

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SYNOPSIS REPORT

Decisions Issued in January, 2020

The Board's monthly reports are intended to assist public employers covered by a grievance procedure to monitor significant personnel-related matters which came before the Grievance Board, and to ascertain whether any personnel policies need to be reviewed, revised or enforced. W. Va. Code §18-29-11(1992). Each report contains summaries of all decisions issued during the immediately preceding month.

If you have any comments or suggestions about the monthly report, please send an e-mail to wvgb@wv.gov.

NOTICE: These synopses in no way constitute an official opinion or comment by the Grievance Board or its administrative law judges on the holdings in the cases. They are intended to serve as an information and research tool only.

TOPICAL INDEX
HIGHER EDUCATION EMPLOYEES

<u>KEYWORDS:</u>	Promotion; Full Professor; Scholarly Achievement; Teaching Excellence; Qualifications; Arbitrary and Capricious
<u>CASE STYLE:</u>	<u>McCoy v. West Virginia State University</u> DOCKET NO. 2017-2137-WVSU (1/10/2020)
<u>PRIMARY ISSUES:</u>	Whether Grievant proved that she met and exceeded the WVSU Handbook criteria for promotion to full professor.
<u>SUMMARY:</u>	Respondent denied Grievant a promotion to full professor based upon the then provost's view that show had failed to demonstrate "scholarly achievement" in her portfolio. Grievant proved that she had received a positive recommendation for promotion from her faculty chair, the interview committee, and the dean. The present interim provost also believes Grievant met the criteria set out in the faculty handbook for promotion to full professor. Grievant proved that the reasons for the denial were not supported by the faculty handbook and the decision to deny her promotion was arbitrary and capricious.

<u>KEYWORDS:</u>	Termination; Job Duties; Medical Leave; Reprisal; Retaliation
<u>CASE STYLE:</u>	<u>Frost v. Bluefield State College</u> DOCKET NO. 2019-0319-BSC (1/27/2020)
<u>PRIMARY ISSUES:</u>	Whether Respondent proved that termination of Grievant's employment was justified or whether Grievant proved that the termination was retaliatory
<u>SUMMARY:</u>	Grievant was employed by Respondent in a classified position and protests his termination from employment while on medical leave alleging such was retaliation because Respondent would not permit him to take indefinite catastrophic leave. Grievant's employment was terminated based on the medical verification provided by his own doctor stating that he was permanently incapacitated from performing his job duties. Respondent's decision to terminate Grievant's employment under these circumstances was reasonable. The granting of indefinite discretionary catastrophic leave is not a reasonable accommodation. Grievant made a prima facie case of retaliation but Respondent provided credible evidence of legitimate nondiscriminatory reasons for its actions and Grievant failed to prove those reasons were pretextual. Accordingly, the grievance is denied.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

<u>KEYWORDS:</u>	Hostile Work Environment; Discrimination; Job Description; Coach Duties
<u>CASE STYLE:</u>	<u>Wright v. McDowell County Board of Education</u> DOCKET NO. 2019-0877-McdED (1/10/2020)
<u>PRIMARY ISSUES:</u>	Whether Grievant proved he was the victim of either discrimination or hostile work environment.
<u>SUMMARY:</u>	Grievant is employed by Respondent in an extra-curricular assignment as an Assistant Coach. Grievant alleges hostile work environment and discrimination by the head coach and the principal of the school. Respondent argued that Grievant failed to prove the underlying facts or that discrimination or a hostile work environment had occurred. While there has been a breakdown of the working relationship between Grievant and the head coach, the breakdown was caused by Grievant, who consistently worked to undermine the head coach's authority and was repeatedly disrespectful and insubordinate, presumably because he believed he should have been selected as the head coach instead. While the head coach's management of Grievant was ineffective and he was discourteous at times, the head coach did not discriminate against Grievant or create a hostile work environment. The principal did take appropriate action in response to the situation and Grievant failed to prove that she discriminated against him or created a hostile work environment. Accordingly, the grievance is denied.

<u>KEYWORDS:</u>	Default; Level One Conference; Time Limits
<u>CASE STYLE:</u>	<u>Wood v. Kanawha County Board of Education</u> DOCKET NO. 2019-1789-KanED (1/24/2020)
<u>PRIMARY ISSUES:</u>	Whether Grievant is entitled to relief by default.
<u>SUMMARY:</u>	Grievant is a teacher employed by the Kanawha County Board of Education. Grievant contends that default occurred at level one of the grievance process because the requested conference was not held within ten days of Respondent receiving the grievance. Respondent counters that Grievant's request for default is untimely. The record established that Grievant failed to timely file her request for default. This matter is remanded to allow the parties to conduct a Level One conference.

KEYWORDS: Salary; Experience; Favoritism; Discrimination; Reprisal; Ultra Vires; Mistake; Experience Credit for Pay Purposes; ECPP; Service Credit; Bachelor's Degree; BSN; School Nurse; Overpaid; Private Sector; Payroll; Unauthorized; Retaliation; Presumption; Pretext

CASE STYLE: Schreckengost v. Wood County Board of Education

DOCKET NO. 2019-0758-WooED (1/30/2020)

PRIMARY ISSUES: Whether Grievant proved her claims of discrimination and favoritism by a preponderance of the evidence.

SUMMARY: Grievant is employed by Respondent as a school nurse. Grievant learned that another school nurse hired on the same day as she was allowed experience credit for pay purposes for twenty years she worked before receiving her bachelor's degree, while Grievant was not allowed to receive such service credit. Grievant claimed discrimination, favoritism, and reprisal. Respondent denied Grievant's claims and asserted that it made changes to the other employee's salary and to Grievant's to correct mistakes. Grievant failed to prove her claims by a preponderance of the evidence. Therefore, this grievance is DENIED.

KEYWORDS: Termination; Willful Neglect of Duty; Insubordination; Misconduct; Correctable Conduct

CASE STYLE: Ruddle v. Randolph County Board of Education

DOCKET NO. 2019-0534-RanED (1/31/2020)

PRIMARY ISSUES: Whether Respondent had good cause to terminate Grievant.

SUMMARY: Respondent contends that Grievant was terminated from employment for willful neglect of duty and insubordination. Respondent failed to meet its burden of proof and establish these charges by a preponderance of the evidence at the evidentiary hearing. In addition, the record established that Respondent's action of termination was precipitous due to the nature of Grievant's conduct. Given the unique facts of this case, it appears that Grievant's alleged misconduct could be correctable. Accordingly, the undersigned finds that Respondent failed to establish the charges against Grievant, and, under the unique circumstances of this case, Grievant is entitled to an improvement plan. This grievance is granted.

KEYWORDS: Termination; Insubordination; Willful Neglect of Duty; Work-Related Injury; Family and Medical Leave Act; Correctable Conduct; Progressive Discipline, Improvement Plan

CASE STYLE: Peters v. Ohio County Board of Education
DOCKET NO. 2019-0541-OhiED (1/28/2020)

PRIMARY ISSUES: Whether Respondent proved Grievant's conduct was non-correctable and willful, justifying termination rather than an improvement plan.

SUMMARY: Grievant was injured at work while employed by Respondent as a classroom teacher. After missing two years, she returned to work, only to be sidelined with shingles for a month. After Grievant exhausted her paid leave, Respondent processed the rest of her absence as unpaid leave. Respondent informed Grievant she would need preapproval to use her three remaining days. It also directed her to prepare lesson plans a week in advance. Grievant then missed three days due to illness, informing Respondent of her absence each morning. Whereupon, Respondent terminated her because she did not have adequate lesson plans or preapproval for unpaid leave. Grievant challenges her termination due to lack of an improvement period or prior discipline. Respondent counters that Grievant's conduct was willful and insubordinate. Respondent failed to prove Grievant's conduct was non-correctable or willful.

Grievant further alleges that her termination was in retaliation for using worker's compensation and that Respondent violated HIPPA, FMLA, and the ADA by contacting her medical provider without permission and failing to provide extended leave or sufficient accommodations. Grievant did not prove these actions entitled her to relief. Accordingly, this grievance is GRANTED, IN PART, AND DENIED, IN PART.

KEYWORDS: Planning Period; Discrimination; SAT; Testing

CASE STYLE: Nelson v. Wayne County Board of Education

DOCKET NO. 2019-0172-CONS (1/31/2020)

PRIMARY ISSUES: Whether Grievant proved by a preponderance of the evidence that Respondent violated W. Va. Code § 18A-4-14 by denying her planning periods and discriminated against her W. Va. Code § 6C-2-2(d).

SUMMARY: Grievant was employed by Respondent as a classroom teacher. Grievant was required to assist in administering practice SAT testing and actual SAT testing on certain dates during the 2017-2018 school year. As a result of the testing requirement and protocols, Grievant missed her planning periods on each of the days, while some of the other teachers assisting with the testing did not. Thereafter, Respondent denied Grievant's claim for compensation for the lost planning periods. Grievant asserts that Respondent violated West Virginia Code § 18A-4-14 and engaged in discrimination in violation of West Virginia Code § 6C-2-2(d). Respondent denies Grievant's claims. Grievant proved her claims by a preponderance of the evidence. Accordingly, this grievance is GRANTED.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
SERVICE PERSONNEL

KEYWORDS: Selection; Annual Review; Heavy Equipment Operator; Welder; Welder Crew Leader; Crew Leader; Mechanic; Duties; Classification; Multiclassification; Posting; Reclassification; Transfer; Seniority Date; Arbitrary and Capricious; Mistake; Reposting; Vacancy; Competency Test; Title; Error; Qualified

CASE STYLE: Rife v. Raleigh County Board of Education
DOCKET NO. 2018-1441-RaLED (1/27/2020)

PRIMARY ISSUES: Whether Grievant proved that Respondent's decision to fill the vacancy was improper, or otherwise, arbitrary and capricious.

SUMMARY: Grievant was regularly employed by Respondent as a Heavy Equipment Operator. Grievant argues that Respondent failed to perform yearly reviews of his classification and duties as required by W. Va. Code § 18A-4-8(I), and that as a result, he was denied a Welder Crew Leader in June 2018 to which he would have otherwise been entitled. Respondent denies Grievant's claims, and argues that while it failed to perform the annual classification reviews, Grievant was not entitled to the Welder Crew Leader position, and that it properly selected another applicant for the position. Grievant failed to prove by a preponderance of the evidence that he was entitled to the Welder Crew Leader position as a result of Respondent's violation of W. Va. Code § 18A-4-8(I), or otherwise. Therefore, the grievance is DENIED.

KEYWORDS:

Termination; Suspension; Employee Code of Conduct; Insubordination; Mitigation

CASE STYLE:

Moffatt v. Webster County Board of Education

DOCKET NO. 2019-0686-WebED (1/31/2020)

PRIMARY ISSUES:

Whether Respondent had good cause to terminate Grievant.

SUMMARY:

Grievant was given a long-term suspension without pay for punching his supervisor in the jaw/neck area, an act Grievant admits doing. Grievant argues that his actions were justified by his supervisor's abusive language and threats. Grievant also argues that he was acting in self-defense. Respondent proved that Grievant was guilty of insubordination because hitting his supervisor constituted a serious violation of the Board's Employee Code of Conduct. The evidence does not support a finding of self-defense. Given the totality of the circumstances and the ultimate action of the Board, further mitigation of the punishment was not warranted.

TOPICAL INDEX
STATE EMPLOYEES

<u>KEYWORDS:</u>	Motion to Dismiss; Timelines; Untimely Filed
<u>CASE STYLE:</u>	<u>Gullett v. Department of Health and Human Resources/Welch Community Hospital AND Division of Personnel</u> DOCKET NO. 2019-1781-DHHR (1/23/2020)
<u>PRIMARY ISSUES:</u>	Whether this grievance was timely filed.
<u>SUMMARY:</u>	Respondent moved to dismiss this grievance alleging that it was not filed within fifteen days of the date Grievant was notified that his reallocation did not include granting of backpay. Grievant argues that his filing was timely because it was simply part of the reallocation process with DOP. Respondent proved that a grievance for backpay is not part of the reallocation process and that Grievant's claim was not filed within the mandatory time period set out in statute.