

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SYNOPSIS REPORT

Decisions Issued in October, 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
STATE EMPLOYEES

<u>KEYWORDS:</u>	Termination; Resignation; Coercion; Deception; Probationary Employee; Job Performance
<u>CASE STYLE:</u>	<u>Burns v. Kanawha-Charleston Health Department</u> DOCKET NO. 2020-1061-KanCH (10/15/2020)
<u>PRIMARY ISSUES:</u>	Whether Grievant proved that her resignation was involuntary or that she was constructively discharged.
<u>SUMMARY:</u>	Grievant was employed in the position of a Nurse 3 and was serving a probationary period. She was given the difficult choice of resigning or being dismissed. Grievant chose the “resign under protest.” She alleges that her resignation was given under duress, involuntary, and resulted in a constructive discharge. Grievant was unable to perform essential recording keeping functions of the job after receiving more than the regular amount of training. She was given time to consider her choice and consult with an advisor. She did not prove that her resignation was involuntary. Even if Grievant’s resignation was involuntary, she did not prove that her job performance during the probationary period was satisfactory. Therefore, her dismissal was justified.

KEYWORDS: Suspension; Investigation; Harassing a Coworker; Workplace Security Policy; Standards of Work Performance and Conduct; Mitigation

CASE STYLE: James v. Division of Highways
DOCKET NO. 2020-0275-DOT (10/1/2020)

PRIMARY ISSUES: Whether Respondent established that there was a legitimate, non-retaliatory reason for disciplinary action and Grievant did not prove that the reason was pretextual.

SUMMARY: Grievant is employed as a Transportation Worker 1 Craft Worker with the Division of Highways at Cabell county in Respondent's District 2. Grievant alleges that cited investigation and disciplinary action(s) were improper and he was retaliated against for filing a grievance. On August 22, 2019, Respondent orally suspended Grievant for refusing an assigned job duty and threatening his crew chief. Additionally, Respondent suspended Grievant for one (1) day (served on October 1, 2019) for harassing a coworker who provided a statement for the investigation into the incident of August 22, 2019, and other attempts to interfere with Respondent's investigation. Respondent met its burden of proof justifying disciplinary action. Grievant failed to demonstrate that the disciplinary action taken against him was inappropriate, an abuse of discretion, or excessive. Respondent established by a preponderance of the evidence that Grievant violated recognized and applicable Administrative Operating Procedures. Grievant's violation of Respondent's Standards of Work Performance and Conduct; violations of the West Virginia Division of Personnel's Workplace Security Policy and violations of DOP's Prohibited Workplace Harassment Policy justified disciplinary action. Mitigation is not warranted. This grievance is DENIED.

KEYWORDS: Suspension; Misconduct; Progressive Discipline; Insubordination

CASE STYLE: Weekley-Chambers v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital
DOCKET NO. 2020-0685-DHHR (10/9/2020)

PRIMARY ISSUES: Whether Respondent proved by a preponderance of evidence that it had cause to suspend Grievant.

SUMMARY: Grievant was employed by Respondent as a Housekeeper. Respondent suspended Grievant for three days for engaging in misconduct by disobeying Lead Housekeeper Barton and throwing a bag of trash at him. Respondent contends that the suspension was warranted because Barton was her superior and supervisor and Grievant had prior corrective action. Grievant contends she was never told that Barton was in charge that day, a misunderstanding that was further confounded when Barton deferred as usual to assignments from a more senior Lead. Grievant asserts she does not remember throwing anything and that Respondent did not present sufficient evidence thereof. Respondent proved that it had cause to suspend Grievant as part of progressive discipline for disobeying, throwing an empty paper bag at, and yelling at her superior. Accordingly, the grievance is DENIED.

KEYWORDS: Termination; Reprisal; Workers' Compensation Act; Policy

CASE STYLE: Tate v. Division of Corrections and Rehabilitation/Bureau of Community Corrections
DOCKET NO. 2020-0711-MAPS (10/23/2020)

PRIMARY ISSUES: Whether Respondent proved that it had legitimate non-retaliatory reasons for the termination of Grievant's employment.

SUMMARY: Grievant was dismissed for from employment for violating DCR Policy 129.03 which requires employees to immediately report any arrest for a misdemeanor or felony to their immediate supervisor. Grievant was arrested on a felony charge in North Carolina and pled guilty to a reduced misdemeanor charge. Grievant did not report either event to his supervisor. They were later discovered during a routine records check performed for other reasons. Grievant admits that he did not report the arrest and conviction but argues that in truth, Respondent terminated his employment in retaliation for him previously reporting alleged violations of policies by others at PCCJ and his Workers' Compensation claim. Respondent proved that it had valid non-retaliatory reasons for terminating Grievant's employment. Grievant did not prove that those reasons were pretextual.

KEYWORDS: Motion to Dismiss; Employee; Employer; Time limits

CASE STYLE: Bragg v. Public Employees Insurance Agency
DOCKET NO. 2021-0250-DOA (10/29/2020)

PRIMARY ISSUES: Whether the Grievance Board has jurisdiction to hear this matter and whether it was untimely.

SUMMARY: Grievant was employed by Respondent and voluntarily resigned her position. Respondent, in accepting the resignation, noted it was in the process of dismissing Grievant for misconduct at the time of her resignation, and that she would, therefore, be barred from using Respondent's computer systems. Grievant asserts Respondent has harassed her in her new employment by denying her access to Respondent's computer systems and Respondent has failed to properly and timely pay her final wages. Grievant also protests several other issues predating her resignation. Grievant's claims regarding her resignation and from before her resignation are untimely and Grievant has failed to demonstrate a proper excuse for her untimely filing. The Grievance Board lacks jurisdiction to hear her claims of alleged harassment by Respondent in her new position or to address claims under the West Virginia Wage Payment and Collection Act. Accordingly, the grievance is dismissed.

KEYWORDS: Reallocation; Job Duties; Back Pay

CASE STYLE: Hebb v. Division of Corrections and Rehabilitation/Bureau of Juvenile Services
DOCKET NO. 2019-0322-MAPS (10/16/2020)

PRIMARY ISSUES: Whether Grievant proved that, due to a change in her duties and responsibilities, her position should have been reallocated

SUMMARY: Grievant is employed by Respondent as a Correctional Officer II. Grievant became eligible for position reallocation on February 14, 2018, when her duties and responsibilities changed. Respondent inadvertently delayed reallocating her position to Correctional Officer II until June 7, 2018. Grievant proved entitlement to back pay with interest. Accordingly, this grievance is GRANTED.

KEYWORDS: Grievance; Contact Information; Abandonment

CASE STYLE: Roberts v. Division of Corrections and Rehabilitation/Bureau of Prisons and Jails
DOCKET NO. 2019-0267-MAPS (10/20/2020)

PRIMARY ISSUES: Whether Grievant has abandoned the grievance based on the failure to provide valid contact information and the length of time since the last action in the grievance.

SUMMARY: After filing the grievance on August 16, 2018 and requesting a transfer on September 13, 2018, Grievant failed to pursue further action in the grievance and failed to provide valid contact information to the Grievance Board in spite of being told to do so by February 25, 2019, through the November 28, 2018 order of continuance and abeyance. These failures constitute abandonment of the grievance. Therefore, the grievance must be dismissed.

KEYWORDS: Temporary Employee; Dismissal Order; Standing

CASE STYLE: Lamb v. Division of Corrections and Rehabilitation/Bureau of Prisons and Jails AND
DOCKET NO. 2020-0783-MAPS (10/20/2020)

PRIMARY ISSUES: Whether Grievant has standing to file a grievance.

SUMMARY: Grievant was hired as no more than 1,000 hours in a 12-month period as a temporary exempt employee. Temporary employees are not afforded the statutory right to file a grievance. Accordingly, the grievance is dismissed from the docket.