

## **SHARON SKEENS**

**v. Docket No. 96-BOD-018**

**SOUTHERN W.VA. COMMUNITY and TECHNICAL COLLEGE**

### **DECISION**

The grievant, Sharon Skeens, is employed by Southern West Virginia Community and Technical College (SWVCTC or College) as a Human Resources Assistant III in its Human Resources Office. She filed a grievance at Level I, on or about September 18, 1995, protesting an August 28, 1995 warning letter issue by her supervisor, Director of Human Resources Patricia Hank. Ms. Hank declined to withdraw or modify the warning, and the grievance was denied at Level II following a hearing held December 18, 1995. Participation at Level III was waived, and appeal to Level IV was made January 18, 1996. Scheduled hearings were continued and the parties eventually agreed to submit the case for decision on the record developed at Level II. Proposed findings of fact and conclusions of law were received by July 19, 1996.

### **Background**

The grievant has been employed by SWVCTC for approximately eleven years and it appears that she has served as a HumanResources Assistant for at least two years. One of her responsibilities is to submit a payment for withheld employee payroll taxes and an accompanying report to the West Virginia Department of Tax and Revenue on or before the 20th day of each month.

It is undisputed that the grievant mistakenly mailed the November 1994 payment and report to the West Virginia Consolidated Retirement Board. On December 2, 1994, the grievant resubmitted them with a letter to Tax and Revenue explaining the error; the grievant asked that the payment be considered timely. No response to the grievant's request was immediately forthcoming.

At approximately 4:30 p.m. on July 12, 1995, the grievant, her husband and Janet Grieme, the college's classified service senate president, approached Ms. Hank and inquired whether a

December 9, 1994 warning letter had been removed from the grievant's personnel file. [\(See footnote 1\)](#) Ms. Hank responded that per a Level II grievance decision on the letter, it was not to be removed until July 25, 1995.

The grievant and her husband confirmed this holding in the decision and then posed several questions about the extent of a supervisor's authority to take disciplinary action against a College employee. At or near the end of their conversation, atleast part of which was overheard by Vice-President for Financial Affairs Oretha Baker, the grievant and Mr. Skeens indicated that they were filing a lawsuit against Ms. Hanks over "tricks" in the Human Resources Department. Apparently, they did not otherwise explain the basis for the action.

On July 13, the grievant's husband reported that she was ill and would not work that day or July 14. The grievant was scheduled to begin two weeks of vacation on July 17.

Believing that the grievant had acted oddly or uncharacteristically on July 12, Ms. Hanks telephoned Payroll Representative Carol Trent on July 13, 1995 to discern the reason or reasons for her behavior. [\(See footnote 2\)](#) Ms. Trent advised that she had talked to the grievant on July 12, and opined that she may have been upset over a penalty assessed against SWVCTC for a late November 1994 payment to Tax and Revenue. Ms. Trent expressed surprise that Ms. Hanks was not aware of the penalty.

On July 14 or 17, Ms. Hanks telephoned Tax and Revenue Auditor Scott Johnson and confirmed that the College had been assessed a penalty for the November 1994 payment, and that, with interest, approximately \$800.00 was owed. Mr. Johnson advised Ms. Hanks that per Tax and Revenue regulations, a notice had been mailed to SWVCTC in mid-March 1995, explaining that the fine had entered the "warrant" stage. He also advised that he had talked to the grievant on July 12, at approximately 2:15 p.m., and made her aware that a petition for a lien against SWVCTC's assets was the next step in the collection process.

On or about July 14, 1995, SWVCTC Accountant Betty McKenzie informed Ms. Hanks that she also had discussed the penalty with the grievant on July 12. Ms. McKenzie indicated that the grievant appeared to be upset that she, Ms. McKenzie, had not handled the matter.

Tax and Revenue eventually forgave the penalty upon Ms. Hank's written request; the college was required to pay \$39.48 interest. Ms. Hank's explanation for the late November 1994 tax payment was essentially the same as that provided by the grievant in her December 2, 1994 request that the

payment be deemed timely.

The grievant saw her doctor on July 13 or 14, and reported that she was suffering a great deal of stress on her job; he recommended a leave of absence. The grievant attended a church camp from July 17 to July 28, and was scheduled to return to work at the beginning of August. She reported sick for the first two weeks in August and returned to work on or about August 14. Upon her return, the grievant submitted a doctor's statement indicating that she had been under his care and was partially incapacitated from July 13 to August 14. She at least sought and may have initially received approval to record the July 17 to July 28 period as sick leave instead of vacation time.

After the grievant's return, Ms. Hanks essentially waited to see if and when she would advise her of the penalty. After two weeks, Ms Hanks concluded that the grievant did not intend to bring the matter to her attention, and issued the August 28, 1995 written warning in question. The letter provided, [\(See footnote 3\)](#)

On October 19, 1994, you received a verbal warning for subversive behavior, and insubordination.

On December 9, 1994, you received a written warning for gross insubordination and neglect of duty. This warning was scheduled to be removed from your personnel file on July 25, 1995.

In mid-March you received a notice from the West Virginia Department of Tax and Revenue assessing Southern WV Community and Technical College a penalty of nearly eight hundred dollars.

You removed the notice from the mail and tried to hide the penalty from myself and Ms. Baker, VP for Financial Affairs. You tried to get Betty McKenzie, Accountant, to process payment without anyone knowing. On July 12, 1995 at approximately 2:15 pm, you received a call from Mr. Scott Johnson of the Department of Tax and Revenue informing you that the assessment had gone into a warrant stage and court proceedings would begin for the purpose of placing a lien against the College's assets. You were out of the office for over two hours that afternoon and returned visibly upset.

Realizing that being discovered was imminent you proceeded to review your personnel file and demand that the letter of warning be removed. I had to pull the hearing evaluator's answer and have you read it to show that the warning was not to be removed until July 25, 1995. You and your husband questioned me, Merle Dempsey, VP for Student Affairs, and Oretha Baker, VP for Financial Affairs,

regarding the ability of a supervisor to fire a subordinate. You informed me that we (you and I) would have no discussions in the future without a witness and both you and Mr. Skeens threatened me with court action for the "tricks that were going on" in our department.

While this was taking place, I had no idea why you were so antagonistic and upset. I did not clearly understand or discover your action until July 17, 1995. I still have not been able to locate any document regarding the penalty. You met with my supervisor on May 5, 1995 and vowed that you would try to improve and work with me. You expressed an unreasonable fear of my trying to fire you. All this time, you were trying to hide the \$790.70 penalty. Your actions in this situation are totally unacceptable. Dishonestly cannot be tolerated in the Human Resources Department. Your negligence could have cost the institution nearly eight hundred dollars. This letter is your second written warning. If any action such as those you have been displaying over the last two years or more continue, you will be immediately dismissed.

You should have brought the penalty notice to me the instant you retrieved it from the mail. We could have worked together to write a justification to have the penalty waived. However, from March through July you intended to deceive and cover-up. You became so upset on July 12, 1995, when you realized that you were about to be discovered, that you did not return to work.

This warning will remain in your personnel file for one year from the date you receive it upon your return to work.

Additionally, you are not to remove any departmental mail from our mail box or before it is opened and date stamped.

## **Argument**

The college contends it has met its burden to establish the truth of the allegations contained in the letter, and avers that the penalty imposed was a lenient one. The grievant disputes that she committed any wrongdoing and asserts that the warning was part of an ongoing effort by Ms. Hanks to retaliate against her for filing an August 1994 grievance over her placement in a new job classification plan.

## **Findings and Conclusions**

The warning is a disciplinary matter and the college bears the burden of establishing by a preponderance of the evidence that the grievant committed the acts for which she was warned. W.Va.

Code §29-6A-6; Dancy v. Raleigh County Bd. of Educ., Docket No. 95-41- 168 (Sept. 7, 1995). The grievant bears the burden on her claim of retaliation. Smith v. W.Va. Dept. of Corrections, Docket No. 95- CORR-547 (June 28, 1996). For the reasons discussed below, the undersigned concludes that the college has met its burden, and that the grievant has failed to establish any valid defense to the charges.

The grievant's Level II testimony is perhaps the strongest part of SWVCTC's case; findings regarding her credibility are dispositive of most if not all factual disputes. On nearly all matters of significance, the grievant's responses to questions were evasive or nonresponsive. During the crucial inquiry into whether she received the mid-March notice from Tax and Revenue, the grievant's most forthright response was that without some written note to that effect she could not recall whether she received it, and that she could not find any such note.

The grievant implied but did not assert outright that she turned a file over to Ms. McKenzie which might have contained the notice. Further, she recalled vaguely that she talked to Ms. Hanks about the penalty shortly after her return to work in August and was assured that it had been resolved. The grievant also implied that Tax and Revenue may not have sent the notice; the U.S. Postal Service may have lost it; or it may have been misdirected within the college. The grievant was certain that the penalty was not a matter of great significance and that it was not something she would normally bring to Ms. Hanks' attention. She represented that she visited Ms. Hanks' office on the evening of July 12 to examine her personnel file because she felt that Ms. Hanks was preparing to take some action against her. The grievant was again noticeably vague regarding the basis for this belief.

The grievant's lack of credibility and the record as a whole support that she received the penalty notice in March 1995, and took no action to resolve it herself or refer it to others. Further, the record reflects that the penalty was an important matter, and that the grievant had a duty to bring it to Ms. Hanks' attention. Her failure to do so is indicative of dishonesty.

It is clear that the grievant received a telephone call from Mr. Johnson on July 12, 1995. Her subsequent examination of her personnel file and confrontation with Ms. Hanks over the December 9, 1994 warning letter support that she was concerned over her failure to address the written notice and intended to conceal Mr. Johnson's latest communication.

The undersigned finds the retaliation charge contrived. There was no corroboration of the grievant's testimony on the issue, and her assertions regarding Ms. Hanks' motivation for engaging in

reprisal were vague and generally unconvincing. Ms. Hanks was more credible in her denial of the charge. In any event, to the extent that the record supports a prima facie case of retaliation, the college has demonstrated legitimate, non-pretextual reasons for the warning letter. See, Conner v. Barbour County Bd. Of Educ., Docket No. 95-01-031 (Sept. 30, 1995). [\(See footnote 4\)](#)

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Logan County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. 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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**JERRY A. WRIGHT**

**ADMINISTRATIVE LAW JUDGE**

**Dated: July 31, 1996**

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[Footnote: 1](#)

*The record reflects only that this letter concerned "gross insubordination and neglect of duty." Despite that the August 28, 1995 warning letter in question makes reference to the earlier letter and an October 19, 1994 verbal reprimand, it does not appear that SWVCTC considered either matter to be relevant to the charges at issue herein. The grievant does not assert and the record does not support that the college improperly relied on the prior disciplinary actions.*

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[Footnote: 2](#)

*Ms. Trent is assigned to the College's Financial Affairs Department and Ms. Hanks was aware that the grievant had spent at least part of the workday in that office on July 12.*

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[Footnote: 3](#)

*This is the version which was ultimately placed in the grievant's personnel file. At Level II, the college agreed to to delete certain portions of the original letter relating to the grievant's use of sick leave during the periods discussed above.*

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[Footnote: 4](#)

*It is noted that while the record supports that the grievant's attempts to conceal the penalty may have eventually caused Tax and Revenue to decline to grant a waiver, it is inaccurate to say that her "negligence could have cost the institution nearly eight hundred dollars." It is clear from Ms. Hanks' testimony that she did not intend to admonish the*

*grievant for the failure to make a timely November 1994 tax payment, and since Tax and Revenue ultimately accepted the grievant's original explanation, the claim of negligence seems unreasonable. The undersigned suggests that SWVTC delete that charge from the letter.*