**THE WEST VIRGINIA PUBLIC EMPLOYEES**
**GRIEVANCE BOARD**

**SAMANTHA HEFLIN,**
**Grievant,**

**v.** **DOCKET NO. 2012-0686-DHHR**

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

## DECISION

This grievance was filed at level one of the grievance procedure by Grievant, Samantha Heflin, on December 30, 2011, against her employer, Respondent, the Department of Health and Human Resources. The statement of grievance reads, "Robert Kimble refused to pay my travel in full, because I stayed overnight due to inclement weather. There were several accidents reported in the area. Since it was after hours and I had no way of contacting my supervisor, I used my own judgment to stay safe." As relief Grievant sought, "I want my lodging and meal reimbursement paid in full. I want my travel time paid in accordance with WV State Code, and made whole in any other way."

A hearing was held at level one on January 26, 2012, and the grievance was denied at level one on February 10, 2012. Grievant appealed to level two on February 21, 2012. A mediation was held on January 8, 2013. Grievant appealed to level three on February 8, 2013, and a level three hearing was held before the undersigned Administrative Law Judge on June 5, 2013, in the Grievance Board's Westover office. Grievant was represented by Kevin McHenry, and Respondent was represented by Harry C. Bruner, Jr.,

Assistant Attorney General. This matter became mature for decision upon receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law on June 27, 2013.

## Synopsis

Grievant obtained approval to attend a training session in Morgantown, and her travel expenses were pre-approved to drive to Morgantown from Weston and back both days. Her overtime for the two days was also pre-approved. At the end of the first day of training it was snowing. Grievant compared the cost of staying overnight at a hotel and meal expenses to the pre-approved expenses and overtime cost, and since the cost to stay over was less than the total pre-approved cost to return to Weston and drive back the next day, she decided to stay overnight. She did not call her supervisor to obtain approval for this change because it was after work hours, and she did not know she needed to do so. When she returned to work she turned in her travel expense form listing the hotel and meals, and one round trip of mileage, rather than two. Almost two weeks later, she was advised that her travel expenses were being denied because she had not obtained pre-approval to stay overnight. Respondent has no policy in place that requires an employee to call her supervisor to obtain approval to stay overnight. Respondent does have in place a policy that requires submission of a supplemental travel authorization form if expenses exceed the pre-approved travel expenses by 10 percent, which was the case here. No one told Grievant that such a form was needed, or made any effort to work with Grievant to make sure her expenses were paid. Grievant demonstrated that she incurred valid travel expenses on behalf of her employer which should have been paid.

The following Findings of Fact are made based upon the record developed at levels one and three.

## Findings of Fact

1. Grievant was employed by the Department of Health and Human Resources ("HHR"), at William R. Sharpe, Jr. Hospital, in Weston, West Virginia, as an Accountant Auditor 1, from March 2009, until her resignation on January 31, 2012.

2. Sometime in September 2011, Grievant requested approval from her supervisor, Alex Cruz, to attend two days of training in Morgantown, West Virginia. Her request projected the cost of traveling 130 miles round-trip for two days to be $116.56, the cost of registration as $128.00, and overtime for her at $169.36, for a total cost of $413.92. Grievant's travel request was approved as submitted in November 2011.

3. Grievant attended the two days of training in Morgantown on December 7 and 8, 2011. Grievant's normal work hours were 8:00 a.m. to 4:00 p.m., five days a week. Grievant left Weston at 7:00 a.m.[1] on December 7, 2011, and the training session ended at 4:00 p.m. that day. When the training session ended it was snowing. Grievant checked to see how much a hotel room would be and was able to get a room for the night in Morgantown at a cost of $91.84. If she stayed overnight she would also be entitled to claim meal expenses in the amount of $69.00. If she stayed overnight the number of hours of overtime and the attendant cost would be less than the amount that had been pre-approved. Grievant compared the total cost of traveling back and forth to Weston, including overtime, versus the cost of staying overnight, and determined that the total costs associated with staying overnight would be less than the pre-approved amount of $413.92. Grievant decided to stay overnight rather than driving 65 miles in the snow that evening.

[1] Grievant testified at the level three hearing that she left her house at 6:00 a.m., but her travel expense form shows that she left at 7:00 a.m.

She did not call her supervisor for approval to change her travel plans and stay overnight, because she did not know she needed to do so, and the office was already closed by the time she made the decision not to drive in the snow. Grievant returned to Weston on December 8, 2011, after the training session, arriving home at 5:15 p.m.

4. Grievant submitted a travel expense report to Mr. Cruz, on December 9, 2011. On the expense report Grievant claimed travel in the amount of $61.10 for 65 miles to Morgantown on December 7, 2011, and 65 miles travel to Weston on December 8, 2011, lodging in the amount of $91.84, meals in the amount of $69.00, and the registration fee of $128.00, for a total of $349.94. Grievant also turned in two hours of overtime for the week which were a direct result of attending the training in Morgantown.

5. Mr. Cruz took no action on Grievant's travel expense report, but at some point gave it to his supervisor, Robert Kimble, Chief Financial Officer at Sharpe Hospital. On December 20, 2011, Mr. Kimble appeared in Grievant's office and told her he was denying her travel expenses for the overnight hotel stay and meals, because she did not call to obtain prior approval to stay overnight in a hotel. Grievant told Mr. Kimble that she had chosen to stay in the hotel because it was cheaper than driving back and forth. She did not mention that the weather had played a role in her decision because she did not believe it was necessary to do so. Mr. Kimble made no mention to Grievant that she had not submitted the proper form for changes in travel expenses.

6. Mr. Kimble had been working for Respondent for a month and a half at the time he denied Grievant's travel expenses, and did not yet have signature authority. He had no prior experience as a state employee.

7. Respondent has in place a written policy governing travel, Policy Memorandum 3400. That Policy provides that "[a]pproval to travel shall be secured in advance by the employee in accordance with this DHHR travel policy." The Policy further states that "[i]f any unapproved travel occurs, then that particular travel event is deemed unauthorized travel. The unauthorized travel will be evaluated through memorandum submission to the Director, Office of Financial Services, to determine whether the travel will be considered reimbursable or personal expense." The Policy does not define "unapproved travel." The Policy states with regard to travel expenses which "exceed the approved travel authorization amount by more than ten percent, a supplemental travel authorization form must be submitted for review and approval before travel expenses are submitted for payment processing." The Policy does not state who is responsible for completion and submission of this supplemental travel authorization form.

8. Respondent does not have a policy that requires an employee to call and obtain approval for a change in travel plans such as occurred here.

9. Grievant did not submit a supplemental travel authorization form for review and approval prior to submitting her travel expenses to her supervisor.

10. Mr. Kimble did not tell Grievant that the reason her travel expenses were being denied was because they exceeded ten percent of the pre-approved expenses, nor did he tell her that she needed to submit a supplemental travel authorization form.

11. After speaking with Mr. Kimble, Grievant went to her representative's office and told him what had occurred and that she wanted to file a grievance. Mr. McHenry had at the time been employed by Respondent at Sharpe Hospital for close to 17 years, and was the Procurement Officer. Mr. McHenry went to talk to Mr. Kimble the next day in an

effort to resolve the situation, explaining to Mr. Kimble that Grievant was concerned with the weather when she made the decision to stay overnight. Mr. Kimble told Mr. McHenry to get out of his office. Mr. Kimble then looked on an internet site to see what the reported weather conditions were on December 7, 2011, in Morgantown, and decided that the minimal amount of snow was no excuse for an overnight stay.

12. Grievant was eventually reimbursed $61.10 for travel, and $128.00 for the registration fee, for a total expense reimbursement of $189.10.

13. On day two, Grievant did not have any travel time in the morning, but she did not arrive at her home until about 5:15 p.m. on December 8, 2011. Grievant was paid overtime for two hours for the week which included December 7 and 8, 2011, as a direct result of her attendance at the training in Morgantown, in the amount of $42.33. Had Grievant traveled back and forth both days instead of staying overnight, she would have had additional overtime for the week of approximately two hours, for an additional $42.33.

14. Had Grievant traveled back and forth as she had prior approval to do, she would have received a total of $250.20 for travel and registration reimbursement, and $84.66 in overtime, for a total expense associated with attending the training of $334.86. Grievant was actually paid $231.43.

## 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 Bd. 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).

Grievant is seeking to be paid $118.51. Respondent refused to pay Grievant this amount because she did not seek prior approval to stay overnight in Morgantown, and when Mr. Kimble checked the weather reports, he decided it was not dangerous for her to drive back to Weston. Of course, neither Mr. Kimble nor Grievant could have projected what the weather would have been like the next morning when Grievant left at 6:00 a.m. to drive to Morgantown. Respondent's stated position at the level three hearing was that Grievant knew the rules, employees need to follow the rules, and that this was a matter of principle. Respondent argued that Grievant did not have the authority to decide whether to stay overnight and "run up" her expense account. The undersigned finds Respondent's stance to be petty and to border on the ludicrous.[2]

Respondent also argued that Mr. Kimble's decision was based on budgetary concerns, and that he was charged with being a good steward of funds. Given that Grievant's expenses and overtime were actually less than the pre-approved amount, this argument is without merit. However, Mr. Kimble did indeed achieve some savings for

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[2] Respondent's counsel also insinuated that the reason Grievant had chosen to spend the night was that Mr. McHenry stayed with her. Respondent offered no support for such accusations. Arguably, these questions could have been pertinent to the determination of the credibility of the witnesses had Respondent presented testimony to support the insinuation. Given that this was not done, the undersigned finds this entire line of inquiry to be completely without any basis in fact, and in poor taste.

Respondent at Grievant's expense. The undersigned will point out that, had Grievant traveled back and forth both days she would have been entitled to an additional $61.10 in mileage, and an additional $42.33 in overtime, or more, depending on how long it took Grievant to drive home in the snow, for a total savings to Respondent of $103.43, while Grievant paid the majority of her own travel expenses incurred for the benefit of her employer.

Respondent's stated position is that Grievant had to call her supervisor to obtain approval to stay overnight, and her failure to do so was a violation of proper procedure. However, Respondent could point to no such written requirement. Mr. Kimble had been on the job for less than two months, and Grievant testified that she was not aware of any such requirement. Respondent did not demonstrate that Grievant failed to follow the standard, proper procedure.

With regard to Respondent's Travel Policy, Grievant had obtained pre-approval to travel, and her travel was authorized. The only issue remaining is the requirement in the Policy that a supplemental travel authorization form be submitted if actual expenses exceed pre-approved expenses by ten percent, which was the case here, excluding overtime. Mr. Kimble testified at the level three hearing that this was one reason the travel expenses were denied; however, he testified at the level one hearing, "[i]f she would have called and left a message I would have approved [the overnight stay.]" Level one hearing transcript at page 13. Mr. Kimble did not tell Grievant she needed to submit a different form. He told her he was denying her travel expenses. If Grievant needed to submit a different form, the reasonable thing for Mr. Kimble to do would have been to assist the employee by communicating this information to her, and then get the travel expense

approved. Had Grievant or Mr. Kimble completed the appropriate forms, the travel expense should have been approved. To deny Grievant the valid expense reimbursement simply because she did not fill out another form when no one explained this was necessary cannot be condoned by the undersigned. Particularly over $118.51. If Mr. Kimble, or Mr. Cruz, wanted Grievant to follow a particular course of action, the proper approach would be to approve the valid expenses, and explain what was expected in the future.

The following Conclusions of Law support the Decision reached.

## Conclusions of Law

1. Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 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).

2. Grievant demonstrated that Respondent failed to pay her the entire amount of the travel expense she incurred for training benefitting Respondent.

Accordingly, this grievance is **GRANTED.** Respondent is **ORDERED** to pay Grievant $118.51.

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).

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**BRENDA L. GOULD**
**Administrative Law Judge**

**Date: August 8, 2013**