BETTY BECK

v. **Docket No. 93-HHR-294**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/OFFICE OF OPERATIONS

D E C I S I O N

On July 29, 1993 (See footnote 1), the Grievant, Betty Beck, appealed her 1992 evaluation to Level IV. She stated she "disagreed with her evaluation" and sought "[r]eevaluation with representation." (See footnote 2) This grievance was waived at Levels I and II and denied at Level III. This case became mature for decision on March 14, 1995.

Issues

The issue in this case is very straightforward. Grievant contends her evaluation is unfair, and does not reflect the overall quality of her work. Respondent argues Grievant's documented behavior at work, frequent tardiness, failure to report to assigned duty without being reminded, failure to work designated hours, working overtime without permission, and taking prolonged breaks outside the building, clearly warrant the scores on her evaluations. Respondent also argues that two of the above-stated problems represent unmet-goals from the prior year, compounding the seriousness of the behaviors, and Grievant's evaluation accurately reflects her level of performance.

Findings of Fact

1. Grievant is employed as a terminal operator/Office Assistant I in the Income Maintenance Section of the Office of Operations, Department of Health and Human Resources.

2. In early 1992, the Grievant received her evaluation for June 3, 1991 to December 31, 1991. She was rated satisfactorily at 5.33 and received 5s in most areas. (See footnote 3) Two goals were set for her. One was to "report to assigned coverage station (front desk) without reminding each time." Two was "do not work past 4:30 without supervisor's knowledge." An addendum was attached

to this evaluation clarifying these goals.

3. From January, 1992 to May, 1992, Goal #1 was not a problem because the Grievant and other employees worked intermittent, full day shifts at the front desk as there was no permanent receptionist. After May, the Employer returned to a front desk relief schedule. Since that time Grievant has had to be reminded forty of her sixty-eight scheduled days to report for previously assigned desk duty. Thus, the Grievant had to be reminded of this duty 59% of the time.

4. Between January 1, 1992 and December 31, 1992, the Grievant worked past 4:30 p.m. a number of times without the knowledge or permission of her supervisor. Even after she was informed this behavior was against regulations, she continued to do so. See West Virginia Department of Welfare Employees Handbook at 43.

5. Between January 1, 1992 and December 31, 1992, the Grievant was late to work ninety-four out of two hundred and thirty-six times for a total of four hundred and forty minutes. Thus, the Grievant was late 48% of the time for a total of 7-1/3 hours. Forty-two of these late days were five minutes or more.

6. One reason Grievant worked over without permission was to make up her late time. Grievant did not have permission to adjust her schedule in this manner.

7. On several occasions Grievant left the building for her break and was gone longer than fifteen minutes and could not be located. Employees are not allowed to leave the building at break time without a supervisor's permission. Id. at 41.

8. The quality of Grievant's work was satisfactory.

9. Because of the problems listed in Findings of Facts 3, 4, 5, 6, and 7, Grievant received a 4.16 or fair rating for 1992. The Grievant received 4s, or fairs, in the areas of dependability, cooperation, communication ability, judgment, and favorable job attitude. Grievant's quality of work was rated at a 5 or satisfactory.

10. A fair rating indicates an employee "must have failed to meet specific job performance requirements." October 30, 1989 Memorandum to Division Directors and Area Administrators, re: Service Ratings.

11. If an employee's job performance is in the fair category it is "below requirements of [the] job and must improve to be satisfactory." Performance Evaluation Form PO-32, revised October, 1983.

12. Four goals were listed on this evaluation form by Ms. Diane Kovac, Grievant's supervisor.

Since the two prior goals from 1991 had not been met, they were restated. Two goals were added: "Arrive to work by 8:30 a.m.", and "Keep co-workers and supervisor informed when leaving the building on break."

13. An addendum was attached to the evaluation detailing the behavior which led to the setting of the four goals.

14. Grievant disagreed with her 1992 evaluation and refused to sign it. She noted on the form "[r]ating is not a proper reflection of my overall evaluation. Immediate Supervisor was unable to provide justification for lower rating."

Discussion

A grievant challenging her evaluation must establish by a preponderance of the evidence that the supervisor abused her discretion or misinterpreted or misapplied established policy or law. Messinger v. W. Va. Dept. of Health and Human Resources/Div. of Human Srvs., Docket No. 92-HHR-380 (Apr. 7, 1993); Kemper v. W. Va. Dept. of Transp., Docket No. 91-DOH-325 (Mar. 2, 1992). Grievant has failed to meet this burden. There is no evidence to support Grievant's contention that her evaluation did not accurately reflect the overall quality of her work. On the contrary, the record reflects Grievant's failure to correct prior, identified problem areas, and the development of additional problems which are unacceptable.

The above-discussion will be supplemented by the following conclusions of law.

Conclusions of Law

1. "In a situation w[h]ere an employee challenges his or her performance evaluation, that employee must prove by a preponderance of the evidence that the problem evaluation was prepared as a result of the supervisor's misinterpretation or misapplication of established policy or law addressing the evaluation process or that the evaluation was established by an abuse of discretion." Kemper v. W. Va. Dept. of Transp., Docket No. 91-DOH-325 (Mar. 2, 1992).

2. Grievant has failed to meet her burden of proving Respondent either misinterpreted or misapplied established policy or law, or acted in an arbitrary and capricious manner.

Accordingly, this grievance is **DENIED**.

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

of the county in which the 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.

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: May 25, 1995

Footnote: 1*The length of time this case was at Level IV reflects numerous problems with scheduling and obtaining the Level III transcript, as well as the failure of the Grievant or her representative to communicate with the undersigned. Numerous transcripts, which contained detailed information and testimony about this grievance, were forwarded to the undersigned, but the Grievant's testimony was not. No additional Level III tapes were found and repeated requests from the undersigned as to what Grievant wanted to do about this state of affairs resulted in no information from the Grievant or her representative. All were notified that the decision would be based on the record at hand. No objection to this process was received. The Respondent submitted a brief, but Grievant decided to submit on the record below.*

Footnote: 2*Grievant did not clarify the exact meaning of this relief.*

Footnote: 3*Satisfactory performance would be between a 5 to 6. The areas evaluated are dependability, quality of work, cooperation, communication ability, judgment, and favorable job attitude.*