THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

CATHERINE WILT,
Grievant,

v. **Docket No. 2011-0983-DHHR**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
WILLIAM R. SHARPE, JR. HOSPITAL,
Respondent.

DECISION

Grievant, Catherine Wilt, filed this grievance on January 13, 2011, against her employer, William R. Sharpe, Jr. Hospital, alleging that, "on 1-6-11 I was injured by a violent patient and had to seek medical attention. I was mandated to clock out at 5:50 p.m. than returned at 7:47p.m." As relief, Grievant seeks, "restore pay with interest, and any leave time lost and to otherwise be made whole." This grievance was denied at level one by Decision dated May 23, 2011. Appeal to level two was perfected on May 26, 2011. A level two mediation session was conducted on August 15, 2011. Grievant appealed to level three. A level three hearing was conducted before the undersigned Administrative Law Judge on February 16, 2012. Grievant appeared in person, and by his representative, Gordon Simmons, UE Local 170. Respondent appeared by its counsel, Harry C. Bruner, Jr., Assistant Attorney General. This matter became mature for consideration upon receipt of the last of the parties' proposed findings of fact and conclusions of law on March 16, 2012.

Synopsis

Grievant was injured by a patient while performing her duties as a Health Service Assistant. Grievant sought medical attention at a local hospital. Grievant was clocked-out on that day for one hour and fifty-seven minutes. Grievant did not request sick leave for the time period. Grievant did not meet her burden of proof and demonstrate that the Respondent violated, misapplied or misinterpreted any statutes, policies, rules, or regulations in this matter when it requested that she clock out during the time she was away from work and being treated for her injury.

The following findings of fact are based upon the record developed at level one and level three.

Findings of Fact

1. Grievant has been employed for the past nine years at Sharpe Hospital as a Health Service Assistant in Lewis County, West Virginia.

2. On January 6, 2011, Grievant was at work and was injured by a patient while performing her duties as a Health Service Assistant.

3. Grievant sought medical treatment for the injury at Stonewall Jackson Hospital.

4. Respondent requested that Grievant clock-out while she was receiving medical treatment. Grievant was away from work for about one hour fifty-seven minutes on that day while she was seeking medical treatment for her on-the-job injury.

5. Grievant did not request sick leave with pay for this time.

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 Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *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). "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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

On January 6, 2011, Grievant's forearm and wrist were injured when a patient became violent while Grievant was performing her duties at Sharpe Hospital. Grievant elected to seek medical treatment for the injury at Stonewall Jackson Hospital, a nearby facility. Respondent's Nurse Clinical Coordinator required Grievant to clock-out while Grievant was seeking medical treatment. Grievant was off-the-clock from 5:50 p.m. until 7:47 p.m. while seeking treatment. Grievant alleges that Respondent should not have required her to clock-out while seeking medical treatment for the on-the-job injury. Respondent counters that it was merely following the applicable Division of Personnel Rule addressing work-related injury.

Respondent relied upon Division of Personnel Rule 14.4(f)(7), which provides as follows:

> Work related injury or illness - An employee may elect to use sick leave due to a personal injury received in the course of and resulting from covered

> employment with the State or its political subdivisions in accordance with W. Va. Code § 23-4-1. However, an employee who elects not to use sick leave under this paragraph must apply for a medical leave of absence without pay.

Contrary to assertions made by Grievant, the record is clear that Grievant did not receive medical attention at Sharpe Hospital, and she was not directed by her employer to seek medical attention. The record also established that Sharpe Hospital requires all employees to clock-out while receiving medical treatment for injuries at the workplace. This would appear to be in compliance with the above quoted administrative rule. The record also established that Respondent's Human Resource Director, Cindy Drury, reviewed applicable time records and leave request forms. Ms. Drury discovered that Grievant did not request sick leave for the time period at issue. The record is not fully developed on the issue of whether or not Grievant was paid for this time due to her failure to claim sick leave. The lower level record appears to demonstrate that she was not.

In the present case, Grievant has failed to demonstrate by a preponderance of the evidence that the Respondent violated, misapplied or misinterpreted any statutes, policies, rules, or regulations in this matter. The undersigned joins with the level one grievance evaluator in opining that it would be prudent for Respondent to make employees aware of the option to request sick leave in these situations.

The following conclusions of law support the decision reached.

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. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *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. The Division of Personnel's Rule 14.4(f)(7) allows an employee to elect to use sick leave due to a personal injury received in the course of and resulting from covered employment with the State.

3. Grievant has failed to demonstrate by a preponderance of the evidence that the Respondent violated, misapplied or misinterpreted any statutes, policies, rules, or regulations in this matter when it requested that she clock-out during the time she was away from work and being treated for her injury.

Accordingly, this grievance is **DENIED**.

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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

Date: May 30, 2012

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Ronald L. Reece
Administrative Law Judge