BRENDA LUCCI,

Grievant,

v. **Docket Nos. 01-HE-014/151**

HIGHER EDUCATION INTERIM GOVERNING BOARD/

WEST VIRGINIA UNIVERSITY,

Respondent.

D E C I S I O N

Brenda Lucci (Grievant), employed by West Virginia University (WVU or Respondent), filed a level one grievance on January 29, 2001, following the termination of her employment as a Cancer Registrar. The grievance was denied at levels one and two. Upon appeal to level four, the grievance was consolidated with an earlier grievance in which Grievant contested a letter of warning. (See footnote 1) An evidentiary hearing was conducted in the Grievance Board's Westover office on August 23, 2001, at which time Grievant was represented by Fred Tucker of the United Mine Workers Association, and Respondent was represented by Samuel R. Spatafore, Assistant Attorney General. The matter became mature for decision upon receipt of the parties' proposed findings of fact and conclusions on or before November 20, 2001.

The facts of this matter have been derived from the record in its entirety, including the level two transcript, and the evidence submitted at level four.

Findings of Fact

1. Grievant is a 1979 graduate of WVU with a Bachelors degree in Social Work, and was first employed by WVU in 1981 as a Medical Records Assistant. WhenRespondent divested the hospital to as private corporation, West Virginia University Hospitals, Inc.(WVUH, Inc.), in 1985, Grievant elected to remain a State employee rather than become a corporate employee.

2. In late 1999 Grievant applied for the position of Cancer Registrar at WVUH, Inc. Grievant met the minimum qualifications for the position, and was awarded the assignment effective January 3, 2000.

3. WVUH, Inc., employs two Cancer Registrars. These individuals use three coding systems to abstract the medical charts of patients diagnosed with cancer. The data generated by the Registrars

is provided to local, state, and national entities, which utilize the statistics for trending, treatment modalities, marketing, etc.

4. The second Registrar employed by WVUH, Inc., Pam Moats, was assigned to be Grievant's trainer.

5. Shortly after assuming her duties as Registrar, Grievant was sent to a week- long course for Registrars in North Carolina. Grievant did not find this course to be helpful in her work at WVUH, Inc.

6. Christine Metheny, Manager of Technicians in the Health Information Management Unit and Grievant's immediate supervisor, met with Grievant weekly to evaluate her progress, and discuss goals and objectives.

7. Grievant was assigned fifteen charts per week, which were to be abstracted at an accuracy rate of 93%. Grievant's training was initially limited to prostate cancer.

8. Grievant consistently did not achieve the quantity or quality of work expected of her during the first half of 2000. In June, Ms. Metheny noted that Grievant's error ratehad drastically increased to a point that it was unacceptable, and her overall performance had fallen below job specifications.

9. In July 2000, Grievant was sent to a second week-long seminar, which she did find to be helpful.

10. Grievant's performance did not improve, and Ms. Metheny conducted an informal verbal counseling session with Grievant on September 25, 2001, at which time she advised Grievant that her performance must improve within five weeks. Grievant's assignment was reduced to ten abstracts per week. The session was memorialized in a memorandum dated September 26, 2000.

11. Grievant's performance did not improve, and Ms. Metheny issued a First Letter of Warning dated October 30, 2000, for her failure to meet acceptable standards.

12. On November 15, 2000, Ms. Metheny issued a Second Letter of Warning when Grievant's performance still did not improve. Ms. Metheny advised Grievant that her continued failure to improve would result in further disciplinary action, up to and including termination of employment.

13. Grievant completed no abstracts during the month of December.

14. On January 16, 2001, Ms. Metheny issued Grievant an Intent to Terminate letter, which was followed by a Termination Notice dated January 19, 2001. Reasons given for the action were Grievant's failure to complete the assigned number of abstracts at the determined quality level, and her failure to maintain the quality of other work, including Pathology Staging Forms.

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). 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 Res., 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.

Respondent asserts that Grievant failed to satisfactorily complete the duties required of a Cancer Registrar. Grievant does not deny that she failed to meet either the quality or quantity standards set by her supervisor, but argues that she was impeded by unrealistic expectations, as well as suffering harassment and lack of cooperation by the trainer. Specifically, Grievant submitted a letter into the level four record, dated November 1, 2000, in which Beverly Keener, Director of the West Virginia Cancer Registry stated, "the National Cancer Registrars Association which sponsors the Certified Tumor Registrar (CTR) credentialing program recognizes that at least two years of experience in a cancer registry is necessary for persons to qualify to take the CTR examination." Grievant also testified that it was her understanding at the time she accepted the position that it would take two years for her to become fully trained.

More importantly, Grievant appears to attribute her failure to succeed to the ongoing turmoil with Ms. Moats. Grievant testified that upon her arrival, Ms. Moats, a corporateemployee, indicated a curiosity regarding her salary. Ms. Metheny had advised Grievant not to discuss her salary; however; Ms. Moats was able to retrieve that information from another source. Ms. Moats subsequently filed a grievance, but did not prevail. Grievant testified that from that point the situation continued to deteriorate. She recalled Ms. Moats stating that she did not want to train her, cursing, swearing, belittling, and badgering her. According to Grievant, Ms. Moats threw charts at her, did not allow her to ask questions or call anyone outside the office to ask questions, and even locked her computer.

Interestingly, Ms. Moats was not called as a witness by either party at any of the three hearings held in these matters. However, Ms. Metheny did testify that she was aware of the tension between Grievant and Ms. Moats. Ms. Metheny stated that she spoke with them individually and directed them

to work out their differences. Additionally, she reported the situation to Melissa Martin, Director of Health Information Management, who also met with Grievant, Ms. Moats, and Ms. Metheny. Ms. Martin testified at level four that she perceived the situation as personality differences, but thought the meeting cleared the air and resulted in a good outcome. Grievant's request that her work be reviewed by an employee of the Department of Health was denied since it was the practice of WVUH, Inc. to train within the institution.

Accepting Grievant's description of her relationship with her trainer, it certainly was an impediment to her success. Since there was no other trainer on-site, it appears that Ms. Metheny and Ms. Martin made efforts to facilitate a more copacetic relationship, but to no avail. However, even when consideration is given to the lack of cooperation by Ms. Moats, Grievant's failure to complete the quantity of work is not acceptable. While thissituation was perhaps not handled in the best of all possible ways, Respondent put Grievant on notice that her work needed to improve, and instead it deteriorated. Grievant's assertion that she could have performed satisfactorily given a “proper person with the proper attitude to train her, along with the proper work environment on a daily basis,” may very well be accurate; however, Respondent is not obligated to make special arrangements in personnel or environment to accommodate another employee in this type situation. Therefore, it is determined that Respondent has met its burden and proved by a preponderance of the evidence that Grievant did not satisfactorily perform in the position of Cancer Registrar.

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. 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. Respondent has proven by a preponderance of the evidence that Grievant failed to meet either the quantity or quality of work demanded by the position of Cancer Registrar, demonstrating unsatisfactory performance.

3. Grievant has failed to prove that Respondent acted improperly in imposing progressive discipline, or that her work had attained a satisfactory level.

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) 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. 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: December 6, 2001 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

The grievance regarding the letter of warning had been denied at levels one and two. At level four, the matter was assigned Docket No. 01-HE-014.