**GAILLYNN M. BOWMAN,**

**Grievant,**

**v.**

**DOCKET NO. 96-EBA-464**

**WEST VIRGINIA EDUCATIONAL**

**BROADCASTING AUTHORITY,**

**Respondent.**

**D E C I S I O N**

Grievant, Gaillynn Bowman, originally filed her grievance protesting her dismissal from the West Virginia Educational Broadcasting Authority (WPBY) , directly to level four on October 8, 1996. The grievance was remanded to level three for a hearing by Order dated October 17, 1996. A level three hearing was conducted on October 29, 1996, and a decision rendered on November 6, 1996, by Dale M. Rhodes, designated hearing examiner for WPBY. (See footnote 1) Grievant then appealed to level four on November 12, 1996. Following several continuances for good cause, hearing was held on March 25, 1997, at which time this case became mature for decision.

SUMMARY OF THE EVIDENCE

Grievant's Exhibits

1.

WPBY-TV Position Description for Business Clerk.

2.

Handwritten letter from Anthony S. Neri, M.D. to Grievant, dated September 24, 1996 (w/typewritten version attached).

3.

West Virginia Educational Broadcasting Authority Employee Evaluation Report for Grievant, dated October 2, 1996.

4.

Termination notice from Gloria M. Nash to Grievant, dated October 2, 1996.

5.

Letter from Grievant to Dr. Neri, dated September 22, 1996.

Testimony

Grievant testified in her own behalf, and offered the testimony of Gloria Nash, Elizabeth Lundy, and Peter Stark. WPBY offered the testimony of Gloria Nash, Thomas Holleron, and Dale Rhodes.

ISSUE

Grievant alleges she was terminated without cause, and that she was discriminated against due to her disability. The issue is whether WPBY discriminated against Grievant due to her disability when it terminated her employment on October 2, 1996. I find it did not.

BACKGROUND

Grievant was first employed by WPBY on a temporary part-time basis as a Business Clerk in September 1995. Gloria Nash was, at all times relevant herein, her immediate supervisor. Although no written performance evaluation was done of Grievant while she was a temporary employee, Ms. Nash rated her performance as satisfactory. Ms. Nash testified that Grievant had a tendency to want to do things her own way, and she had talked to her about the importance of being a team player.

In March 1996, WPBY posted a full-time Business Clerk position, reporting directly to Ms. Nash. See G. Ex. 1. Ms. Nash received approximately 10 applications for theposition. Out of those 10, she narrowed the field to 5 applicants. She offered the position to the remaining 5 applicants, but for various reasons, none of them could take the job.

Grievant had submitted her application but had indicated to Ms. Nash that she did not want full-

time employment. After Ms. Nash offered the position to the other applicants with no success, Grievant agreed to take the Business Clerk position in April 1996. Grievant and Ms. Nash worked out a flex-time schedule for her to work. Grievant was a probationary full-time employee from April through October 2, 1996.

The WPBY Business Office consisted of Ms. Nash, Grievant, and Charles Denning, another Business Clerk. During the first two months of Grievant's probationary period, Ms. Nash did not have problems with Grievant's work. However, Ms. Nash testified that Grievant still was not a team player, and was inflexible regarding work assignments. Ms. Nash received complaints from Mr. Denning regarding Grievant. Specifically, Ms. Nash had given him a work assignment, which Grievant took off his desk, without his or Ms. Nash's knowledge, and worked on herself.

Ms. Nash testified that the station had an informal working environment, where employees routinely left their desks, moved around, talked with each other, and went for coffee. There were no structured, scheduled “break” periods at WPBY. Shortly after Grievant began her probationary period, she began daily asking Ms. Nash if she could take a break. Ms. Nash told Grievant she did not have to ask to take a break, and that she was free to leave her desk. Grievant continued to ask Ms. Nash almost on a daily basis if she could take breaks.

Grievant testified she needed to take two 15-minute breaks a day, during which she had to “power walk”, or walk briskly, because of a medical condition. Grievant suffers fromendometriosis, has had multiple surgeries for this condition, and was on pain medication. Grievant testified she was in considerable pain due to her condition, which required her to stretch her leg and abdominal muscles during the day. (See footnote 2) For this reason, she felt she needed to “power walk”. WPBY is located on the campus at Marshall University. Grievant would take her “power-walking” breaks outside the building, and walk across the campus.

In June 1996, Ms. Nash contacted Dale Rhodes, Director of Planning and Administration, about whether the station had a policy on break periods, because she had an employee who was asking to take breaks. Mr. Rhodes told her the station did not have a break policy, opining that it was a good idea to let employees take breaks, get up and walk around. Ms. Nash continued to let Grievant take “breaks.”

Grievant continued to ask Ms. Nash for permission to take breaks, and Ms. Nash contacted Mr. Rhodes at least one more time to confirm that the station had no written or other policy regarding

break periods. At no time during these conversations did Ms. Nash tell Mr. Rhodes the employee was requesting the breaks because of a medical condition.

At the end of July 1996, Ms. Nash started evaluating Grievant's performance. She spoke with Thomas Holleron, the General Manager, about Grievant in late August 1996. Mr. Holleron testified Ms. Nash told him she was not happy with Grievant's performance, and that she was confrontational. He told Ms. Nash to do whatever she felt was necessary, and advised her to talk to Mr. Rhodes regarding the guidelines on probationaryemployees. Ms. Nash did not mention anything to him about Grievant taking breaks, and in his opinion, the breaks were not an issue at that time.

Mr. Rhodes confirmed that Ms. Nash contacted him in late August 1996 about terminating Grievant. He told her to look at the probationary policy, and she called him back to tell him she had decided to terminate Grievant at the end of her probationary period. Ms. Nash asked Mr. Rhodes to look over the evaluation she had prepared on Grievant. She faxed him a copy of the evaluation in late August or early September, and definitely before Labor Day. Mr. Rhodes suggested some changes to the evaluation, specifically that Ms. Nash needed to add more substance to the evaluation. Ms. Nash added information to the evaluation, and that was the last time he saw the evaluation. At no time during her conversations with him did Ms. Nash mention she had a problem with Grievant taking breaks, nor did she mention that Grievant had a medical condition in relation to the breaks.

Mr. Rhodes testified that Ms. Nash's complaints about Grievant were somewhat vague, but basically she just did not feel Grievant “fit in” in the Business Office. Mr. Rhodes testified he has known Ms. Nash for approximately 10 years, and that she is set in the way she runs the Business Office. He was not surprised that someone new in the office would not “fit in”. Mr. Rhodes did not question Ms. Nash's decision to terminate Grievant.

In approximately the second week of September, Grievant's habit of taking her breaks outside the building began to cause problems for Ms. Nash, because Grievant could not be located when she was needed. Ms. Nash asked Grievant not to leave the building on her breaks. Ms. Nash did not tell Grievant she could not take breaks at all. Grievant testified she told Ms. Nash about her medical condition, in detail, and explained that she could not get up enough momentum to alleviate her pain if she had to stay within the building on her breaks. Grievant testified that during this conversation, she asked Ms. Nash if a letter from her doctor would help, and Ms. Nash said yes.

After Ms. Nash told Grievant not to take her breaks outside the building, Grievant stopped taking

breaks altogether. She testified that if she could not “power walk”, then it was useless to take breaks. On September 30, 1996, Grievant presented a letter from her doctor to Ms. Nash, which stated, in its entirety:

> This patient has undergone multiple major surgeries for Endometriosis, cysts and adhesions, and eventually a total hysterectomy. She suffers from irritable bowel syndrome and probable residual adhesive disease. She is on medication and special diet, and has been advised to avoid extensive work periods and to use rest periods to alleviate the pain.

G. Ex. 2.

Ms. Nash testified she did not request a doctor's letter from Grievant and was confused about why Grievant was presenting it to her. Grievant testified Ms. Nash told her it would be helpful to have a doctor's excuse to explain her leave usage and breaks when it came time for her evaluation. Because the doctor's letter did not mention power walking, she told Ms. Nash she could call him to confirm that she needed to power walk. Grievant testified it was at this time she told Ms. Nash in detail about her condition, and that she needed to power walk to alleviate her pain. She testified Ms. Nash proceeded to call her doctor with the door open, and Grievant asked her to shut the door so that Mr. Denning, her co-worker, could not hear the conversation. Ms. Nash testified she told Grievant shewas busy, and would get back to her about the letter, but that she was not going to call the doctor as she had not requested the letter in the first place. (See footnote 3)

Grievant left Ms. Nash's office at this point and went to see Mr. Holleron, the General Manager. She told Mr. Holleron that she had a medical condition which required that she power walk, and that Ms. Nash refused to let her take breaks. She did not tell him that she had already spoken to Ms. Nash about the issue. He told her he would look into it, called Ms. Nash, and asked her what was going on.

Ms. Nash was extremely upset with Grievant for going over her head to Mr. Holleron. She explained what she knew to Mr. Holleron, and informed him that she had never denied Grievant's requests to take breaks, only asking her to restrict her breaks to the building. After hearing Ms. Nash's explanation, he left it up to her to deal with Grievant, and fully supported her position in the matter.

Ms. Nash presented Grievant with her probationary performance evaluation on October 2, 1996,

the last day of her probationary period. Ms. Nash rated Grievant's performance “unsatisfactory.” Ms. Nash explained that Grievant performed the mechanics of her duties and responsibilities in a satisfactory manner, but that she was confrontational, not a team player, and Ms. Nash had lost all confidence in Grievant. The evaluation form notes that Grievant “has tendency to want to do things her way regardless of instructions”, and that her ability to work with others is “good, but at times seems to do begrudelingly(sic).” G. Ex. 3. Ms. Nash comments that “Gail oversteps her authority andinitiates actions that should have been discussed with her supervisor before - not after the fact. She resents having her actions questioned. Mrs. Bowman does not listen to instructions.” G. Ex. 3. Ms. Nash informed Grievant by memorandum the same day that she was being terminated effective October 2, 1996. G. Ex. 4.

Ms. Nash was vague when asked by Grievant's counsel for specific incidents which led her to the conclusions noted on the evaluation. Grievant offered the testimony of two WPBY employees with whom she interacted who did not have any complaints about Grievant. Those employees did not work in the Business Office, and did not witness any day-to-day interaction between Grievant and Ms. Nash and Mr. Denning. While Ms. Nash was less than specific about her most of her complaints, the one concern she referred to time and again was that Grievant went over her head to Mr. Holleron, and essentially lied to him about Ms. Nash not letting her take breaks. While there was no testimony directly on this matter, I suspect Ms. Nash's comments to this effect on Grievant's evaluation were added after this incident occurred on September 30, 1996.

## DISCUSSION

The termination of a probationary employee hired for permanent employment is not a per se disciplinary action. A probationary employee must advance a grievance complaint, including a challenge to separation from employment through discharge purportedly on determinations of unsatisfactory performance, through the procedural levels and prove her case by a preponderance of the evidence to prevail on the complaint. Bonnell v. W. Va. Dept. of Corr., Docket No. 89-CORR-163 (Mar. 8, 1990).

Grievant contends she was not terminated for unsatisfactory performance, but because of her handicap or disability. Public employers are prohibited from discriminatingin terms and conditions of employment because of “handicap” under the West Virginia Human Rights Act, W. Va. Code §§ 5-

11-1, et seq., or “disability” under the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12112-14 (1994). This Grievance Board does not have authority to determine liability for claims that arise under the West Virginia Human Rights Act, which would include a claim of handicap discrimination. Nevertheless, the Grievance Board's authority to provide relief to employees for “discrimination”, “favoritism”, and “harassment”, as those terms are defined in W. Va. Code § 29-6A-2, includes jurisdiction to remedy discrimination that would also violate the Human Rights Act. In other words, the Grievance Board does have subject matter jurisdiction over handicap-based discrimination claims. Smith v. W. Va. Bureau of Employment Programs, Docket No. 94- BEP-099 (Dec. 18, 1996). See Vest v. Bd. of Educ., 193 W. Va. 222, 455 S.E.2d 781 (1995).

W. Va. Code § 29-6A-2(d) defines "discrimination" as:

> any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.

In order to establish a claim of discrimination under W. Va. Code § 29-6A-2(d), an employee must establish a prima facie case of discrimination by a preponderance of the evidence. In order to meet this burden, the Grievant must show:

(a)

that she is similarly situated, in a pertinent way, to one or more other employee(s);

(b)

that she has, to her detriment, been treated by her employer in a manner that the other employee(s) has/have not, in a significant particular; and,

(c)

that such differences were unrelated to actual job responsibilities of the grievant and/or the other employee(s) and were not agreed to by the grievant in writing.

Hendricks v. W. Va. Dept. of Tax and Revenue, Docket No. 96-T&R-215 (Sept. 24, 1996); See Parsons v. W. Va. Div. of Highways, Docket No. 91-DOH-246 (Apr. 30, 1992). Once the grievant establishes a prima facie case of discrimination, the burden shifts to the employer to demonstrate a legitimate, nondiscriminatory reason for the employment action. Hendricks, supra; see Tex. Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981).

Grievant has failed to make a prima facie case under the standard set forth above for establishing a claim of discrimination under W. Va. Code § 29-6A-2(d). Grievant has failed to identify any other employee, either probationary or disabled, who was treated differently than she was in similar circumstances. See Keatley v. Mingo County Bd. of Educ., Docket No. 95-29-257 (Sept. 25, 1995).

Furthermore, a review of the applicable law under the Americans With Disabilities Act, 42 U.S.C. § 12111, et seq. ("ADA"), reveals that Grievant's claims in that regard also fail. The ADA provides that:

> No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

42 U.S.C. § 12112.

A person making a claim of discrimination under the ADA bears the burden of proving a prima facie case of discrimination by a preponderance of the evidence. In a typical ADA case, the claimant must prove that:

(1)

she was in the protected class;

(2)

she was discharged;

(3)

at the time of her discharge she was performing her job at a level that met her employer's legitimate expectations; and

(4)

her discharge occurred under circumstances that raise a reasonable inference of unlawful discrimination.

Ennis v. Nat'l Assoc. of Bus. & Educ. Radio, Inc., 53 F.3d 55 (4th Cir. 1995).

Once a claimant has made a prima facie case of discrimination, the burden shifts to the employer to articulate some legitimate, nondiscriminatory explanation, which, if believed by the trier of fact, would support a finding that unlawful discrimination was not the cause of the employment action. If the employer meets this burden, the presumption created by the prima facie case "drops out of the picture", and the claimant bears the ultimate burden of proving that she has been the victim of intentional discrimination. Id. at 58., citing St. Mary's Honor Ctr. v. Hicks, ___ U.S. ___, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993). (See footnote 4) Based upon the facts in this case and the following discussion, I find Grievant has not established a prima facie claim of discrimination under the ADA, because she was not in the protected class.

The ADA defines “disability” as:

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such impairment; or (C) being regarded as having such an impairment.

The determination of whether an individual has a disability within the meaning of the ADA must be decided on a case-by-case basis. Barfield v. Bell South Telecommunications, Inc., 886 F. Supp. 1321 (S.D. Miss. 1995). For an impairment to “substantially limit” one or more major life activities, the individual must be unable to perform, or be significantly limited in the ability to perform, an activity compared to an “average person in the general population.” 29 C.F.R. § 1630.2(j); McKay v. Toyota Motor Mfg., U.S.A., Inc., 878 F. Supp. 1012 (E.D. Ky. 1995).

Grievant has alleged she is substantially limited in the major life activity of working. In order to prove she is substantially limited in the major life activity of working, she must prove that she is significantly restricted in ability to perform either a class of jobs, or a broad range of jobs in various classes as compared to the average person with comparable training, skills, and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major live activity of working. 29 C.F.R. § 1630.2(j)(3)(I); McKay, at 1015. One whose impairment merely affects one or more major life activities is not disabled. Barfield, at 1324. A mere degradation of a major life activity does not amount to a disability. Freund v. Lockheed Missiles and Space Co., Inc., 930 F. Supp. 613 (S.D. Ga. 1996).

Grievant has failed to prove that she has a handicap or is disabled within the meaning of the ADA. While Grievant has proven she has an impairment which causes her pain and discomfort, and for

which she takes medication, she has not demonstrated that her impairment substantially limits the major life activity of working. She did not identify any class or classes of jobs which she is unable to perform, and in fact, did not identify anyparticular function of her job at WPBY that she could not perform because of her impairment.

Grievant told Ms. Nash she would have to take some time off each month for doctor's appointments. Ms. Nash allowed Grievant to take time off. Grievant told Ms. Nash she was in a lot of pain, even “crippling” pain. Again, Ms. Nash did not have a problem with Grievant taking time off, or taking breaks at work. However, the fact that Grievant experienced pain which required her to take days off work does not render her disabled. The employee in McKay, supra, was afflicted with carpal tunnel syndrome, which made it impossible for her to perform tasks which required repetitive movements. She was also restricted in the amount of weight she could lift, was on medication, wore splints, and received physical therapy. The employee's impairment required her to be absent on a frequent basis, for which she was ultimately dismissed. The court held in McKay that the employee had not proven she was disabled within the meaning of the ADA. Similarly, in Barfield, supra, the employee suffered from severe migraine headaches, which also caused her to frequently miss work. Despite the employee's impairment, she had not offered any proof of any job she could not do. The court held that the “fact that the plaintiff may be unable to perform, and hence was absent from a job does not mean she has a disability.” Barfield, at 1324.

In this case, Grievant likewise has not offered proof of any job she cannot do. In fact, she performed the functions of her job at WPBY in a satisfactory manner. As in McKay, merely because Grievant suffers from an impairment that requires her to be absent from work, or in this case, requires her to take breaks, does not render her disabled within the meaning of the ADA. Further, Grievant has not proven by a preponderance of theevidence that she even informed her employer, or Ms. Nash, that she suffered from a disability which required reasonable accommodation. Grievant told Ms. Nash she had suffered a miscarriage years ago. She told Ms. Nash that she had “female” problems, and told her she had endometriosis. Grievant told Ms. Nash she experienced pain as a result of her “female” problems. Grievant normally took off a couple of days a month, which Ms. Nash attributed to her “female” problems. Ms. Nash testified Grievant told her about her “female” problems, but never told her she had a handicap or was disabled.

Grievant acknowledged she did not use the word disability or handicap when speaking to Ms.

Nash about her problems. Grievant's doctor's excuse does not use the term disability or handicap, and more importantly, does not state that Grievant needs to power walk. It states Grievant needs rest periods. While this situation may involve some miscommunication, Grievant, in no event, clearly informed Ms. Nash or anyone else at the station, that she suffered from a disability which required reasonable accommodation in the form of power walking outside the building. It is not the employer's duty or burden to research its employees' medical conditions to determine whether they rise to the level of a disability. Myers v. W. Va. Dept. of Transp., Docket No. 96-DMV-304 (Feb. 10, 1997); Lewis v. Mason County Bd. of Educ., Docket No. 94-26-175 (Dec. 12, 1994); Howell v. W. Va. Dept. of Health and Human Res., Docket No. 90-H-484 (Sept. 27, 1991); Cordray v. Wood County Bd. of Educ., Docket No. 90-54-267 (Jan. 31, 1991).

All WPBY employees are in the classified exempt service of state government. All employees are given a copy of the EBA Personnel Policy Manual at the time of their hiring. The probationary period is described at section 3.01 of the manual, which states, in pertinent part:

> Probation is a mutual agreement on the part of the employee and employer to evaluate each other prior to full commitment. Regular employees of the EBA are considered to be in a probationary status for the first six months of employment . . . .
>
> During the probationary period, an employee has the opportunity to learn the details of his/her new situation and to gain a feeling for the position. At the same time, the EBA evaluates the employee in the light of his/her job responsibilities. A formal Performance Evaluation (see Section 3.05) is completed at the end of the probationary period.
>
> . . .
>
> Employees may be dismissed at any time during the probationary period if, in the judgment of the supervisor, the quality of the employee's work does not merit continuation with the EBA.

The EBA Personnel Manual conforms with the West Virginia Division of Personnel's policy with regard to the termination of probationary employees:

Section 10.05 Dismissal during Probation

(a)

> If at any time during the probationary period, the appointing authority determines that the services of the employee are unsatisfactory, the appointing authority may dismiss the employee in accordance with Section 12.02. of this rule.

Ms. Nash did not get along with Grievant, and after Grievant went over her head to complain about the breaks, she could not trust Grievant anymore. This is sufficient reason for an employer to terminate a probationary employee. While Ms. Nash may not have been as clear and specific as one would desire from a witness, I did not get the impression that she was deliberately evading answering questions, but more likely that she was confused by the questions. Ms. Nash did not have a problem with Grievant's performance of her job. Ms. Nash found Grievant to be confrontational, not a team player, and simply did not like her; when Grievant went over her head to Mr. Holleron, it was the last straw. Ms. Nash lost confidence in Grievant and could not trust her any longer. That is why Grievant was terminated.

## FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Grievant was a probationary full-time employee of WPBY from April to October 2, 1996.
2. Grievant suffers from endometriosis, an impairment that causes her pain and discomfort.
3. Grievant informed Ms. Nash of her medical history, including a miscarriage, surgeries, and the need to alleviate her pain.
4. Grievant did not inform Ms. Nash or anyone else at WPBY that she was disabled or handicapped, and needed reasonable accommodation.
5. Gloria Nash, Grievant's immediate supervisor, gave Grievant an unsatisfactory performance evaluation at the end of her probationary period.
6. Ms. Nash found Grievant to be confrontational and she had lost all confidence in Grievant when Grievant went over her head to Mr. Holleron to complain about her break periods.
7. Ms. Nash terminated Grievant's employment effective October 2, 1996, the last day of her probationary period.
8. Grievant was terminated at the conclusion of her six month probationary period under the terms of the EBA Personnel Manual and the West Virginia Division of Personnel regulations regarding probationary employees.

## CONCLUSIONS OF LAW

1. The termination of a probationary employee hired for permanent employment is not a per se disciplinary action. A probationary employee must advance a grievance complaint, including a challenge to separation from employment through discharge purportedly on determinations of unsatisfactory performance, through the procedural levels and prove her case by a preponderance of the evidence to prevail on the complaint. Bonnell v. W. Va. Dept. of Corr., Docket No. 89-CORR-163 (Mar. 8, 1990).

2. Grievant has not proven by a preponderance of the evidence that she was discriminated against under W. Va. Code § 29-6A-2(d).

3. Grievant has not proven by a preponderance of the evidence that she is disabled or has a handicap under the Americans With Disabilities Act, 42 U.S.C. §§ 12112- 14 (1994).

4. Grievant has not proven by a preponderance of the evidence that Ms. Nash's decision to terminate her employment was based upon her medical condition or was arbitrary and capricious.

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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**MARY JO SWARTZ**

**Administrative Law Judge**

**Dated: July 3, 1997**

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Footnote: 1

*The level three transcript, exhibits, and decision have been incorporated into the record, and references to the transcript and exhibits will be "Tr., p. ____", and "LIII Ex. ___."*

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Footnote: 2

*Endometriosis is defined as: An abnormal condition in which the uterine mucous membrane invades other tissues in the pelvic cavity; the uterus and ovaries are the most common sites; other areas include the intestines, umbilicus, bladder, and ureters. Melloni's Illustrated Medical Dictionary, 2nd ed., 1985.*

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Footnote: 3

*Although Ms. Nash and Grievant differed in various aspects of their testimony regarding some events, because I find Grievant is not handicapped or disabled, a determination of credibility is not necessary to reach the final outcome in this grievance.*

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Footnote: 4

*The applicable standard for establishing handicap discrimination under the West Virginia Human Rights Act, W. Va. Code § 5-11-1, et seq., is similar to the standard set forth in Ennis, supra. Under the Human Rights Act, a claimant must establish that (1) she meets the definition of "handicapped"; (2) she is a "qualified handicapped person"; and (3) she was discharged from her job. The burden then shifts to the employer to rebut the prima facie case by presenting a legitimate, nondiscriminatory reason for the discharge. Morris Nursing Home v. Human Rights Comm'n, 431 S.E.2d 353 (W. Va. 1993).*