ANNA RUTH LEWIS,

Grievant,

v. **Docket No. 02-49-162**

UPSHUR COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Anna Ruth Lewis, employed by the Upshur County Board of Education (UCBE) as a teacher's aide, filed a grievance directly to level four on June 7, 2002, as is permitted by W. Va. Code § 18-29-4, following a suspension and termination of her employment. Grievant seeks reinstatement, with back pay and interest, benefits, and seniority, retroactive to May 6, 2002, and removal of all references to the suspension and dismissal from her employment records. An evidentiary hearing was conducted in the Grievance Board's Elkins office on September 17, 2002, at which time Grievant was represented by John E. Roush, Esq., of WVSSPA, and UCBE was represented by Kelly J. Kimble, Esq., of Kay, Casto & Chaney. A second day was scheduled for hearing on February 14, 2002; however, upon convening it was determined that no further evidence was to be presented. The matter became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on or before March 3, 2002.

Background

UCBE Superintendent John T. Mattern advised Grievant on May 8, 2002, that she was suspended, without pay, from her position as kindergarten aide at Academy School for the remainder of the school year. This action was memorialized by Superintendent Mattern in a letter dated May 13, 2002, in which he stated: This will confirm our conversation of May 8, 2002, during which you provided the Upshur County Board of Education with an excuse for your absence from work for April 30 through May 6, 2002, signed by Keith Smith, P. A. This physician's certificate from the Buckhannon Medical Care was changed by you, as you indicated in our discussion, from a return to work on May 1, 2002, to one of May 6, 2002.

You told me that you called the office of Buckhannon Medical Care and got permission to change the dates because you were still ill. I called the Buckhannon Medical Center [sic] and spoke with Ellen Radabaugh, clerical coordinator, who had spoken with Dr. Andrew Talkington and Keith Smith, P.A. Dr. Smith indicated that he did not give you authorization to change the physician's certificate and Ms. Radabaugh told me that Dr. Tarkington extended your excuse for absence to include May 2, which would have meant that you should have returned to work on May 3, 2002. You did not return to work until May 6, 2002, and you did not notify Principal Adams that May 3 was your return to work date.

There are a few other excuses in your file that appear to have been altered. I am turning over the April 30 excuse along with the others in question to the Prosecuting Attorney for his review and possible investigation.

Accordingly, this will confirm that you have been suspended from your position of kindergarten aide at Academy School for the remainder of the school year without pay. This suspension will begin on May 9, 2002, and will continue through June 10, 2002. This action is being taken by me, as Superintendent, pursuant to West Virginia Code § 18A-2-7 and § 18-4-10.

Based upon the fraudulent excuse provided by your dated April 30 and May 2 and further investigation of past excuses that appear to have been altered, I will consider recommending to the Board of Education, County of Upshur, your dismissal based upon § 18A-2-8 for immorality and willful neglect of duty. . . .

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

Findings of Fact

1. Grievant has been employed by UCBE for twenty-three years, and has held the classification of Aide at all times pertinent to this decision. There is no evidence that Grievant has ever been subject to any formal discipline by UCBE prior to this event.

2. Grievant was treated at Buckhannon Medical Care on April 30, 2002, at which time she was provided a physician's certificate excusing her from work due to illness from April 30 to May 1, 2002. The signature of Keith Smith, P. A. was on this form.

3. On May 6, 2002, Grievant submitted the physician's statement, which Grievant had altered to revise the return date to May 6, 2002. Grievant had previously exhausted her leave for the 2001-2002 school year, and was required to provide a physician's statement when she was absent more than three consecutive days, pursuant to UCBE policy.

4. Upon inquiry by UCBE, Buckhannon Medical Care confirmed that “Dr. Talkington looked through her chart and found where he had excused her 5/1/02 and 5/2/02.” Pursuant to a call from Superintendent Mattern on May 8, 2002, Dr. Talkington faxed him another statement stating Grievant was to be “off work 5/1 and 5/2/02.”

5. Buckhannon Medical Care patient phone call records establish that Grievant called on May 2, 2002, to advise the medication she had been given was not working, and she would like a different prescription called into her pharmacy. The message also notes that Grievant “needs work excuse for yesterday and today.”

6. By letter dated May 30, 2002, Dr. Talkington advised Superintendent Mattern, in part:

The patient reports she verbally requested off work for 5/3/02 from our nurse at that time [she called for an extension of 5/1 and 2]. The patient reports she would have already been offwork Saturday and Sunday, 5/4/02 and 5/5/02, and she would have then returned to work on 5/6/02.

The patient admits to me, changing the original 4/30/02 work excuse to return to work on 5/6/02 herself. I think there could have been a honest misunderstanding between the patient, my staff, and myself regarding the off work slip for 5/3/02, and the patient being allowed to change the original work excuse herself.

7. Morgantown Ear, Nose & Throat (ENT) Clinic, Inc., issued two leave slips for Grievant in 1999. The first, dated February 22, 1999, states that Grievant would return to work on March 12, 1999. The return to work date was originally March 1, and a 2 had been inserted to amend the date to March 12. The second form, dated March 5, 1999, indicates that Grievant was under the doctor's care from March 1 through March 8, 1999, her return to work date.

8. A phone message from the ENT Clinic records, dated March 4, 1999, establishes that Grievant called and requested “a work slip for this week. 3-1-99 - 3-8-99,” and that it was sent to her home. Grievant did not submit this excuse, but did submit the one dated February 22, 1999.

9. Grievant submitted a physician's statement from theTri-County Health Clinic, Inc., dated

October 6, 1998, to UCBE indicating that she could return to work on October 12, 1998. The statement had originally provided that Grievant could return to work on October 7, 1998; however, Grievant changed the date after calling the Clinic and advising them she did not feel well enough to go to work that week. Superintendent Mattern did not have access to the information from the Clinic that Grievant had called, and did not base his recommendation for disciplinary action on that excuse. 10. Following an evidentiary hearing UCBE voted to accept Superintendent Mattern's recommendation that Grievant's employment be terminated, effective June 4, 2002.

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. Dep't 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.

UCBE argues that the evidence does not support Grievant's claim that she was excused from work on May 3, 2002, but to the contrary, Grievant's medical chart and the clinic's telephone records indicate that she neither requested, nor was authorized, to be off work that day. Respondent further argues that the February 22, 1999, ENT leave slip appears to have an altered return to work date from March 1, to March 12. Even considering the second leave slip which was never submitted but provided Grievant an excuse through March 8, the amended form extended Grievant an additional three days off work beyond that confirmed by the physician's office. UCBE argues that Grievant's actions constitute willful neglect of duty because she knew that Policy required her to have a medical release signed by a doctor, yet she knowingly and intentionally submitted formswhich were amended, without the doctor's signature. Further, UCBE asserts that Grievant engaged in immorality by forging the medical excuses. (See footnote 1) UCBE concludes that Grievant's testimony is not credible in light of the evidence presented, and that mitigation is not warranted in this case.

Grievant admits to having altered the May 2002 leave slip, but only with the doctor's permission, which she understood to include May 3, 2002. Grievant states that she cannot recall the events

regarding the 1999 ENT leave slip, but indicated a general understanding that changing the forms was permissible with the doctor's permission. She denies that she engaged in immorality since she had no intent to falsify the documents because she was actually ill. Neither did she engage in willful neglect of duty, Grievant argues, since there was no policy or rule against such actions for her to knowingly and intentionally violate. Grievant asserts that the suspension and dismissal were in fact retaliation for a grievance which she was planning to file. Finally, Grievant opines that termination is too severe a penalty for her exercise of questionable judgment.

"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)." Graham v. Putnam County Bd. of Educ., Docket No. 99-40-206 (Sep. 30, 1999). W. Va. Code §18A-2-8 provides that a board may suspendor 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.

"Immorality is an imprecise word which means different things to different people, but in essence it also connotes 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.' [Citation omitted.]" Golden v. Bd. of Educ. of County of Harrison, 169 W. Va. 63, 67, 285 S.E.2d 665, 668 (1981); Snodgrass v. Wetzel County Bd. of Educ., Docket No. 97-52-384 (Dec. 15, 1997); Harry v. Marion County Bd. of Educ., 203 W. Va. 64; 506 S.E.2d 319 (1998). "'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 v. Kanawha County Bd. of Educ., Docket No. 94-20-1143 (June 28, 1995), citing Youngman v. Doerhoff, 890 S.W.2d 330 (Mo. 1994)." Wahl v. Mineral County Bd. of Educ., Docket No. 98-28-175 (Sep. 14, 1998).

To prove willful neglect of duty, the employer must establish that the employee's conduct constituted a knowing and intentional act, rather than a negligent act. Williams v. Cabell County Bd. of Educ., Docket No. 95-06-325 (Oct. 31, 1996); Jones v. Mingo County

Bd. of Educ., Docket No. 95-29-151 (Aug. 24, 1995); Hoover v. Lewis County Bd. of Educ., Docket No.93-21-427 (Feb. 24, 1994). Willful neglect of duty encompasses something more serious than incompetence. Bd. of Educ. v. Chaddock, 183 W. Va. 638, 398 S.E.2d 120, 122 (1990); Sinsel v. Harrison County Bd. of Educ., Docket No. 96-17-219 (Dec. 31, 1996). Willful neglect of duty may be defined as an employee's intentional and inexcusablefailure to perform a work-related responsibility. Adkins v. Cabell County Bd. of Educ., Docket No. 89-06-656 (May 23, 1990).

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 United States Merit System Protection Board 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). The Grievance Board has applied these factors in many cases, and considers the following in assessing 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's information. See Holmes v. Bd. of Directors/W.Va. State College, Docket No. 99-BOD-216 (Dec. 28, 1999); Perdue, supra.

In the present matter, Grievant's testimony is found to be credible. The evidence establishes that she called Buckhannon Care Center and requested an extension of leave,the only question is for how long. Office records indicate that Grievant only requested May 1 and 2. However, Grievant's testimony at the Board hearing was that she called the office on Thursday to report the medication she had been given was not helping, and that she “also told the receptionist that I did not feel that I was going to be well enough to go to work on Friday, being May the 3rd, I believe, and told her that I would need to change my excuse. She never said you may or you may not.” Accepting Grievant's

representation of the conversation, there was no clear request on her part for a revised return to work date, and the receptionist may not have understood that was what she needed. It is logical that if Grievant called on Thursday to report the medication had not worked, she would not feel ready to return to work on Friday.

Evidence also establishes that Grievant had called Tri-County Medical and Morgantown ENT and asked for extentions of sick leave in the past. It does appear that she altered the February 22, 1999, document, changing the return to work date from March 1, to March 12. While the records substantiate that Grievant had been granted an extention to March 8, there is no evidence that she requested any time thereafter. Because Grievant has no recollection of this event, it may only be concluded that she made the change without calling for approval on that occasion. However, with or without verbal confirmation, altering the leave slips was not the proper manner to verify her illness to UBCE, and it is not clear why Grievant decided it was permissible to do so.

In consideration of the evidence in its entirety, the undersigned finds that Grievant did not engage in immorality or willful neglect of duty because she was in fact ill when she used the sick leave, and secured the physician statements required by county policy forabsences in excess of three days. Grievant has acted in an unacceptable manner by altering the forms rather than securing new ones.

Grievant concedes that she exercised questionable judgment, but argues that dismissal is too severe a penalty for her conduct. This Grievance Board has determined that mitigation of the penalty imposed by an employer constitutes extraordinary relief, and is granted only when there is a showing that a particular punishment is so clearly disproportionate to the offense committed that imposition of such a penalty involves an abuse of discretion, Hosaflook v. West Virginia Division of Corrections, Docket Nos. 98-CORR-446/447 (Jan. 20, 2000), or the penalty is so harsh under the circumstances, its imposition by the employer involves an arbitrary and capricious act. Frantz v. W. Va. Dep't of Health & Human Resources, Docket No.99-HHR-096 (Nov. 18, 1999). Lilly v. Dep't of Health & Human Resources, Docket No.00-HHR-093 (May 8, 2000). See Wilkerson v. Lincoln County Bd. of Educ., Docket No.99-22-420 (Mar. 27, 2000). Considerable deference is afforded to the employer's determination of the seriousness of the employee's
conduct and the prospects for rehabilitation. Overbee v. Dep't of Health & Human Resources, Docket No. 96-HHR-183 (Oct. 3, 1996).

"When considering whether to mitigate the punishment, factors to be considered include the

employee's work history and personnel evaluations; whether the penalty is clearly disproportionate to the offense proven; the penalties employed by the employer against other employees guilty of similar offenses; and the clarity with which the employee was advised of prohibitions against the conduct involved." Phillips v. Summers County Bd. of Educ., Docket No. 93-45-105 (Mar. 31, 1994). See Austin v. Kanawha County Bd. of Educ., Docket No. 97-20-089 (May 5, 1997). Altering the physicians' statements was improper. However, also to be considered is Grievant's long term employment with UCBE, during which she has received no prior formal discipline. Also, in February 2002 Grievant had exhausted her leave, and did not collect a salary for the days she was off work. While UCBE was still responsible for other employment-related costs, they would be minimal for the one day which is in contention. Consideration is given to the fact that Grievant's claim that she was ill on the days she was absent was found to be credible, and was not challenged by UCBE. Finally, Grievant appears to now understand what is expected of her, and there should be no future occurrences of this type.

Grievant's claim that her dismissal was taken in reprisal for her initiation of the grievance procedure is not supported by the evidence. W. Va. Code § 18-29-2(p) defines "reprisal" as "the retaliation of an employer or agent toward a grievant or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it." A grievant claiming retaliation may establish a prima facie case of reprisal by establishing:

(1) that he engaged in protected activity, e.g., filing a grievance;

(2) that he was subsequently treated in an adverse manner by the employer or an agent;

(3) that the employer's official or agent had actual or constructive knowledge that the employee engaged in the protected activity; and

(4) that there was a causal connection (consisting of an inference of a retaliatory motive) between the protected activity and the adverse treatment.

Conner v. Barbour County Bd. of Educ., Docket Nos. 93-01-543/544 (Jan. 31, 1995). See Frank's Shoe Store v. W. Va. Human Rights Comm'n, 179 W. Va. 53, 365 S.E.2d 251 (1986); Fareydoon-Nezhad v. W. Va. Bd. of Trustees/Marshall Univ., Docket No. 94-BOT-088 (Sept. 19, 1994); Webb v. Mason County Bd. of Educ., Docket No. 89-26-56 (Sept. 29, 1989).

This charge requires little discussion. The evidence shows that Grievant had experienced ongoing

difficulties with the teacher she worked with, and had discussed the matter a number of times with her principal. An informal conference had been scheduled, but was postponed due to Grievant's absence. Superintendent Mattern testified that he was not aware that an informal conference had been requested when he suspended Grievant. Thus, no grievance had been filed and Grievant has failed to demonstrate reprisal.

In addition to the foregoing findings of fact and discussion, the following conclusions of law are appropriate.

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). 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 beproved is more probable than not.” Black's Law Dictionary (6th ed. 1991), Leichliter v. W. Va. Dep't 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.

2. "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)." Graham v. Putnam County Bd. of Educ., Docket No. 99-40-206 (Sep. 30, 1999).

3. W. Va. Code §18A-2-8 provides that 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.

4. "Immorality is an imprecise word which means different things to different people, but in essence it also connotes 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.' [Citation omitted.]" Golden v. Board of Education of County of Harrison, 169 W. Va. 63, 67, 285 S.E.2d 665, 668 (1981); Snodgrass v. Wetzel County Bd. of Educ., Docket No. 97-52-384 (Dec. 15, 1997); Harry v. Marion County Bd. of Educ., 203 W. Va. 64; 506 S.E.2d 319 (1998). "'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 v. Kanawha County Bd. of Educ., Docket No.94-20-1143 (June 28, 1995), citing Youngman v. Doerhoff, 890 S.W.2d 330 (Mo. 1994)." Wahl v. Mineral County Bd. of Educ., Docket No. 98-28-175 (Sep. 14, 1998).

5. To prove willful neglect of duty, the employer must establish that the employee's conduct constituted a knowing and intentional act, rather than a negligent act. Williams v. Cabell County Bd. of Educ., Docket No. 95-06-325 (Oct. 31, 1996); Jones v. Mingo County Bd. of Educ., Docket No. 95-29-151 (Aug. 24, 1995); Hoover v. Lewis County Bd. of Educ., Docket No.93-21-427 (Feb. 24, 1994). Willful neglect of duty encompasses something more serious than incompetence. Bd. of Educ. v. Chaddock, 183 W. Va. 638, 398 S.E.2d 120, 122 (1990); Sinsel v. Harrison County Bd. of Educ., Docket No. 96-17-219 (Dec. 31, 1996). Willful neglect of duty may be defined as an employee's intentional and inexcusable failure to perform a work-related responsibility. Adkins v. Cabell County Bd. of Educ., Docket No. 89-06-656 (May 23, 1990).

6. 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).

7. Factors to be considered when assessing a witness's testimony include: 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, theadministrative 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. See Holmes v. Bd. of Directors/W.Va. State College, Docket No. 99-BOD-216 (Dec. 28,

1999); Perdue, supra.

8. UCBE failed to prove that Grievant engaged in immorality or willful neglect of duty, but did prove that she improperly amended physician's statements after calling the office for permission.

9. Mitigation of the penalty imposed by an employer constitutes extraordinary relief, and is granted only when there is a showing that a particular punishment is so clearly disproportionate to the offense committed that imposition of such a penalty involves an abuse of discretion, Hosaflook v. West Virginia Division of Corrections, Docket Nos. 98-CORR-446/447 (Jan. 20, 2000), or the penalty is so harsh under the circumstances, its imposition by the employer involves an arbitrary and capricious act. Frantz v. W. Va. Dep't of Health & Human Resources, Docket No.99-HHR-096 (Nov. 18, 1999). Lilly v. Dep't of Health & Human Resources, Docket No.00-HHR-093 (May 8, 2000). See Wilkerson v. Lincoln County Bd. of Educ., Docket No.99-22-420 (Mar. 27, 2000). Considerable deference is afforded to the employer's determination of the seriousness of the employee's conduct and the prospects for rehabilitation. Overbee v. Dep't of Health & Human Resources, Docket No. 96-HHR-183 (Oct. 3, 1996).

10. "When considering whether to mitigate the punishment, factors to be considered include the employee's work history and personnel evaluations; whether the penalty is clearly disproportionate to the offense proven; the penalties employed by theemployer against other employees guilty of similar offenses; and the clarity with which the employee was advised of prohibitions against the conduct involved." Phillips v. Summers County Bd. of Educ., Docket No. 93-45-105 (Mar. 31, 1994). See Austin v. Kanawha County Bd. of Educ., Docket No. 97-20-089 (May 5, 1997).

11. Mitigation is appropriate in this case considering Grievant's length of employment, clean disciplinary record, a finding that her testimony was credible, and that her actions resulted in only minimal cost to UCBE.

12. Grievant failed to prove the dismissal was motivated by reprisal, defined in W. Va. Code § 18-29-2(p) as "the retaliation of an employer or agent toward a grievant or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it."

Accordingly, this grievance is **GRANTED**, and the Board is hereby ORDERED to reinstate Grievant as an Aide, with all back pay and benefits to which she is entitled from the effective date of the dismissal. The suspension is upheld as appropriate discipline for Grievant's failure to provide

proper documentation of sick leave.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Upshur 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: MARCH 20, 2002 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1 *In its proposed findings of fact and conclusions of law UCBE additionally argues that Grievant's conduct constitutes insubordination. Since that charge was not included in the dismissal letter, it will not be considered at this time.*