

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**ANGELA F. ATKINS, et al.,  
Grievants,**

**v.**

**Docket No. 2024-0810-CONS**

**DEPARTMENT OF COMMERCE/  
WORKFORCE WEST VIRGINIA,  
Respondent.**

**DECISION**

Grievants<sup>1</sup> are employed by Respondent, Department of Commerce, within Workforce West Virginia. On March 19, 2024, and various dates thereafter, Grievants filed this grievance against Respondent. Grievants' statements were not identical but made the same claims. A representative grievance statement was:

On 9/18/2023 to 9/22/2023, the entire Integrity Unit, whose names are listed below, participated in the in-person course, the UI Fraud Investigations Certificate (NIA2) with Instructors Kimberly Lind, and Richard "Skip" Tompkins. This training is DOP approved for a 4% merit increase. We also received a signed letter from Commissioner, Scott Adkins, approving the training and a pay raise of 3% after completing the course. We (the entire Integrity Unit) were to receive a 3% pay raise. The paperwork was submitted to HR on 10/25/2023 and to this date we have not received the said pay raise. When we ask our Director, Bill Scott, about it, he tells us that he must speak to Scott Adkins, Commissioner.

For relief, Grievants requested: "[S]ettlement of our 3% pay raise to be retroactive to 10/25/2023 to the present. We have enclosed the copy of the DOP's approved training, the signed letter from the commissioner, Scott Adkins, our certificate of completion of the UI Fraud Investigations Certificate (NIA2) and the date via email it was submitted to HR."

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<sup>1</sup> Grievants are Angela Atkins, Amanda Babbitt, Angela Bowen, Katrina Waugh, Regina Peck, Amber Harper, Julie Coleman, Myra Greene, and Kim Pasternak.

Following the April 5, 2024, level one hearing, a level one decision was rendered on May 1, 2024, denying the grievance. Grievants appealed to level two on May 10, 2024. Following unsuccessful mediation, Grievants appealed to level three of the grievance process on August 7, 2024. A level three hearing was held on December 10, 2024, before Chief Administrative Law Judge Billie Thacker Catlett<sup>2</sup> at the Grievance Board's Charleston, West Virginia office. Grievants were self-represented. Respondent appeared by Carrie Sizemore and was represented by counsel, Mark S. Weiler, Assistant Attorney General. This matter became mature for decision on January 16, 2025, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

### **Synopsis**

Grievants are employed in various positions by Respondent. Grievants protest Respondent's decision not to provide discretionary pay increases for training Grievants completed. Respondent asserts the pay increases that Grievants seek are simply discretionary and are not required. Grievants have failed to prove by a preponderance of the evidence that they are entitled to a pay increase, or that Respondent has violated any law, rule, or policy or acted in an arbitrary and capricious manner by failing to grant them such. Accordingly, this grievance is DENIED.

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

### **Findings of Fact**

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<sup>2</sup> For administrative reasons, the grievance was reassigned to the undersigned to render a decision.

1. Grievants are employed in various positions by Respondent within the Integrity Unit of Workforce West Virginia.

2. Due to increased identity theft and fraudulent activity affecting the agency, the Integrity Unit was formed. Following the formation of the unit, Workforce West Virginia Acting Commissioner Scott Adkins; James “Andy” Osborne, Assistant Director, Integrity Division; and Workforce Human Resources Director Carrie Sizemore met regarding training that could be sought to assist the unit and which might qualify employees for a discretionary pay increase.

3. The Division of Personnel’s (“DOP”) Pay Plan Policy allows for a discretionary pay increase for “Professional Skills and Competency Development,” and states, in relevant part:

Under the following conditions, an appointing authority may submit the Request for Approval form recommending an in-range salary adjustment of up to 10% of current salary for all eligible permanent employees who acquire certain formal training, education, certification or licensure, not required to meet the minimum qualifications of the job classification to which the position the employee occupies is assigned.

a. The appointing authority must file with the Director a request for prior approval of professional skills/competencies, formal training/education, certification or licensure and related competencies of the job duties for which this type of adjustment is being requested. Failure to obtain prior approval shall result in denial.

b. Upon approval of the professional skills/competencies, formal training/education, certification or licensure, the appointing authority may request a discretionary pay differential under this section. The discretionary pay differential shall not exceed the maximum percentage approved by the Director based upon the Professional Skills/Competency Development Decision Tree (see Appendix C). The appointing authority shall provide a

request for and documentation to the Division for all employees who have acquired the same formal training, education, certification or licensure within the one (1) year time period set forth in this section. The request shall state the recommended percentage and shall be consistent among all eligible employees. Future pay differential requests for employees who subsequently obtain the same training, education, certification or licensure are discretionary.

(Respondent's Exhibit 2 - DOP Pay Plan Policy at page 10-11.)

4. To seek approval for the training from the DOP under the first step of the Pay Plan Policy, Assistant Director Osborne completed "Agency Certification Submission Form" for the "UI Fraud Investigations Certificate" on November 12, 2021. Human Resources Director Sizemore reviewed and approved the form on January 13, 2022, and forwarded it to the DOP. (Respondent's Exhibit 1).

5. By letter to the Acting Commissioner Adkins, dated January 25, 2022, DOP Director Sheryl R. Webb approved the certification, stating as follows:

The Division of Personnel (DOP) is in receipt of your request of January 13, 2022, seeking prior approval of professional skills/competencies for the formal training, education, certification, or licensure as required under Section III.E.3 of the *DOP Pay Plan Policy* (DOP-P12) that may be used for a discretionary increase. We have reviewed and approved the following certification: UI Fraud Investigation certification[.] This certification qualifies for an in-range salary adjustment up to 4%. You may now submit to the DOP a *Request for Approval* form for the employee(s). The request for a discretionary increase must meet all other requirements as set forth in the *Pay Plan Policy*. Once the request has been reviewed and all approvals have been received, your agency will be notified and may then proceed with processing the personnel transaction to affect the increase.

(Respondent's Exhibit 5.)

6. Assistant Director Osborne sent a memo dated February 27, 2023, to Acting Commissioner Adkins, to request approval for all Integrity staff to be enrolled in the in-person training course, UI Fraud Investigation, in September 2023. The memo stated, "...completion of this course will present an opportunity for staff to receive the recently approved 3% one-time salary increase as approved by the Division of Personnel." Acting Commissioner Adkins signed his name and noted "Approved - 02-27-23." (Grievants' Exhibit 2).

7. Grievants completed the in-person training course, UI Fraud Investigation, and became certified on September 21 and 22, 2023.<sup>3</sup> (Grievants' Exhibit 6).

8. By email dated October 3, 2023, Assistant Director Osborne forwarded to Acting Commissioner Adkins a memo regarding the discretionary pay increase with the fraud training certifications of Grievants. (Grievants' Exhibit 3; see also Exhibit 6).

9. On February 16, 2024, Human Resources Director Sizemore and Acting Commissioner Adkins signed and submitted "Pay Plan Policy Request for Approval Discretionary Pay Differential" to the Cabinet Secretary of the Department of Commerce for approval. (Respondent's Exhibit 3).

10. In March 2024, the West Virginia Legislature approved an across-the-board 5% pay raise for state employees, including Grievants.

11. On March 19, 2024, Grievants filed the instant grievance because they had not yet received the discretionary pay increase.

12. On October 16, 2024, Thomas McClure, Human Resources Director of Department of Commerce, notified Workforce Human Resources Director Sizemore and

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<sup>3</sup> Grievant, Angela Bowen, only became certified on September 22, 2023.

Acting Commissioner Adkins that the requests for approval of the discretionary pay increases for Grievants were denied. (Respondent's Exhibit 4).

13. Workforce Human Resources Director Sizemore notified Grievants by email on October 17, 2024, that the Department of Commerce's Cabinet Secretary denied the request for a discretionary pay increase for the Grievants. (Grievants' Exhibit 4).

14. The UI Fraud Investigation course taken by Grievants is included in the DOP Pay Plan Policy list of approved certifications. (Grievants' Exhibit 1).

15. The UI Fraud Investigation course was not required by Respondent for Grievants' continued employment.

16. Pursuant to DOP Pay Plan Policy, Respondent has no obligation to pursue a discretionary increase and Grievants are not entitled to receive a discretionary increase. Further, "[s]uch increases are subject to authorization or limitation by the Governor's Office, appointing authority, and/or the State Personnel Board. Each discretionary pay differential requires prior approval of the Director before the appointing authority implements salary adjustments under this section of the policy." (Respondent's Exhibit 2 - DOP Pay Plan Policy at page 7).

17. "Personnel transactions under this Policy shall not be effective until all necessary approvals have been obtained." (Respondent's Exhibit 2 – DOP Pay Plan Policy at page 14).

### **Discussion**

Before moving on to the merits of the grievance, we must first address a procedural matter. At the beginning of the level three hearing, Respondent raised the issue of mootness due to the Grievants' failure to file t he grievance

after notice from the Secretary of the Department of Commerce denying the discretionary pay increase on October 16, 2024. Grievants filed the instant grievance on March 19, 2024, because their request for the discretionary pay increase had not been addressed. Chief Administrative Law Judge Billie Thacker Catlett addressed the issue later in the level three hearing, at which time Respondent formally moved to dismiss the grievance based on the testimony and arguments presented.

The Supreme Court has repeatedly admonished the lower courts to uphold the legislative intent of simple, expeditious and fair grievance procedures, and to give such procedures flexible interpretation in order to carry out the legislative intent. See *Duruttya v. Board of Educ.*, 181 W.Va. 203, 382 S.E.2d 40 (1989) (finding a grievant had substantially complied with the grievance process although the grievance had been filed with the incorrect entity), *Spahr v. Preston County Bd. of Educ.*, 182 W. Va. 726, 391 S.E.2d 739 (1990) (applying a flexible interpretation to find a grievance timely filed several months after the challenged grievable event), *Hale v. Mingo County Bd. of Educ.*, 199 W. Va. 387, 484 S.E.2d 640 (1997) (holding an intervenor may make affirmative claims for relief as well as asserting defensive claims). The grievance process is not “to be a procedural quagmire where the merits of the cases are forgotten.” *Spahr*, 182 W. Va. at 730, 391 S.E.2d at 743. Justice Starcher sums up the Court’s philosophy in *Hale*:

In *Spahr, supra*, we upheld a circuit court's determination that a grievance was timely filed several months after the challenged grievable event because the employees did not initially know of the actual facts relating to their grievance. *Spahr*, 182 W.Va. 726, 391 S.E.2d 739 (1990). *Spahr* and *Duryutta, supra* teach that the timeliness of a grievance claim is not necessarily a cut-and-dried issue because a tribunal must apply to the timeliness determination the principles of substantial compliance and flexible interpretation to achieve the legislative intent of a simple and fair grievance process,

as free as possible from unreasonable procedural obstacles and traps.

*Hale*, n.10, 199 W. Va. at 393, 484 S.E.2d at 646.

As the grievance was filed based upon Respondent's lack of response to the request for discretionary pay increase and the requested relief was to be awarded the increase, it is not necessary for Grievants to file an additional grievance upon confirmation of the denial of the discretionary pay increase. Respondent objected and the same is noted; however, the motion to dismiss is DENIED.

Moving on to the merits of the matter, as this grievance does not involve a disciplinary matter, Grievants have the burden of proving their 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.*

Grievants assert they are entitled to the discretionary pay increase because Acting Commissioner Adkins had approved the increase by signing the February 27, 2023, memo. Grievants further assert they are entitled to the increase due Respondent's failure to timely address the request and "deceitful" conduct. Grievants allege retaliation. Respondent asserts Grievants failed to prove the decision not to pursue the pay increase violated any law, rule, policy, or procedure or that the decision was arbitrary and capricious.



Grievants assert that they are entitled to a 3% discretionary pay increase upon completion of UI Fraud Investigations training approved by the Division of Personnel (DOP) pursuant to the DOP Pay Plan Policy, Professional Skills/Competency Development. (See Level 1 Grievance Form; Respondent's Exhibit 2, pp. 10-11.) More specifically, Grievants assert that Respondent is bound by Acting Commissioner Adkins's approval of the memo submitted by Assistant Director Osborne.

The Pay Plan Policy mandates a two-step process to obtain a discretionary pay increase for professional skills or competency development. An agency must first obtain prior approval of the specific professional skills or competency development for which the adjustment is being sought. Only after DOP approves the specific professional skills or competency development can the agency then seek the pay increase.

Grievants mistakenly interpreted Acting Commissioner Adkins's handwritten approval for the training course on the memo of January 25, 2022, as an approval for the discretionary pay increase upon completion of the UI Fraud Investigation training course. However, the memo merely stated "...this course will present an opportunity for staff to receive the recently approved 3% one-time salary increase...." This memo was clearly just the first step in seeking prior approval from DOP for the training only as required by the Pay Plan Policy. Respondent made no representation to Grievants that the discretionary pay increase was approved by DOP or that it was guaranteed upon completion of the training.

The Grievance Board has stated that "[a]n agency's decision not to recommend a discretionary pay increase generally is not grievable." *Lucas v. Dep't Health and Human Res.*, Docket No. 07-HHR-141 (May 14, 2008). See also *Morgan v. Dep't Health and*

*Human Res.*, Docket No. 07-HHR-131 (June 5, 2008). Discretionary increases “are not mandatory or obligatory on the part of the Respondent.” *Harris v. Dep’t of Transp.*, Docket No. 06-DOH-224 (Jan. 31, 2007). “However, discretionary decisions must be made in a manner that is reasonable and not arbitrary and capricious. See [*Mihaliak*] *v. Div. of Rehab. Serv.*, Docket No. 98-RS-126 (Aug. 3, 1998).” *Compton v. Div. of Juvenile Serv.*, Docket No. 2018-0756-MAPS (October 24, 2018) (citing *Moore v. Dep’t of Env’tl. Prot.*, Docket No. 2014-0046-DEP (May 9, 2014)).

An action is recognized as arbitrary and capricious when “it is unreasonable, without consideration, and in disregard of facts and circumstances of the case.” *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). “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 Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff’d* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998). “[T]he “clearly wrong” and the “arbitrary and capricious” standards of review are deferential ones which presume an agency’s actions are valid as long as the decision is supported by substantial evidence or by a rational basis. Syllabus Point 3, *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996).” Syl. Pt. 1, *Adkins v. W. Va. Dep’t of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001) (*per curiam*). “While a searching inquiry into the facts

is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the employer].” *Trimboli v. Dep’t of Health and Human Res.*, *supra*; *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001), *aff’d* Kanawha Cnty. Cir. Ct. Docket No. 01-AA-161 (July 2, 2002), appeal refused, W. Va. Sup. Ct. App. Docket No. 022387 (Apr. 10, 2003).

Grievants appear to assert Respondent’s decision not to seek the discretionary increase was arbitrary and capricious due to Respondent’s alleged failure to timely address the request and alleged “deceitful” conduct. Grievants failed to prove either assertion. Respondent was under no obligation to seek the pay increase at all, much less within a particular timeframe and there was no evidence of “deceitful” conduct. At most, there may have been unclear communication by Assistant Director Osborne to Grievants regarding the required procedure to obtain the discretionary increases. However, any such lack of clarity does not render the ultimate decision not to seek the increases arbitrary and capricious. Grievants presented no evidence that the decision was motivated by any improper purpose or consideration.

Grievants’ proposed findings of fact and conclusions of law referred to “continued retaliatory conduct after the grievance towards our section.” “No reprisal or retaliation of any kind may be taken by an employer against a grievant or any other participant in a grievance proceeding by reason of his or her participation....” W. VA. CODE § 6C-2-3(h) (2024). Reprisal is defined as “the retaliation of an employer toward a grievant, witness, representative or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.” W. VA. CODE § 6C-2-2(o) (2024). Grievants

presented no retaliation claim on prior pleadings. Further, the issue was not fully developed by the Grievants at the hearing. The only evidence submitted was the testimony of Grievant, Amber Harper, that, since the grievance, vacancies in the Integrity Unit were not filled and positions were recently moved to another unit. Grievants presented no other evidence regarding retaliation related to the filing of the grievance. Even if the issue had been raised properly, the evidence is insufficient to prove a claim of retaliation.

Grievants have failed to prove by a preponderance of the evidence that they are entitled to a discretionary pay increase for completing the UI Fraud Investigations training, or that Respondent is required to grant them such a pay increase. Grievants failed to prove that the decision not to approve the discretionary pay increase violated any rules, law or policy or that the decision was arbitrary and capricious. Therefore, the grievance must be denied.

The following Conclusions of Law support the decision reached.

### **Conclusions of Law**

1. Sfsfd The Supreme Court has repeatedly admonished the lower courts to uphold the legislative intent of simple, expeditious and fair grievance procedures, and to give such procedures flexible interpretation in order to carry out the legislative intent. See *Duruttya v. Board of Educ.*, 181 W.Va. 203, 382 S.E.2d 40 (1989) (finding a grievant had substantially complied with the grievance process although the grievance had been filed with the incorrect entity), *Spahr v. Preston County Bd. of Educ.*, 182 W. Va. 726, 391 S.E.2d 739 (1990) (applying a flexible interpretation to find a grievance timely filed several months after the challenged grievable event), *Hale v. Mingo County Bd. of Educ.*, 199 W.

Va. 387, 484 S.E.2d 640 (1997) (holding an intervenor may make affirmative claims for relief as well as asserting defensive claims). The grievance process is not “to be a procedural quagmire where the merits of the cases are forgotten.” *Spahr*, 182 W. Va. at 730, 391 S.E.2d at 743.

2. Justice Starcher sums up the Court’s philosophy in *Hale*:

In *Spahr, supra*, we upheld a circuit court's determination that a grievance was timely filed several months after the challenged grievable event because the employees did not initially know of the actual facts relating to their grievance. *Spahr*, 182 W.Va. 726, 391 S.E.2d 739 (1990). *Spahr* and *Duryutta, supra* teach that the timeliness of a grievance claim is not necessarily a cut-and-dried issue because a tribunal must apply to the timeliness determination the principles of substantial compliance and flexible interpretation to achieve the legislative intent of a simple and fair grievance process, as free as possible from unreasonable procedural obstacles and traps.

*Hale*, n.10, 199 W. Va. at 393, 484 S.E.2d at 646.

3. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018).

4. 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.*

5. An action is recognized as arbitrary and capricious when “it is unreasonable, without consideration, and in disregard of facts and circumstances of the case.” *State ex*

*rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). “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 Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff’d* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998).

6. “[T]he “clearly wrong” and the “arbitrary and capricious” standards of review are deferential ones which presume an agency’s actions are valid as long as the decision is supported by substantial evidence or by a rational basis. Syllabus Point 3, *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996).” Syl. Pt. 1, *Adkins v. W. Va. Dep’t of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001) (per curiam). “While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the employer].” *Trimboli v. Dep’t of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff’d* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998); *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001), *aff’d* Kanawha Cnty. Cir. Ct. Docket No. 01-AA-161 (July 2, 2002), appeal refused, W. Va. Sup. Ct. App. Docket No. 022387 (Apr. 10, 2003).

7. “An agency’s decision not to recommend a discretionary pay increase generally is not grievable. *Lucas v. Dep’t Health and Human Res.*, Docket No. 07-HHR-

141 (May 14, 2008). See also *Morgan v. Dep't Health and Human Res.*, Docket No. 07-HHR-131 (June 5, 2008). Discretionary increases “are not mandatory or obligatory on the part of the Respondent.” *Harris v. Dep't of Transp.*, Docket No. 06-DOH-224 (Jan. 31, 2007). “However, discretionary decisions must be made in a manner that is reasonable and not arbitrary and capricious. See [*Mihaliak*] *v. Div. of Rehab. Serv.*, Docket No. 98-RS-126 (Aug. 3, 1998).” *Compton v. Div. of Juvenile Serv.*, Docket No. 2018-0756-MAPS (October 24, 2018) (citing *Moore v. Dep't of Env'tl. Prot.*, Docket No. 2014-0046-DEP (May 9, 2014)).

8. “No reprisal or retaliation of any kind may be taken by an employer against a grievant or any other participant in a grievance proceeding by reason of his or her participation. Reprisal or retaliation constitutes a grievance and any person held responsible is subject to disciplinary action for insubordination.” W. VA. CODE § 6C-2-3(h) (2024). Reprisal is defined as “the retaliation of an employer toward a grievant, witness, representative, or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.” W. VA. CODE § 6C-2-2(o) (2024).

9. Grievants failed to prove that the decision not to approve the discretionary pay increase violated any rule, law or policy or was arbitrary and capricious.

10. Grievants failed to prove by a preponderance of the evidence that they are entitled to a discretionary pay increase for completing the UI Fraud Investigations training, or that Respondent is required to grant them such a pay increase.

Accordingly, the 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) (2024). 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) (2024).

**DATE: March 3, 2025**

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**Kimberly D. Bentley,  
Administrative Law Judge**