THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

NANCY KEMPER,
Grievant,

v. **DOCKET NO. 2013-1656-CONS**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
BUREAU FOR CHILDREN AND FAMILIES,
Respondent.

DECISION

Grievant, Nancy Kemper, filed two grievances against her former employer, the Department of Health and Human Resources/Bureau for Children and Families, on March 1 and March 21, 2013, at level three of the grievance procedure, challenging her suspension without pay pending investigation, and her dismissal. These grievances were consolidated for hearing and decision. As relief Grievant seeks, "[t]o be made whole including backpay with interest and all benefits restored."

A level three hearing was held before the undersigned Administrative Law Judge on August 22, 2013, in the Grievance Board's Westover office. Grievant was represented by Gregory H. Schillace, Esquire, Schillace Law Office, and Respondent was represented by Harry C. Bruner, Jr., Assistant Attorney General. This matter became mature for decision on October 1, 2013, on receipt of Respondent 's Proposed Findings of Fact and Conclusions of Law. Grievant declined to submit written proposals.

Synopsis

Grievant was suspended pending an investigation, and then dismissed from her employment as an Economic Service Worker for falsification of information and encouraging a customer to commit fraud. A client reported to the office receptionist that no one had called him for his scheduled review in January 2013. Grievant's supervisor placed telephone calls to some of the clients assigned to Grievant for reviews, and asked to speak to the clients, whom she did not know. Persons identifying themselves as the clients were asked whether they had been contacted for a case review in January 2013, and these individuals reported that they had not been contacted. Computer entries made by Grievant indicated that these clients had been contacted for a telephone review. Grievant's supervisor did not take written statements from any of the persons she contacted, nor did she take any action to verify that the person she was speaking to was the client, and no other steps were taken to investigate the allegations.[1] None of the clients

[1] After the first day of hearing, Grievant's supervisor obtained unsworn, written statements from four of the clients, at the request of her supervisor and Respondent's counsel. Respondent's counsel was specifically asked at the beginning of the second day of hearing whether he had concluded his case presentation, to which he responded in the affirmative. Respondent's counsel then attempted to use the written statements, which had not been placed in the record or presented to Grievant's counsel, to cross-examine Grievant. The undersigned ruled that this would not be allowed as no witness had identified the documents. Respondent's counsel then attempted to place the statements into the record as "rebuttal" through the testimony of Grievant's supervisor. The undersigned refused to admit these documents as they were not rebuttal evidence, and the statements were not taken during the course of the investigation, and were taken after the first day of hearing at level three. Grievant's supervisor's excuse for not obtaining the written statements during the course of the investigation was that she did not think of it. It is readily apparent that Grievant's supervisor had no investigatory training. While Respondent kept pointing out how serious Grievant's alleged infractions were, it is clear that Respondent did not properly conduct the investigation which led to a long-term employee's discharge from employment.

was called to testify at the level three hearing. One client that had come into the office signed a written statement which was prepared and notarized by employee Tammy Rush, but the statement was not given under oath, and Ms. Rush was not called to testify. The only evidence presented by Respondent to prove the charges was hearsay. Under the circumstances presented here, this hearsay is entitled to no weight. Respondent did not prove the charges against Grievant.

The following Findings of Fact are made based upon the record developed at level three.

Findings of Fact

1. Prior to her dismissal, Grievant was employed by the Department of Health and Human Resources ("HHR"), as an Economic Service Worker at the Lewis County Office for six and a half years.

2. Grievant's duties included taking food stamp applications, now referred to as "SNAP" (Supplemental Nutritional Assistance Program), and conducting reviews to determine if clients were still eligible for benefits, conducting Medicaid reviews and taking applications, and working with food and clothing vouchers.

3. When employees such as Grievant conduct a review of client information, they enter data under their identification number and password into the computer system used statewide by HHR to maintain client information, which is referred to as RAPIDS.

4. Food stamp recipients must complete forms every six or twelve months to update their information, and return those forms to HHR. Economic Service Workers are then assigned to make personal contact with the clients to verify the information, either in person or by telephone, to determine whether the clients still qualify for benefits.

5. Economic Service Workers in Lewis County have a caseload of 600 to 800 clients. Grievant was assigned 49 food stamp reviews to be completed during the first two weeks of January 2013. Telephone reviews are conducted on Mondays, Tuesdays, Thursdays, and Fridays. The two other Economic Service Workers who were reporting to work at the Lewis County HHR office in January 2013 were assigned 18 and 12 telephone reviews, respectively. One Economic Service Worker was on medical leave, and the remaining employees were taking care of his caseload. Grievant asked her co-workers to help her with her telephone reviews, and the two workers did so. Had Grievant not completed her telephone reviews, she would not have been penalized in any way.

6. On February 12, 2013, Grievant became upset when she learned that a co-worker had told three other employees about her medical condition, resulting in a loud exchange of words among Grievant, her supervisor, Amanda Smith, and the co-worker. On February 13, 2013, Grievant was called to the office of the Community Services Manager for Lewis and Upshur Counties, Mary Austin, for a meeting regarding this exchange. Ms. Austin's comments to Grievant during that meeting led her to believe that Ms. Austin was going to fire her if she did not resign, although, Ms. Austin would provide her with a reference if she tried to find another job. Ms. Austin admitted that she told Grievant she could resign and she would give her a reference. Ms. Austin did not indicatee why she would have said this to Grievant.

7. Also on February 12, 2013, a client, R.P., came into the Lewis County HHR office and reported to the receptionist that he had not been contacted for his food stamp review, which had been scheduled for January 14, 2013. The client was not directed to

Grievant. The information entered into RAPIDS indicated that Grievant had contacted R.P. by telephone to verify his information.

8. On February 13, 2013, Ms. Smith was assigned to survey the clients Grievant had been assigned to contact for reviews in January 2013, to determine whether they had been contacted. She did not complete the surveys until sometime in March 2013.

9. On February 14, 2013, Grievant applied for a medical leave of absence. Grievant's medication had been changed, and she was having difficulty adjusting to the new medication. Grievant left the office to visit her doctor and to obtain a medical excuse, and when she returned to the office an hour and a half later her office access card had been deactivated, and Ms. Austin told her she was not to speak to anyone in the office other than Ms. Austin or Ms. Smith. Grievant was granted a medical leave of absence from February 14, 2013, through March 4, 2013.

10. By letter dated February 28, 2013, Grievant was notified by Interim Regional Director of Region III,[2] Lisa M. McMullen, that she was being suspended without pay pending an investigation, effective March 4, 2013, based on allegations of gross misconduct.

11. Ms. Smith spoke with four individuals by telephone who told her they were the clients with whom she had asked to speak, R.P., S.M., B.P., and C.K.. Ms. Smith did not know any of these individuals, and did not verify that they were the individuals with whom she had asked to speak. Ms. Smith identified herself to each individuals to whom she spoke, and advised that she was conducting a survey. She asked each of them

[2] Lewis County is in HHR's Region III.

whether an interview had occurred for their January review, and each responded that they had not been contacted for this review. She did not identify a particular date when the review may have occurred. Ms. Smith did not ask for a written statement from any of these individuals during the course of her investigation, because she did not think to do so. Ms. Smith spoke with client D.P. in person on March 8, 2013, when he or she came into the office to speak with her after she had left a telephone message for D.P. on March 6, 2013. Ms. Smith did not speak with any other person with whom the entries in RAPIDS indicate Grievant had conducted a telephone review in January 2013.[3] Grievant had entered information in RAPIDS that she had contacted each of these clients by telephone on January 7, 8, or 14, 2013, to conduct a telephone review to verify the information they had previously submitted.

12. By letter dated March 11, 2013, Grievant was notified that a predetermination meeting had been scheduled for March 15, 2013, regarding "irregularities in SNAP reviews conducted by" Grievant.

13. In attendance at the predetermination meeting on March 15, 2013, were Grievant, Ms. Smith, and Ms. Austin. Ms. Austin conducted the meeting by advising Grievant that the case comments she had entered into RAPIDS showed that a SNAP telephone review had been completed by Grievant with a particular client on a particular date in January or February 2013, and then she asked Grievant what she could tell her about that particular review and whether she should assume that the telephone review was completed since the case comments documented that it did occur. Grievant responded

[3] Ms. Smith spoke with one client, G.L., whose telephone review was scheduled for February 2013. See Finding of Fact Number 24.

that there were too many reviews to remember, and that if the entry had been made in RAPIDS then she completed the review. At the end of the meeting, Ms. Austin told Grievant that Ms. Smith had spoken to each of the clients and that each client had said Grievant did not contact them for their review. Ms. Austin also told Grievant that client J.K. had said that Grievant had told him that if she were him she "would not report this information to me. . . . you do realize that you will lose your stamps by reporting this information," and asked her if she had a comment. Grievant told Ms. Austin that she did not recall saying this to J.K., and that he was "a disturbed man. . . . He has been in the hospital. He has slept in his car. Has come in the office in his hospital gown with tubes hanging out." At no time during this meeting was Grievant allowed to look at any of the client information to refresh her recollection, nor was she allowed to look at the entries she had made in RAPIDS.

14. By letter dated March 18, 2013, Grievant was notified by Ms. McMullen that she was being dismissed from her position effective April 3, 2013, for "falsification of client contacts and redetermination reviews for cases within your assigned workload, as well as falsifying reported information in a case and encouraging a customer to commit fraud by not reporting information to you." The letter provided information related to client reviews for R.P., S.M., B.P., C.K., D.P., and J.K., all of whom were identified only by their initials in the letter.

15. With regard to R.P., the dismissal letter states as follows:

> On February 12, 2013 R.P. came into the office and reported to the receptionist the [sic] he received his SNAP benefits for February but the

review was scheduled for January 1, 2013.[4] The ES Supervisor spoke with R.P. on February 14, 2013 and the client stated that he didn't get a call for the phone review from the worker. The Agency file shows that you documented that you conducted a Redetermination review. A decision regarding federally funded benefits was made based on that documentation of a review.

16. With regard to S.M., the dismissal letter states as follows:

S.M. was scheduled for a phone review on January 8, 2013 at 8:30. Client reports that they have not met or spoken with an agency employee to conduct their review.[5] The Agency file shows that you documented that you conducted a Redetermination review. A decision regarding federally funded benefits was made based on that documentation of a review[.]

17. With regard to B.P., the dismissal letter states as follows:

B.P. was scheduled for a phone review on January 8, 2013 at 1:30. Investigation revealed that no worker completed the review, the client dropped off forms at the local office and waited all day but no one ever called to conduct the review. A decision regarding federally funded benefits was made based on that documentation of a review.

18. With regard to C.K., the dismissal letter states as follows:

C.K. was scheduled for a phone review on January 8, 2013 at 11:00. Investigation revealed that no phone review was conducted. The client waited the entire day. The client finally attempted to call you directly and the phone kept ringing and she was never able to speak with you. The client then came into the office on January 9, 2013 and completed a paper that said "please call my cell for review if no answer at home number.["] She never received a call. The Agency file shows that you documented that you conducted a Redetermination review. A decision regarding federally funded benefits was made based on that documentation of a review.

19. With regard to D.P., the dismissal letter states as follows:

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[4] Grievant pointed out that this was an error, as January 1, 2013, was a state holiday. The entries in RAPIDS show the date as January 14, 2013.

[5] Ms. Smith testified that she called to speak to S.M. and asked whether a review had been conducted, and the individual identifying him or herself as S.M. told her "no." Ms. Austin testified that S.M. had come into the office to report that no review had been conducted.

> D.P. states that his phone review was scheduled for 1:00 and he wasn't able to keep that time so he called and spoke to Ms. Kemper to let her know he could do it at 3:00.[6] Ms. Kemper told him to complete forms and mark out the time he will be available. Client turned in the paperwork and followed the instructions but reports that he did not receive a phone call for the review. On March 8, 2013[,] client verified that he received the paperwork regarding his SNAP benefit amount. The agency file shows that you documented that you conducted a Redetermination review. A decision regarding federally funded benefits was made based on that documentation of a review.

Ms. Smith did not attempt to contact D.P. until March 6, 2013.

20. With regard to J.K., the dismissal letter states as follows:

> J.K. came into the Lewis County office on February 22, 2013 to report that there were errors in his case. The client provided a written statement as to his complaint. He states that he come into the office on January 15, 2013 to give you his award letter for college as he is now a full time student. The client reports that you told him "if I were you I would not report this information to me". And that you also said, "you realize that you will lose your stamps". The client brought in the CAF and case comments to show the errors. CAF says he was not enrolled in school and therefore client was still getting SNAP benefits. Income Maintenance Policy 9.a;A.2,f explains about individuals determined to be students, participation in the SNAP program is limited to those students who meet the criteria. Students must meet an exception to the restriction on student eligibility to qualify for SNAP benefits. This constitutes falsifying an Agency record as well as encouraging a client to commit fraud in a federally funded program.

21. Tammy Rush, an employee of HHR in the Lewis County office, wrote a statement which she notarized as being signed, but not sworn to, by J.K. and dated February 22, 2013. The record does not reflect why Ms. Rush wrote the statement. The statement reads, in pertinent part, as follows:

> On 1-15-13 I was in to report to Kemper that I am attending college and brought in my documentation. She told me "[i]f I were you I would not report this information to me." She also said "you do realize that you will lose your stamps." I told her yes, I realize that [illegible] my paperwork [illegible] errors

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[6] D.P.'s telephone review was scheduled for January 7, 2013, and Grievant's entries in RAPIDs show that she spoke with him or her on that date.

> I found in her print off I requested is she put that I [sic] not enrolled in school even though she listed my loan amounts, she listed that I'm working when I'm not, she also reported that my tuition cost is 6054.00 which she combined tuition and room and board.

J.K. was not called to testify at the hearing.

22. J.K. frequently visited the Lewis County HHR office while Grievant was employed there. It was Grievant's observation that J.K. had a lower I.Q. and a questionable learning level. Grievant had a conversation with J.K. regarding what he would need to do if he returned to college. Grievant told J.K. that he would need to provide verification of tuition and any other costs, and that he would have to work at least one hour of work study or work at a job at least 20 hours a week in order to keep receiving food stamps. Grievant did not tell J.K. not to report information to her, and the information which she had received from J.K. did not indicate that he had actually returned to college.

23. Neither Ms. Austin or Ms. Smith know J.K. The record does not reflect whether a review was completed of J.K.'s allegations that he had provided information to Grievant that demonstrated he was enrolled in school, or whether any of J.K.'s documentation demonstrated when he enrolled in school, if he in fact did so. The record also does not reflect whether HHR's records show that Grievant entered information that J.K. was working when he was not.

24. Ms. Smith spoke with another individual whom she believed to be a client, G.L., although she did not know when she had spoken with him or her, and she indicated that G.L. told her he or she had not been contacted for his or her February review. Grievant had made an entry in RAPIDS that she had contacted G.L. on February 11, 2013, by telephone and conducted the review. The dismissal letter does not list G.L. as a client

whose record had been falsified by Grievant, and no witness explained the reason for this omission.

25. Grievant could not specifically recall any information about any of the other clients identified by their initials, but testified that if the entries in RAPIDS show that she contacted these clients, then she did so.

26. The case comments from RAPIDS list Barry Dempsey as the "Primary Worker" for clients B.P., C.K., and D.P. Case comments entered into RAPIDS prior to January 2013 were entered by an Economic Service Worker other than Grievant for C.K. and D.P. Grievant had entered a case comment in RAPIDS for B.P. in November 2012, but the phone review preceding the one in January 2013 was done by a different Economic Service Worker.

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. W. VA. CODE § 29-6A-6; *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 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 and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. *Id*.

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, 380 S.E.2d 226 (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 rights and interests 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, 581 (W. Va. 1985); *Oakes v. W. Va. Dept. of Finance and Admin.*, [164 W. Va. 384,] 264 S.E.2d 151 (W. Va. 1980); *Guine v. Civil Service Comm'n*, [149 W. Va. 461,] 141 S.E.2d 364 (W. Va. 1965)." *Scragg v. Bd. of Dir. W. Va. State College,* Docket No. 93-BOD-436 (Dec. 30, 1994).

The only evidence offered by Respondent to support the charges against Grievant was the testimony of Ms. Smith and the dismissal letter which summarizes what Ms. Smith was told by those she interviewed. Grievant denied that she had falsified information, testifying that, while she could not remember any individual telephone contacts with individuals, if she had entered into the computer system that she had made the telephone contact, then she must have done so. Grievant testified that she was not aware of any consequences to her had she not completed her reviews on a certain date, so there would have been no reason for her to misrepresent that she had called a client. Respondent did not dispute this latter point.

Ms. Smith's testimony and any written findings regarding what she was told is hearsay, and as such, the undersigned must determine how much weight it can be given in this proceeding. The Grievance Board has applied the following factors in assessing hearsay testimony: 1) the availability of persons with first hand knowledge to testify at the

hearings; 2) whether the declarants' out of court statements were in writing, signed, or in affidavit form; 3) the agency's explanation for failing to obtain signed or sworn statements; 4) whether the declarants were disinterested witnesses to the events, and whether the statements were routinely made; 5) the consistency of the declarants' accounts with other information, other witnesses, other statements, and the statement itself; 6) whether collaboration for these statements can be found in agency records; 7) the absence of contradictory evidence; and 8) the credibility of the declarants when they made their statements.[7] *Gunnells v. Logan County Bd. of Educ.,* Docket No. 97-23-055 (1997); *Sinsel v. Harrison County Bd. of Educ.*, Docket No. 96-17-219 (Dec. 31, 1996); *Seddon v. W. Va. Dep't of Health/Kanawha-Charleston Health Dep't*, Docket No. 90-8-115 (June 8, 1990).

Respondent's excuse for not calling any of the clients as witnesses was that they had a right to their privacy. Despite this, however, at the end of the hearing, Respondent offered to return for another day of hearing in order to call these clients as witnesses, which was opposed by Grievant, and denied.[8] Respondent presented no sworn statement from any individual to support Ms. Smith's report of her "investigation." Ms. Smith's excuse for her failure to obtain written statements, a very basic investigatory technique, was that she did not think to get written statements. In fact, except for D.P., Ms. Smith made contact

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[7] The United States Merit System Protection Board Handbook ("MSPB Handbook") set out these as factors to examine when assessing hearsay. *See Borninkhof v. Department of Justice*, 5 MSBP 150 (1981).

[8] The undersigned would note that the Grievance Board often takes the testimony of minors at level three hearings, using only their initials in the record to protect their privacy.

with those she called only by telephone. While R.P. and J.K. came into the office, neither spoke with Ms. Smith at the office. Ms. Smith did not know any of the individuals she called, and only took the word of the person on the other end of the telephone that he or she was the client to whom she had asked to speak , as did Grievant when she conducted telephone reviews. The verbal statements were not routinely made, and the undersigned has no way to determine whether the clients felt, rightly or not, any pressure to respond in a particular fashion to the inquiries, or whether they even understood what was being asked.

As to assessment of credibility, Grievant testified that J.K. has a lower I.Q., and she testified that she absolutely did not tell him not to report to Respondent that he was going to college. Respondent did not rebut this testimony. As to S.M., B.P., and C.K., the undersigned has no way to determine whether the individuals Ms. Smith spoke with by telephone were actually these clients of Respondent. Further, no evidence was presented to assess the credibility of any of the identified clients, their capacity to understand what they were being asked, or for that matter, their memory. Some of these individuals were asked sometime after February 12, 2013, whether they had been contacted for a telephone review that Grievant had recorded occurred on January 7, 8, or 14, 2013. In the case of D.P. the telephone interview was scheduled for January 7, 2013, and he or she did not speak with Ms. Smith until March 8, 2013. Assuming the individuals Ms. Smith spoke with by telephone were in fact the clients, they were being asked to recall whether they had received a telephone call more than a month before regarding their review, not something that everyone is going to remember. It also appears from the client records themselves that some of these individuals were actually assigned to another case worker, although no

one explained whether this is what the records are indicating. If this is the case, then it is entirely possible that these clients were expecting a telephone call from their assigned caseworker, and did not understand that Grievant's telephone call was their review. Grievant could not offer testimony about any of the individuals because she did not know who they were from their initials, and she could not recall information about all of the clients in her caseload of 600 to 700.

> Hearsay evidence is admissible in the grievance procedures for state and education employees, but there is no requirement, statutory or otherwise, that it be afforded any particular weight. Generally, written statements, even affidavits, may be discounted or disregarded unless the offering party can provide a valid reason for not presenting the testimony of the persons making them. *See, Seddon v. W.Va. Dept. of Health,* Docket No. 90-H-115 (Dec. 14, 1997).

Cook v. W. Va. Division of Corrections, Docket No. 96-CORR-037 (Oct. 31, 1997), Conclusion of Law No. 2. The undersigned concludes that the testimony of Ms. Smith regarding her conversations with each of the identified individuals is unreliable hearsay, which is entitled to no weight, particularly given Ms. Smith's lack of skills in investigative techniques and suspect documentation skills. The undersigned further concludes that the written statement allegedly signed by J.K. is entitled to no weight, as it was not given under oath, and is unreliable hearsay. Grievant's testimony on her conversation with J.K. was credible, and no evidence was offered to rebut it. Respondent failed to prove the charges against Grievant. *See, Warner v. Dep't of Health and Human Res.*, Docket No. 07-HHR-409 (Nov. 18, 2008).

The undersigned would also point out that the method used by Ms. Smith and Ms. Austin to elicit Grievant's side of the story at the predetermination meeting appeared to be

designed only to support what they had already decided to do, rather than trying to hear Grievant's explanation. Grievant was not charged with behavior related to a specific incident that would be easy to recall. If they truly wanted to hear an explanation from Grievant, Ms. Smith and Ms. Austin should have given Grievant the opportunity to refresh her recollection of these clients and interviews that she had recorded she had conducted more than two months before, by providing her with copies of client records and the entries she had made in RAPIDS to review so that she had at least some opportunity to recall what had occurred. The testimony of Ms. Austin and Ms. McMullen that Grievant should have recalled the work she had done for each client in January is disingenuous, particularly given that they were both aware that Grievant was having medical issues serious enough for her to be off on medical leave for over two weeks.[9] Grievant did provide information at the predetermination meeting, however, about J.K. which would have led someone interested in finding the truth to conduct further inquiry into J.K.'s allegations, which was not done.

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. W. VA. CODE § 29-6A-6; *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988).

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[9] The undersigned would note that Ms. Smith could not recall how many clients she had contacted during her investigation of Grievant, even though this was an unusual situation, and one would think that Ms. Smith would have taken detailed notes. Apparently, only Grievant is supposed to have a memory of everyone to whom she speaks.

2. 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, 380 S.E.2d 226 (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 rights and interests 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, 581 (W. Va. 1985); *Oakes v. W. Va. Dept. of Finance and Admin.*, [164 W. Va. 384,] 264 S.E.2d 151 (W. Va. 1980); *Guine v. Civil Service Comm'n*, [149 W. Va. 461,] 141 S.E.2d 364 (W. Va. 1965)." *Scragg v. Bd. of Dir. W. Va. State College*, Docket No. 93-BOD-436 (Dec. 30, 1994).

3. Respondent failed to prove the charges against Grievant.

Accordingly, this grievance is **GRANTED.** Respondent is **ORDERED** to reinstate Grievant to her position as an Economic Service Worker at the Lewis County HHR Office, and to pay her all backpay to which she is entitled from the date she was suspended without pay, plus interest, and restore all benefits, as though she had not been 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 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: November 4, 2013