

SHIRLEY JONES,

Grievant,

v.

Docket No. 96-HHR-371

**WEST VIRGINIA DEPARTMENT OF HEALTH
& HUMAN RESOURCES, SHARPE HOSPITAL,**

Respondent.

DECISION

On August 28, 1996, Shirley Jones (Grievant) submitted this grievance to Level IV, as authorized by W. Va. Code § 29-6A-4(e), challenging her dismissal as an employee of Respondent Department of Health and Human Resources (DHHR). An evidentiary hearing in this matter was conducted in Weston, West Virginia, on September 18, 1996. At the conclusion of that hearing, the parties were offered an opportunity to submit written post-hearing arguments. This matter became mature for decision on October 10, 1996, upon receipt of a written brief from DHHR. Consistent with W. Va. Code § 29-6A-4 and the practice of this Grievance Board, this disciplinary action has been advanced on the docket for an expedited decision.

Grievant was employed by DHHR as a Health Service Worker at William R. Sharpe, Jr., Hospital (Sharpe Hospital) in Weston, West Virginia. Sharpe Hospital is a state-operated mental health facility. By letter dated August 14, 1996, Hospital Administrator Michael Todt informed Grievant of his decision to dismiss her, citing, in pertinent part, the following particulars:

This letter is to inform you of my decision to dismiss you from your position as a Health Service Worker with the Department of Health and Human Resources, Sharpe Hospital. Your dismissal is effective August 29, 1996, providing you with a fifteen (15) day calendar notice. The specific reason for this personnel action is as follows.

In November, 1995, allegations were made that you had or were having a personal and financial relationship with Patient #15094, a former hospital patient. These allegations, if sufficiently proven, would show your conduct was in violation of provision No. 11 of the Employee's Handbook that prohibits the exploitation of patients, and a Professional Conduct of Employees Memorandum dated December 29, 1995, from Michael Todt, Hospital Administrator restating the provisions of the handbook:

"All Weston Hospital employees are restricted from conducting intimate, personal, financial or business relationships of any kind with patients who have been treated at this facility for one year after the patient's discharge. Violation of this restriction will be considered exploitation of the patient, former patient or patient's family member for personal gain and is grounds for possible disciplinary action, such as suspension and/or termination. Exceptions to this directive must have the express written approval of the Hospital Administrator. The primary exception to this directive will be where there is a relationship that was established prior to the patient's admission."

Because of the allegations in December, 1995, you were interviewed by Rick Sisley, Patient Advocate, regarding the allegations of a personal and financial relationship with former patient #15094. You stated that you were acquainted with the patient because she had been a patient at Sharpe Hospital but denied having any personal or financial relationship with her. You stated that you were aware of the provisions of the employee's handbook prohibiting the exploitation of patients and specifically denied borrowing money from Patient #15094. The former patient was also interviewed and denied having a personal relationship or lending money to you.

Because the allegations of your conduct could not be sufficiently proven and the results of the investigation were inconclusive, you were given a letter dated January 29, 1996, reminding you of the provisions of the employee's handbook. You were also informed in that letter that, ".....if at a future date it is determined that you are in violation of the professional standard of conduct expected of employees at Sharpe Hospital, you will be subject to disciplinary action."

Since the November, 1995, investigation into your alleged misconduct, you were suspended on April 11, 1996 without pay for a period of fifteen (15) days. The reason for your suspension was: the inappropriate and non-therapeutic relationship with a patient of this facility and your repeated instances of insubordination (the intentional and willful failure to comply with the instructions of your supervisor.)

On July 29, 1996, I received information from Carol C., sister of Patient #15094, the former patient of Sharpe Hospital, showing that you had borrowed money from Patient #15094. This information included a "fax" from Carol C stating the following:

[At this point the notice restates the contents of a "Personal Guaranty" dated July 9, 1995, wherein Grievant agreed to repay \$700, plus an additional \$200, to M.L.C., and the contents of a memo to Mr. Todt from Carol C. which accompanied the "note."]

Because of the information that we have received, we now believe that i[t] has been shown by a preponderance of evidence that you had both a personal and financial relationship with Patient #15094. While during the December, 1995, investigation of your alleged personal/financial relationship with Patient #15094, you denied having any such relationship. Obviously, your statements to the Patient Advocate were untrue and were intended to mislead the investigator. Your lack of truthfulness indicates your lack of trustworthiness.

Accordingly, the information contained in this letter leads me to the conclusion that you are unable to meet the required standards of conduct and that I must take this action in dismissing you from your employment. Your repeated repudiation of an acceptable standard of conduct so thoroughly disrupts and undermines the employer-employee relationship as to eliminate any likelihood that a lesser penalty would beneficially serve to reform your conduct in the workplace.

The State and its agencies have reason to expect their employees to observe a standard of conduct which will not reflect discredit upon the abilities and integrity of their employees, or create suspicion with reference to their employees' capacity and honesty in discharging their duties and responsibilities. I find the nature of your misconduct is sufficient to conclude that you did not meet a reasonable standard of conduct as an employee of the West Virginia Department of Health and Human Resources, Sharpe Hospital, warranting your dismissal.

* * *

J Ex 1.

In support of these charges, DHHR presented testimony from several witnesses. Richard Sisley, employed by the Legal Aid Society of Charleston as a Patient Advocate assigned to Sharpe Hospital, testified regarding an investigation he conducted in November and December 1995. Mr. Sisley received a verbal complaint from S.W. [\(See footnote 1\)](#), a former patient, alleging that Grievant had been exploiting another former Sharpe Hospital patient, M.L.C. See R Ex 25. S.W. alleged that Grievant was contacting M.L.C. around the first of each month and would assist M.L.C. in spending her disability check by going out drinking in various bars. He also claimed that M.L.C. had loaned \$700 to Grievant. S.W. provided Mr. Sisley with two letters which he had supposedly received from

M.L.C., and which made some reference to her relationship with Grievant. See R Exs 26 & 27.

Mr. Sisley interviewed M.L.C., Dave Matthews (a neighbor of M.L.C.'s), and two staff members who might have seen Grievant and M.L.C. socializing in local bars. The two staff members each reported seeing M.L.C. and Grievant in local bars on at least one occasion. Mr. Sisley confronted Grievant with these allegations. She denied any improper personal relationship with M.L.C., also denying that she had borrowed money from M.L.C. She did acknowledge that she was aware of the policy prohibiting any personal or financial relationship with a patient for at least one year following the patient's discharge from Sharpe Hospital. During her interview, M.L.C. likewise denied any socializing with Grievant or loaning her any money.

Michael Todt, Hospital Administrator, determined that Mr. Sisley's investigation did not provide conclusive evidence of misconduct by Grievant. Accordingly, Grievant was issued a "reminder" letter from Ann Jennings, Director of Human Resource Management, emphasizing the prohibition on relationships with former patients. R Ex 20. Mr. Todt subsequently received a telephone call from Carol C., M.L.C.'s sister, advising that she was going to be attaching Grievant's wages because of her failure to pay a debt to M.L.C.

Ms. C. told Mr. Todt that Grievant had borrowed the money directly from M.L.C. Although Ms. C. opposed the loan, she relented as it was M.L.C.'s money. Mr. Todt requested Ms. C. to provide some proof of the debt and, on July 26, 1996, he received a facsimile memorandum from Ms. C., forwarding a copy of a document which purported to memorialize the loan agreement between Grievant and M.L.C. The document, dated "7-9-95," was entitled "Personal Guaranty," and had been filled in by hand (in the underlined portions) as follows:

I, Shirley Jones, residing at PO Box 435 Weston, for and in consideration of your extending at my request credit in the amount of 700.00 (hereinafter referred to as the debtor[]), of which, I personally guarantee to you, [M.L.C.], payment in monthly installments, of no less than \$200.00 per month. Repayment of the original amount plus \$200.00 will start on 8-15-95. I hereby bind myself to pay you on demand the sum borrowed (sic) repayment schedule is not kept.

R Ex 29. The document is purportedly signed by "Shirley Jones." In her memo, Ms. C. stated that the amount of the debt had been reduced to \$580, apparently through prior partial payments by Grievant. See R Ex 29. Mr. Todt confronted Grievant with this document, and she acknowledged signing the "guaranty." However, Grievant told him that she borrowed the money from another sister, not Carol

C. or M.L.C.

The "Weston Hospital [\(See footnote 2\)](#) Employee's Handbook" dated June 1994, includes the following provision in the section entitled "Employee Responsibilities:"

All Weston Hospital employees are restricted from conducting intimate, personal, financial or business relationships of any kind with patients who have been treated at this facility for one year after the patient's discharge. Violation of this restriction will be considered exploitation of the patient, former patient or patient's family member for personal gain and is grounds for possible disciplinary action, such as suspension and/or termination. Exceptions to this directive must have the express written approval of the Hospital Administrator. The primary exception to this directive will be where there is a relationship that was established prior to the patient's admission.

R Ex 28 at 11.

Mr. Todt noted that many of the patients at Sharpe Hospital are "seriously mentally ill," and it is very important to establish boundaries between patients and staff in that environment. Mary Dean, a Registered Nurse employed at Sharpe Hospital as a Nurse Clinical Coordinator on the evening shift, was Grievant's immediate supervisor up until the time Grievant was terminated. Ms. Dean also noted that personal relationships can interfere with a patient's treatment regimen, by sending confusing signals regarding the status of staff personnel to the patient. Mr. Todt acknowledged that Grievant had been given approval by the treatment team to take M.L.C. out of the hospital on three occasions during the time when Grievant was laid off from employment. However, there had not been a waiver of the policy prohibiting financial relationships between patients and employees.

According to Mr. Todt, M.L.C. is a "revolving patient" who is likely to return to Sharpe Hospital for treatment in the future. M.L.C. was last discharged from Sharpe Hospital on March 18, 1995. Grievant was recalled from lay-off on January 30, 1995. Grievant waived her right to silence under W. Va. Code § 29-6A-6, electing to testify in her own behalf at the hearing. Grievant explained that she borrowed the money from Carol C. She indicated that she was discussing her financial problems by phone with M.L.C., and M.L.C. suggested that Carol C. could loan her some money. Carol C. subsequently called Grievant and agreed to loan \$700 to Grievant, further agreeing that since M.L.C. was moving to Weston, Grievant could repay the loan to M.L.C. who was in greater need of the money. Grievant recalled that M.L.C. personally delivered the \$700 in cash to her on July 9, 1995, and later provided the note which Grievant voluntarily signed. She later made some payments on the loan to M.L.C. However, M.L.C. moved out of town and Carol C. told her to begin making payments

to her instead of M.L.C. However, Grievant "lost Carol's address" and was unable to locate either Carol C. or M.L.C. Grievant admitted that she had become "friends" with M.L.C. during the two years M.L.C. was hospitalized prior to Grievant's layoff in 1992. Grievant declared that after M.L.C. moved back to Parkersburg, she tried to locate her without success. She denied exploiting M.L.C. in any manner. Grievant explained that she did not tell Mr. Sisley that she had borrowed money from Carol C., rather than M.L.C., because she was not asked that specific question. Grievant stated: "If he would have asked me, I would have told him. But he didn't ask me and I never thought of it."

Grievant was previously suspended without pay for 15 days in April 1996 for an inappropriate and non-therapeutic relationship with a patient and insubordination. See R Ex 24. The merits of this prior disciplinary action are not at issue here, as Grievant did not timely contest this action through the statutory grievance procedure. See Stamper v. W. Va. Dept. of Health & Human Resources, Docket No. 95-HHR-144 (Mar. 20, 1996); Womack v. Dept. of Admin., Docket No. 93-ADMN-430 (Mar. 30, 1994).

DISCUSSION

In disciplinary matters, W. Va. Code § 29-6A-6 places the burden of proof on the employer. Broughton v. W. Va. Div. of Highways, Docket No. 92-DOH-325 (Dec. 31, 1992). Where, as here, the existence or nonexistence of certain material facts hinges on witness credibility, detailed findings of fact and explicit credibility determinations are required. Pine v. W. Va. Dept. of Health & Human Resources, Docket No. 95-HHR-066 (May 12, 1995). See Harper v. Dept. of the Navy, 33 M.S.P.R. 490 (1987). Accordingly, it is necessary to discuss certain aspects of this matter in greater detail. Grievant acknowledged that she became friends with M.L.C. while M.L.C. was a patient in the hospital prior to Grievant's lay-off in 1992. During the lay-off, M.L.C.'s treatment team permitted Grievant to associate with M.L.C. on certain occasions. Although Grievant was allowed to maintain a social relationship with M.L.C. at one point, she remained aware that employees were prohibited from conducting any kind of financial relationships with former patients and their families. See R Ex 28. Whether Grievant borrowed money from Carol C. or M.L.C. (or another sister as explained to Mr. Todt), such conduct represents a serious breach of the standards of conduct expected from DHHR's employees at Sharpe Hospital.

Moreover, Grievant's claim that she borrowed the money from Carol C., rather than M.L.C., is simply not credible. Grievant admitted that she signed the "Personal Guaranty" indicating that she

borrowed \$700 from M.L.C., not Carol C. Likewise, she admitted that M.L.C. was the person who handed her the cash, provided her the "guaranty" document to sign, and received her payments repaying the loan, at least until M.L.C. left town. Whatever the nature of the financial relationship which Grievant established with these women, M.L.C. was inextricably involved.

Given this involvement of M.L.C. in this transaction, Grievant's claim that she never thought of telling Mr. Sisley that she had, in fact, borrowed money from Carol C., rather than M.L.C., is unworthy of belief. Not only does a preponderance of the evidence indicate that Grievant misled Mr. Sisley during the course of his investigation, she continued to follow that same course of conduct at the Level IV hearing. Accordingly, the undersigned administrative law judge finds that DHHR established the charges alleged by a preponderance of the evidence.

The judicial standard in West Virginia requires that "dismissal of a civil service employee be for good cause, which means misconduct of a substantial nature directly affecting rights and interest of the public, rather than upon trivial or inconsequential matters, or mere technical violations of statute or official duty without wrongful intention." Syl. Pt. 2, Buskirk v. Civil Service Comm'n, 332 S.E.2d 579, 581 (W. Va. 1985); Oakes v. W. Va. Dept. of Finance and Admin., 264 S.E.2d 151 (W. Va. 1980); Guine v. Civil Service Comm'n, 141 S.E.2d 364 (W. Va. 1965). The public clearly has a significant interest in employees of state mental hospitals strictly complying with rules that are established to prevent the staff from improper relationships with patients or their families. Grievant's violation of these rules, and her misleading denial of such activity to the Patient Advocate, constitutes misconduct of a substantial nature affecting the rights and interests of the public. See Payne v. W. Va. Dept. of Transp., Docket No. 93-DOH-454 (Apr. 29, 1994).

In Buskirk, supra, the Supreme Court of Appeals of West Virginia stated that "the work record of a long time civil service employee is a factor to be considered in determining whether discharge is an appropriate disciplinary measure in cases of misconduct." Id. at 585. Grievant previously received a 15-day suspension for an inappropriate relationship with a male patient and for insubordination for failing to comply with specific orders from her supervisors relating to avoiding further allegations of misconduct. Grievant's prior work record is otherwise insufficiently lengthy or exemplary to offset these serious incidents of prohibited conduct. Accordingly, Respondent's decision to dismiss Grievant must be sustained.

In addition to the foregoing discussion, the following findings of fact and conclusions of law are

made in this matter.

FINDINGS OF FACT

1. Grievant was employed by Respondent DHHR as a Health Service Worker at Sharpe Hospital in Weston, West Virginia.

2. Prior to being laid off by Respondent in 1992, Grievant developed a "personal relationship" with a patient, M.L.C.

3. While on lay-off from Sharpe Hospital, M.L.C.'s treatment team permitted Grievant to sign M.L.C. out of the hospital on at least three occasions.

4. Since at least 1994, the Employee's Handbook applicable to employees at Sharpe Hospital has contained a provision regarding "Exploitation of Patients" which prohibits employees from conducting "financial or business relationships of any kind with patients and families of patients who have been treated at this Facility for one year after the Patient's discharge." R Ex 28 at 11.

5. Grievant returned from lay-off to regular employment status at Sharpe Hospital on January 30, 1995.

6. M.L.C. was last discharged from Sharpe Hospital on March 18, 1995.

7. On July 9, 1995, M.L.C. transferred \$700 in cash to Grievant. Grievant subsequently signed a "Personal Guaranty" in which she agreed to repay \$700, plus an additional \$200, to M.L.C. Grievant subsequently delivered partial payments to M.L.C., repaying all but \$580. See R Ex 29.

8. Sometime in November or December of 1995, Grievant was questioned by Richard Sisley, Patient Advocate, regarding an allegation that she borrowed money from M.L.C. Grievant denied any financial transactions with M.L.C. M.L.C. likewise denied any transactions with Grievant.

9. On January 29, 1996, Grievant was informed that the investigation "that you may have had both a financial and a social relationship with a former patient" was "inconclusive." Grievant was warned that she would be subject to disciplinary action if she was subsequently found to be in violation of the standard of conduct expected of Sharpe Hospital employees. R Ex 20.

10. On April 22, 1996, Grievant was suspended without pay for 15 days for an "inappropriate and non-therapeutic relationship with a patient" and "repeated instances of insubordination." R Ex 24.

11. On July 26, 1996, M.L.C.'s sister, Carol C., provided Hospital Administrator Michael Todt with a copy of the "Personal Guaranty" document described in Finding of Fact Number 7.

CONCLUSIONS OF LAW

1. Pursuant to W. Va. Code § 29-6A-6, the burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. Wellman v. W. Va. Dept. of Health & Human Services, Docket No. 93-HHR-079 (Oct. 18, 1993); Ramey v. W. Va. Dept. of Health, Docket No. H-88-005 (Dec. 6, 1988).

2. Dismissal of a civil service employee must be for "good cause, which means misconduct of a substantial nature affecting rights and interest of the public, rather than upon trivial or inconsequential matters, or mere technical violations of statute or official duty without wrongful intention." Syl. Pt. 2, Buskirk v. Civil Service Comm'n, 332 S.E.2d 579, 581 (W. Va. 1985).

3. DHHR demonstrated by a preponderance of the evidence that Grievant violated a written work rule prohibiting financial transactions between employees and former patients or their families, and further misrepresented the extent of her involvement with a former patient to the Patient Advocate in the course of an official investigation. Further, DHHR demonstrated that Grievant's misconduct directly affected the rights and interests of patients of Sharpe Hospital. Thus, DHHR established good cause for Grievant's dismissal, given Grievant's relatively short tenure with the agency and her work record, which included a previous 15-day suspension for insubordination and having an inappropriate and non-therapeutic relationship with a male patient. See Buskirk, supra; Grueser v. W. Va. State Bd. of Rehabilitation, Docket No. 95-RS-084 (June 29, 1995).

4. An allegation that a particular disciplinary measure is disproportionate to the offense proven or otherwise arbitrary and capricious is an affirmative defense, and the grievant bears the burden of demonstrating that the penalty was clearly excessive or reflects an abuse of agency discretion, or an inherent disproportion between the offense and the personnel action. Thompson v. W. Va. Dept. of Health & Human Services, Docket No. 94-HHR-254 (Jan. 20, 1995). See Martin v. W. Va. State Fire Comm'n, Docket No. 89-SFC-145 (Aug. 8, 1989); Schmidt v. W. Va. Dept. of Highways, Docket No. DOH-88-063 (Mar. 31, 1989). Grievant herein has failed to meet that burden.

Accordingly, this Grievance is **DENIED**.

Any party 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.

LEWIS G. BREWER
ADMINISTRATIVE LAW JUDGE

Dated: October 30, 1996

[Footnote: 1](#)

The patients who were involved in this matter will be identified by their initials, consistent with this Board's practice respecting the privacy of individuals under such circumstances. See, e.g., Grueser v. W. Va. State Bd. of Rehabilitation, Docket No. 95- RS-084 (June 29, 1995); Edwards v. McDowell County Bd. of Educ., Docket No. 93-33- 118 (July 13, 1994).

[Footnote: 2](#)

Administrative notice is taken that Sharpe Hospital was previously named Weston Hospital.