CHRISTINA LYNN,

Grievant,

v. Docket No. 04-MCHD-102

MONONGALIA COUNTY HEALTH DEPARTMENT,

Respondent.

D E C I S I O N

Christina Lynn ("Grievant"), employed by the Monongalia County Health Department ("MCHD") as an Office Assistant/Home Health Aide, filed an expedited grievance to level four, as is permitted by W. Va. Code § 29-6A-4 (e)(2), on March 12, 2004, following her dismissal from employment on March 3, 2004. Grievant requests reinstatement, back pay, attorney fees, and other appropriate relief. An evidentiary hearing was conducted in the Grievance Board's Westover office on January 19, 2004. Grievant was represented by Darrell W. Ringer, Esq., and MCHD was represented by Phillip M. Magro, Assistant Prosecuting Attorney. The grievance became mature for decision upon receipt of proposed finding of fact and conclusions of law filed by the parties on or before May 18, 2004.

The following findings of fact are made based upon a preponderance of the evidence.

Findings of Fact

1. Grievant has been employed by MCHD since May 1994, and held the position of Office Assistant/Home Health Aide at all times pertinent to this grievance. Grievant was assigned to each classification half-time. 2. Grievant was absent from her employment on March 1, and 2, 2004, due to the illness of her two year old son. Grievant's spouse had been injured and was also at home.

3. On Wednesday, March 3, 2004, Grievant reported to work and found that her patient schedule consisted of some of those missed on Monday and Tuesday, in addition to Wednesday's patients. Grievant was scheduled to see five patients in Monongalia and Marion Counties that day.

4. Grievant was unhappy that she did not have a back-up for the days she was absent,

and was concerned whether she could possibly see all five patients within an eight hour work day. Grievant expressed her concerns to the Program Manager for Enhanced Health Services, Shelley Welch, who advised her that she was not expected to do any office work that day, but was expected to see the five patients.

5. Grievant advised Ms. Welch that she was going to resign, and left her office. Grievant returned to Ms. Welch's office several minutes later with an uncompleted resignation form in her hand, and stated that she was going home. Grievant did not submit the resignation form. Ms. Welch asked Grievant if she was quitting, and Grievant stated that she was not. Ms. Welch requested that Grievant not leave until she spoke with Personnel Specialist Kathy Messenger.

6. Ms. Messenger advised Ms. Welch that if Grievant chose to go home, it would be considered job abandonment. Ms. Messenger then contacted Assistant MCHD Director Linda Chico who confirmed her position.

7. While waiting as requested, Grievant restated that she did not believe it was fair that nurses had backups for visits and home care aides did not. She also stated thatshe did not feel well, and was too upset to see patients. Grievant was advised by Ms. Welch that she had intended to work until she saw her patient schedule, and if she left it would be considered job abandonment.

8. Grievant then stated that she did not understand why MCHD could not have contract help to see patients when she was not there. Ms. Messenger advised Grievant that she was aware of the situation when she accepted the position. Grievant was subsequently given ten minutes to decide whether she would see the patients, or leave.

9. Grievant decided that she would see the patients, and began preparing the necessary paperwork. While Ms. Chico, Ms. Welch, and Ms. Messenger were discussing whether Grievant had verbally resigned, Grievant advised Ms. Welch that Mr. Lynn had called to report that their son was vomiting, and had diarrhea and a fever. Due to his injured arm, he could not care for the child, and she needed to go home.

10. Ms. Welch told Grievant that she could leave if she so chose, and that they would meet the following morning to determine whether disciplinary action, up to dismissal, would be taken. Grievant left MCHD at 10:10 a.m.

11. On March 4, 2004, Grievant reported to work and was provided a copy of a letter

from Ms. Chico, dated March 3, 2004, accepting her "verbal resignation" of March 3, 2004. The original letter was mailed to Grievant on March 3, 2004.

12.

Ms. Chico is authorized to accept a verbal resignation; however, Ms. Welch is not authorized to accept such resignations.

Discussion

Notwithstanding the frequent references to job abandonment, Grievant was not dismissed for that reason. Based upon the March 3, 2004 letter from Ms. Chico, the issuepresented here is whether Grievant resigned. 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.

Grievant testified she was tired from caring for her ill child the previous two days, and was overwhelmed when she saw her patient schedule. Although she had been told that she was not expected to complete any Office Assistant duties that day, she still did not believe that it was fair because that work was continuing to accumulate. Grievant recalled stating "you'll be getting my resignation," but did not complete a resignation form, and did not believe she had resigned. MCHD asserts that it properly accepted Grievant's verbal resignation.

"A resignation is, by definition, a voluntary act on the part of an employee seeking to end the employer-employee relationship. Smith v. W. Va. Dep't of Corrections, Docket No. 94-CORR-1092 (Sept. 11, 1995). See Welch v. W. Va. Dep't of Corrections, Docket No. 95-CORR-261 (Jan. 31, 1996). As a general rule, an employee may be bound by her verbal representations that she is resigning when they are made to a person or persons with the authority to address such personnel matters. See, Welch, supra; Copley v. Logan County Health Dep't, Docket No. 90-LCHD-531 (May 22, 1991). The representations must be such that a reasonable person would believe that the employee intended to sever his relationship with the employer." Hale-Smith v. Mingo County Bd. of Educ., Docket No. 98-29-075 (Sept. 30, 1998). MCHD's interpretation of events is not entirely without basis. Grievant clearly did not want to perform the duties as assigned to her on March 3. After stating her objection, Grievant

was advised that her schedule would not change. Grievant, by her own admission, indicated that she would be quitting her employment. Considering the disruption she was causing, and that her behavior was perilously close to insubordination, her resignation may have been welcomed at the time. However, in both her written statement of March 3, 2004, and her level four testimony, Ms. Welch quoted Grievant as saying, "I'm going to resign." This statement advises that an action will be taken at an undisclosed point in the future, it does not state an intent to sever the employment relationship at that specific time. Grievant's lack of intent to resign is further demonstrated by the fact that she proceeded to prepare for her home visits. Even if the comment should be construed as a verbal resignation, the statement was not made to an individual authorized to accept it. A third party may not forward a verbal resignation to one authorized to receive it. Welch, supra.

Mr. Lynn's call for help may reasonably be viewed with a suspicious eye by MCHD administrators, given the timing of his request for help was so closely made following Grievant's complaints. However, the call appears to have been legitimate, as evidenced by a written statement provided to MCHD, by Dianne M. Jones, R.N., which stated in part:

> **At one point, [Grievant] came back to the nurse's station she was teary eyed and went over to the file cabinet and pulled out a resignation request form and proceeded to fill it out. When I saw what she was doing I said 'Oh, Christina are you sure you want to do that? She didn't respond. I left the nurses station, transferring the phones to my office. A short time later I answered the phone and it was Christina's husband asking to speak to her. I walked out to the Nurses station and she wasseated there. I told her she had a call from her husband and she took the call.**

Ms. Jones was not called as a witness at the level four hearing, and the information is accepted as credible absent any objection. This statement confirms that Grievant's husband in fact did call her within the time frame of the morning events. While the timing of the call created an unfavorable appearance for Grievant, it appears to have been an unfortunate coincidence.

Finally, MCHD asserts that Grievant did not complete a leave form prior to departing work on March 3, 2004. Grievant responds that the form was completed and placed in Ms. Welch's mailbox, as was office practice. Lila Travenski, a coworker, testified that Grievant had filled out a leave slip, and had asked her the date. Ms. Chico testified that completing a form prior to

leaving work is technically required, but not stringently enforced, depending on the circumstances of each case. Whether the form was completed in advance or not, MCHD did not dismiss Grievant, and this issue requires no further consideration.

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 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. 2. "A resignation is, by definition, a voluntary act on the part of an employee seeking to end the employer-employee relationship. Smith v. W. Va. Dep't of Corrections, Docket No. 94-CORR-1092 (Sept. 11, 1995). See Welch v. W. Va. Dep't of Corrections, Docket No. 95-CORR-261 (Jan. 31, 1996). As a general rule, an employee may be bound by her verbal representations that she is resigning when they are made to a person or persons with the authority to address such personnel matters. See, Welch, supra; Copley v. Logan County Health Dep't, Docket No. 90-LCHD-531 (May 22, 1991). The representations must be such that a reasonable person would believe that the employee intended to sever his relationship with the employer." Hale-Smith v. Mingo County Bd. of Educ., Docket No. 98-29-075 (Sept. 30, 1998).

3.

Grievant did not verbally resign from her employment at MCHD.

Accordingly, the grievance is GRANTED, and MCHD Ordered to reinstate Grievant to the position of Office Assistant/Home Health Care Aide, with back pay and benefits. **(See footnote 1)**

Any party or the West Virginia Division of Personnel 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

EmployeesGrievance 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: JUNE 14, 2004 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1 ***Grievant's request for attorney fees may not be granted at this level. Snodgrass v. Kanawha County Bd. of Educ., Docket No. 97-20-007 (June 30, 1997).***