

# **WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

## **SYNOPSIS REPORT**

### **Decisions Issued in June, 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](mailto: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.

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**HIGHER EDUCATION EMPLOYEES**

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<b><u>KEYWORDS:</u></b>	Tenure; Applications; Qualifications; Policy; Arbitrary and Capricious
<b><u>CASE STYLE:</u></b>	<u>Rakus v. Marshall University</u> DOCKET NO. 2019-1637-MU (6/10/2020)
<b><u>PRIMARY ISSUES:</u></b>	Whether Respondent's decision to deny Grievant tenure was arbitrary and capricious.
<b><u>SUMMARY:</u></b>	<p>Grievant's application for tenure was denied because he had not published a paper resulting from his research in a peer-reviewed journal prior to his application for tenure. Grievant points out that he presented at national meetings and was successful in receiving significant grants to support his research. He argues that it is arbitrary and capricious to deny him tenure based upon one criterion, especially since he had submitted a paper to a journal that had not yet been accepted for publication.</p> <p>Respondent demonstrated that the criteria used for granting tenure had been consistently applied by the department for decades and were academically sound. Respondent gave Grievant notice and reminders of the criteria during his probationary period. Grievant did not prove that the decision to deny him tenure was arbitrary and capricious.</p>

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<b><u>KEYWORDS:</u></b>	Pay Raise; Job Duties; Position Information Questionnaires; Classification
<b><u>CASE STYLE:</u></b>	<u>Graham, et al. v. West Virginia University</u> DOCKET NO. 2019-1206-CONS (6/26/2020)
<b><u>PRIMARY ISSUES:</u></b>	Whether Grievants proved that they were improperly compensated.
<b><u>SUMMARY:</u></b>	<p>Grievants are employed by WVU as Trades Specialists. Upon the departure of a coworker, Grievants were assigned many of his plumbing duties. Grievants contend that even though WVU recently updated their Position Information Questionnaires and provided them a small raise, they remain underpaid. They request a \$5 per hour pay raise. WVU counters that Grievants are properly paid within their classification and paygrade. Grievants did not prove that they are entitled to the requested raise. Accordingly, this grievance is DENIED.</p>

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**STATE EMPLOYEES**

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<b><u>KEYWORDS:</u></b>	Selection; Supervisory Experience; Hostile Work Environment; Arbitrary and Capricious
<b><u>CASE STYLE:</u></b>	<u>Pigman v. Department of Health and Human Resources/Bureau for Children and Families</u> DOCKET NO. 2018-1478-CONS (6/3/2020)
<b><u>PRIMARY ISSUES:</u></b>	Whether Grievant proved by a preponderance of the evidence that her non-selection was arbitrary and capricious.
<b><u>SUMMARY:</u></b>	<p>Grievant alleges in her consolidated claims that she has been subjected to a hostile work environment, was improperly passed over for a supervisor position, was subject to reprisal for filing a grievance and an inaccurate performance evaluation. Grievant did not prove that the actions of Supervisor White constituted a hostile work environment. Additionally, since Ms. White is no longer Grievant's supervisor that claim is largely moot.</p> <p>Grievant did not prove that the hiring procedure was flawed or the decision regarding the successful applicant was arbitrary and capricious. Grievant did prove that she was subjected to reprisal which resulted in her receiving poor evaluations.</p>

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<b><u>KEYWORDS:</u></b>	Termination; Written Reprimand; At-will Employee; Discrimination; Substantial Public Policy; West Virginia Human Rights Act; Mitigation
<b><u>CASE STYLE:</u></b>	<u>Smith v. Housing Development Fund</u> DOCKET NO. 2019-1889-CONS (6/25/2020)
<b><u>PRIMARY ISSUES:</u></b>	Whether Respondent had good cause to terminate Grievant.
<b><u>SUMMARY:</u></b>	<p>Grievant was employed by Respondent as a Mortgage Loan Closer. Grievant's employment was at will. Grievant grieves a written reprimand and subsequent termination from employment. Grievant alleged that she was terminated due to her race and protected activities of participating in the grievance procedure and Respondent's EEO procedure, all of which would be substantial public policies. Grievant failed to make a prima facie case of protected class discrimination. Grievant made a prima facie case of protected activity discrimination but Respondent showed legitimate, nondiscriminatory reasons for the termination that Grievant could not prove were pretextual. Grievant failed to prove mitigation of the punishment is warranted. As the termination of Grievant's employment is upheld, the grievance protesting the written reprimand is moot. Accordingly, the grievance is denied.</p>