

# **THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**LAUREL COOK,**  
**Grievant,**

**v.**

**Docket No. 2022-0802-WVU**

**WEST VIRGINIA UNIVERSITY,**  
**Respondent.**

## **DECISION**

Grievant, Laurel Cook, employed by West Virginia University as an Associate Professor of Marketing in the John Chambers College of Business and Economics, filed this action on May 20, 2022, in which she alleged “[H]arassment and violations of Faculty Academic Integrity.” Grievant requested that she be provided a graduate assistant as relief at the level three hearing. This grievance was denied following a level one conference by decision dated December 16, 2022. A level two mediation session was conducted on August 29, 2023. A level three evidentiary hearing was conducted before the undersigned on February 21, 2024, at the Grievance Board’s Westover office. Grievant appeared in person and *pro se*. Respondent appeared by Christopher Staples, Executive Director of Academic Personnel, Tracy Morris, Associate Provost for Academic Personnel, Carol Marunich, Deputy General Counsel, and Samuel R. Spatafore, Assistant Attorney General. The matter became mature for ruling upon receipt of the last of the parties’ Findings of Fact and Conclusions of Law on March 21, 2024.

## **Synopsis**

Grievant is employed by West Virginia University as an Associate Professor of Marketing. Most of the issues raised in her initial grievance were resolved prior to the

level three hearing. Concerning the only remaining issue, Grievant failed to establish that West Virginia University's failure to provide her with a graduate student was in some way arbitrary and capricious or a violation of policy.

The following Findings of Fact are based on the record of this case.

### **Findings of Fact**

1. Dr. Laurel Cook is employed by West Virginia University as an Associate Professor of Marketing in the John Chambers College of Business and Economics.

2. Many of the claims by Grievant were addressed and resolved following both a mediation conducted by Respondent and a mediation conducted by the Grievance Board.

3. The only remaining issue is Grievant's request for an assignment of a graduate student.

4. Grievant acknowledged during the level three hearing that faculty are not entitled to an assignment of a graduate student.

5. Relevant policy provides that, "[H]aving a GA assigned to a faculty member is a privilege and not a right. Therefore, faculty members are not guaranteed to have a GA assigned to them nor are faculty members guaranteed a certain number of GA hours."

6. The record did not provide that West Virginia University violated any rules, policies, or procedures in not assigning Grievant a graduate student or graduate assistant.

### **Discussion**

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the

W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant argues that the lack of a graduate assistant is detrimental to her research. Grievant's position is that it was unreasonable for West Virginia University to not provide a graduate student following her request. In essence, it amounts to arbitrary and capricious conduct on the part of West Virginia University. "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health and Human Resources*, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary

and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Id.* (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

The record established that West Virginia University's applicable policy provides that, "[H]aving a GA assigned to a faculty member is a privilege and not a right. Therefore, faculty members are not guaranteed to have a GA assigned to them nor are faculty members guaranteed a certain number of GA hours." The limited evidence does not support a finding that West Virginia University violated any rules, policies, or laws. Dr. Cook presented well at the hearing and is obviously a very talented marketing professor. Notwithstanding, the undersigned cannot view the conduct of West Virginia University as arbitrary and capricious based on the record of this case.

The following Conclusions of Law support the decision reached.

### **Conclusions of Law**

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. “Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996).” *Trimboli v. Dep’t of Health and Human Resources*, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when “it is unreasonable, without consideration, and in disregard of facts and circumstances of the case.” *Id.* (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

3. Respondent’s failure to provide Grievant a graduate student to assist with her job duties cannot be viewed as arbitrary and capricious based upon the record of this case. In addition, the record does not support a finding that West Virginia University violated any rules, policies, or laws.

Accordingly, this grievance is **DENIED**.

“The decision of the administrative law judge is final upon the parties and is enforceable in the circuit court situated in the judicial district in which the grievant is employed.” W. VA. CODE § 6C-2-5(a) (2024). “An appeal of the decision of the administrative law judge shall be to the Intermediate Court of Appeals in accordance with

§ 51-11-4(b)(4) of this code and the Rules of Appellate Procedure.” W. VA. CODE § 6C-2-5(b). Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such an appeal and should not be named as a party to the appeal. However, the appealing party must serve a copy of the petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

**Date: April 30, 2024**

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**Ronald L. Reece**  
**Administrative Law Judge**