THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

ANDY RAY SIMPSON,
Grievant,

v. **DOCKET NO. 2011-1326-WVU**

WEST VIRGINIA UNIVERSITY,
Respondent.

DECISION

Grievant, Andy Ray Simpson, filed this grievance against his employer, West Virginia University, on March 21, 2011, after he was notified that his employment was being terminated. The statement of grievance reads, "[t]ermination d[ue] to ra[cial] statement." As relief Grievant sought to have the dismissal reversed and to be returned to his job, with "back pay and benefits."

A conference was held at level one on April 11, 2011, and a level one decision denying the grievance was issued on May 2, 2011. Grievant appealed to level two, and a mediation session was held on September 28, 2011. Grievant then appealed to level three, and a level three hearing was held before the undersigned Administrative Law Judge on February 24, 2012, in the Grievance Board's Westover office. Grievant appeared *pro se*, and Respondent was represented by Samuel R. Spatafore, Assistant Attorney General. This matter became mature for decision on receipt of Respondent's Proposed Findings of Fact and Conclusions of Law, on March 29, 2012. Grievant declined to submit written proposals.

Synopsis

Grievant's employment was terminated by Respondent based on allegations that Grievant had made racial comments at the workplace to an African American who was employed as a temporary worker. Respondent chose not to present as witnesses those who had reported they had heard the comments, or the former employee to whom the comments were allegedly directed, relying instead on the hearsay report of the person who investigated the matter, and the written statements of the alleged victim and other employees, which were not given under oath. These statements are hearsay and cannot be given any weight under the circumstances presented.

The following Findings of Fact are made based on the evidence presented at level three.

Findings of Fact

1. Grievant was employed by Respondent, West Virginia University ("WVU"), as an Electrician for four and a half years, until he was fired in March 2011. He worked in the in-house Construction Department.

2. From October 2010 through March 2011, approximately 25 WVU employees reported to the St. Francis School each morning to get their work assignments for the day, including Grievant. Once assignments were made, the employees would travel in groups to the assigned work site.

3. On February 28, 2011, John Joliffe, a Carpenter Lead in the in-house Construction Department at WVU, told his supervisor, Allen Bildstein, Construction Manager, WVU Facilities Management, that Grievant had been directing racial slurs toward

an African American temporary laborer on the in-house construction crew, David Robertson. Mr. Bildstein immediately reported this to his superior, Paul Zepp, who then reported this to the WVU President's Office of Social Justice.

4. Mr. Robertson began working as a temporary employee in the in-house Construction Department in October 2010. Mr. Robertson did not make a complaint to anyone at WVU that Grievant was making racial comments to him or threatening him.

5. James Goins, Jr., was assigned to investigate the allegations against Grievant. Mr. Goins interviewed several employees, including Mr. Robertson. On March 17, 2011, Mr. Goins sent a letter to Grievant advising him that his investigation had been completed, and it was the conclusion of the Office of Social Justice that the evidence was "sufficient to substantiate the charge."

6. By letter dated March 17, 2011, Grievant was advised by Mr. Bildstein that he intended to terminate Grievant's employment, based on the conclusion by the Office of Social Justice that Grievant had engaged in racial discrimination and "created a hostile work environment by making threats of violence toward your co-worker." The letter stated that Grievant's behavior was "completely inappropriate and will not be tolerated." Grievant was provided the opportunity to discuss this matter with Mr. Bildstein on March 22, 2011, and he did so.

7. By letter dated March 24, 2011, Grievant was advised by Mr. Bildstein that, effective that day, his employment was being terminated, based on the information outlined in the March 17, 2011 Intent to Terminate letter.

8. As part of his investigation, Mr. Goins spoke to Mr. Joliffe on March 1, 2011. Mr. Joliffe told Mr. Goins that he had been told by at least three other employees[1] in the in-house Construction Department that Grievant had been calling Mr. Robertson a Nigger everyday over a two and a half week period, and that on February 24, 2011, he heard Grievant tell Mr. Robertson "you better smile Nigger so I can see where you are at." Mr. Joliffe also told Mr. Goins that he had been told Grievant had also said to Mr. Robertson, "the only good Nigger is a dead Nigger'" "why are you here today Nigger I forgot my pistol and rope," and "mother fucking Nigger," and that he had said "the Nigger should be hanging from a tree."

9. Mr. Joliffe told Mr. Goins that he had delayed reporting what he had been told until he had heard Grievant use this type of language toward Mr. Robertson himself.

10. Mr. Joliffe's co-workers view him as a trouble-maker, who likes turmoil and starts rumors. Mr. Joliffe and Grievant had had several verbal disagreements at the workplace. Shortly before Mr. Joliffe made the allegations against Grievant, Grievant had accused Mr. Joliffe of coming to work drunk, and had printed out the WVU policy on drinking on the job and placed it on a table at work. At least one of Grievant's co-workers had heard Mr. Joliffe say he was going to get Grievant back.

11. Mr. Goins does not record the interviews he conducts. When someone provides him with a written statement, these statements are not sworn statements.

12. Mr. Joliffe was not called as a witness, and his statement was not given to Mr. Goins under oath.

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[1] Mr. Goins only identified two individuals, other than Mr. Joliffe and Mr. Robertson, who stated they had heard these comments.

13. Mr. Goins interviewed "Witness A", who was not identified, but is apparently a co-worker of Grievant's. Mr. Goins only identified Witness A as a smoker. Witness A told Mr. Goins that he had heard Grievant call Mr. Robertson a Nigger, "from the first week of Dave's time as a temp," which would have been in October 2010. He told Mr. Goins he had also heard Grievant "threaten" Mr. Robertson with a "pistol and a rope a few times," and that he had heard Grievant tell Mr. Robertson that "the only good Nigger is a dead Nigger," "what are you doing here today Nigger," and "smile ... so he could see where he was."

14. Though Witness A was not identified, Grievant believed he knew who he was, and that he was a friend of Mr. Joliffe's. Witness A was not called as a witness, and his statement was not given to Mr. Goins under oath. No explanation was provided in the record as to why Witness A had not previously reported this conduct when it had allegedly been occurring for four months.

15. Mr. Goins contacted Mr. Robertson and interviewed him. Mr. Goins' investigative report states that Mr. Robertson told him Grievant had called him a Nigger "just about everyday," but that "he was afraid to bring the matter forward because he thought it would hurt his chances of obtaining full time employment from the University." The report further states that "Mr. Robertson **confirmed** that Mr. Simpson stated the entire above mentioned bullet points [the comments noted by Mr. Joliffe and Witness A] to him." (Emphasis added.) Mr. Robertson told Mr. Goins these statements were being made to him by Grievant as he walked by when Mr. Robertson was smoking outside before work.

16. Mr. Robertson provided Mr. Goins with a written statement, dated March 9, 2011. The written statement alleges that Grievant called Mr. Robertson a Nigger "some

days," beginning in October 2010, "mostly in the morning outside smoking in [the] dark." Mr. Robertson related that Grievant "would say, 'open your eyes Blackman so we can see you.' Also he said 'only good Nigger is a dead Nigger. He forgot his gun and pistol. Grab a rope and throw it over the raftors [sic] and string the Nigger up.'"

17. Mr. Robertson was not called as a witness, and neither his verbal or written statements were given to Mr. Goins under oath.

18. Shortly after this investigation, Mr. Robertson quit working at WVU, and is suing WVU civilly because of the racial comments alleged to have been made by Grievant.

19. Mr. Goins did not know after the completion of his investigation where the smoking area at St. Francis was located.

20. Mr. Goins interviewed Grievant during the course of his investigation. Grievant denied to Mr. Goins that he had ever used the word Nigger when speaking to Mr. Robertson. Mr. Goins' recollection of his interview with Grievant was that Grievant had admitted to making the remarks to Mr. Robertson that he had forgotten his gun and rope, and to smile so he could see him, but that Grievant was only joking and did not mean to threaten or intimidate Mr. Robertson. He recalled that Grievant had admitted what he had done was wrong.

21. Mr. Goins told Grievant he had 10 days if he wished to provide a written statement responding to the charges. Grievant provided a written statement to Mr. Goins, signed March 15, 2011. When Grievant testified at the level three hearing, he affirmed the statements in the written statement. Grievant's written statement provides that "I have never call [Mr. Robertson] a Nigger nor in anyway made life threatening remarks." Grievant

further stated, “I am making a formal statement that I did not at anytime do any of the things in David Robinson’s [sic] statement” . . .. “I deny all charges made against me.”

22. Grievant was not a smoker, and he did not stand outside with the smokers talking before work.

23. Sometime prior to March 15, 2011, Grievant met with Mr. Bildstein and Mr. Robertson and apologized to Mr. Robertson “for anything that I might have said to have offend[ed] David in anyway.” Mr. Robertson told Grievant he accepted the apology and Grievant thought the matter was closed.

24. Mr. Goins interviewed about 14 employees, and of those 14, three, including Mr. Joliffe and Witness A, told Mr. Goins they had heard Grievant make racial comments to Mr. Robertson. The record does not reflect who the third person was or exactly what that person told Mr. Goins.

25. Lawrence Baldwin has been employed as an electrician by WVU for two and a half years, and worked with Grievant almost everyday. On most days, either Mr. Baldwin or Grievant were the first employees at work. If Grievant was already at work when Mr. Baldwin arrived, he would be working on assignments at the computer.

26. Mr. Baldwin is a smoker, and would be outside in the mornings before starting work almost every morning smoking with the smoker’s group outside the front door. Mr. Robertson smoked and was with the group several times smoking in the mornings. Mr. Baldwin never heard Grievant make the racial comments to Mr. Robertson which are set forth in Mr. Robertson’s written statement, nor had he ever heard Grievant use this type of language.

27. Mr. Baldwin also observed Grievant and Mr. Robertson working together, and had concluded that they had a good relationship. It was Mr. Baldwin and Grievant who had made sure Mr. Robertson had safety gloves and eye ware when he began working for WVU.

28. Mr. Baldwin was not interviewed by Mr. Goins, but did provide a written statement to him. The record does not reflect what his written statement said.

29. Aaron Srednicki, an Electrician at WVU, also reported to St. Francis for work during the time period at issue. Mr. Srednicki is also a smoker who hung out with the smoker's group outside sometimes. Mr. Srednicki had never heard Grievant make the statements attributed to him by Mr. Robertson.

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. *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988). "The preponderance standard generally 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 Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. *Id*.

Grievant was an employee of Respondent for four and a half years. While the allegations against Grievant are a serious matter which cannot be condoned if proven, the consequences to Grievant are likewise a serious matter, and it was imperative that

Respondent be sure what the truth was, and put forward a case sufficient to prove the charges against Grievant.

Respondent relied entirely on Mr. Goins' testimony, including his impressions of the credibility of those he interviewed, Mr. Goins' investigative report, and the written statements provided to him, to support the charges against Grievant. Mr. Goins' testimony, his investigative report, and the statements given to him are all hearsay. The undersigned must determine how much weight this evidence can be given in this proceeding.

Grievant, however, not only testified at the level three hearing, subjecting himself to cross-examination, but presented a number of witnesses. Grievant denied making any of the racial comments to Mr. Robertson. He pointed out that Mr. Goins did not record his interview, and stated that Mr. Goins was mistaken as to what he had said during the interview. Even Mr. Goins' recollection of Grievant's statement to him was that he absolutely denied ever referring to Mr. Robertson as a Nigger.

In evaluating the hearsay presented by Respondent, the undersigned must look to prior case law. The Grievance Board has applied the following factors in assessing hearsay testimony: 1) the availability of persons with first hand knowledge to testify at the hearings; 2) whether the declarants' out of court statements were in writing, signed, or in affidavit form; 3) the agency's explanation for failing to obtain signed or sworn statements; 4) whether the declarants were disinterested witnesses to the events, and whether the statements were routinely made; 5) the consistency of the declarants' accounts with other information, other witnesses, other statements, and the statement itself; 6) whether collaboration for these statements can be found in agency records; 7) the absence of contradictory evidence; and 8) the credibility of the declarants when they made their

statements.[2] *Gunnells v. Logan County Bd. of Educ.,* Docket No. 97-23-055 (1997); *Sinsel v. Harrison County Bd. of Educ.*, Docket No. 96-17-219 (Dec. 31, 1996); *Seddon v. W. Va. Dep't of Health/Kanawha-Charleston Health Dep't*, Docket No. 90-8-115 (June 8, 1990).

> Hearsay evidence is admissible in the grievance procedures for state and education employees, but there is no requirement, statutory or otherwise, that it be afforded any particular weight. Generally, written statements, even affidavits, may be discounted or disregarded unless the offering party can provide a valid reason for not presenting the testimony of the persons making them. *See, Seddon v. W.Va. Dept. of Health,* Docket No. 90-H-115 (Dec. 14, 1997).

Cook v. W. Va. Division of Corrections, Docket No. 96-CORR-037 (Oct. 31, 1997), Conclusion of Law No. 2.

Mr. Robertson was the most important witness, yet he was not called to testify. Mr. Robertson did provide a signed, written statement, but it was not given under oath, nor was it subject to cross-examination. Respondent provided no reason for the failure to take a sworn statement from Mr. Robertson. This statement was not written until after Mr. Robertson was interviewed by Mr. Goins, even though, according to the statement, the inappropriate racial comments had been occurring for four months. Mr. Robertson never reported this himself, but simply agreed that Grievant had made inappropriate racial comments after being approached by Mr. Goins. The undersigned would be interested to know exactly what Mr. Goins told Mr. Robertson, as his testimony does not make clear whether Mr. Robertson only agreed with the statements alleged by Mr. Joliffe and Witness

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[2] The United States Merit System Protection Board Handbook ("MSPB Handbook") set out these as factors to examine when assessing hearsay. *See Borninkhof v. Department of Justice*, 5 MSBP 150 (1981).

A to have been made by Grievant after being shown these statements by Mr. Goins. Mr. Goins' investigative report would indicate the latter. Respondent provided no explanation for its failure to call Mr. Robertson as a witness. After this investigation, Mr. Robertson brought a lawsuit against Respondent based on the statements alleged to have been made by Grievant. One might guess that it was a strategic decision not to place Mr. Robertson on the witness stand in this proceeding, but it would be nothing more than a guess as no rationale was provided. The fact that Mr. Robertson has now filed a lawsuit against Respondent certainly can be viewed as a motive for making false accusations against Grievant.

This case bears some similarity to the situation in *Tuttle v. Department of Transportation*, Docket No. 07-DOH-353 (January 3, 2008), *aff'd* Circuit Court of Kanawha County, Civil Action No. 08-AA-12 (July 23, 2008). In that case the alleged victim also was not called as a witness, she did not report the incident until two weeks after it allegedly occurred, and her written statement was not given under oath. In that case the undersigned concluded that, "Ms. Jones' statement is entitled to no weight in this instance. She was the most important witness, as she was the alleged victim, yet she never was called upon to give a sworn statement. She did not report the incident for at least two weeks, at a time when she was discussing permanent employment with the state." Also similar to the situation in *Tuttle,* the corroborating witness was found not to be credible, as will be discussed below. Mr. Robertson's statement cannot be given any weight.

Likewise, Respondent declined to have Mr. Joliffe or "Witness A", whoever he is, testify, and presented no reason for the failure to call them as witnesses. Witness B was never identified either, nor does the record reflect exactly what he told Mr. Goins. While

Mr. Goins found their statements given to him to be credible, their statements were not given under oath and they were not presented for cross-examination. Further, Grievant presented several witnesses who supported Grievant's claim that Mr. Joliffe had a reason to fabricate this story to hurt Grievant, and Grievant stated that he knew who Witness A was, and he and Mr. Joliffe were close. Whether Witness A is a credible witness certainly cannot be evaluated by the undersigned when his identity was not revealed. Mr. Goins testified that Mr. Joliffe seemed uncomfortable and nervous about the situation. While Mr. Goins believed this added to Mr. Joliffe's credibility, these same behaviors are often observed in witnesses who are lying. Mr. Joliffe absolutely cannot be considered a credible witness by the undersigned under these circumstances, despite Mr. Goins' impressions.

Grievant, however, presented several co-workers as witnesses, who appeared voluntarily on Grievant's behalf without being subpoenaed. Their testimony was that Mr. Joliffe was difficult to get along with, threatened co-workers, including Grievant, was known to start rumors, and had reason to fabricate evidence against Grievant. They uniformly had found Grievant to be professional, courteous, and easy to get along with, and could not believe that he would have made the statements attributed to him by Mr. Robertson in his written statement. All of this certainly calls Mr. Joliffe's credibility into question. The statements of Mr. Joliffe and Witness A can be given no weight.

Additionally, the testimony of one of Grievant's witnesses was particularly compelling. Lawrence Baldwin is an Electrician at WVU, who worked with Grievant almost everyday for two and a half years. Mr. Baldwin testified that he is one of the smokers who smoked outside St. Francis with the smoker's group almost every morning. He stated that he had <u>never</u> heard Grievant make any of the comments to Mr. Robertson which were

attributed to him. Further, he testified that either he or Grievant were usually the first ones at the worksite, and that if Grievant was already there, he would be sitting at the computer working on assignments, not hanging around in the smoking area waiting to cause trouble. He had personally observed Grievant and Mr. Robertson working together, and thought they had a good working relationship. He pointed out that it was he and Grievant who had made sure Mr. Robertson had the safety gloves and eye ware that he needed for work.

Jeremy Blake, an Electrician at WVU who had worked with Grievant for four and a half years, also stated that Grievant was usually working at the computer when he arrived at St Francis for work. Aaron Srednicki, who was also a smoker, had never heard Grievant make the statements attributed to him by Mr. Robertson while Grievant was passing through the smoking area.

The only testimony remaining to be evaluated is Mr. Goins' recollection of what Grievant had said to him. It should first be pointed out that even Mr. Goins testified that Grievant had always denied referring to Mr. Robertson as a Nigger. With this, there is no evidence to support a finding that Grievant ever used the term Nigger when speaking to Mr. Robertson, and the charges that he had done so have not been proven.

What remains is Mr. Goins' recollection of the unrecorded interview with Grievant. Mr. Goins stated that Grievant had admitted to making comments to Mr. Robertson about forgetting his gun and rope and to smile so he could see him, and that Grievant explained this as construction site humor, although he admitted he was wrong to have made the statements. This, again, is hearsay. Grievant denied both in his written statement provided to Mr. Goins shortly after the interview, and under oath at the level three hearing, that he had made any of the comments attributed to him by Mr. Robertson. Although

Respondent asserted in its written argument that Grievant "testified that Mr. Goins lied about his interview with him," that is not accurate. Grievant pointed out that his interview with Mr. Goins was not recorded, and when Respondent's counsel specifically asked him if he was saying Mr. Goins was lying, Grievant clearly said he was not saying Mr. Goins was lying; rather, he believed Mr. Goins was mistaken about what he had said. Mr. Goins was also emphatic that Grievant had said he would resign if he had a paper in front of him, while Grievant's recollection of his reference to resigning is somewhat different.

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 Res.*, Docket No. 96-HHR-371 (Oct. 30, 1996); *Pine v. W. Va. Dep't of Health & Human Res.*, 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 Res./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's

information. *See Holmes v. Bd. of Directors/W. Va. State College*, Docket No. 99-BOD-216 (Dec. 28, 1999); *Perdue, supra*.

The undersigned concludes that neither Mr. Goins nor Grievant fabricated their testimony. Certainly in any conversation the individuals at times hear what they want to hear, and misinterpret what is being said. People frequently have different interpretations even of the written word. Even though Mr. Goins was conducting an investigation and needed to make sure he understood what those being interviewed were saying, he did not have Grievant confirm his statements in writing at the time, and Mr. Goins could easily have misinterpreted what Grievant said to him during the interview. Mr. Goins did not explain exactly how he had gone about conducting Grievant's interview, so there is no way to know at this point what he had told Grievant prior to Grievant's response. Mr. Goins had already spoken to the witnesses against Grievant, and it is more likely than not that he went into the interview with Grievant with the impression that the allegations were true. Grievant is a construction worker, and is not as articulate as Mr. Goins. Mr. Goins did not record the interview in order to avoid any misinterpretations. It seems likely that Grievant did admit to inappropriate construction site humor directed toward Mr. Robertson. Mr. Goins gave Grievant ten days to provide a written statement, and when he did so, he flatly denied all the allegations against him.

While Grievant clearly accused Mr. Joliffe and Witness A of lying to get back at him, and he accused Mr. Robertson of lying, speculating as to the reason, he did not accuse Mr. Goins of lying. Rather, Grievant believed that Mr. Goins had not understood what he was saying during the interview. The credible testimony of Grievant's witnesses who were smokers support Grievant's statements that he had never directed racially charged

comments toward Mr. Robertson. The undersigned concludes that Grievant was a credible witness. Respondent did not prove the charges against Grievant.

The following Conclusions of Law support the Decision reached.

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. *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988). "The preponderance standard generally 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 Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. *Id*.

2. The Grievance Board has applied the following factors in assessing hearsay testimony: 1) the availability of persons with first hand knowledge to testify at the hearings; 2) whether the declarants' out of court statements were in writing, signed, or in affidavit form; 3) the agency's explanation for failing to obtain signed or sworn statements; 4) whether the declarants were disinterested witnesses to the events, and whether the statements were routinely made; 5) the consistency of the declarants' accounts with other information, other witnesses, other statements, and the statement itself; 6) whether collaboration for these statements can be found in agency records; 7) the absence of contradictory evidence; and 8) the credibility of the declarants when they made their

statements.[3] *Gunnells v. Logan County Bd. of Educ.,* Docket No. 97-23-055 (1997); *Sinsel v. Harrison County Bd. of Educ.*, Docket No. 96-17-219 (Dec. 31, 1996); *Seddon v. W. Va. Dep't of Health/Kanawha-Charleston Health Dep't*, Docket No. 90-8-115 (June 8, 1990).

> 3. Hearsay evidence is admissible in the grievance procedures for state and education employees, but there is no requirement, statutory or otherwise, that it be afforded any particular weight. Generally, written statements, even affidavits, may be discounted or disregarded unless the offering party can provide a valid reason for not presenting the testimony of the persons making them. *See, Seddon v. W.Va. Dept. of Health,* Docket No. 90-H-115 (Dec. 14, 1997).

Cook v. W. Va. Division of Corrections, Docket No. 96-CORR-037 (Oct. 31, 1997), Conclusion of Law No. 2.

4. Respondent did not prove the charges against Grievant.

Accordingly, this grievance is **GRANTED**. Respondent is **ORDERED** to reinstate Grievant to his position as an Electrician at West Virginia University and to pay him all backpay to which he is entitled from the date his employment was terminated until the date he is reinstated, restore all benefits, as though he had not been dismissed from his employment, and remove all references to the dismissal from all personnel records maintained at West Virginia University.

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[3] The United States Merit System Protection Board Handbook ("MSPB Handbook") set out these as factors to examine when assessing hearsay. *See Borninkhof v. Department of Justice*, 5 MSBP 150 (1981).

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

BRENDA L. GOULD
Administrative Law Judge

Date: May 3, 2012