BARBARA STAATS,

Grievant,

v. **Docket No. 01-19-334**

JEFFERSON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Barbara Staats, employed by the Jefferson County Board of Education (JCBE) as a Secretary, filed a grievance directly to level four, as is permitted by W. Va. Code §18A-2-8, following the termination of her employment. Grievant requests reinstatement, back pay, benefits, seniority, and interest on all monetary sums. A level four hearing was conducted in the Grievance Board's Westover office on September 18, 2001, at which time Grievant was represented by John E. Roush, Esq. of the West Virginia School Service Personnel Association, and JCBE was represented by Claudia W. Bentley, Esq., of Bowles Rice McDavid Graff & Love. The grievance became mature for decision upon receipt of Respondent's reply to Grievant's proposed findings of fact and conclusions of law on November 20, 2001.

The following facts are derived from the evidence submitted at the level four hearing.

Findings of Fact

1. Grievant was first employed by JCBE as a substitute in 1985, and began full- time employment as a regular employee in October 1986. Grievant has been assigned as a full-time Secretary at Ranson Elementary School (RES) since 1989. 2. While at RES Grievant began filing claims for overtime compensation. For the period of 1996-2001 Grievant received the following:

Year	Hours	Compensation
1996-97	19	$346.07
1997-98	98.5	$2,070.54
1998-99	411	$8,454.86
1999-00	420.5	$9,066.67
2000-01	176	$4,061.30.

3. Grievant did not receive authorization from RES Principal Debra Corbett for each occasion

she worked overtime.

4. Grievant signed Ms. Corbett's, or Head Teacher Judith Cain's name to some, if not all the overtime forms, from 1996-2000, and signed the Principal's name on all the forms filed during the 2000-2001 school year.

5. In March 2001, Ms. Corbett took the school's finance records to the JCBE Treasurer at the Board office to review what she believed could be financial improprieties.

6. When Grievant observed the financial records had been removed from the office, she contacted her sister to serve as her service personnel association representative.

7. On Friday, March 16, 2001, Ms. Corbett met with JCBE Treasurer Nancy Davis-White and Associate Superintendent Beverly Hughes to review the records and address concerns the principal had with specific transactions. 8. Early Monday morning, March 19, 2001, Grievant and her representative appeared at the office of Ms. Davis-White to express concern, and to request “what needed to be done” regarding the financial records.

9. Grievant was suspended on March 19, 2001, with pay, pending an investigation into apparent irregularities in her overtime reports and in the financial records at the school.

10. By letter dated April 3, 2001, Grievant was notified that Superintendent Judson Romine would recommend the termination of her employment to JCBE, and of her right to a hearing.

11. By letter dated May 1, 2001, Assistant Superintendent Gerry R. Sokol reminded Grievant of her hearing before the Board scheduled for May 8, 2001, and advised her that her termination would be recommended for the following reasons: “submitting unauthorized documents to receive overtime compensation for school years 96-97, 97-98-99-00 and 00-01; misappropriation of grant funds received for Energy Express and misappropriation of funds received for an Education Alliance Grant.”

12. On May 7, 2001, JCBE counsel advised Grievant's counsel that, given the pendency of a criminal investigation into a number of financial discrepancies, JCBE would proceed to recommend Grievant's termination only on the unauthorized overtime issue.

13. JCBE conducted a hearing at Grievant's request on May 8, 2001, after which it affirmed the suspension and voted to terminate Grievant's contract.

Discussion

In disciplinary matters, the employer bears the burden of proving the charges by a preponderance of the evidence. W. Va. Code §18-29-6; Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427

(Feb. 24, 1994); Landy v. Raleigh County Bd. of Educ., Docket No. 89-41-232 (Dec. 14, 1989). Moreover, the authority of a county board of education to discipline an employee must be based upon one or more of the causes listed in W. Va. Code §18A-2-8, as amended, and must be exercised reasonably, not arbitrarily or capriciously. Bell v. Kanawha County Bd. of Educ., Docket No. 91-20-005 (Apr. 16, 1991). See Beverlin v. Bd. of Educ., 158 W. Va. 1067, 216 S.E.2d 554 (1975).

Respondent asserts that Grievant submitted claims for overtime work which were not signed, or otherwise approved, by the principal. This action, which resulted in Grievant's receipt of a considerable amount of money over a number of years, was the basis for dismissal. Grievant argues that she worked the hours claimed to JCBE's benefit, with the approval of the principal, who had also authorized her to sign documents including overtime claims.

At level four, Respondent presented the testimony of Kenneth Blake, a forensic document examiner qualified as a handwriting expert. Mr. Blake stated that he had reviewed seventy-seven (77) questioned overtime request documents submitted by Grievant, comparing them with known samples of handwriting by Ms. Corbett, and RES Head Teacher Judith Cain, whose signature was on one of the documents.

One of the documents was found to be of such poor quality it could not be evaluated, and Mr. Blake determined that he could not eliminate Ms. Corbett as the signer of nine others. Mr. Blake concluded that within a reasonable degree of certainty, all but 23.5 of the 1128 hours of overtime submitted by the Grievant for the period of 1996-2001was obtained with a forged signature of the Principal or Head Teacher. Mr. Blake was not asked, and did not speculate on who might have forged the names, but did determine they were simulations, meaning that the individual tried to simulate the writing of the person whose name was being used. Mr. Blake opined that attempted simulation indicates wrongdoing, because if the individual signing the name was authorized to do so, he or she would use their own handwriting and initial the signature.

Because Ms. Corbett denies she authorized the use of her signature or the overtime, as claimed by Grievant, it is necessary to make a determination of credibility. Butts v. Higher Educ. Interim Govenring Bd./Shepherd College, Docket No. 01-HE-100 (Nov. 1, 2001); Jones v. W. Va. Dep't of Health & Human Resources, Docket No. 95-HHR- 066 (May 12, 1995). An Administrative Law Judge is charged with assessing the credibility of the witnesses that appear before her. See Lanehart v. Logan County Bd. of Educ., Docket No. 95-23-235 (Dec. 29, 1995); Perdue v. Dep't of Health &

Human Resources/Huntington State Hosp., Docket No. 93-HHR-050 (Feb. 4, 1993).

The United States Merit System Protection Handbook is helpful in setting out factors to examine when assessing credibility. Harold J. Asher and William C. Jackson, Representing the Agency before the United States Merit Systems Protection Board 152-53 (1984). Some factors to consider in assessing a witness's testimony are: 1) demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and, 5) admission of untruthfulness. Id. Additionally, the administrative law judge should consider: 1) the presence or absence of bias, interest,, or motive; 2) the consistency of prior statements; 3) the existence or nonexistence of any fact testified to by the witness; and, 4) the plausibility of the witness's information. Id. The testimony of Grievant and Ms. Corbett is diametrically opposed. Ms. Corbett testified that she was not aware that Grievant had claimed overtime, did not tell Grievant she wanted her to be paid overtime, or that Grievant requested permission to work the overtime. On the contrary, Ms. Corbett stated that Grievant kept up with her duties, and left her work area in immaculate condition at the end of the day. The principal acknowledged that Grievant did work beyond her regular schedule at times, but stated that she understood that Grievant was donating the time, as do all school employees. Upon review of the request slips, Ms. Corbett testified that some of the reasons given for the requests were not even Grievant's responsibilities. Ms. Corbett also denied giving Grievant permission to sign overtime or other forms, noting that either she or the Head Teacher were to sign all such documents.

Grievant testified that she had worked overtime without compensation for several years until Ms. Corbett told her she should be paid. Grievant asserts that she worked all the hours for which overtime was requested, and signed Ms. Corbett's name on some of the request forms, including all of those for the 2000-2001 school year, with Ms. Corbett's permission, but denies ever signing Ms. Cain's name on the documents. Grievant further denied any attempt to simulate the signature of Ms. Corbett.

Having observed the demeanor of the witnesses, and evaluating the content of their testimony, the undersigned finds that Grievant had both motive and opportunity to complete the leave request forms. While she may have been at RES for the hours claimed, Grievant was not authorized by Ms. Corbett to work the amount of overtime for which she was paid. This finding is based upon the testimony of Ms. Corbett, which was corroborated by Ms. Davis-White and Associate Superintendent

Beverly Hughes, whostated that Ms. Corbett exhibited complete surprise when the issue of Grievant's overtime was raised.

When questioned by the undersigned as to whether she had specifically requested and received permission from Ms. Corbett to work each and every day that overtime was claimed, Grievant stated that she would say something to the effect that “I have to get this finished” or “this is coming due” and Ms. Corbett would say “okay”. Grievant admitted that she did not receive permission for each day, and her response to the undersigned's question was entirely too vague to be considered a request for overtime.

Further, Ms. Davis-White recalled that when she and Grievant met with Superintendent Romine, Grievant initially denied signing the request forms, but later admitted to signing all of those submitted in the 2000-2001 school year. This inconsistency damages Grievant's credibility. Also, the fact that Grievant and her representative reported to the Treasurer's office with concerns prior to any being raised with her, adds to the appearance of culpability.

Finally, Grievant's testimony that she did not attempt to simulate the Principal's signature was refuted by Mr. Blake, and even to the untrained eye of the undersigned, those documents completed during the 2000-2001 school year, which Grievant admits to signing, clearly show a difference between the Principal's authorization signed by Grievant, and Grievant's own signature, supporting a finding of attempted simulation. When asked why she did not initial the signature, Grievant offered no substantive reason, but stated that she now knows that would have been the correct way to have completed the form.

By comparison, Ms. Corbett had no motive to deny that she approved the requested overtime compensation. There is no evidence that the principal was subject to discipline,or would have suffered any consequences had she approved the overtime. When considered with the testimony of the Treasurer and Assistant Superintendent who both noted Ms. Corbett's surprise when the issue of overtime was raised, it is determined that Principal Corbett was more credible than Grievant.

W. Va. Code § 18A-2-8 provides that:

Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

Although JCBE did not label Grievant's actions with any of the statutory reasons for dismissal, it would constitute immorality. "`Immorality' is defined as `conduct not in conformity with accepted principles of right and wrong behavior; contrary to the moral code of the community; wicked; especially, not in conformity with the acceptable standards of proper sexual behavior.' Golden v. Bd. of Educ. of County of Harrison, 285 S.E.2d 665 (W. Va. 1981)." Hayes v. Kanawha County Bd. of Educ., Docket No. 94-20-1143 (June 28, 1995). "`Immoral conduct is conduct which is always wrong. Just as one can never be accidentally or unwittingly dishonest, immoral conduct requires at least an inference of conscious intent.' See Hayes, [supra], citing Youngman v. Doerhoff, 890 S.W.2d 330 (Mo. 1994)." Bell v. Mingo County Bd. of Educ., Docket No. 97-29-172 (Mar. 10, 1998); Petry v. Kanawha County Bd. of Educ., Docket No.96-20-380 (Mar. 18, 1997).

Based upon all the evidence of record, JCBE has proven by a preponderance of the evidence that Grievant engaged in immorality when she submitted claims and received compensation for overtime work which had not been authorized. The proposed findings of fact and discussion are supplemented by the following formal conclusions of law.

Conclusions of Law

1. In disciplinary matters, the employer bears the burden of proving the charges by a preponderance of the evidence. W. Va. Code §18-29-6; Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994); Landy v. Raleigh County Bd. of Educ., Docket No. 89-41-232 (Dec. 14, 1989).

2. “Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.” W. Va. Code § 18A-2-8.

3. Respondent has proven by a preponderance of the evidence that Grievant engaged in immorality when she requested and received overtime compensation for work which had not been approved by the principal.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Jefferson 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 tosuch appeal and should not be so named. However, the appealing party is required by W. Va. Code §29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: November 30, 2001 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE