

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

NICOLE EMCH,

Grievant,

v.

Docket No. 2023-0172-WetED

WETZEL COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Nicole Emch, is employed by Respondent, Wetzel County Board of Education. On September 6, 2022, Grievant filed this grievance against Respondent, stating:

WV18A-4-7a, WVBOE Policy 5000, & WV6C-2-2. The hiring committee had personal bias that skewed the results. The BOE did not hire the best candidate.

As relief, “[Grievant] seek[s] to have placement in the position ASAP, back pay, & all other related benefits.”

A level one conference occurred on September 19, 2022, and an order issued therefrom on October 10, 2022. Grievant appealed to level two on October 17, 2022. A level two mediation occurred on December 9, 2022. Grievant appealed to level three on December 20, 2022. A level three hearing was held on April 20, 2023, before the undersigned at the Grievance Board's Westover office. Grievant appeared in person and was represented by Lisa Summers and Thomas Bane, both of WVEA. Respondent appeared by Ben McPherson, Chief Personnel Officer, and was represented by Rick Boothby, Esq., Bowles & Rice LLP. This matter became mature for decision on June 16, 2023. Each party submitted written Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant is employed by Respondent, Wetzel County Board of Education. Grievant applied for the Technology Integration Specialist posting but was not selected. The interview committee assigned 81.4 percent of the maximum possible points to one of nine statutory selection factors and 2.3 percent to each of the other eight factors. Respondent could not explain why so much weight was placed on one factor. Three of the four interview committee members found Grievant to be the most qualified candidate. Grievant proved Respondent's selection process was arbitrary and capricious and that she was the most qualified candidate. Accordingly, the grievance is GRANTED.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

Findings of Fact

1. Grievant, Nicole Emch, is employed by Respondent, Wetzel County Board of Education (Board), in a professional capacity as a Special Education Teacher.
2. On May 13, 2022, the 220-day professional position of Technology Integration Specialist (TIS) was posted for the 2022-2023 school year. The deadline for applications was May 27, 2022. (Respondent's Exhibit 1).
3. The TIS position was posted as "countywide based at WC Technology Center." "Countywide" means that a TIS may be sent to different schools in the county, depending on the needs of students and the Board. (Respondent's Exhibit 1).
4. A TIS provides training and support to school staff on technology integration and assists in the implementation of the county technology plan. (Technology Director McPherson's testimony).

5. There were four applicants for the TIS position including Grievant, Kandi Loy-Kay, Allison Zwick, and Brenda Nichols. (Respondent's Exhibits 2-6).

6. An interview committee was formed, and all four applicants were interviewed on August 5, 2022.

7. The interview committee included county Technology Director Ben McPherson, and Technology Integration Specialists Mary Young, Sadonna Kimble, and Holly Cain. (Respondent's Exhibits 3-6).

8. During the interviews, each interview committee member took notes and kept score on a hiring matrix which displayed the nine selection factors from West Virginia Code § 18A-4-7a. (Respondent's Exhibits 3-6).

9. The selection factors were as follows: (1) appropriate certification, licensure, or both; (2) Amount of experience relevant to the position; (3) the amount of coursework, degree level or both in the relevant field and degree level generally; (4) academic achievement; (5) In the case of the position of principal, certification of the duties of the job; (6) specialized training relevant to the performance of the duties of the job; (7) past performance evaluations conducted pursuant to West Virginia Code §§ 18A-2-12 and 18A-3C-2; (8) Seniority; and (9) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

10. The interview committee assigned factors one through eight a maximum score of 1 point each for a combined maximum possible score of 8 points.

11. The interview committee assigned the ninth factor, "other measures or indicators upon which the relative qualifications of the applicant may fairly be judged," a maximum possible score of 35 points.

12. The interview committee developed seven interview questions, which it assigned as subparts to factor nine. The committee assigned each of the seven questions a maximum possible score of 5, giving factor nine a maximum possible score of 35. (Respondent's Exhibits 3-6).

13. The nine factors had a combined maximum possible score of 43 points: 35 for factor nine and 1 point for each of the eight other factors. Factor nine was assigned 35 times the weight of each of the other selection factors. Thus, factor nine was 81.4 percent of the maximum possible score and the other eight factors combined were 18.6 percent of the maximum, or 2.3 percent each. (Judicial notice).

14. There was no agreement or directive as to the method each interviewer would use to score the selection factors and the interview questions.

15. The interview committee members were not formally trained in the interview process but received brief instruction from Mr. McPherson before the interviews.

16. The committee members were told that an average of the scores would be used to determine who the committee would recommend to the Superintendent. Before the interviews were conducted, Mr. McPherson explained to the committee members that, at the end of the interviews, he would add up each of the four interviewer's scores for each applicant and divide the total by four. Mr. McPherson felt that averaging the interview committee members' scores would help blunt the impact of any unusually high or low scores. (Mr. McPherson's testimony).

17. During interviews, each committee member took notes on the candidate's questionnaire form and scoring matrix and assigned points to each of the seven answers under factor nine, as well as the other eight selection factors.

18. None of the four applicants were TIS certified or had any experience as a TIS. Thus, the factor of “amount of experience relevant to the position” was graded based on overall teaching experience. (Mr. McPherson’s testimony and Respondent’s Exhibit 2).

19. Following the applicant interviews, each interview committee member tallied their scores on the matrix for all nine factors and gave the matrix to Mr. McPherson.

20. The average combined score awarded to each candidate for factors one through eight is as follows:

- * Allison Zwick – 4 points.
- * Kandi Loy-Kay – 3 points.
- * Grievant – 3 points.
- * Brenda Nicols – 1 point.

(Respondent’s Exhibit 2).

21. Each of the seven interview questions under factor nine was assigned 11.6 percent of the total possible points available for all nine selection factors. (Judicial notice).

22. Thus, a good or bad answer to any of the seven interview questions assigned to factor nine could create or erase a deficit to any of the combined average scores awarded to each candidate on the first eight factors. (Judicial notice).

23. The hiring committee recommended Ms. Loy-Kay for the TIS position.

24. Ms. Kimble gave Ms. Loy-Kay a total of 34 points, the next highest applicant a total of 28 points, and Grievant 27 points. (Respondent’s Exhibit 3).

25. Thus, Ms. Kimble scored Ms. Loy-Kay 17.7 percent higher than the next highest candidate and 20.6 percent higher than Grievant. (Judicial notice).

26. Ms. Kimble had known Ms. Loy-Kay for 7 years, 5 or 6 of which were as a coworker. (Ms. Kimble’s testimony).

27. In her level three hearing testimony, Ms. Kimble could not say why there was such a disparity in her scoring.

28. The average score the committee awarded for factor nine is as follows:

- * Kandi Loy-Kay – 22.75
- * Grievant – 22.5
- * Allison Zwick – 20.75
- * Brenda Nichols – 19.5

(Respondent's Exhibit 2).

29. The average score the committee awarded for all nine selection factors is as follows:

- * Kandi Loy-Kay – 25.75
- * Grievant – 25.5
- * Allison Zwick – 24.75
- * Brenda Nichols – 20.5

(Respondent's Exhibit 2).

30. The difference between the average total score of the successful applicant, Ms. Loy-Kay, and the next highest candidate, Grievant, is under 1 percent. Even accounting for the dilution of the 20.6 percent difference between Ms. Kimble's scoring of Ms. Loy-Kay and Grievant by a fourth through the averaging of the four interviewer's scores, the difference was more than enough to put Ms. Loy-Kay on top. (Judicial notice).

31. Three of the four interview committee members agreed that Grievant was the most qualified candidate, Ms. Kimble being the exception. Mr. McPherson, Ms. Cain, and Ms. Young each testified that they selected Grievant as the most qualified candidate for the position.

32. During the level three hearing, some interview committee members could not, even in looking at the individual factor nine questionnaire notes prepared by the same

interviewer for each candidate, reconcile the disparity in the points awarded for the seven questions and the score tally attributed to factor nine on the nine-factor matrix.

33. The score tally on the interview questionnaires for some interviewers did not always match those given under factor nine on the associated interviewer's nine-factor matrix. (Respondent's Exhibit's 3-6).

34. Ms. Kimble's answer to many critical questions was "I don't remember." This included her response to whether she had changed Grievant's score on interview questions one and six and whether this change was from high to low or low to high.

35. Ms. Kimble's scoring on her interview notes has two scores next to questions one and six. The lowest of each of those two scores adds up to the total of 24 points that Ms. Kimble attributed to Grievant on factor nine. If Ms. Kimble had utilized the high scores, she would have awarded Grievant a score of 26 on factor nine. (Respondent's Exhibit 3 & judicial notice).

36. Ms. Kimble testified that she could not remember whether she typically changes her mind.

37. The score given to each applicant by each interviewer in this matter is not always apparent.

38. Nor did the average of each interviewer's nine-factor matrix match the average provided on the "master matrix." (Respondent's Exhibits 2-6).

39. Mr. McPherson filled out a "master matrix" with the data he received and calculated an average score for each candidate to determine which candidate the hiring committee should recommend to the Superintendent. (Respondent's Exhibit 2).

40. As the committee met, Ms. Cain took issue with the accuracy of the math for the average scores.

41. Ms. Cain pointed out to the committee that the hiring process was flawed because a few extreme scores were skewing the average against selecting the best qualified candidate for the position. She also questioned the math, saying it should not have resulted in the selected candidate having the highest average score.

42. It is apparent that there were either mathematical errors or a lack of transparency in scores used to reach the given averages.

43. The Superintendent recommended Ms. Loy-Kay to the Board and the Board selected Ms. Loy-Kay.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). “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. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff'd*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

Grievant applied for the position of Technology Integration Specialist (TIS) but was not selected. The interview committee weighed its selection formula so that 35 of 43 possible points, or 81.4 percent, were assigned to just one of the nine selection factors. Each of the other eight factors was assigned one point, or just 2.3 percent. Grievant contends that she is the most qualified candidate. Grievant alleges that Respondent

weighed the West Virginia § 18-A-4-7a selection factors in an arbitrary and capricious manner, rendering the selection process fatally flawed. Respondent counters that it has leeway to attribute weight to each of the selection factors and that the process was not flawed.

"County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious." Syl. pt. 3, *Dillon v. Wyoming County Bd. of Educ.*, 177 W. Va. 145, 351 S.E.2d 58 (1986). "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." *Trimboli v. Dep't of Health & Human Res.*, Docket No. 93-HHR-322 (June 27, 1997) (citations omitted). "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)).

An examination of the statute controlling the filling of vacancies for professional positions is necessary to determine if the selection process was arbitrary and capricious. West Virginia Code § 18A-4-7a provides, in pertinent part:

(a) A county board of education shall make decisions affecting the filling of vacancies in professional positions of employment on the basis of the applicant with the highest qualifications: Provided, that the county

superintendent shall be hired under separate criteria pursuant to section two, article four, chapter eighteen of this code.

(b) In judging qualifications for the filling of vacancies of professional positions of employment, consideration shall be given to each of the following:

- (1) Appropriate certification, licensure or both;
- (2) Amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the required certification area;
- (3) The amount of course work, degree level or both in the relevant field and degree level generally;
- (4) Academic achievement;
- (5) In the case of a classroom teaching position or the position of principal, certification by the National Board for Professional Teaching Standards;
- (6) Specialized training relevant to the performance of the duties of the job;
- (7) Past performance evaluations conducted pursuant to section twelve, article two of this chapter and section two, article three-c of this chapter or, in the case of a classroom teacher, past evaluations of the applicant's performance in the teaching profession;
- (8) Seniority;
- (9) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged;
- (10) In the case of a classroom teaching position, the recommendation of the principal of the school at which the applicant will be performing a majority of his or her duties; and
- (11) In the case of a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to the provisions of section five, article five-a, chapter eighteen of this code by the faculty senate of the school at which the employee will be performing a majority of his or her duties.

(c) In considering the filling of a vacancy pursuant to this section, a county board is entitled to determine the appropriate weight to apply to each of the criterion when assessing an applicant's qualifications: Provided, That if one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, each criterion under subsection (b) of this section shall be given equal weight except that the criterion in subdivisions (10) and (11) shall each be double weighted. [Emphasis added].

Id. This statute specifies that criteria ten and eleven are only considered in filling classroom teaching positions, and criterion five is only used for classroom teaching and principal positions. The position in question is neither a classroom teaching nor principal position. Subsection (c) establishes that the Board is entitled to determine the weight to be applied to each factor when filling professional non-classroom teaching positions.

As a general rule, when selecting candidates for professional positions other than classroom teachers, a county board of education must consider each applicable criterion listed in the section. However, the statute permits a board to determine the weight to be applied to each factor, so long as the weighting does not result in an abuse of discretion. *Elkins v. Boone County Bd. of Educ.*, Docket No. 95-03-415 (Dec. 28, 1995); *Hughes v. Lincoln County Bd. of Educ.*, Docket No. 94-22-543 (Jan. 27, 1995); *Blair v. Lincoln County Bd. of Educ.*, Docket No. 92-22-009 (Apr. 10, 1992); *Komorowski v. Marshall County Bd. of Educ.*, Docket No. 08-25-007 (Mar. 23, 2009).¹ Accordingly, a board may determine that the last criterion, “other measures or indicators,” is the most important and determining factor as long as it does not abuse this discretion. *Berry v. Boone County Board of Education*, Docket No. 2014-0450-BooED (Sept. 29, 2014).

"The arbitrary and capricious standard of review of county board of education decisions requires a searching and careful inquiry into the facts; however, the scope of review is narrow, and the administrative law judge may not substitute her judgment for

¹These cases were decided prior to the amendment of W. VA. CODE § 18A-4-7a in 2013. However, the criteria for filling professional positions other than classroom teachers and principals remains essentially the same. So these decisions are still applicable. See *Berry v. Boone County Bd. of Educ.*, Docket No. 2014-0450-BooED (Sept. 29, 2014), for a discussion of the effects of the 2013 amendment on filling these positions.

that of the board of education. See generally *Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276 (1982). An administrative law judge cannot perform the role of a 'super-interviewer' in matters relating to the selection of candidates for vacant positions. *Harper v. Mingo County Bd. of Educ.*, Docket No. 93-29-064 (Sept. 27, 1993)]; *Stover v. Kanawha County Bd. of Educ.*, Docket No. 89-20-75 (June 26, 1989).” *Barnett, et al. v. Cabell County Bd. of Educ., and McMillian*, Docket No. 2015-1762-CONS (May 31, 2016). To prevail, a non-selected candidate must prove by a preponderance of the evidence that the decision-making process was fatally flawed, that the county board acted in an arbitrary and capricious manner, or that the county board otherwise overstepped its broad discretion as described in the applicable statute. *Smith v. Cabell County Board of Education*, Docket No. 2019-0244-CabED, (May 14, 2019).

Ultimately, the undersigned must decide whether Respondent abused its considerable discretion and if the selection process was significantly flawed to render the selection of the successful candidate arbitrary and capricious. Respondent was obligated to justify the weight it assigned to the ninth selection factor; a weight 35 times higher than that assigned any other selection factor. Three of the four interview committee members selected Grievant as the most qualified candidate. That the selection formula did not result in the nomination and selection of the most qualified candidate, as mandated by the Code, hints at a flawed formula. When just one of the nine selection factors is assigned a weight of 81.4 percent, it effectively negates any consideration of the other eight factors. Such a lopsided assignment is prone to questionable outcomes, necessitating transparency.

Committee members were not able to explain why they attributed 81.4 percent of the maximum possible score to just one factor. Adding to the lack of transparency and the arbitrary nature of the selection process, one committee member scored the successful candidate 17.7 percent higher than any other candidate but could not explain why and could not remember if she changed her score to some of Grievant's interview questions up or down, let alone why she did so. The majority of the interview committee members agreed that their formula did not result in the nomination and selection of the most qualified candidate. This highlights the imperative that Respondent be as transparent as possible when placing an inordinate weight on one selection factor. The committee members minimized the other eight objective statutory factors to such a degree as to render them meaningless in the selection process. Instead, they placed most of the weight on seven customized interview questions they included under the subjective category of "other measures." In highlighting their customized interview questions at the expense of the other eight factors specified in Code, Respondent was dutybound to explain.

Respondent argues that the selection committee simply recommends a candidate and the Board does the actual selecting. Respondent contends that Grievant did not have any Board member testify and therefore did not show how much credence the Board placed on the committee and Superintendent's recommendation. The Board only votes up or down on a single nominee. The Board voted for the nominee recommended through the flawed process and was not presented with the option of choosing Grievant. The respective duties of the Superintendent and the Board are set forth in West Virginia Code § 18A-2-1(a)(4), which states, in relevant part:

(a) The employment of professional personnel shall be made by the board only upon nomination and recommendation of the superintendent, subject to the following: ...

(4) In case the board refuses to employ any of the persons nominated, the superintendent shall nominate others and submit the same to the board at such time as the board may direct;

It is clear that the Superintendent has the duty to nominate a qualified candidate and the Board to vote for or against the nomination. If a board rejects a nomination, it may then direct a superintendent to provide another nomination. The Grievance Board has previously elaborated on this division of duties, stating:

"W. Va. Code § 18A-2-1 prohibits a county board from participating in the evaluation process by which the superintendent reaches a decision to nominate a particular candidate, not through the use of specific language[,] but by explicitly establishing a bifurcated appointment procedure." *Gore, supra.* . .

"This [Code] language effectively divides the power to hire equally between the superintendent and the county board. No person may be appointed to a professional position until both have exercised their authority under the statute. Implicit in the statute is that the respective roles in the hiring process must be distinct, i.e., that the superintendent must exercise his statutory duty to nominate independent of the county board and that the board, in fulfilling its obligations under the statute, must reject or accept without undue influence from the superintendent. Otherwise, the division of authority is rendered meaningless." *Rakes v. Raleigh County Bd. of Educ.*, Docket No. 93-41-448 (Mar. 17, 199[4]). Because the prohibition against undue interference by either party is an implied and not explicit part of the statute, it is not possible to adopt a rule applicable to all situations in which a violation of that prohibition is alleged. *Gore, supra.* Each case must be decided on its own merits.

Oldham v. Cabell County Bd. of Educ., Docket No. 03-06-269 (Feb. 27, 2004).

The selection committee acted on behalf of the Superintendent to come up with a nominee. The Superintendent submitted the nominee to the Board for approval. The Board had the option of rejecting the nominee, in which case the Superintendent would have had an obligation to submit a different nominee. The Board, however, approved the nominee selected by the interview committee through the flawed selection process. That the nominee met the minimum qualifications is not germane to this discussion. Generally, only qualified candidates make it to the interview. A proper assessment entails determining whether the selection process itself was fatally flawed and arbitrary and capricious. Grievant not only proved this was the case, but also proved she was deemed the most qualified candidate by three of four interview committee members.

Accordingly, the grievance is GRANTED.

The following conclusions of law are appropriate in this matter:

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). "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. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff'd*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

2. "County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a

manner which is not arbitrary and capricious. " Syl. pt. 3, *Dillon v. Wyoming County Bd. of Educ.*, 177 W. Va. 145, 351 S.E.2d 58 (1986). To prevail, a non-selected candidate must prove by a preponderance of the evidence that the decision-making process was fatally flawed, that the county board acted in an arbitrary and capricious manner, or that the county board otherwise overstepped its broad discretion as described in the applicable statute. *Smith v. Cabell County Board of Education*, Docket No. 2019-0244-CabED, (May 14, 2019).

3. "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." *Trimboli v. Dep't of Health & Human Res.*, 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)).

4. West Virginia Code § 18A-4-7a sets out specific criteria the Board must use in determining which candidate is the most qualified for a particular professional position. When selecting a candidate for a professional position other than a classroom teacher, a county board of education must consider each applicable criterion listed in the section, but the statute permits a board to determine the weight to be applied to each factor, so long as the weighting does not result in an abuse of discretion. *Elkins v. Boone County*

Bd. of Educ., Docket No. 95-03-415 (Dec. 28, 1995); *Hughes v. Lincoln County Bd. of Educ.*, Docket No. 94-22-543 (Jan. 27, 1995); *Blair v. Lincoln County Bd. of Educ.*, Docket No. 92-22-009 (Apr. 10, 1992); *Komorowski v. Marshall County Bd. of Educ.*, Docket No. 08-25-007 (Mar. 23, 2009).

5. “A county board of education shall make decisions affecting the filling of vacancies in professional positions of employment on the basis of the applicant with the highest qualifications;” W. VA. CODE § 18A-4-7a(a).

6. Grievant proved by a preponderance of the evidence that Respondent weighed the selection factors in a manner that was arbitrary and capricious and resulted in an abuse of its discretion and a flawed selection process.

7. Grievant proved by a preponderance of the evidence that she was the most qualified candidate for the TIS position.

Accordingly, this grievance is GRANTED. Respondent is ORDERED to instate Grievant to the TIS position and award her retroactive pay and benefits.

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 civil action number should be included so that the certified record can be properly filed with the circuit court. See *also* W. VA. CODE ST. R. § 156-1-6.20 (2018).

Date: August 3, 2023

Joshua S. Fraenkel
Administrative Law Judge