SHIRLEY REED,

Grievant,

v.

DOCKET NO. 98-BSS-289

WEST VIRGINIA BUREAU OF

SENIOR SERVICES,

Respondent.

D E C I S I O N

Grievant, Shirley Reed, filed this grievance on August 7, 1998, protesting her dismissal by her employer, the West Virginia Bureau of Senior Services ("Bureau"), effective August 1, 1998. Grievant seeks reinstatement to full employment with back pay plus interest. A level four hearing was held on September 10, 1998 and October 15, 1998, and this case became mature for decision on November 17, 1998, the deadline for the parties' proposed findings of fact and conclusions of law. The Bureau was represented by Jeffrey G. Blaydes, Assistant Attorney General, and Grievant was represented by Marilyn Kendall, AFSCME/WVSEU Council Representative.

SUMMARY OF EVIDENCE

Bureau Exhibits

Ex. 1 -

July 17, 1998 dismissal letter from Patricia F. Bradford, Commissioner, to Shirley Reed.

Ex. 2 -

Draft Newsletter entitled "Senior Lifelines."

Ex. 3 -

July 9, 1998 memorandum from Tom Dudley, Research & Analysis Coordinator, to Kathy Tighe.Ex. 4 -
May 4, 1998 suspension letter from Patricia F. Bradford, Commissioner, to Shirley Reed.

Ex. 5 -

June 12, 1997 suspension letter from William E. Lytton, Jr., Deputy, Program Operations, to Shirley Reed.

Ex. 6 -

January 22, 1998 memorandum from Patricia F. Bradford, Commissioner, to Tim Basford, Assistant Director, Classification and Compensation.

Ex. 7 -

Handwritten drawing of layout of Bureau's library.

Ex. 8 -

Classification Specification for Office Assistant II, effective 12/1/91.

Ex. 9 -

April 16, 1998 written reprimand from Kathy Tighe to Shirley Reed.

Ex. 10 -

Personnel Action Form for Shirley Reed, dated April 3, 1998.

Grievant's Exhibits

Ex. 1 -

Various newsletters and reports from the West Virginia Bureau of Senior Services.

Ex. 2 -

May 14, 1998 letter from Anna Laliotis, Program Director, Beacon Partial Hospitalization Program, to Kathy Tighe.

Ex. 3 -

Doctor's slips from Stephen E. Perkins, M.D., and letter dated December 28, 1994,

from Beverly A. Lares, Therapist, to Mr. William Lytton.

Ex. 4 -

Various examples of work performed by Grievant in January and February, 1998.

Ex. 5 -

Bureau of Senior Services Staff Roster.

Ex. 6 -

Classification Specification for Word Processor, effective 12/1/91.

Ex. 7 -

Personnel Transaction Card for Shirley Reed.

Ex. 8 -

Copy of Grievance Form dated May 29, 1998.

Ex. 9 -

Draft Response to Letter of April 16, 1998 from Shirley Reed, dated June 25, 1998.

Ex. 10 -

Bureau of Senior Services Payroll Leave Record for Shirley Reed.

Ex. 11 -

Undated letter from Shirley Reed to Patricia F. Bradford, Commissioner.

Ex. 12 -

Statement in Response to June 12, 1997 Letter Concerning Insubordination Allegations from Shirley Reed, undated.

Ex. 13 -

Charleston Area Medical Center Records for Shirley Reed, 5/29/9-5/31/96.

Ex. 14 -

September 12, 1994 memorandum from Shirley Reed to William Lytton.

Ex. 15 -

November 2, 1994 memorandum from Shirley Reed to William Lytton.

Ex. 16 -

August 24, 1998 memorandum from John O. Frame, D.O., to [C]athy Tighe.

Ex. 17 -

Unemployment Compensation Decision from Board of Review, West Virginia Bureau of Employment Programs, dated September 30, 1998.

Ex. 18 -

July 16, 1998 memorandum from Shirley Reed to Kathy Tighe.

Testimony

The Bureau presented the testimony of Patricia F. Bradford, Thomas Dudley, Kathy Tighe, William Lytton, and Lee Rogers. Grievant testified in her own behalf, and presented the testimony of Robert Reed and Tanya Clark.

FINDINGS OF FACT

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

1. Respondent Bureau of Senior Services is a state agency which promotes services to enhance the health, safety and welfare of West Virginia's senior population and serves as the primary agency within state government to provide services to the senior population. W. Va. Code § 16-5P-1; LIV Test., Patricia Bradford.

2. Grievant was employed by the Bureau as an Office Assistant II. Grievant had held a variety of positions with the Bureau and its predecessor agencies dating back to February, 1984. G. Ex. 7. (See footnote 1)

3. Grievant was terminated by letter dated July 17, 1998. In that letter, Commissioner Patricia Bradford indicated that the “conduct and behavior” of Grievant was “inappropriate and unacceptable” in that Grievant displayed confrontational actions, had been insubordinate, used abusive or threatening language toward management, and promoted religion while performing public duties. R. Ex. 1.

4. The immediate incident leading to Grievant's termination occurred on July 8, 1998. On that day, a fellow employee of Grievant, Tom Dudley, witnessed a conversation between Grievant and another state employee, custodian William Ballard, concerning religious matters. (See footnote 2) Specifically, Grievant and Mr. Ballard were discussing the recent bomb threat which had been called in to the Capitol Complex, and Mr. Ballard was voicing hisopinion on the appropriate punishment for individuals who would make such a threat. As the conversation ended, Mr. Ballard approached Mr. Dudley and asked him his opinion. Mr. Dudley told Mr. Ballard he did not wish to discuss those matters with him. Mr. Ballard became loud, forcing Mr. Dudley to raise his voice, asking Mr. Ballard to leave the office. After Mr. Ballard left the office, Grievant ran after him to the doorway, calling, “Do not cast your pearls among the swine.”

5. Mr. Dudley was offended by this comment, interpreting it to mean Grievant considered him “swine.” He told Grievant he did not appreciate the comment, and found it impossible to work in the office the remainder of the day. He told Grievant he was going to request she be reassigned to work with someone she did not consider swine, and Grievant responded by pointing out all she had done for him over the years. Mr. Dudley pointed out certain work that he had assigned Grievant several months before, which was not yet completed.

6. That evening, Grievant went to Holly Grove Mansion, the main office of the Bureau, to speak to Commissioner Bradford. (See footnote 3) Grievant believed Mr. Dudley had gone to the Mansion to report the incident, and wished to relay her side of the story. As it was then after hours, Grievant, along with her husband, had to pound loudly on the Mansion door, as Commissioner Bradford's office is on the second floor. Commissioner Bradford opened the door to find Grievant, very upset, trying to hand her some documents. Grievant explained that she had been working on an insert to the Bureau's newsletter, and wantedthe Commissioner to see it. The Commissioner told her they did not need another newsletter, that Grievant was not authorized to prepare documents for the newsletter, and told Grievant's husband to take her home, as she was clearly upset.

7. Another employee of the agency had been assigned the task of preparing the newsletter. At no time had Grievant been given the responsibility of preparing the newsletter, nor was this duty within her job description.

8. Unbeknownst to Grievant, Mr. Dudley had not gone to the Mansion to report the incident that day. The next day, however, Mr. Dudley prepared a memorandum to Kathy Tighe, Grievant's

immediate supervisor, Mike Shock, the Deputy Commissioner, and the Commissioner, detailing the July 8, 1998, incident. R. Ex. 3.

9. Mr. Dudley met with Mr. Shock and the Commissioner on July 9, 1998, at which time he relayed to them other incidents regarding Grievant. Specifically, he told them that two members from the American Association of Retired Persons ("AARP") had been visiting the library, sometime in March 1998, and overheard a religious discussion between Grievant and Mr. Ballard. They commented to Mr. Dudley that they were surprised that such discussions were occurring on state property.

10. Mr. Dudley also told the Commissioner and Mr. Shock that another custodian, Mr. Bentley, who worked the same shift as Mr. Ballard, had made remarks to him that he did not want to listen to that religious "shit". Mr. Dudley said Mr. Bentley had made such remarks to him approximately 5 or 6 times between January and July 1998.

11. Mr. Dudley had not reported any of these incidents at the time they occurred. However, they are detailed in Grievant's dismissal letter. R. Ex. 1. 12. Mr. Dudley told Grievant early on, when she first moved to MB47, that he could tolerate listening to her religious music and tapes.

13. Mr. Dudley told Grievant he did not think religious discussions were appropriate in the Capitol, but he did not tell her to stop, nor was he particularly bothered by these discussions until the "swine" incident.

Previous Disciplinary Action Against Grievant

14. Grievant had received disciplinary action from the Bureau prior to the July 8, 1998, for insubordination, inappropriate, confrontational and unprofessional conduct. R. Ex. 1.

15. Grievant's first disciplinary action for insubordination occurred in the hallway of the Mansion on June 2, 1997. On that day, Commissioner Bradford was discussing matters with staff from the Department of Administration in the hallway, when Grievant interrupted their conversation to express her personal opinion regarding the safety of the Mansion, and her concerns that the building was going to fall in on them. Commissioner Bradford asked Grievant to leave and told her they would discuss her concerns later. Grievant replied that she was a taxpayer and had every right to express her opinion when and where she desired. The Commissioner then asked Grievant to put her concerns in writing, again asking her to get back to her office. Grievant never prepared any written

complaint for the Commissioner.

16. Grievant's then immediate supervisor, William Lytton, discussed this incident with her, after the Commissioner reported it to him. Grievant agreed that her actions could be perceived as insubordinate by the Commissioner, and she was given a three (3) daysuspension, and a warning that any further similar behavior could be grounds for further disciplinary action, including dismissal.

17. Mr. Lytton's letter of suspension included several other incidents involving Grievant, which had occurred in the past, but for which no disciplinary action had been taken, other than verbal warnings. R. Ex. 5. Those incidents included comments she made in the fall of 1995 to staff from the Legislative Auditors office regarding her belief that funds used to support the Silver Haired Legislature were being utilized in an inappropriate manner. This led to a review by the Auditors, which ultimately concluded that the funds designated for the Silver Hair Legislature were not being used inappropriately.

18. Additionally, on one occasion, following receipt of a memorandum from the Commissioner authorizing employees to work on a Saturday to prepare for the physical relocation of the staff to the Mansion, Grievant approached her with some questions regarding the memorandum. Commissioner Ballard asked Mr. Lytton to sit down with Grievant and explain the situation, and Grievant openly challenged Mr. Lytton's authority to discuss these matters with her, and questioned why the Commissioner had asked him to do it. Mr. Lytton was Grievant's immediate supervisor at the time.

19. In another incident, Grievant questioned Commissioner Bradford's lack of response to a memorandum she had provided to her on the preceding day. Grievant expressed her concerns over the Commissioner's lack of support for the staff and the inappropriateness of securing items from surplus property in an attempt to enhance the working environment of the Bureau in a cost effective manner. In other words, Grievant openly challenged the Commissioner's use of surplus property to redecorate the Mansion in response to a directive and funds given by the Governor. R. Ex. 5. 20. Another incident occurred when Kathy Tighe asked Grievant to prepare the Title V grant renewal which she had always done in the past. Grievant refused to do the assignment, and Ms. Tighe told her that she had to do it. Grievant subsequently took three weeks sick leave during the time the grant had to be done. (See footnote 4)

21. On May 4, 1998, Grievant was suspended for ten (10) days for an incident of “blatant and intentional insubordination.” That action arose from an incident that occurred on April 6, 1998, when

Grievant was given a copying assignment from Mr. Dudley for a major mailing. No staff was available at the Mansion to complete the copying, and Grievant agreed to do the assignment. Grievant took the assignment to the Mansion to copy the morning of April 6, 1998. The Mansion contains a large photocopier used for large copying jobs. While Grievant was copying, she began to have trouble operating the machine. She became increasingly frustrated and agitated, and asked Kathy Tighe, her immediate supervisor, who was present in the office, if she could take the copying job to Staples, and use the Bureau's credit card. Ms. Tighe denied the request, explaining that the Bureau only authorized that type of expenditure in an emergency situation.

22. Grievant then asked Ms. Tighe if there was someone else who could make the copies, as her husband was waiting for her in the car. Ms. Tighe explained there was no one available to do the copying job. Grievant asked why Ron Petty, the facilities manager, could not do the job, as the previous runner had done copying. Ms. Tighe explained that Mr. Petty was not a runner. Finally, Grievant loudly protested that copyingwas not in her job description, and that she was a Word Processor. Ms. Tighe told Grievant that she had been reclassified, at her own request, to an Office Assistant II, and that in any event, copying is a part of everyone's job at the Bureau.

23. Grievant grabbed the paperwork she was working on, stormed out of the Mansion, and returned to MB47. She threw the papers down on a table, and told Mr. Dudley she was not going to complete the copying job, and that she was going immediately to Personnel. Mr. Dudley completed the copying himself.

24. This incident was followed up with a letter instituting a ten (10) day suspension, as it was Grievant's second disciplinary action involving insubordination. R. Ex. 9. (See footnote 5)

25. Based on this record of progressive discipline, as well as the incident of July 8, 1998, Grievant was dismissed for insubordination and disruptive and abusive behavior in the workplace, as well as promoting inappropriate religious activities on state property during work hours.

26. Grievant explained that all of these incidents are a result of a panic disorder. However, at no time during these incidents did Grievant inform any of her coworkers that she suffered from a panic disorder, or that she was having a panic attack. Grievant had never requested accommodation from her employer relating to her panic disorder or copying duties. Grievant never requested any accommodation from the Commissioner, other than to be moved to MB47 in October 1997. This request was granted. 27. The only documented evidence of any type of anxiety problems

Grievant was experiencing was a request she had made back in 1994 or 1995 to Mr. Lytton, asking that she be removed from back-up telephone receptionist duty, because the phones made her nervous. She had presented Mr. Lytton with a doctor's statement confirming that she suffered from an anxiety disorder related specifically to the telephone duties. G. Ex. 3. Mr. Lytton took her off the phone duties, and placed the doctor's letter in a file he maintained in his office. Grievant was pleased that he did not put the letter in her personnel file, in order to keep her condition confidential.

28. When Grievant moved to MB47, she told Mr. Lytton that she could handle the phones there because there were fewer phone calls to that office.

29. Grievant never discussed her anxiety disorder again, nor presented any medical documentation regarding this disorder to anyone at the Mansion or MB47, until May 14, 1998.

30. On April 27, 1998, Grievant was admitted to Beacon Partial Hospitalization Program for treatment of major depression and anxiety disorder. She was discharged from the program on May 5, 1998, with instructions to return to work. The Program Director wrote Kathy Tighe a letter dated May 14, 1998, confirming Grievant's admittance into the program. G. Ex. 2. (See footnote 6)

DISCUSSION

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In cases dealing with disciplinary matters, the burden of proof rests with the employer to prove the charges by a preponderance of the evidence. Cummings v. W. Va.Dept. of Admin., Docket No. 92-ADMN-255 (Dec.3, 1992). The dismissal of a permanent civil service employee in West Virginia must be for good cause. Good cause has been defined as “misconduct of a substantial nature directly affecting the rights and interests of the public, rather than upon trivial or inconsequential matters, or mere technical violations of statute or official duty without wrongful intention.” Oakes v. W. Va. Dept. of Finance and Admin., 264 S.E.2d 151 (W. Va. 1980), citing Guine v. Civil Service Comm., 141 S.E.2d 364 (W. Va. 1965).

The offense of insubordination “encompasses more than an explicit order and subsequent refusal to carry it out. It may also involve a flagrant or willful disregard for implied directions of an employer.” Sexton v. Marshall Univ., Docket No. BOR-2-88-029-4 (May 25, 1988).

The Bureau asserts that Grievant's insult of a fellow employee was insubordination. Specifically, the Bureau contends that, by telling Mr. Ballard not to “cast pearls before swine” in reference to Mr. Dudley, Grievant engaged in inappropriate and unacceptable confrontational behavior. Further, the

Bureau asserts that Grievant defied the authority of management, and used abusive, threatening, or profane language in speaking to management. Finally, the Bureau contends that, by making religious comments, playing religious music and sermons on state property and during work hours, Grievant unnecessarily and inappropriately entangled state activities with Grievant's religious activities. That behavior, when viewed alone or in combination with past disciplinary matters, provided just case for the Bureau to terminate Grievant's employment.

With regard to Grievant's prior discipline, it cannot be argued that Grievant's propensity to express her opinion at inappropriate times and places has not endeared herto her employer. However, Grievant received discipline commensurate with those offenses in the form of a three (3) day and a ten (10) day suspension. Grievant cannot be disciplined again for those actions. Thus, the issue to be decided is whether the latest incident complained of in the Bureau's termination letter is “misconduct of a substantial nature directly affecting the rights and interests of the public, rather than upon trivial or inconsequential matters.” Oakes, supra.

While the Bureau attempted to portray Grievant's visit to Holly Grove Mansion on the evening of July 8, 1998, as insubordinate, even the Commissioner could not bring herself under oath to testify that Grievant's behavior was insubordinate. Grievant merely went to the Commissioner to explain her side of the events that had occurred that day between she and Mr. Dudley, and to show her some projects she had been working on relating to the Bureau's newsletter. While it is true no one authorized Grievant to work on these projects, there is no evidence that Grievant was disobeying any direct order from her supervisors not to work on such projects when she had the time.

Grievant testified that Mr. Dudley had not given her very many assignments since she returned from her hospitalization at Beacon, and she was merely trying to fill up her time in some productive manner. Mr. Dudley argued that he had given Grievant a filing project which she never completed. Much of the filing was paperwork which had come out of a co-worker's desk. That co-worker had died in January 1998, and the filing was a means of cleaning up his work station. Grievant explained that Mr. Dudley had told her they needed to wait and see whether they were going to hire additional staff before deciding to spread out the filing project. Grievant says she had done as much as she couldwith that project. Moreover, Grievant was in the hospital from April 22 through May 5, 1998, and obviously was not able to work on the filing during that time.

Both Mr. Dudley and Grievant presented themselves as credible witnesses. While there may have

some miscommunication about the filing project, the fact of the matter is that Mr. Dudley did not express any concerns or complain about Grievant's productivity to her or to her supervisor, Kathy Tighe, before the July 8, 1998, incident. Thus, I must conclude that Grievant's productivity was not a grave issue with Mr. Dudley before July 8, 1998, and if Grievant were working on her own projects during down time at work, there is no evidence to show that was insubordinate in any way.

That leaves the issue of Grievant's religious activities in the workplace. It is undisputed that Mr. Dudley tolerated Grievant's religious music and sermons, as well as her conversations with Mr. Ballard since Grievant started working in MB47, which was in October of 1997. Mr. Dudley never complained to anyone about Grievant's practices, and only told Grievant a few times that he thought it was inappropriate, but he conceded he never asked her to stop.

Grievant testified that Mr. Ballard was a minister and liked to talk about his personal problems as well as religious matters with her. Grievant testified that Mr. Ballard did most of the talking, and she listened with a sympathetic ear. As indicated above, Grievant testified no one ever told her that these conversations were unwelcome or annoying. The only other person in MB47 during this time period was Mr. Dudley, and the library had infrequent visitors, except during the Legislative session.

Grievant concedes that Mr. Ballard may have come in the day the two women from AARP were in the library, and that they may have overhead their discussions. However,no one mentioned to her that the women had complained about the subject of their discussion. As for Mr. Bentley, the other custodian, he came into the office from time to time to visit, just as Mr. Ballard did. She did not feel comfortable around Mr. Bentley, and told Mr. Dudley. Mr. Dudley told her not to worry, that Mr. Bentley talked to everybody the way he talked to her. Mr. Dudley did not ask Mr. Bentley to stop coming to the office to visit.

The letter of termination contains an explanation to Grievant about the legal complexities of the issue of religious activity in a public workplace. Inasmuch as the Bureau had not, in any way, discussed this issue with Grievant prior to her termination, it is inappropriate to raise the issue for the first time in a letter of termination and include it as a reason for termination. The Bureau portrayed this particular activity as having been a long-standing practice of Grievant. If, in fact, it was improper or violative of legally established standards, the Bureau had a duty to make an attempt to remedy the situation long before Grievant's termination. It is incumbent upon the Bureau to prove what directive was issued to Grievant or what policy existed that she disobeyed. This it has not done. Zimowski v.

Mineral County Bd. of Educ., Docket No. 98-28-050 (July 20, 1998). Never having advised Grievant that her conduct was violative of any rule, regulation, policy or law, Grievant could not reasonably have been expected to know that her conduct was improper and could result in disciplinary action. Therefore, this charge against Grievant cannot stand.

Finally, Grievant has been charged with using abusive, threatening, or profane language to her co-worker, Mr. Dudley. Mr. Dudley believed Grievant was calling him a“swine”. Grievant testified she had told Mr. Ballard before not to preach in the work place, and her comment to him was merely a reminder of that admonition.

“Abuse” is defined as “[t]o turn from the proper use; to ill-use; to deceive; to vilify; to violate.” Also, “[m]isuse; bad language addressed to a person; insulting words; violation.” New Webster's Dictionary, 5, (1992 ed.).

“Threaten” is defined as “[a] menace; declaration of intention to punish or hurt.” Also, “[t]o use threats towards; to menace; to show to be impending.” New Webster's Dictionary, 228, (1992 ed.).

“Profane” is defined as “[n]ot sacred; secular; irreverent; blasphemous; impure. To treat with irreverence; to desecrate.” New Webster's Dictionary, 178, (1992 ed.).

While it certainly is understandable that Mr. Dudley was offended by the comment, especially as he perceived it was directed at him, I cannot find that Grievant's use of the word “swine” in the context in which it was used can be considered “abusive, threatening, or profane.” Grievant's comment was directed to Mr. Ballard, not Mr. Dudley. Further, Grievant was using a common religious phrase to indicate to Mr. Ballard that his preaching in the work place was not appreciated by many people, including Mr. Dudley. Mr. Dudley took the term out of context. Rather than insulting Mr. Dudley, I conclude that Grievant was warning Mr. Ballard from pushing his religious beliefs too far in Mr. Dudley's presence.

AFFIRMATIVE DEFENSE

The employee bears the burden on any defense raised to the charges. Parham v. Raleigh County Bd. of Educ., Docket No. 91-41-131 (Nov. 7, 1995). Grievant alleges her actions are a result of a panic disorder. The evidence shows that Grievant requested accommodation from her employer in 1995 or 1996, when she requested that Mr. Lyttonremove her from telephone duty, as the phones made her nervous. She presented him with a doctor's statement confirming that she suffered from an

anxiety disorder, which he put in a file in his office. Mr. Lytton testified he shared this information with Mr. Shock, but did not put the doctor's information in Grievant's personnel file, in order to keep it confidential. Unfortunately, when Kathy Tighe, Grievant's immediate supervisor, came on board, she was not informed of this situation. Neither was Commissioner Bradford, when she was appointed Commissioner of the Bureau.

There is no evidence that Grievant ever brought this disorder to her employer's attention again after the telephone incident. However, the evidence shows that Grievant did suffer a panic attack at work on at least one occasion, requiring hospitalization, and her employer was certainly aware of that incident. As to Grievant's rather erratic, confrontational behavior, she has presented no evidence to show that this type of behavior is a common symptom of panic disorder. Thus, while it seems Grievant does suffer from an anxiety disorder which the Bureau must take into consideration in assessing Grievant's performance, Grievant must be cautioned about her confrontational behavior, and be reminded that just because she may suffer from a medical condition, that does not justify disruptive behavior in the workplace, and the Bureau would not be prohibited from disciplining her further should she continue in this mode. See Smith v. Bureau of Emp. Prog., Docket No. 94-BEP-099 (Dec. 18, 1996); see also Coster v. W. Va. Div. of Corr., Docket No. 94-CORR-600 (Aug. 12, 1996).

CONCLUSIONS OF LAW

1. The burden of proof in disciplinary matters rests with the employer, and the charges against the employee must be proven by a preponderance of the evidence. W.Va. Code § 29-6A-6; Ramey v. W. Va. Dept. of Health, Docket No. H-88-005 (Dec. 6, 1988).

2. The termination of a civil service employee must be for good cause, which means misconduct of a substantial nature directly affecting the rights and interests of the public, rather than trivial or inconsequential matters, or mere technical violations of statute or official duty without wrongful intent. W. Va. Code § 29-6-10; Oakes v. W. Va. Dept. of Finance and Admin., 164 W. Va. 384, 264 S.E.2d 151 (1980).

3. The Bureau has not proven the charges against Grievant by a preponderance of the evidence.

4. The employee bears the burden on any defense raised to the charges. Parham v. Raleigh

County Bd. of Educ., Docket No. 91-41-131 (Nov. 7, 1995).

5. Grievant has proven that she suffers from an anxiety disorder, but she has not proven that this disorder is the cause of her disruptive behavior in the workplace. See Smith v. Bureau of Emp. Prog., Docket No. 94-BEP-099 (Dec. 18, 1996); see also Coster v. W. Va. Div. of Corr., Docket No. 94-CORR-600 (Aug. 12, 1996).

Accordingly, this grievance is **GRANTED** and the Bureau is hereby **ORDERED** to reinstate Grievant to her former position as Office Assistant II, with full back pay and benefits from the date of her termination. Grievant is hereby **ORDERED** to fully respect and adhere to the directives of her employer, and to cease any type of disruptive behavior which could be perceived by the Bureau as insubordination. Grievant is also **ORDERED** to provide the Bureau of with proof that she is undergoing treatment for her panic disorder.

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred. Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7(1998). 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: December 23, 1998

Footnote: 1

Grievant was initially employed with the State Commission on Aging as a Typist II. She was promoted to a Typist III, then a Word Processor. On April 16, 1998, she was reclassified to Office Assistant II.

Footnote: 2

Mr. Ballard visited Grievant almost daily during work hours and engaged in religious discussions with Grievant. These conversations occurred almost daily from 2:30 p.m. to 3:00 p.m. during the last three months of 1997 and all of 1998

through Grievant's termination.

Footnote: 3

The Commissioner and a majority of her staff are housed in the Holly Grove Mansion. Mr. Dudley, Grievant and several other employees, are housed in "MB47", or the basement of the Capitol, where the Bureau maintains a 9,000 volume library for use by the public. This library is often used by legislators and other members of the public.

Footnote: 4

Ms. Tighe testified that Grievant had requested three weeks vacation, but Grievant's attendance records for that time period verify that Grievant took three weeks sick leave.

Footnote: 5

Grievant filed a grievance over this disciplinary action, which has not yet been resolved. The evidence presented shows that Grievant appealed from level one to level two on July 6, 1998. She has never heard from the Bureau regarding the status of this grievance. Thus, this grievance is still pending before the Bureau.

Footnote: 6

This period coincides with the three week period Ms. Tighe believed was a three week vacation.