THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

CAROL RENEE HARRISON,
Grievant,

v. **Docket No. 2012-1362-DHHR**

DEPARTMENT OF HEALTH
AND HUMAN RESOURCES,
Respondent.

DECISION

Grievant, Carol Harrison, filed this grievance on May 30, 2012, following the termination of her employment with the Department of Health and Human Resources. She seeks to have her "personnel file completely removed of any deficiency or misconduct or negative job performances. All pay recovered for discharge and ten day suspension in January. Compensation for working under distress and mental abuse due to unfair working conditions and intentional wrongful allegations against me. All lost benefits & education & tenure - any expenses that occur."

This grievance was filed directly to level three. A level three hearing was conducted before the undersigned Administrative Law Judge on June 28, 2013, at the Grievance Board's Westover office location. Grievant appeared in person, and by her representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent appeared by its counsel, Michael E. Bevers, 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 August 12, 2013.

Synopsis

Grievant was terminated from her job with the Bureau for Children and Families because of performance deficiencies. Grievant's performance was regularly evaluated and she was given numerous opportunities to improve before she was dismissed. The record established that Grievant was counseled, placed on corrective action plans, reprimanded, twice suspended, and demoted; however, her job performance did not adequately improve. Record also established that progressive discipline was ineffective, and termination for unsatisfactory performance was for good cause.

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

Findings of Fact

1. Grievant was employed by the Department of Health and Human Resources ("DHHR") as a Social Service Worker 2 with the Ohio/Brooke/Hancock District of the Bureau for Children and Families.

2. Donna White is a Child Protective Services Supervisor in this office. Ms. White was Grievant's direct supervisor. Ms. White was Grievant's supervisor for a substantial portion of Grievant's employment, and observed problems with Grievant's job performance.

3. Grievant began her employment with the DHHR in November 2009. Grievant was employed as a Reception Social Worker, and was trained on how to do intake assessments. Grievant was the employee in the office that received calls from individuals reporting suspected abuse or neglect. Her responsibility was to gather all of the necessary information for DHHR to make the initial decisions on whether the report should be

screened out with no further action, or screened in if action was required. Grievant needed to provide enough information for her supervisor to make a determination as to the imminence or type of required response.

4. Grievant had continual issues with her job, and had a history of performance failures and deficiencies that began in February 2010. Grievant was ultimately dismissed for failure to timely make referrals, failing to relay important information to her supervisor, and for using the internet for personal banking.

5. Grievant had difficulty understanding child maltreatment and safety, which led to intake assessments lacking relevant information, causing delays in her supervisors' ability to address the reports. Grievant received feedback about what was missing from the intakes and referrals, but she did not follow the directives from her supervisors, and needed instructions repeatedly. For example, Grievant merged information from two different people into the file of one person. She received instructions later that day on how to merge information correctly. Grievant made the same mistake not long after that counseling session.

6. Grievant was placed on a Corrective Action Plan in March 2010. Grievant was placed on another Corrective Action Plan in June 2010. Grievant received a written reprimand for performance deficiencies in November 2010. Grievant received a three-day suspension for performance deficiencies in January 2011. Grievant was placed on another Corrective Action Plan in November 2011. Grievant received a ten-day suspension for performance deficiencies in January 2012. Grievant was ultimately dismissed for a series of incidents that started in the spring of 2010.

7. On May 13, 2010, Grievant received a voice mail message alleging abuse

as reported by an anonymous caller. That day the computers were not working. Grievant was instructed by her supervisor to enter the intake referral the next day. Grievant forgot to enter the referral and failed to send it to a supervisor for review and assignment, causing a delay.

8. On May 28, 2010, two intake referrals were received but were not sent until the following day, and only after Grievant's supervisor asked about the status of the referrals. Again, on June 23, 2010, Grievant failed to make a timely disclosure to her supervisor of a reported case of abuse or neglect.

9. On September 17, 2010, Grievant failed to enter an intake referral until directed by her supervisor. In that particular incident, police had requested Child Protective Services assistance because they were doing a drug raid where children were believed to be present. Grievant stated that she did not have enough information to enter a referral. Grievant received a written reprimand for failing to timely submit the referral, and failure to relay important information to her supervisor.

10. On January 3, 2011, Grievant received a three-day suspension based on unacceptable job performance. The suspension letter notes that Grievant was continuing to have problems with incomplete intake assessments, sending intakes to the wrong supervisors, failing to obtain and provide adequate details, and delays in entering intakes.

11. In the fall of 2011, Grievant was asked to provide a copy of her renewed social work license. She was notified that failure to renew her license would result in demotion. Grievant failed to renew her social work license.

12. In January 2012, Grievant was given a ten-day suspension for providing conflicting information to her supervisors, continuing problems concerning her failure to

speak to a supervisor when calling off from work, and failure to timely renew her social work license.

13. On March 8, 2012, a supervisor discovered that two intakes from Respondent's hotline were still in the inbox from March 7, 2012, and that Grievant had not processed these intakes or submitted them for review. Grievant had previously been directed to check the inbox several times during the workday. The delay in sending these referrals for screening can often place children in an unsafe environment.

14. In the spring of 2012, Grievant continued to neglect her responsibility to send intakes to her supervisors for screening.

15. By letter dated May 14, 2012, Grievant was terminated for her history of performance deficiencies and misconduct that culminated in Grievant failing to timely make a referral on May 3, 2012, and failing to relay important information to her supervisor on May 7, 2012.

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. Procedural Rules of the W. Va. Public Employees Grievance Bd. 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). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not."

Petry v. Kanawha County Bd. of Educ., Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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).

Permanent 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 and 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).

"The 'term gross misconduct as used in the context of an employer-employee relationship implies a willful disregard of the employer's interest or a wanton disregard of standards of behavior which the employer has a right to expect of its employees.' *Graley v. W. Va. Parkways Economic Dev. & Tourism Auth.*, Docket No. 91-PEDTA-225 (Dec. 23, 1991) (*citing Buskirk v. Civil Serv. Comm'n*, 175 W. Va. 279, 332 S.E.2d 579 (1985). *See Evans v. Tax & Revenue/Ins. Comm'n*, Docket No. 02-INS-108 (Sept. 13, 2002)." *Jaggers-Green v. Bur. of Empl. Programs*, Docket No. 03-BEP-026 (July 30, 2004).

It is undisputed in the record of this case that Grievant was placed on a Corrective Action Plan in March 2010 to address incorrect merges of files, submitting incomplete referrals, and failing to properly investigate her referrals. It is also undisputed that Grievant was placed on another Corrective Action Plan in June 2010 to address incomplete referrals, failing to submit referrals in a timely fashion, the length of time it took Grievant

to receive and enter referrals, and the lack of timely responses to her supervisors. The record established that Grievant was given a written reprimand for similar problems in November 2010. Grievant was subsequently suspended, twice, for acts of misconduct. The undersigned agrees with Respondent that Grievant's job performance was unsatisfactory. In fact, the record is clear that Grievant's deficiencies in performing her job amounted to a wanton disregard of standards of behavior which the employer has a right to expect of its employees.

Respondent met its burden of proof and demonstrated that Grievant's job performance was unsatisfactory. The record is clear that Respondent repeatedly tried to impress upon Grievant the importance of correctly performing her job, but to no avail. In addition, the record is clear Grievant was counseled on numerous occasions about her job performance and that she needed to comply with her Corrective Action Plans.

Respondent afforded Grievant progressive disciplinary action beginning with verbal warnings and a plan of improvement. Notwithstanding, Grievant failed to improve her job performance. Grievant received numerous verbal warnings, written warnings, and suspensions, but she continued her pattern of deficiencies. Grievant was well aware that her job performance, over the course of two years, was unacceptable. Respondent has met its burden of proof and demonstrated Grievant's termination in this case was for good cause.

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. Procedural Rules of the W. Va. Public Employees Grievance Board, 156 C.S.R. 1 § 156-1-3 (2008); *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988).

2. Permanent 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 and 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).

3. Respondent has met its burden of proof and established by a preponderance of the evidence that Grievant's job performance was clearly deficient, which warranted termination after progressive disciplinary measures were ineffective.

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: September 11, 2013

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Ronald L. Reece
Administrative Law Judge