ANNETTE BLAKE,

Grievant,

v.

DOCKET NO. 02-HEPC-026

HIGHER EDUCATION POLICY

COMMISSION/MARSHALL UNIVERSITY,

Respondent.

D E C I S I O N

Grievant, Annette Blake, filed the following Statement of Grievance on October 16, 2001, with the Higher Education Policy Commission/Marshall University ("Marshall"), stating:

> The policy on equal opportunity/affirmative action have [sic] been violated regarding discrimination, on age, sex, and others as identified in my memorandums to Larry Kyle[.] I have not been advanced in employment or treated without discrimination. Information supplied is insufficient for me to complete my work, and I am being harassed over this lack of information, lack of planning of the Division. (See attachments.)
>
> Relief sought: (See footnote 1) To remove the discrimination practices that have been apparent in this Division for several years.
>
> To eliminate the need for defending myself from personal reprimands for being given incorrect purchasing policy procedures by Continuing Education staff and blaming me for their mistakes. Staff should receive Harassment class, hiring class, and purchasing materials class. All funds and orgs. as well as information that I I [sic] have used has been at their direction. (See attachments.) (See footnote 2)

This grievance was denied at all lower levels, and Grievant appealed to Level IV on January 30, 2002. A pre-hearing conference was conducted on August 15, 2002, to discuss the testimony of the numerous witnesses Grievant wished to call. Respondent also filed an oral Motion to Quash several

of the subpoena requests after hearing the planned testimony and/or finding out the expected witnesses did not have anything to offer on the issues of the grievance. Numerous witnesses had been excused by Grievant, and several subpoenas were quashed on Respondent's Motion. A Level IV hearing was held in the Grievance Board's Charleston, West Virginia, office on August 27, 2002. This matter became mature for decision on October 1, 2002, upon receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 3) Grievant was represented by her husband, and Marshall was represented by Jenndonnae Houdyschell, Assistant Attorney General.

Issues and Arguments

In her Statement of Grievance, Grievant asserted she had been discriminated against because of her age and sex. At both Level III and Level IV, Grievant's assertionswere more general, and she maintained she had been subjected to discrimination, favoritism, and harassment. (See footnote 4) Grievant specifically cited she had treated differently than one of her supervisors, Sarah Chapman. Respondent contended Grievant had not been discriminated against because of her gender or age, had not been treated unfavorably, and had not been subjected to harassment. Rather, Grievant's negative treatment was due to her poor work performance.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact. (See footnote 5)

Findings of Fact

1. Grievant has been employed by Marshall for many years and works as an Administrative Secretary in the Continuing Education and Workforce Development Division ("CED" or "Division") of the Community and Technical College.

2. At one time, Grievant and Ms. Chapman were both Administrative Secretaries. Since that time, Ms. Chapman has received several promotions and upgrades. Grievant has not, and has only received the across-the-board raises.

3. All parties agree this Division is a difficult place to work, and Grievant has a difficult task in working for three supervisors. The Administrative Secretary Job Description requires this employee to perform many varied tasks, including composing and typing letters; maintaining balances for grants, contracts, expense accounts, purchasing agreements, and other appropriations from a variety of funds; developing and implementing internal office procedures; explaining departmental policies and

answering routine correspondence independently; compiling reports and statistics; screening calls, correspondence, and visitors; preparing regular mail, bulk mail, and delivering and sorting mail; and scheduling meetings and appointments. The position requires the ability to engage in multi-tasking.

4. When the new Coordinator of this Division, Dr. Diana Long, was placed in charge, she was directed to clean up the disorder in and the reputation of the Division. She held a meeting with staff on February 2, 2001, to discuss the future of the CED. She indicated in this meeting that she expected the staff to resolve differences between themselves and to "act like adults, no more tattling." 5. As part of this process, she met with all employees individually and discussed their job duties, concerns, strengths, and weaknesses. Dr. Long met with Grievant on February 6, 2001, about these matters. Dr. Long identified Grievant's job duties as "information processing and processing of payroll, purchasing, contracts, accounts receivable, [and] correspondence." All these are job duties included in the Administrative Secretary Job Description. Resp. Ex. No. 4, at Level IV.

6. Following this meeting, on February 22, 2001, Dr. Long wrote Grievant summarizing the substance of the meeting. Grievant's duties were outlined, the possibility of a transfer was discussed, and Grievant's strengths and weaknesses, as well as her animosity toward Ms. Chapman was examined. At this meeting, Grievant agreed to perform the duties she had been assigned, and to rectify her professional conduct. She was to stop engaging in Division gossip; stop judging, evaluating, and reporting on the job performance of others; present at least one solution whenever she identified a problem; commit to repairing animosities with other staff members; and develop an improvement plan to increase her secretarial skills. Resp. Ex. No. 5, at Level IV.

7. This letter also noted any behavior contrary to the agreed upon behavior "will result in termination." Grievant was put on notice that her performance and organization skills would be monitored monthly, and if the work load was beyond her ability she would be asked to transfer to another position. If at that time she did not transfer, she would be terminated. Grievant demonstrated her understanding of these statements by signing this document. Resp. Ex. No. 5, at Level IV.

8. On August 16, 2001, Dr. Larry Kyle, one of Grievant's first level supervisors, wrote Grievant a lengthy memo detailing Grievant's failure to meet her work responsibilities. Areas of deficiency were incomplete and inaccurate payrolls, inappropriate communication with staff outside the Department, rudeness to customers and vendors, poor interoffice relationships, insubordination, and changing the formats of contracts and confirmation letters without authorization. Resp. Ex. No. 1, at Level IV.

9. On September 25, 2001, Dr. Kyle sent Grievant another memo outlining Grievant's continuing inability to meet her work responsibilities and informing her he was recommending a three-day suspension. The problems listed were inappropriate conduct, failure to perform job duties accurately, and false representation of facts. Dr. Kyle stated any further deficiencies would result in a recommendation for termination. Grt. Ex. No. 6, at Level IV.

10. Grievant was provided a pre-disciplinary hearing on October 5, 2001, and the recommendation for a suspension was upheld. Resp. Ex. No. 7, at Level IV.

11. In September and October 2001, Grievant requested four and one half days of annual leave in October, to be taken on succeeding Thursdays and Fridays. Some of the annual leave was denied by Dr. Kyle noting Grievant had used too much annual and sick leave, and the work load did not permit Grievant's absence at this time. Grievant was allowed to take the second request for leave as her suspension days. Dr. Kyle checked with Human Resource Services prior to denying this leave.

12. Another continuing problem with Grievant's performance was her leaving the office for extended periods of time without informing anyone of her actions. She had beendirected numerous times by her supervisors that she must inform them before she leaves the office and where she is going. Grievant asserts she is taking the mail, she sometimes combines her lunch hour with these trips, and everyone should know where she is going without her having to report her absence. Grievant also has been directed to take the mail at eleven o'clock and to not combine this trip with her lunch period.

13. Grievant consistently has trouble performing a variety of tasks, and frequently the material she submits for review and/or signatures must be redone. All materials typed by Grievant must be carefully reviewed as Grievant does not catch her own mistakes. For example, Grievant did not properly close out grants, improperly calculated mileage on travel vouchers, and submitted incorrect payroll forms. On one travel form, she put down Bluefield instead Lewisburg for the destination, and when this was brought to her attention she argued they were the same place. Test. Dr. Long, Level IV Hearing.

14. Contrary to the directions she has been given, Grievant spends part of her work time checking up on others and reporting their errors. This behavior is most pronounced with Ms. Chapman.

15. For several years, Grievant has received negative evaluations. On January 25, 2002, Grievant received another of these poor evaluations. Grievant's overall work performance and relationship with her supervisors were rated as unsatisfactory. Grievant was directed to improve her interactional skills and to correct her poor work attitude. Grievant disagreed with this evaluation and stated the accusations were "inaccurate" and "unfounded," and "leadership doesn't require respect." Grt. Ex. No. 5, at Level IV. 16. The evaluation states if either the employee or the supervisor marks they do not agree with the evaluation, Human Resource Services will contact the supervisor and mediate any differences. Grievant checked the box indicating she did not agree with her evaluation, but was not contracted by anyone from Human Resource Services. Grt. Ex. No. 5, at Level IV.

17. Jim Stephens, Director of Human Resource Services, stated Human Resources only followed up on an evaluation if there was a change from the prior years. Since Grievant had received similar evaluations in the past and had always disagreed with them, Human Resources did not attempt to mediate this disagreement. (See footnote 6)

18. On February 22, 2002, Grievant was talking to another employee, when Dr. Kyle came into the office and "Moo'd" at them. Grievant sent a memo to Dr. Long stating she did not appreciate this behavior. Dr. Long received this memo and directed Grievant to address the issue with Dr. Kyle herself. Dr. Long also told Dr. Kyle not to "Moo" at anyone again. Grievant viewed this behavior as harassment. Grt. Executive Secretary. Nos. 12 and 13, at Level IV.

19. In November 1999, Mr. Stephens, who has a business outside of Marshall and with Marshall's knowledge, was directed to some work outside Marshall by Dr. Kyle. Contrary to Grievant's assertions there was nothing illegal about these business dealings, and Mr. Stephens is not a friend of Dr. Kyle, only a business associate at Marshall. 20. On June 7, 1999, Dr. Kyle sent a written reprimand to Ms. Chapman and another employee noting their interpersonal conflicts and directing them to resolve this conflict or further disciplinary action would be forthcoming. Grt. Ex. No. 10, at Level IV.

21. On April 16, 2002, Grievant sent a memo to Dr. Long, Mr. Stephens, Mr. Harris, and Vicki Riley (See footnote 7) saying she had another incident of "sexual harassment," "abuse of authority," and "causing a hostile working environment" by Ms. Chapman, and she wished to discuss it at her mediation. These alleged actions by Ms. Chapman were not against Grievant, but another employee.

This memo was admitted at Level IV, and it discussed Grievant's interpretation of what she had been told by an ex-employee. Mr. Harris attempted to discuss the sexual harassment issue with Grievant, and she refused to offer any information for him to investigate. The employee involved did not make any complaints. This document did not demonstrate any sexual harassment, but rather Grievant's view of the issue, which was that Ms. Chapman had treated this employee so badly she felt forced to quit. Grt. Ex. No. 8, at Level IV.

Discussion

___As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Toney v. Lincoln County Bd. of Educ., Docket No. 99-22-046 (Apr. 23, 1999); Bowen v. Kanawha County Bd. of Educ., Docket No. 99-20-039 (Marshall. 30, 1999); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997). "The preponderance standardgenerally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. Id. The issues raised by Grievant will be discussed separately.

I. Credibility

An issue that must be addressed is credibility. In situations where the existence or nonexistence of certain material facts hinges on witness credibility, detailed findings of fact and explicit credibility determinations are required. Jones v. W. Va. Dep't of Health & Human Resources, Docket No. 96-HHR-371 (Oct. 30, 1996); Pine 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. See Lanehart v. Logan County Bd. of Educ., Docket No. 95-23-235 (Dec. 29, 1995); Perdue v. Dep't of Health and Human Resources/Huntington State Hosp., Docket No. 93-HHR-050 (Feb. 4, 1993).

The Grievance Board has applied the following factors to assess a witness's testimony: 1) demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and 5) admission of untruthfulness. 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'sinformation. (See footnote 8) See Holmes v. Bd. of Directors/W.Va. State College, Docket No. 99-BOD- 216 (Dec. 28, 1999); Perdue, supra.

The testimony of Respondent's witnesses was credible. They did not demonstrate any prejudice, and the information presented was plausible. Their statements were believable, clear, consistent with each others, and internally consistent. Additionally, there was no demonstration of bias, only frustration.

Grievant did not testify at Level IV, but did testify at Level III. Thus, the testimony presented by Respondent at Level IV was unrebutted. Grievant's testimony at Level III was somewhat confusing, as she had difficulty staying on point. Additionally, Grievant appears to selectively disregard information she does not want to hear. Grievant believes she is being mistreated, and Ms. Chapman is treated more favorably. "[A] [f]actor to be considered in making and explaining credibility determinations is [the] possibility that [the] witness is biased and may consciously or unconsciously shade his or her testimony for or against one of the other witnesses or parties." Chin v. Dep't of Treasury, 44 M.S.P.R. 201 (1990). Accordingly, the undersigned Administrative Law Judge finds Grievant's testimony to be distorted by her selective attention to facts, and influenced by her own bias.

II. Discrimination and favoritism Grievant alleges she has been the victim of age and sex discrimination and favoritism. (See footnote 9) Discrimination is defined in W. Va. Code § 29-6A-2(d), as "any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees." W. Va. Code § 29-6A-2(h) defines favoritism as "unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees."

This Grievance Board has determined that a grievant, seeking to establish a prima facie case of discrimination and favoritism under W. Va. Code §§ 29-6A-2(d) & (h), must demonstrate the following:

(a) that he is similarly situated, in a pertinent way, to one or more other employee(s);

(b) that he has, to his detriment, been treated by his employer in a manner that the

other employee(s) has/have not, in a significant particular;

and,

(c) that such differences were unrelated to actual job responsibilities of the grievant and/or the other employee(s) and were not agreed to by the grievant in writing.

Parsons v. W. Va. Dep't of Transp., Docket No. 91-DOH-246 (Apr. 30, 1992).

Once a grievant establishes a prima facie case of discrimination or favoritism, the employer can offer legitimate reasons to substantiate its actions. Thereafter, the grievant may show the offered reasons are pretextual. Hickman, supra. See Tex. Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981); Frank's Shoe Store v. W. Va. HumanRights Comm'n, 179 W. Va. 53, 365 S.E.2d 251 (1986); Hendricks v. W. Va. Dep't of Tax & Revenue, Docket No. 96-T&R-215 (Sept. 24, 1996); Runyon v. W. Va. Dep't of Transp., Docket Nos. 94-DOH-376 & 377 (Feb. 23, 1995).

Grievant has not met her burden of proof and established a prima facie case of discrimination or favoritism. While Grievant did show her annual leave was not approved at times, she did not show Dr. Kyle's reason for the denial was arbitrary and capricious or that another similarly situated employee was treated more favorably. Grievant complained about Ms. Chapman's preferred treatment, but then placed into evidence a written reprimand Ms. Chapman had received for her behavior. Although Grievant complained about Ms. Chapman in terms of age and sex discrimination, the testimony revealed Ms. Chapman is also an older, white female. Accordingly, Grievant has not met her burden of proof and demonstrated any discrimination of favoritism on the basis of age and sex, nor has she established any other evidence of discrimination and favoritism in general.

III. Harassment

Grievant's arguments can also be seen as a complaint of harassment. W. Va. Code § 29-6A-2(l) defines harassment as "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession." "Harassment has been found in cases in which a supervisor has constantly criticized an employee's work and created unreasonable performance expectations, to a degree where the employee cannot perform her duties

without considerable difficulty. See Moreland v. Bd. of Trustees, Docket No. 96-BOT-462 (Aug. 29, 1997)." Pauley v. Lincoln County Bd. of Educ., Docket No. 98-22-495 (Jan. 29, 1999). A single incident does not constitute harassment. Id; Metz v. Wood County Bd. of Educ., Docket No. 97-54-463 (July 6, 1998). In order to establish harassment in violation of W. Va. Code § 29-6A-2(l), the grievant must show a pattern of conduct, rather than a single improper act. See Hall v. W. Va. Dep't of Transp., Docket No. 96-DOH-433 (Sept. 12, 1997); Phares v. W. Va. Dep't of Pub. Safety, Docket No. 91-CORR-275 (Dec. 31, 1991). See also Thompson v. Bd. of Trustees, Docket No. 96-BOT-097 (Dec. 31, 1996). Repeated comments of a sexual nature by a supervisor have been found to constitute harassment. Hall, supra. See Tibbs v. Hancock County Bd. of Educ., Docket No. 98-15-016 (June 16, 1998).

Grievant has not demonstrated she has been subjected to harassment. While it is true that she received memos detailing the problems with her work performance, and these can be viewed as written reprimands, and she also received a suspension for these same difficulties, these occurrences alone do not constitute harassment. See Loundman-Clay v. Higher Educ. Policy Comm'n/Bluefield State College, Docket No. 02-HEPC-013 (Aug. 29, 2002). Employers are expected to inform employees about their problems in the work area, and employees are entitled to receive fair and honest feedback and evaluations. Rider v. Bd. of Trustees/Marshall Univ., Docket No. 99-BOT-348 (Apr. 7, 2000). This feedback may not always be positive and/or appreciated by an employee. Dr. Long testified at length about the failings in Grievant's work performance, and the attempts made to correct them. Just because Grievant did not agree with the information she received, does not mean it was inappropriate or constitutes harassment. The information and corrections Grievant received were proper and warranted. Although Grievant believes the actions taken against her are the result of favoritism, discrimination, and/or harassment, she has not shown her beliefs to be true. As frequently stated by the Grievance Board, "[m]ere allegations alone without substantiating facts are insufficient to prove a grievance." Baker v. Bd. of Directors/W. Va. Univ. at Parkersburg, Docket No. 97-BOT-359 (Apr. 30, 1998); See Adkins v. Dep't of Transp./Div of Highway, Docket No. 01-DOH-420; Lester v. Nicholas County Bd. of Educ., Docket No. 01-34-581 (Jan. 25, 2002). See also Harrison v. W. Va. Bd. of Directors/Bluefield State College, Docket No. 93-BOD-400 (Apr. 11, 1995).

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Howell v. W. Va. Dep't of Health & Human Resources, Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also 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).

2. Discrimination is defined in W. Va. Code § 29-6A-2(d), as "any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees." 3. W. Va. Code § 29-6A-2(h) defines favoritism as "unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees."

4. A grievant, seeking to establish a prima facie case of discrimination and favoritism under W. Va. Code §§ 29-6A-2(d) & (h), must demonstrate the following:

> (a) that he is similarly situated, in a pertinent way, to one or more other employee(s);
>
> (b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;
>
> and,
>
> (c) that such differences were unrelated to actual job responsibilities of the grievant and/or the other employee(s) and were not agreed to by the grievant in writing.

Parsons v. W. Va. Dep't of Transp., Docket No. 91-DOH-246 (Apr. 30, 1992).

5. Once a grievant establishes a prima facie case of discrimination and/or favoritism, the employer can offer legitimate reasons to substantiate its actions. Thereafter, the grievant may show the offered reasons are pretextual. Hickman, supra. See Tex. Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981); Frank's Shoe Store v. W. Va. Human Rights Comm'n, 179 W. Va. 53, 365

S.E.2d 251 (1986); Hendricks v. W. Va. Dep't of Tax & Revenue, Docket No. 96-T&R-215 (Sept. 24, 1996); Runyon v. W. Va. Dep't of Transp., Docket Nos. 94-DOH-376 & 377 (Feb. 23, 1995).

6. Grievant has not met her burden of proof and established a prima facie case of discrimination and/or favoritism. 7. "Harassment" is defined under W. Va. Code § 18-29-2(n) as "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy, and professionalism."

8. Grievant has failed to prove by a preponderance of the evidence that she has been subjected to harassment. See Pauley v. Lincoln County Bd. of Educ., Docket No. 98- 22-495 (Jan.29, 1999).

9. "Mere allegations alone without substantiating facts are insufficient to prove a grievance." Baker v. Bd. of Directors/W. Va. Univ. at Parkersburg, Docket No. 97-BOT- 359 (Apr. 30, 1998); See Harrison v. W. Va. Bd. of Directors/Bluefield State College, Docket No. 93-BOD-400 (Apr. 11, 1995).

Accordingly, this grievance is **DENIED**.

Any party 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy ofthe 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.

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: October 17, 2002

Footnote: 1

At Level III and Level IV, Grievant indicated she wanted to be transferred, and she appeared to expect Marshall to take this action. Transfers at Marshall are employee directed; an employee applies for open positions until one is obtained. Grievant's supervisors have encouraged her to apply for positions, but have not always been able to recommend Grievant for these positions, when they are called for references. Additionally, the one position Grievant's supervisors said they would recommend her for, Grievant would not allow the prospective employer to call her supervisors.

Footnote: 2

There were no attachments. There was a stack of papers enclosed with the Level III hearing materials, but none of these documents had been admitted below. Grievantbelieved these documents had been admitted. It was clearly explained to Grievant that they had not, and if she wanted them admitted this could be done at Level IV. The process of how to get them admitted was also explained. Grievant did not admit the majority of these documents into the record.

Footnote: 3

Grievant appears to misunderstand the role of the undersigned Administrative Law Judge. In her post-hearing proposals she requested the undersigned to conduct an investigation or order an investigation by an outside party prior to issuing a Decision. Grievant also submitted additional documentation which she wished to be considered. As this evidence was not placed into the record at the hearing, it was not considered, especially since Grievant was informed at the close of the Level IV hearing that additional evidence could not be considered after the hearing was adjourned.

Footnote: 4

At the end of the pre-hearing conference, Grievant stated this grievance was on her suspension, which had occurred shortly before she had filed this grievance. The Statement of Grievance and Relief Sought stated nothing about a suspension as can be seen from page one, and the undersigned Administrative Law Judge was unaware until that moment Grievant had been suspended. Respondent asserted the grievance was only on gender and age discrimination. The undersigned Administrative Law Judge informed Grievant her grievance did not mention a suspension, that she could certainly address the issue at the start of the Level IV hearing, and the undersigned would review the record prior to the Level IV hearing to see if it could be inferred from the lower level record that her suspension was a part of the grievance. The undersigned did review the record, but Grievant did not raise the issue at hearing. Accordingly, the grievance was considered only on the grounds of discrimination, favoritism, and harassment.

At the Level III hearing, Grievant did not mention the term suspension at any point, but did refer to letters of criticism. See Findings of Fact 6, 8, & 9, infra. Grievant did not specify which letters or memos she was referring to. Grievant did not discuss suspension at Level IV.

Footnote: 5

Both sides placed several documents into the evidence that were written after the grievance was filed.

Footnote: 6

It is suggested to Respondent that if this is indeed the routine, that such information be provided to all employees.

Footnote: 7

There was no information on who this person is.

Footnote: 8

The United States Merit System Protection Board Handbook ("MSPB Handbook") set out these as 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).

Footnote: 9

The statutory definitions of discrimination and favoritism in the grievance procedure, encompass age and sex discrimination. See Hendricks v. W. Va. Dep't of Tax and Revenue, Docket No. 96-T&R-215 (Sept. 24, 1996).