THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

PATRICIA WEBB,

Grievant,

v. **Docket No. 06-HHR-139**

Sue Keller

Senior Administrative Law Judge

DEPARTMENT OF HEALTH & HUMAN RESOURCES/

BUREAU FOR CHILDREN & FAMILIES,

Respondent.

D E C I S I O N

Patricia Webb ("Grievant"), employed by the Department of Health & Human Resources ("DHHR") as an Economic Service Worker in the Bureau for Children & Families, filed a grievance at level two following her dismissal effective March 22, 2006, for unsatisfactory work performance. For relief, Grievant seeks "to be made whole in all ways." The grievance was denied at levels two and three, and appeal to level four was made on May 1, 2006. The matter was scheduled for hearing; however, DHHR counsel B. Allen Campbell, Senior Assistant Attorney General, and Grievant, representing herself, later agreed to submit the grievance for decision based on the lower-level record. Final written submissions were filed on or before October 11, 2006, and the grievance was transferred to the undersigned on November 13, 2006.

The following facts have been derived from a preponderance of the credible evidence made part of the level three record.

Findings of Fact

___1. Grievant has been employed by DHHR as an Economic Service Worker ("ESW") assigned to the Fayette County office of the Bureau for Children & Families, at all times pertinent to this grievance.

2. Grievant's performance appraisal for the period of September 2002 through August 2003, reflected ratings of “Needs Improvement” in sixteen of twenty-three factors. Comments included on the evaluation included:

- At this time, Ms. Webb is unable to learn or apply new skills. She is able to maneuver RAPIDS but has not maintained her caseload according to the Department goals.

- Ms. Webb has not been performing her duties according to guidelines. She only meets minimally with clients. After reviewing her work in the month of March, I found that she was only doing minimal work. She is unable to take information on her own to determine what actions should be taken.

- Patty is not organized in her work. Her workspace is messy. A check on her computer showed that she saved information on her desktop that was not needed and inappropriate.

3. Grievant's performance appraisal for 2003-2004 showed a decline with seventeen of twenty-three categories rated as “Needs Improvement.” Under the “Summary Comments” section of the form, it was noted that:

[Grievant] has been provided both oral and written instructions on how she is expected to proceed in the job assignment. She has failed to follow these basic instructions. I have asked her for input on how we can work together and make the necessary changes. She makes no suggestion or changes to improve her work performance. Length of time with clients during interviews, inability to complete phone calls in a timely manner, failure on her part of the application/review process and place request for information in mail system, to make or complete case comments at time of applications, to respond to supervisory reviews, unwillingness to work with supervisor to make improvements, failure to turn in work as required of new employees, failure to turn in contact sheets and her applications/reviews on a daily basis, hasnot completed any of the assigned peer reviews, SCA applications were reassigned to coworkers because she was not processing, have resulted in a job performance that is unsatisfactory.

Grievant's supervisor also commented that Grievant was disorganized, maintained a “messy” workspace, and failed to clear her computer of unneeded and inappropriate data.

4. By early 2005, Grievant's work continued to deteriorate to the point that she was limited to seeing clients three days a week. She was not required to provide services at any agency

outstations, nor was she assigned phone duty, due to her inability to promptly respond or transfer the calls. Her error rate on forms that were completed was at 70%, while 95% is the minimum acceptable level. She required much more time to complete her work than other ESWs, and had not completed some duties, such a peer reviews at all. Grievant's performance affected the ability of other workers to complete their duties, and was having a negative impact on office morale.

5. Stacey Brown, Economic Service Supervisor, issued Grievant a “Corrective Action Plan” on April 5, 2005. This four-page document set forth areas which were deficient, and provided explicit direction for their correction within thirty days. The Plan included the following:

- Because Grievant had been observed leaving the office with office items, including documents with case information, she was directed not to remove any papers from any where in the office that were not part of a case she was assigned. Documents from other units and other case workers' files had also been found in and on Grievant's desk. She was directed not to remove papers from printers or other source in any other Unit.

- Grievant was directed to turn in her work for the day along with a contact sheet, by 4:00 p.m. This was to include mail, applications, screening forms, and medical review team information. This work was to be reviewed to ensure Grievant was following correct procedures and policies, as well as provide for tracking the amount of time spent on each case.

- Grievant was directed to complete six reviews or applications per day. While six reviews was the average number completed by ESWs, Grievant had been completing about half that number.

- ESWs are assigned to mail duty two days per month. All mail received by the office on the assigned day is to be competed within ten calendar days. The mail is also to be kept in the mail folder until it is completed. Grievant had not been meeting the due date for this assignment, and had not been keeping the mail in the proper location, making it difficult for other workers to locate.

- Grievant had failed to check her voice messages for days or weeks at a time. Grievant was directed to forward any voice messages which had inadvertently been left on her machine and to check her voice messages regularly.

- Grievant was reminded that she had failed to turn in any peer reviews for February or March. Five peer reviews are to be submitted monthly.

- Grievant was directed to keep her desk in an orderly manner because most client interviews were conducted there. Twenty three cans and six bottles of soda had been found in and around her desk along with dirty cups, napkins, and plates with leftover food. Additionally, documents from other cases were on her desktop, exposing confidential information.

- Grievant was directed that if she arrived late, she was not allowed to adjust her time without permission from her supervisor. Due to difficulty with her failing to leave work at the end of the day, or returning later that evening, Grievant was directed to properly use her swipe card to gain entry into the building. The card was part of a security system which also monitored attendance. Grievant had frequently forgotten her swipe card and entered the building with another employee, in violation of office policy. Grievant was advised that if she arrived at work with no swipe card, she must enter from the front door and ask for a supervisor to gain entry. She was also not to be in building at other times without permission.

- Grievant had failed to review GroupWise (e-mails and calendar alerts) and had once accrued over 3000 unread messages. She was directed to check these twice daily.

- Grievant was directed to complete her daily time sheet using the computer system, and to turn her report in promptly. Failure to complete her time sheet had delayed Ms. Brown's ability to file the payroll report when due.

5. On May 26, 2005, Ms. Brown issued Grievant a verbal reprimand for failing to comply with the corrective action plan. Ms. Brown found that Grievant failed to complywith the plan directives relating to submitting daily contact sheets, completing peer reviews,
completing six reviews/applications per day, produce work at the expected accuracy rate, and to exit the building at the end of her shift.

6. The Corrective Action Plan was extended for an additional thirty days, and Grievant was advised that failure to improve would result in further disciplinary action.

7. On July 15, 2005, Ms. Brown issued Grievant a written reprimand for her continued substandard performance and failure to comply with the improvement plan. Ms. Brown found that Grievant continued to improperly enter and exit the building, completed her work at approximately 40% accuracy rate, completed only three reviews each day, failed to submit daily contact sheets for

all case activity, had completed mail for only one of ten days she was assigned, did not submit peer reviews for April and May, worked unauthorized overtime, failed to forward phone calls, and check voice messages.

8. Grievant was advised that the improvement plan would remain in effect and that the written reprimand would serve as the final warning of impending disciplinary action

9. A five-day suspension was imposed on Grievant, effective October 17, 2005, when she failed to comply with the improvement plan as evidenced by her failure to submit work and contact sheet for daily review, continued failure to use swipe card, failure to increase client interviews to office average, and her failure to take required Web CT courses.

10. On October 24, 2005, Ms. Brown again advised Grievant that upon return from the suspension she was expected to:

-Complete five to six applications or reviews each day

-Turn in all work and contact sheets at the end of each work day

-Complete five peer reviews each month -Work on her alerts weekly

-Submit timesheet and peer reviews on second work day of each month

-Complete assigned mail within ten days

-Enter and exit building properly, and not re-enter building after normal work hours

-Maintain a neat and orderly work area-do not keep case files or mail in work area

-Take all WEB CT courses by October 31, 2005.

11. Grievant was suspended for ten working days beginning December 16, 2005, when her performance still did not improve.

12. Mary Ann Dean, Interim Regional Director, notified Grievant by letter of March 6, 2006, that her dismissal would be effective March 22, 2006. The reason for the action was Grievant's continued unsatisfactory work performance.

Issues and Arguments

DHHR asserts Grievant's work performance continued to be unsatisfactory despite numerous counselings, warnings, and a Corrective Action Plan. Because Grievant could not or would not perform the duties of the position, there was no alternative but dismissal. Grievant argued that she had been given an unreasonable job assignment, and that the constant monitoring of her activities

created a hostile work environment. Grievant additionally explained that she did not check her e-mail daily because she heard other workers discussing theirs, and so knew what was in them. She also admitted that she had taken paper home to use as scrap paper.

Discussion

The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. *W. Va. Code* § 29-6A-6; *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988). "The preponderance standard generally requiresproof 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 Res*., Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. *Id.*

State employees who are in the classified service can only be dismissed for "good cause," meaning "misconduct of a substantial nature directly affecting the rights and interest of the public, rather than upon trivial or inconsequential matters, or mere technical violations of statute or official duty without wrongful intention." Syl. Pt. 1, *Oakes v. W. Va. Dep't of Finance & Admin*., 164 W. Va. 384, 264 S.E.2d 151 (1980); *Guine v. Civil Serv. Comm'n*, 149 W. Va. 461, 141 S.E.2d 364 (1965); See also Section 12.2 and .3, Administrative Rules, W. Va. Div. of Personnel.

DHHR has clearly demonstrated Grievant failed to perform the most essential duties of her position in a satisfactory manner. Grievant apparently was knowledgeable of the mechanics of her duties, but failed to complete a minimum number of case reviews, timely respond to mail and telephone inquiries, or complete peer reviews. The work which she did accomplish revealed an error rate significantly higher than acceptable. Accordingly, DHHR has proven that Grievant's work was unsatisfactory in both quality and quantity, and did not improve despite numerous efforts.

The evidence does not support Grievant's claims that her workload was unreasonable, or that she was working in a hostile environment. To the contrary, Grievant was expected to complete only the average amount of work produced by her coworkers. In fact, she completed approximately half the amount of reviews, etc., performed by the other ESWs. Efforts to assist Grievant is improving her performance did not create ahostile work environment. The fact that her work was monitored, and an improvement plan was assigned, were simply efforts to promote her production to the minimum acceptable level. While Grievant may have felt stressed, the administrators acted appropriately in

their efforts to remedy her unsatisfactory performance. *See: Rider v. BOT/Marshall Univ.*, Docket No. 99-BOT-348 (Apr. 7, 2000).

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. The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. *W. Va. Code* § 29-6A-6; *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988).

2. DHHR has proven by a preponderance of the evidence that Grievant was dismissed for unsatisfactory performance despite several efforts to correct her actions.

3. The evidence does not establish that Grievant was assigned an unreasonable workload, or that efforts to improve her performance constituted a hostile work environment.

Accordingly, the grievance is **DENIED.**

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 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 11, 2006

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE