RICKY MOORE,

Grievant,

v. **Docket No. 98-BOT-123**

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY,

Respondent.

D E C I S I O N

Grievant, Ricky Moore, employed by the Board of Trustees at West Virginia University (Respondent), filed a level four grievance appeal on April 23, 1998, in which he alleged that he had been improperly required to submit a medical verification form, and requested reimbursement of five dollars ($5.00). The grievance had previously been denied at levels one and two. Grievant had elected to by-pass consideration at level three as is permitted by W. Va. Code §18-29-4(c). Upon appeal to level four, an evidentiary hearing was scheduled for July 9, 1998; however, the parties agreed to submit the matter for decision based upon the lower-level record, supplemented with proposed findings of fact and conclusions of law. (See footnote 1) Grievant later declined the opportunity to submit proposed findings and conclusions, therefore, the matter became mature for decision with the submission of Respondent's proposals on August 10, 1998.

The facts of the matter are undisputed and may be set forth as the following formal findings of fact.

Findings of Fact

1. Grievant is employed by West Virginia University at the Physical Plant. His classification is not known, but he holds a full-time, classified position. 2. Grievant was absent from work and claimed sick leave for the following dates in January 1998:

January 8 & 9 Grievant took his son to the emergency room and was required to observe his son.

January 13 Grievant returned to work, but left soon after his shift started when he began to experience chest pains.

January 14 & 15 Grievant off work for reasons related to stress.

January 16 Grievant had doctors appointment.

January 20-23 Grievant ill with ear infection.

3. The remaining days between January 8 and January 27, when Grievant returned to work, included a holiday, a personal day, and his regularly scheduled days off (weekends).

4. Respondent notified Grievant that medical verification was required for the requested sick leave.

5. Grievant provided a medical verification form; however, it was incomplete and returned to him. Grievant's physician charged him five dollars ($5.00) for the additional paperwork.

6. Upon submission of the completed medical verification form, Grievant was granted all the requested sick leave (58.25 hours).

Discussion

At issue is the WVU Policy ER-11, “Medical Leave Verification”, which states in pertinent part, “[m]edical verification/release is required if an individual is off work more than five (5) consecutive days under the sick leave policy.” Grievant argues that he was not required to provide medical leave verification because he was not absent from workdue to illness for more than five consecutive calendar days. Respondent asserts that Grievant was properly required to provide medical leave verification upon his return to work.

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6. A preponderance of the evidence is defined as “evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black's Law Dictionary (6th ed. 1991), Leichliter v. W. Va. Dept. of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. Id.

Grievant did not assert that the policy was in violation of any statute, was discriminatory, or had

been applied to him in an arbitrary and capricious manner. Neither did he offer any authority or evidence to support his claim that the policy applied only to consecutive calendar days. Respondent persuasively noted that to accept Grievant's claim, would effectively invalidate the policy since the vast majority of employees do not work more than five consecutive days without time off. It is unfortunate that Grievant's physician imposed a fee to complete the medical verification form; however, absent any evidence that Respondent acted improperly in requesting the form, Grievant is not entitled to reimbursement from Respondent. In addition to the foregoing findings of fact and discussion it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6. A preponderance of the evidence is defined as “evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black's Law Dictionary (6th ed. 1991), Leichliter v. W. Va. Dept. of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. Id.

2. Grievant failed to prove that Respondent's policy requiring medical verification/release when an employee is absent from work more than five consecutive days was improperly applied to him.

3. Grievant failed to prove that he was entitled to reimbursement for the fee charged by his physician for completing the medical verification form.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia County and such appeal must be filed within thirty (30) daysof 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.

Date: September 29, 1998 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Grievant was represented by Joe Simoni of WVU-ACE, WVEA, Respondent was represented by Michael Glasser, Esq., Assistant Attorney General.