THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

NICHOLAS NGUYEN,
Grievant,

v. **DOCKET NO. 2012-1368-DOT**

DIVISION OF HIGHWAYS,
Respondent.

DECISION

This grievance was filed directly at Level Three of the grievance procedure by Grievant, Nicholas Nguyen, on May 29, 2012, challenging his dismissal by Respondent, Division of Highways. Grievant contends that he was terminated without good cause. As relief, he is seeking "to be made whole, including back pay with interest & all benefits restored."

On October 24, 2012, a Level Three hearing was held before Administrative Law Judge Landon R. Brown at the Grievance Board's Charleston, West Virginia office. Grievant was represented by Gordon Simmons, Steward for UE Local 170 of the West Virginia Public Workers Union, and Respondent was represented by Mark C. Dean, Esquire, with the Respondent's Legal Division. This matter became mature for decision on December 13, 2012, upon receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law. On December 14, 2012, ALJ Brown, on his own initiative, recused himself from deciding this matter. Thereafter, this grievance was administratively reassigned to the undersigned Administrative Law Judge for

adjudication. Before rendering this decision, the undersigned Administrative Law Judge listened to the recording of the Level Three hearing and reviewed all exhibits.

Synopsis

Grievant was a long-time employee of the Division of Highways, serving as a Chemist II in its Environmental Coatings Division. During his nearly 22 years with Respondent, Grievant compiled a substantial disciplinary record, focusing on leave compliance and hostile behavior in the workplace. The present charges involve unauthorized absence from work, submitting fraudulent time records, and making threatening comments toward a co-worker when confronted concerning his leave discrepancies. Although Grievant denied the allegations, and provided some testimony that contradicted the charges, Respondent established the charges by the weight of the credible evidence. Based upon a clear record of progressive discipline for leave compliance issues, and the serious nature of the threat Grievant related in a meeting, Respondent presented good cause for Grievant's termination.

The following Findings of Fact are made based upon the record developed at the Level Three hearing.

Findings of Fact

1. Grievant was employed by Respondent for nearly 22 years as a Chemist II.

2. Grievant's regular work schedule is from 6:00 AM to 2:30 PM with half an hour off in the morning to take his child to school.

3. Mohammed Shafiei is employed by Respondent as a Highway Engineer, and serves as Supervisor of the Environmental Coatings Group in the Materials Division.

He has held that position for 11 years. In that capacity, Mr. Shafiei has been Grievant's direct supervisor since October 2001.

4. Aaron Gillispie is employed by Respondent as a Senior Highway Engineer, and serves as Director of Respondent's Materials Division. He has been in that position for over five years.

5. Deborah Cox is employed by Respondent as an Office Assistant III, and serves as Supervisor of Payroll. She has been working in that capacity for over two years.

6. The Environmental Coatings Division is located in a separate building at 190 Dry Branch Road approximately one mile east of the State Capitol Complex. The building has parking around the building, including the main parking area which extends along two sides of the building in an "L" shape. The building is surrounded by a fence and has two entrance gates. Only one gate is open after hours and entrance through the gate is controlled by a security guard between the hours of 11:00 PM and 6:00 AM.

7. Grievant, Mr. Shafiei, and Ms. Cox all work at this Dry Branch Road location. Mr. Gillispie's office is located in Building 5 at the State Capitol Complex.

8. On March 25, 2012, Mr. Shaffei asked Terry Burns, Senior Transportation Engineering Technician, to collect employee time slips that are ordinarily turned into Mr. Shaffiei. Mr. Shaffiei had to be out of town until March 28, 2012. Mr. Burns notified employees of this change in an e-mail on March 26, 2012 at 2:16 PM, addressed to various employees, including Grievant. R Ex 3.

9. On March 27, 2012, a Payroll Clerk reported to Ms. Cox that Grievant's payroll time slip for the previous day, March 26, 2012, was missing.

10. Ms. Cox went to Grievant's office around 9:00 AM on the morning of March 27 in an effort to obtain the payroll slip for the previous day. Grievant's office was locked and he did not come to the door. Ms. Cox went into the Chemistry Laboratory, which is adjacent to Grievant's office, and was unable to locate him. She also went out into the parking lot and looked for either of Grievant's vehicles, but neither vehicle was present.

11. Ms. Cox repeated this process six or seven times during the work day on March 27, and walked around the office throughout the day, without encountering or locating Grievant. She also looked for Grievant's vehicles when outside for smoke breaks, but did not observe either vehicle in the parking lot that day.

12. Grievant turned in a payroll slip on March 28, 2012, claiming that he had taken two hours of leave and worked for six hours on March 27, 2012. R Ex 1.

13. Ms. Cox received Grievant's time slip for March 27 (R Ex 1) at or about 6:30 AM on March 28, 2012. After noticing what appeared to be a discrepancy, Ms. Cox went looking for Grievant at or about 11:40 AM in an effort to resolve the discrepancy. However, Grievant was not present in his office or the Chemistry Laboratory at that time. Ms. Cox continued to look for Grievant on March 28, 2012, in his office, the Chemistry Laboratory, the library, and the parking lot on multiple occasions between 11:40 AM and 3:00 PM, but did not observe Grievant or any of his vehicles at any time.

14. Ms. Cox was asked to observe Grievant's work time on Friday, April 6, 2012, because Grievant's immediate supervisor, Mr. Shafiei, does not work on Fridays.

Ms. Cox observed Grievant come in to work at approximately 7:00 AM on April 6, 2012. However, when Ms. Cox checked at 10:10 AM, Grievant was not in his office or at his work station. She observed Grievant returning to the workplace at 11:00 AM and then saw him leaving the work area in his GMC Denali with his son at approximately 11:50 AM. Despite multiple attempts, Ms. Cox was unable to locate Grievant and did not observe any of his vehicles in the parking lot for the rest of the day, before she left at 3:00 PM.

15. Grievant turned in a leave slip for April 6, 2012, claiming that he worked for seven hours and took one hour of leave. Ms. Cox personally observed that Grievant was gone from the workplace for more than one hour on April 6, 2012. R Ex 1.

16. On April 10, 2012, a meeting was held between Aaron Gillispie, Paul Farley, Mohammed Shaffiei, and Grievant, in which Grievant was asked to explain the time discrepancies for March 26, 27 and 28 on his leave slips, as noted by Ms. Cox. Although Grievant was initially calm and responsive during the meeting, he suddenly became agitated, stating that Debbie Cox was always watching him day in and day out, whenever I come in, and "I'd like to bring a gun and shoot her."

17. Grievant admitted that he stated: "Why is everybody always checking up on me?" He also recalled saying, "this is state property and it makes me feel like I am in a concentration camp." Grievant claimed that he then asked whether Debbie could protect everyone from the people sleeping in their cars between 6 and 7:00 AM, who were waiting to take a test, and if they should fail their test, they might come back and bring a gun and shoot Debbie in the building, or words to that effect.

18. Subsequent to the April 10 meeting, Mr. Gillispie and Jeff Black, Respondent's Director of Human Resources, had a telephone conversation with Dr. Daniel Thistlethwaite, a Psychiatrist who was treating Grievant, and who had called with Grievant's permission, stating that there were medical reasons why Grievant should not return to the workplace, indicating that there had been some threats made. Dr. Thistlethwaite indicated that he was not aware of any prior incident where Grievant had threatened to use physical force or had committed a violent act.

19. On May 16, 2012, Mr. Black notified Grievant of his termination as follows:

> In accordance with Section 12.2 of the State Division of Personnel's Administrative Rule and Section II, Chapter 6 of the Division of Highways Administrative Operating Procedures, your employment with the Department of Transportation, Division of Highways, as a Chemist 2 is hereby terminated effective this date at the close of business.
>
> The reason for your termination is further violation of DOT standards of work performance and conduct, compounded by violation of the State's Workplace Security Policy. More specifically, but not limited to:
>
> On March 27, 2012 you failed to report to work. However, you falsely reported that you had worked six (6) hours and took two (2) hours of leave. On March 28, 2012 you left at some time prior to 11:40 a.m., but you falsely reported that you had worked seven (7) hours. When you were questioned regarding these discrepancies, you became very hostile and threatened physical violence toward another employee. You stated that you would bring a gun into the office and blow the head off of this employee and shoot people. Without a doubt, this behavior constitutes gross misconduct. You have previously been disciplined with a 15 day suspension for assaulting a fellow employee, and a 30 day suspension for falsely reporting work time.
>
> Given the nature of your current and past offenses, particularly your proclivity toward inflicting and threatening physical violence, it was determined that the public's interest would be best served by withholding a predetermination conference and notice period prior to your termination. Nonetheless, you have the right to respond to this action to me, either personally or in writing, for the purpose of communicating any reasons why you feel it is unwarranted. If you choose to make a response, please do so no later than May 25, 2012. . . .

G Ex 2.

20. After Grievant was issued his dismissal notice, Mr. Gillispie decided to add additional security by increasing the contracted security service from eight hours per day to twenty-four hours per day, and having two Capitol Police officers stationed at the Dry Branch Road facility during the work day, for the following month.

21. Grievant was not afforded a pretermination hearing based upon these same concerns regarding employee safety.

22. In September 1997, Grievant was issued a notice of disciplinary action for unauthorized leave for exceeding his authorized leave. *See* R Ex 7.

23. In April 1998, Grievant was suspended for three days for taking unauthorized leave. *See* R Ex 8.

24. In August 2005, Grievant was issued a notice of disciplinary action for taking unauthorized leave. *See* R Ex 9. He had gone to Viet Nam due to the death of his brother and was unable to get a return flight before his annual leave was exhausted.

25. In December 2006 in to January 2007, Grievant was suspended for fifteen days due to his physical assault on a fellow employee, punching Roger Campbell in the chest and attempting to puncture him with a pen. *See* R Ex 10.

26. In March 2008, Grievant was issued a written reprimand for taking sick leave without proper approval. *See* R Ex 11.

27. In March 2009, Grievant was suspended for thirty days for incorrectly reporting his time and engaging in inappropriate threatening behavior during a meeting to discuss Grievant's leave usage. *See* R Ex 12.

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 Rule of the W. Va. Public Employees Grievance Bd., 156 C.S.R. 1 § 3 (2008); *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988). The generally accepted meaning of preponderance of the evidence is "more likely than not." *Riggs v. Dep't of Transp*., Docket No. 2009-0005-DOT (Aug. 4, 2009) *citing Jackson v. State Farm Mut. Ins. Co*., 215 W. Va. 634, 640, 600 S.E.2d 346, 352 (2004). *See Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. *Leichliter, supra*.

The employer must also demonstrate that misconduct which forms the basis for the dismissal of a tenured state employee is of a "substantial nature directly affecting rights and interests of the public." *House v. Civil Serv. Comm'n*, 181 W. Va. 49, 51, 380 S.E.2d 216, 218 (1989). The judicial standard in West Virginia requires that "dismissal of a civil service employee be for good cause, which means 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. 2, *Buskirk v. Civil Service Comm'n*, 175 W. Va. 279, 332 S.E.2d 579 (1985); Syl. Pt. 1, *Oakes v. W. Va. Dept. of Finance & Admin.*, 164 W. Va. 384, 264 S.E.2d 151 (1980). *See Guine v. Civil Service Comm'n*, 149 W. Va. 461, 468,

141 S.E.2d 364, 368-69 (1965); *Smith v. Clay County Health Dep't*, Docket No. 2012-0451-ClaCH (Apr. 17, 2012).

Certain facts relating to the charges against Grievant were the subject of conflicting testimony. 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. *Young v. Div. of Natural Res*., Docket No. 2009-0540-DOC (Nov. 13, 2009); *Massey v. W. Va. Public Serv. Comm'n*, Docket No. 99-PSC-313 (Dec. 13, 1999); *Pine v. W. Va. Dep't of Health & Human Res*., Docket No. 95-HHR-066 (May 12, 1995). *See Harper v. Dep't of the Navy*, 33 M.S.P.R. 490 (1987). *See also Clarke v. W. Va. Bd. of Regents*, 166 W. Va. 702, 279 S.E.2d 169 (1981). Some factors to consider in assessing the credibility of a witness include the witness's demeanor, opportunity or capacity to perceive and communicate, reputation for honesty, attitude toward the action, and admission of untruthfulness. Additionally, the fact finder should consider the presence or absence of bias, interest, or motive, the consistency of prior statements, the existence or nonexistence of any fact testified to by the witness, and the plausibility of the witness' information. *Rogers v. W. Va. Reg'l Jail & Corr. Facility Auth*., Docket No. 2009-0685-MAPS (Apr. 23, 2009); *Massey, supra*.

It is further noted that the merits of any prior disciplinary actions which Grievant failed to timely grieve when they were administered are not properly at issue here. *Aglinsky v. Bd. of Trustees*, Docket No. 97-BOT-256 (Oct. 27, 1997); *Jones v. W. Va. Dep't of Health & Human Res*., Docket No. 96-HHR-371 (Oct. 30, 1996). Indeed, all such information contained in the documentation of Grievant's prior discipline must be

accepted as true. *Aglinsky, supra*. *See Womack v. Dep't of Admin*., Docket No. 93-ADMN-430 (Mar. 30, 1994); *Perdue v. Dep't of Health & Human Res*., Docket No. 93-HHR-050 (Feb. 4, 1994). Consistent with this principle, the following documented disciplinary actions are accepted as factually accurate:

A. A September 1997 disciplinary action (R Ex 7) for Grievant exceeding his authorized leave.

B. An April 1998 three-day suspension (R Ex 8) for taking unauthorized leave. *See* R Ex 8.

C. An August 2005 disciplinary action (R Ex 9) for taking unauthorized leave. Grievant had gone to Viet Nam due to the death of his brother but was unable to get a return flight before his annual leave was exhausted.

D. A fifteen-day suspension in December 2006 (R Ex 10) because of Grievant's physical assault of a co-worker.

E. A March 2008 written reprimand (R Ex 11) for taking sick leave without proper approval.

F. A March 2009 thirty-day suspension (R Ex 12) for Grievant incorrectly reporting his time and engaging in inappropriate threatening behavior during a meeting to discuss his leave usage.

Grievant asserts that the present charges are factually inaccurate. More particularly, he claims to have been working in and out of his office and in the Chemistry Laboratory with the door closed. *See* G Ex 3. He claimed to have had specific interactions with certain co-workers, but none of these employees were called to endorse

his claims. Likewise, Grievant presented no records to establish what work he accomplished on March 27 and March 28, despite claiming that he was present and working for most of those days.

Grievant also asserted in his Level Three testimony, and in an earlier written response to Mr. Gillispie (R Ex 2), that he showed Ms. Cox a copy of Mr. Burns' e-mail providing guidance on time reporting in Mr. Shafiei's absence (R Ex 3) when he encountered her at 6:30 AM on the morning of March 27, 2012. However, Respondent presented an e-mail record which showed that Grievant did not open this particular e-mail to read it until 6:31 AM on March 28, 2012, the following morning. *See* R Ex 4. Thus, Grievant's recollection of his encounter with Ms. Cox is contradicted by other documentary evidence.

Grievant also made a claim in writing (R Ex 2) that he obtained approval from George Hanna at 1:00 PM on March 28, 2012, to take sick leave beginning at 1:30 PM that same day to provide medical assistance for his son. When Mr. Gillispie attempted to verify this claim, Mr. Hannah responded in an e-mail stating that he was not even present at that time because he had taken his own son to the doctor and was not at work on the afternoon of March 28, 2012. *See* R Ex 5. Indeed, consistent with this response, Mr. Hannah took 3.5 hours of sick leave on March 28. R Ex 5. This evidence contradicts Grievant's version of the events at issue.

Grievant further stated in his written response that he routinely signs in with the guard "if I am late," and also signs the visitor's book at the front desk. *See* R Ex 3. However, Grievant's signature only appears in the guard's log on March 28, 2012, when

he signed in at 5:58 AM, and was therefore not late, and it does not appear at all in the visitor's book during the relevant time frame from March 26 through March 28. *See* R Ex 6. This is significant because Grievant claims to have reported late on March 27 at around 7:00 AM, and there is no evidence to support this claim. March 27 is the same morning when Grievant claims to have read Mr. Burns' e-mail which the computer records indicate he did not open until the following day. Therefore, important parts of Grievant's explanation are inconsistent with the documentary evidence available here.

Grievant's potential work locations are confined to his office, the adjacent Chemistry Laboratory, and an open space that is referred to as the library. Ms. Cox did not need to be part bloodhound in order to locate Grievant, if he was present. Her testimony was clear and straightforward in regard to the efforts she made to locate Grievant on the days at issue in this grievance. Ms. Cox was aware that he alternated driving two vehicles, and did not see either vehicle at any time, except on the one occasion when she saw him leaving with his son. Ms. Cox had no involvement in Grievant's prior disciplinary actions, and had no motive to falsely accuse him of misconduct. She was simply performing her assigned duties to make sure all time was properly reported and documented.

Grievant's prior documented misconduct, particularly the 30-day suspension he received in March 2009 for improperly reporting his time, and other offenses, involved similar actions. Therefore, Grievant's testimony that he was present at all times claimed on his time slips is contradicted by other documentary evidence, and the testimony of at least one other credible witness, and is therefore found to be unworthy of belief.

Accordingly, Respondent established by a preponderance of the evidence that Grievant falsely reported his time worked on March 27 and 28, 2012, as charged.

In regard to Grievant's alleged statement during the April 10 meeting concerning his leave accounting where he reportedly stated that he would bring a gun to work and shoot Debbie Cox, Grievant's written response to Mr. Black included the following:

> I then mentioned to Mr. Gillispie that every morning when I come to work at 6:00 a.m., I always see a lot of different strangers coming in and out of the building. I mentioned that when Ms. Cox checks for my car then maybe she can find out who they are and that if someone who is crazy fails the test, they could take a gun and shoot us like what happened at another school.

G Ex 3.

Grievant took the position that he was talking about a different scenario in which he was not personally involved, and that the three supervisors who were just a few feet away from him at this meeting misunderstood what he was saying. It is very difficult to see how three educated engineers would misconstrue the statement above with a threat by Grievant to bring a gun and shoot Ms. Cox. These men had worked with Grievant for several years, and showed no indication that they had any difficulty understanding Grievant's words, despite his noticeable Vietnamese accent. It must also be noted that, if true, Grievant's response to the inquiry into his leave usage is so unresponsive and bizarre, that it borders on insubordination for refusing to meaningfully participate in the interview. Grievant's Level Three testimony went even further when he recalled stating: "This is state property and it makes me feel like I am in a concentration camp." It is also troubling that this alternative scenario as described by Grievant includes a prediction relating to violent behavior, albeit by a group of anonymous test-takers.

Mr. Shafiei and Mr. Gillispie were clear and unwavering in their testimony that they heard Grievant state that he ought to bring in a gun and shoot Debbie Cox. Grievant has a documented record of threatening violence in the workplace. His testimony on other issues related to this grievance was discredited. Therefore, the weight of the evidence supports the charge that he threatened a co-worker during the meeting on April 10. Clearly, this threatening statement violates the Division of Personnel's Workplace Security Policy. *See* R Ex 15.

The Division of Personnel's Administrative Rule, 143 C.S.R. 1 § 12.2(a) (2010), does not require a pretermination conference and fifteen days' advance notice when the cause of dismissal is gross misconduct. Respondent presented sufficient grounds for dispensing with the pretermination conference requirement here where Grievant had a history of hostile behavior and made another threat against a co-worker that involved gross misconduct.

Grievant's submission of false time records represents a repeat offense concerning leave and attendance issues where Respondent engaged in exhaustive progressive discipline. Similarly, Grievant's aggressive threatening behavior has been the subject of multiple disciplinary actions. Moreover, this threat, standing alone, involved conduct which could warrant termination for a first offense. Therefore, the penalty of termination, despite Grievant's long tenure in state government, was not shown to be excessive or an arbitrary and capricious exercise of disciplinary authority. *Martin v. W. Va. State Fire Comm'n*, Docket No. 89-SFC-145 (Aug. 8, 1989).

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

2. The employer must also demonstrate that misconduct which forms the basis for dismissal of a tenured state employee is of a "substantial nature directly affecting rights and interests of the public." *House v. Civil Serv. Comm'n*, 181 W. Va. 49, 380 S.E.2d 226 (1989). *See Smith v. Clay County Health Dep't*, Docket No. 2012-0451-ClaCH (Apr. 17, 2012). Non-probationary state employees in the classified service may 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. 2, *Buskirk v. Civil Service Comm'n*, 175 W. Va. 279, 332 S.E.2d 579 (1985); Syl. Pt. 1, *Oakes v. W. Va. Dept. of Finance & Admin.*, 164 W. Va. 384, 264 S.E.2d 151 (1980). *See Guine v. Civil Service Comm'n*, 149 W. Va. 461, 468, 141 S.E.2d 364, 368-69 (1965).

3. If an employee does not grieve specific disciplinary incidents, he cannot place the merits of such discipline in issue in a subsequent grievance proceeding. *Aglinsky v. Bd. of Trustees*, Docket No. 97-BOT-256 (Oct. 27, 1997); *Jones v. W. Va. Dep't of Health & Human Res*., Docket No. 96-HHR-371 (Oct. 30, 1996). *See Stamper v.*

W. Va. Dep't of Health & Human Res., Docket No. 95-HHR-144 (Mar. 20, 1996); *Womack v. Dep't of Admin*., Docket No. 93-ADMN-430 (Mar. 30, 1994). In such cases, the information contained in prior disciplinary documentation must be accepted as true. *See Perdue v. Dep't of Health & Human Res*., Docket No. 93-HHR-050 (Feb. 4, 1994).

4. "Mitigation of the punishment imposed by the employer is extraordinary relief and is granted only when there is a showing that a particular disciplinary measure is so clearly disproportionate to the employee's offense that it indicates an abuse of discretion. Considerable deference is afforded the employer's assessment of the seriousness of the employee's conduct and the prospects for rehabilitation." *Overbee v. Dep't of Health & Human Res*., Docket No. 96-HHR-183 (Oct. 3, 1996). *See Lanham v. W. Va. Dep't of Transp*., Docket No. 98-DOH-369 (Dec. 30, 1998); *Martin v. W. Va. State Fire Comm'n*, Docket No. 89-SFC-145 (Aug. 8, 1989).

5. Respondent established by a preponderance of the credible evidence that Grievant falsely claimed time when he was not present for work and, during a subsequent meeting with his supervisors concerning his leave reporting, threatened physical harm to a co-worker who had reported the leave discrepancies.

6. Given the seriousness of the offenses proved, as well as Grievant's prior documented misconduct, including a 30-day suspension for incorrectly reporting his time and engaging in inappropriate aggressive behavior toward his immediate supervisor, a 15-day suspension for assaulting a co-worker, and a 3-day suspension for taking unauthorized leave, termination of Grievant's employment was not shown to be

disproportionate to the offenses committed, or an arbitrary and capricious exercise of disciplinary authority.

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 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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LEWIS G. BREWER
Administrative Law Judge

Date: January 16, 2013