SHARON SKEENS,

Grievant,

v.

DOCKET NO. 97-BOD-450

BOARD OF DIRECTORS/SOUTHERN WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE,

Respondent.

D E C I S I O N

Grievant, Sharon Skeens, filed this grievance on or about August 13, 1997, protesting her termination from Southern West Virginia Community and Technical College ("Respondent") on June 18, 1997. A level two hearing was held on October 6, 1997. Jerry Cole, Grievance Evaluator, recommended denial of the grievance on October 9, 1997, and President Travis P. Kirkland adopted Mr. Cole's recommendation on October 9, 1997. Grievant appealed to level four on October 15, 1997, and a hearing was held on December 18, 1997. This matter became mature for decision on February 9, 1998, the deadline for the parties' submission of proposed findings of fact and conclusions of law.

SUMMARY OF EVIDENCE

Respondent's Exhibits

Ex. 1 -

Authority (see Attachment A for detail).

Ex. 2 -

Prior Written Warnings and Correspondence (see Attachment A for detail).

Ex. 3 -

Written memoranda of verbal response given to Sharon Skeens by Joanne Tomblin, on July 23, 1997.

Ex. 4 -

September 23, 1995 memorandum from Patricia Hank to Sharon Skeens.Ex. 5 - June 12, 1997 file notation from Patricia Hank.

Grievant's Exhibits

Ex. 1 -

June 24,1997 letter from Travis P. Kirkland to Sharon Skeens.

Ex. 2 -

Return to Work slip from New Hope Christian Counseling Center, dated December 11, 1996.

Ex. 3 -

Return to Work slip from University Obstetrics and Gynecology, dated April 1, 1997.

Ex. 4 -

December 23, 1996 letter from Patricia Hank to Sharon Skeens.

Ex. 5 -

Medical Leave Verification/Medical Release Form.

Ex. 6 -

January 29, 1997 letter from Bobby A. Miller, M.D. to Jane Moran.

Testimony

Respondent offered the testimony of Patricia (Hank) Clay. Grievant testified in her own behalf.

FINDINGS OF FACT

1. Grievant was employed by Respondent on or about December 17, 1984, in a clerical position. Grievant's job title changed several times during the 13 years she was employed by Respondent. At the time of her termination, she was employed as a Human Resources Assistant III.

2. In January 1994, all employees of the West Virginia Higher Education System underwent a reclassification, more familiarly known as the “Mercer” reclassification. Grievant was reclassified as a Human Resources Assistant III.

3. Grievant appealed her classification, which was ultimately affirmed as the correct classification for her position.

4. Following the reclassification, Grievant began to refuse to perform the duties of her job as outlined in her Position Information Questionnaire (“PIQ”), often telling her supervisor, Patricia (Hank) Clay, that it was not within her job classification to perform such duties. R. Ex. 4. 5. On August 6, 1996, Grievant received a written warning for failing to remove passwords from the personal computer at her work station as previously director by Ms. Clay. R. Ex. 2e.

6. On August 12, 1996, Grievant was again instructed to remove all passwords from her files. R. Ex. 2g.

7. On December 3, 1996, Grievant was suspended for five (5) days and warned that similar actions would be grounds for immediate termination, for:

A.

refusal to send a benefits letter to a seriously ill employee;

B.

refusal to deposit a worker's compensation check and to reinstate sick leave for an employee after being directed to do so;

C.

demonstrating willful and intentional disrespect for her supervisor's directions and authority, thus undermining the department and placing the benefit security of employees at risk; and

D.

repeated outbursts and sarcasm toward supervisory and administrative personnel.

R. Ex. 2j.

8. In May of 1997, Grievant was once again instructed to reinstate sick leave for another

employee who utilized workers' compensation, after feigning ignorance of the process. R. Exs. 2a-d, m.

9. Grievant continually filed late reports, and on several occasions hid this fact from her supervisor. R. Exs. 2a-m.

10. During this time period Grievant continued to maintain passwords on her computer, even after being instructed otherwise. LII Test., Skeens, p. 69; R. Exs. 2a-d. 11. Following Grievant's five-day suspension in December, 1996, she failed to return to work for approximately one month. Despite repeated requests, Grievant failed to provide adequate documentation for her medical leave, as requested by her employer. LII Test., Skeens, p. 78, R. Exs. 2a-v.

12. On June 18, 1997, Grievant submitted a verbal resignation and then attempted to withdraw the resignation. She was advised by certified letter that if she was not resigning, she was being terminated. She was presented with the opportunity to discuss this action with President Travis Kirkland prior to the effective date of the termination. R. Ex. 2k.

13. On June 23, 1997, Grievant met with President Kirkland, Ms. Clay, and Mr. Bob Morgenstern, her representative, to discuss her pending termination. Grievant and her representative requested a leave of absence in lieu of termination. They were informed the only leave available to Grievant would be a medical leave of absence. Mr. Morgenstern told President Kirkland that if he would approve a medical leave of absence, then they would provide him with documentation to verify the need for a medical leave. That request was denied by President Kirkland.

14. Grievant was terminated via certified letter on June 24, 1997, for insubordination. R. Ex. 21.

DISCUSSION

In all disciplinary matters, the employer has the burden of proof and must prove all charges against the employee by a preponderance of the evidence. W. Va. Code § 18-29- 6; Latassa v. BOT/W. Va. Univ., Docket No. 96-BOT-477 (July 24, 1997). Respondent terminated Grievant for insubordination, in accordance with the West Virginia Board ofRegents Classified Employees' Handbook. Specifically, Section 10.2.2.1, Limited List of Reasons for Dismissal, provides that:

> Administrators have the right of dismissal for “just cause.” In cases of immediate dismissal, a written statement will be given to the employee and a copy will be included in the employee's record. Just cause includes, but is not limited to, the following:

. . .

11. Insubordination.

In addition, Section 10.3.1, Discharge After Two Written Warnings, provides that “an employee may also be discharged for offenses after he/she has received two written warnings.” R. Ex. 1.

Insubordination involves the “wilful failure or refusal to obey reasonable orders of a superior entitled to give such order.” Latassa, supra. Riddle v. Bd. of Directors, So. W. Va. Community College, Docket No. 93-BOD-309 (May 31, 1994). “Employees are expected to respect authority and do not have the unfettered discretion to disobey or ignore clear instructions.” Burdell v. BOD/West Virginia State College, Docket No. 96-BOD-023 (Dec. 10, 1996), aff'd, Civil Action No. 97-AA-6 (Kanawha County)(Aug. 7, 1997).

Grievant denies that she was insubordinate, and claims she suffered from a severe medical condition for which Respondent denied accommodation. Respondent provided sufficient evidence to prove that Grievant was insubordinate, and that she had received two prior written warnings for the same offenses.

Grievant's claim that she suffered from a medical condition which warranted accommodation is without merit. Grievant failed to provide adequate documentation to her employer despite repeated requests to verify her absence following her five-daysuspension in December 1996. Further, Grievant's ultimatum to President Kirkland at her pre-termination hearing was ill-advised. That simply is not how it works. It was Grievant's obligation to provide President Kirkland with documentation to support a medical leave of absence upon her request for it. It was not appropriate for Grievant to demand President Kirkland grant her a medical leave of absence, and only then would she provide him with medical documentation to support the leave. It appears Grievant did not believe it was her employer's “business” to know about her medical condition. Grievant was wrong. See, Myers v. Dept. of Trans./Div. of Motor Vehicles, Docket No. 96-DMV-304 (Feb. 10, 1997).

CONCLUSIONS OF LAW

1. An employer must establish the charges in a disciplinary matter by a preponderance of the

evidence. W. Va. Code § 18-29-6.

2. An employee of Respondent can be dismissed for insubordination.

3. Insubordination has been held to encompass more than an explicit order and refusal to carry it out. It may also involve flagrant or willful disregard for implied directions of an employer. Burdell v. BOD/West Virginia State College, Docket No. 96-BOD-023 (Dec. 10, 1996), aff'd, Civil Action No. 97-AA-6 (Kanawha County)(Aug. 12, 1997); Browning v. Mingo County Bd. of Educ., Docket No. 96-29-154 (Sept. 30, 1996); Sexton v. Marshall Univ., Docket No. BOR2-88-029-4 (May 25, 1988).

4. Employees are expected to respect authority and do not have the unfettered discretion to disobey or ignore clear instructions. Browning, supra; Reynolds v. Kanawha- Charleston Health Dept., Docket No. 90-H-128 (Aug. 8, 1990). 5. Respondent has proven by a preponderance of the evidence that Grievant was insubordinate to her supervisor, Patricia Clay, on numerous occasions, warranting her dismissal from employment.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to 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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MARY JO SWARTZ

Administrative Law Judge

Dated: March 24, 1998