grievant's testimony that she was unaware of the written policy cited is both incredible and unpersuasive. (See footnote 1) And, the evidence establishes that Grievant was orally told not to work on claims for family members. Moreover, Grievant was told such on June 15, 1995, but she insisted on updating impermissible claims the next day and eight days later.

Finally, Grievant's justification for working on the claims in question is simply based upon the fact that she was too impatient to wait on the claims to be processed within the normal course of business; and therefore, because she had the ability to access thecomputer system, she updated the claims herself. This action is not only unjustifiable but indicative of a public employee's misuse of her position. Grievant not only caused herself to receive workers' compensation benefits for a period of time that she was not entitled, but probably also caused herself to be awarded actual benefits before hundreds of other citizens were awarded benefits they were due and which sould have been paid prior to hers.

Based upon the evidence presented, Grievant's immediate termination of June 30, 1995 is hereby upheld. Her tenure with the BEP is not sufficient to warrant any mitigation of the penalty in this case as it is determined that the BEP did not abuse its discretion in choosing the appropriate penalty. The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusions of law.

Conclusions of Law

1. The Bureau carries the burden in this case of proving the facts supporting Grievant's termination by a preponderance of the evidence. W. Va. Code §29-6A-6.

2. Grievant's acts of insubordination and gross misconduct warranted her immediate dismissal as the nature of her misconduct directly and adversely affected the rights and interests of the public. See, Guine v. Civil Service Commission, 149 W.Va. 461, 468, 141 S.E.2d 364, 369 (1965).

Therefore, this grievance is hereby **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court

of the county in whichthe grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

_____

ALBERT C. DUNN, JR.

Administrative Law Judge

November 20, 1995

Footnote: 1The Undersigned is hard-pressed to imagine that any public employee or official in the same or similar position to Grievant's would need to be formally told not to handle his or her own claim for public benefits. Such an action invites abuse and would directly result in the public's loss of trust in the system.