WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

TERESA SEAGRAVES,
Grievant,

v. **Docket No. 2013-1475-DHHR**

DEPARTMENT OF HEALTH
AND HUMAN RESOURCES,
Respondent.

DECISION

Grievant, Teresa Seagraves, was employed as a Child Protective Services worker by Respondent, Department of Health and Human Resources ("DHHR") in its Mercer County Office. Ms. Seagraves filed a level three grievance form dated February 21, 2013, alleging that she had been dismissed from employment without good cause. As relief, Grievant seeks "to be made whole including backpay [sic] with interest & benefits restored."[1]

A level three hearing was conducted in Beckley, West Virginia, on July 12, 2013. Grievant personally appeared at the hearing with her Representative Gorgon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent was represented by Harry C. Brunner Jr., Assistant Attorney General. Following the hearing both parties submitted Proposed Findings of Fact and Conclusions of Law the last of which was received at the West Virginia Public Employees Grievance Board on August 12, 2013. This matter became mature for decision on that date.

[1] Grievant filed directly to level three pursuant to the authority established in W. VA. CODE § 6C-2-4(a)(4).

Synopsis

Grievant was in the hospital being treated for a suspected heart attack after spending the two previous days on bereavement leave related to death of her step-father. While in the hospital, Grievant was sending a series of texts to her sister complaining about her work situation. She was also sending texts to her supervisor regarding her available leave and her absence from work. While sending a text to her sister Grievant's telephone battery died. Grievant latter recharged the battery and attempted to complete the text to her sister describing a resignation she would send to her employer if she had another job. Rather than going to her sister, the resignation discussion was attached to her previous message to her supervisor and sent to her. The supervisor took the message as a resignation and terminated Grievant's employment. Grievant, without success, told her supervisor and other management representatives that she never intended to resign.

The Grievance Board has consistently held that a resignation must be voluntary to be effective. Grievant proved, in this factual situation, that she did not intend to resign, but sent a text discussing resignation to her supervisor by accident. Grievant's resignation was not voluntary thereby rendering it void and of no effect.

The following facts are found to be proven by a preponderance of the evidence based upon an examination of the entire record developed in this matter.

Findings of Fact

1. Grievant, Teresa Seagraves, was employed by Respondent, Department of Health and Human Resources ("DHHR") as a Child Protective Services Worker in the

DHHR Mercer County Office. She was originally employed by Respondent on February 16, 2012.

2. On February 15, 2013, Grievant went to the hospital because she was experiencing chest pains. Immediately prior to that date, Grievant had taken two or three days of bereavement leave related to the death of her stepfather.

3. During her bereavement leave, Grievant had sent her supervisor, Lorie Bragg, a text each day advising Ms. Bragg that Grievant would not be at work. Texting was the usual method for Grievant to contact her supervisor. Supervisor Bragg did not respond to these texts.[2]

4. Grievant sent a text to Supervisor Bragg on February 14, 2014, asking about bereavement leave. Supervisor Bragg responded to Grievant, telling her that bereavement leave would be subtracted from her regular leave. This was the only response Grievant received from her supervisor. Respondent's Exhibit 1.

5. While at the hospital on February 15, 2013, Grievant was also sending text messages to her sister. Grievant's sister was expressing her surprise that Grievant's supervisor had not responded to her texts related to bereavement leave before that date. Grievant was confiding with her sister about her dissatisfaction with her relationship with her supervisor.

6. Grievant was admitted to the hospital on February 15, 2013, and kept overnight. During that time, she had an ongoing text conversation with her sister expressing her dissatisfaction with her relationship with her supervisor. Grievant also sent a text message to her supervisor regarding her admission to the hospital.

[2] Respondent's exhibit 1 includes a series of text messages sent by Grievant to Supervisor Bragg starting on February 13, 2013, and going through February 15, 2013 advising Supervisor Bragg about her absence, inquiring about bereavement leave and concluding with a message regarding resignation.

7. Grievant was utilizing a new smart phone to do this texting and was unfamiliar with its features. While sending the texts to her sister, the batteries died on Grievant's phone. Later that evening, Grievant recharged the phone and drafted a continuation of her prior texts to her sister in which she wrote a resignation that she would like to send to her supervisor if she had another job.

8. Rather than sending the resignation message to her sister, Grievant accidently sent the message to her supervisor, attached to prior messages she had sent. Grievant had sent the messages to her supervisor on Friday, February 15, 2013, from 11:53 a.m. through 2:58 p.m.. The message related to resignation was sent at 4:05 p.m., attached to the prior messages, and added the following:

> And I quit. Never in my life has such non compassionate boss ever. I'll work til end of feb. but that's it. Not the job but the supervisor. And I want an interview.[3]

9. Rather than responding to Grievant's text, Supervisor Bragg sent an e-mail with copies of the texts she had received from Grievant to the Mercer County DHHR Community Service Manager ("CSM") Yvonne Walker. The e-mail stated the following:

> I'm sending you photos of text messages I received. I did not respond. I consider this a written notice, do you?[4]

10. CSM Walker's response to Supervisor Bragg stated:

> You are correct. This is written notice – Feb. 28th will be her exit date. I will complete the necessary paperwork on 02-19-13, requesting to post her position.[5]

[3] Respondent's Exhibit 1.
[4] Respondent's Exhibit 5.
[5] Respondent's Exhibit 5.

11. Monday, February 18, 2013, was a State Holiday[6] and Grievant did not report to work. CSM Walker and her secretary, Diane Key worked on that day, even though the office was closed. CSM Walker instructed Ms. Keys to process the resignation message received from Grievant and forwarded from Ms. Bragg, "effective 02-28-13." Ms. Keys began processing the paperwork that day including sending notice to the DHHR Human Resources office in Charleston.

12. Upon returning to work on Tuesday, February 19, 2013, Grievant informed Supervisor Bragg that the text message sent by Grievant on Friday was sent to her by mistake, that Grievant did not intend to resign and that she apologized.

13. Supervisor Bragg informed Grievant that the resignation had already been accepted because Grievant had just too many absences. Grievant had never before been counseled or disciplined for absenteeism.

14. Ms. Keys asked Grievant to submit something in writing to CSM Walker indicating that she resigned and that her last day would be February 28, 2013. Grievant refused to do so insisting that she did not intend to resign. Ms. Keys informed Grievant that her identification badge would be deactivated on February 28, 2013.

15. Grievant met with CSM Walker explaining that she did not wish to resign and that the text had been sent to Supervisor Bragg by mistake. CSM Walker informed Grievant that her resignation had already been accepted and forwarded to Charleston and Ms. Walker treated their meeting as an exit interview.

16. Grievant has attempted to find other employment but has been unsuccessful as of the date of the level three hearing.

[6] Presidents Day.

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 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). "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).

A resignation is, by definition, a voluntary act on the part of an employee seeking to end the employer-employee relationship. *Falquero v. Dep't of Env't. Protection*, Docket No. 2008-1596-DEP (Dec. 16, 2008). "To determine whether an employee's act of resignation was forced by others, rather than voluntary, the circumstances surrounding the resignation must be examined in order to measure the ability of the employee to exercise free choice." *Perkins v. Dep't of Health & Human Ser.,* Docket No. 2012-0885-DHHR (Oct. 1, 2013); *Falquero, supra*; *McClung v. W. Va. Dep't of Public Safety*, Docket No. 89-DPS-240 (Aug. 14, 1989); *See Adkins v. Civil Ser. Comm'n*, 171 W. Va. 132, 298 S.E.2d 105 (1982).

However, if the resignation is involuntary and, for example, was submitted as a result of agency coercion, the Grievance Board would have jurisdiction to determine whether the grievant was improperly dismissed from employment. The grievant bears the burden of proving by a preponderance of the evidence that the resignation was involuntary. *McClung*, *supra*.

Factors to be considered in the analysis are whether the employee was given time to consider his or her course of action or to consult with anyone; whether the resignation was abruptly obtained and/or inconsistent with the employee's work history; and whether the employer had reason to believe that the employee is not of a state of mind to exercise intelligent judgment. Duress has been found in situations where the employee involuntarily accepted the employer's terms; the circumstances surrounding the resignation permitted no other alternative; and the circumstances were the result of coercive acts of the employer. Whether a resignation was voluntary is a question of fact which must be resolved on a case-by-case basis. *Smith v. W. Va. Dep't of Corrections*, Docket No. 94-CORR-1092 (Sept. 11, 1995); *Perkins v. Dep't of Health & Human Ser.,* Docket No. 2012-0885-DHHR (Oct. 1, 2013).

Grievant argues that the text message related to a resignation was mistakenly sent to her supervisor. She claims that it was part of her venting to her sister about her work situation and that she never intended to resign. She insists that she did not voluntarily resign.

The facts support Grievant's allegations. First, the text of the alleged resignation begins with the conjunction "and" indicating the text was a continuation of a previous conversation. This is consistent with Grievant's version of the facts. Next, the resignation is very informal.[7] It appears to be more consistent with a venting message sent to her sister than a formal resignation sent to a supervisor. Additionally, the alleged resignation "was abruptly obtained" and not consistent with the previous text messages or Grievant's apparent work history. Finally, Grievant's supervisors had

[7] The text contains incomplete sentences and abbreviated spellings which are consistent with texts sent as part of informal discussions and inconsistent with a professional employee formally ending her employment.

plenty reasons to believe that Grievant "was not of a state of mind to exercise intelligent judgment." Grievant had just returned from bereavement leave due to the loss of her stepfather. Grievant indicated in her texts to Supervisor Bragg that her mother was having a very difficult emotional time and that Grievant was exhausted from the service and caring for her mother. Additionally, Grievant was at the doctor's office and ultimately admitted to the hospital for observation concerning an apparent heart attack. Obviously, Grievant was in an exhausted and vulnerable physical and mental condition when she sent the text to her supervisor. Rather than understanding Grievant's obvious state of duress and contacting Grievant to ascertain her intent in sending this disjointed text message. Grievant's supervisors decided to take advantage of the situation and act quickly upon Grievant's message, even to the extent of processing the alleged resignation on a State Holiday. An application of the factors for determining if a resignation is voluntary to the facts of this case leads to the clear conclusion that Grievant did not voluntarily resign from her employment with Respondent. Accordingly, the grievance is GRANTED and Grievant must be reinstated to her position with back pay and benefits.

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). "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).

2. A resignation is, by definition, a voluntary act on the part of an employee seeking to end the employer-employee relationship. *Falquero v. Dep't of Env't. Protection*, Docket No. 2008-1596-DEP (Dec. 16, 2008). "To determine whether an employee's act of resignation was forced by others, rather than voluntary, the circumstances surrounding the resignation must be examined in order to measure the ability of the employee to exercise free choice." *Perkins v. Dep't of Health & Human Ser.,* Docket No. 2012-0885-DHHR (Oct. 1, 2013); *Falquero, supra*; *McClung v. W. Va. Dep't of Public Safety*, Docket No. 89-DPS-240 (Aug. 14, 1989); *See Adkins v. Civil Ser. Comm'n*, 171 W. Va. 132, 298 S.E.2d 105 (1982).

3. If the resignation is involuntary and, for example, was submitted as a result of agency coercion, the Grievance Board would have jurisdiction to determine whether the grievant was improperly dismissed from employment. The grievant bears the burden of proving by a preponderance of the evidence that the resignation was involuntary. *McClung*, *supra*.

4. Factors to be considered in the analysis are whether the employee was given time to consider his or her course of action or to consult with anyone; whether the resignation was abruptly obtained and/or inconsistent with the employee's work history; and whether the employer had reason to believe that the employee is not of a state of mind to exercise intelligent judgment. Duress has been found in situations where the employee involuntarily accepted the employer's terms; the circumstances surrounding the resignation permitted no other alternative; and the circumstances were the result of

coercive acts of the employer. Whether a resignation was voluntary is a question of fact which must be resolved on a case-by-case basis. *Smith v. W. Va. Dep't of Corrections*, Docket No. 94-CORR-1092 (Sept. 11, 1995); *Perkins, supra.*

5. Grievant did not voluntarily resign and was improperly dismissed from her employment.

Accordingly, the grievance is GRANTED and Respondent is ORDERED to immediately reinstate Grievant to her prior position with back pay and benefits including statutory interest, from the date she was dismissed.

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: OCTOBER 29, 2013

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WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE