THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

MICHAEL LORING BURCH,
Grievant,

v. **Docket No. 2025-0543-DEP**

DEPARTMENT OF ENVIRONMENTAL PROTECTION/
DIVISION OF WATER AND WASTE MANAGEMENT,
Respondent.

DECISION

Grievant, Michael Loring Burch, was employed by Respondent, Department of Environmental Protection ("DEP"), Division of Water and Waste Management ("DWWM"), as a probationary employee. On March 3, 2025, Grievant properly filed this grievance against Respondent directly to level three pursuant to W. VA. CODE § 6C-2-4(a)(4). Grievant filed a statement of grievance, "Probationary appraisal does not replace EPA1, 2, 3. For EPA1, I was not given individualized coaching, reinforcement, and guidance. EPA2 (6 month review) was given at nearly 11 months. There was no coaching, reinforcement, or guidance, and no time to implement any actions. No PIP plan was made nor was there any time to implement such a plan." For relief, Grievant seeks, "Reinstatement and full backpay as a fully credentialed inspector."

A level three hearing was held on September 23, 2025, before Administrative Law Judge Kimberly D. Bentley at the Grievance Board's Charleston, West Virginia office. Grievant appeared and was self-represented. Respondent appeared by Lori Saylor, Employee Relations Specialist, and was represented by counsel, Mark L. Garren, Assistant Attorney General. This matter became mature for decision on October 21, 2025, upon receipt of Respondent's written Proposed Findings of Fact and Conclusions of Law. Grievant did not submit Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant, Michael Loring Burch, was employed by Respondent, Department of Environmental Protection, Division of Water and Waste Management, as a probationary employee in the position of Environmental Inspector-in-Training. Respondent terminated Grievant's employment during his probationary period for unsatisfactory performance. Grievant failed to relocate to his district and exhibited unprofessional conduct. Respondent acted reasonably when it terminated Grievant during his twelve-month probationary period. Respondent did not violate any law, rule, or policy or act in an arbitrary and capricious manner. Grievant failed to establish by preponderant evidence that his services were satisfactory. Accordingly, the 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

1. Grievant was hired on February 26, 2024, by the Department of Environmental Protection, Division of Water and Waste Management, Environmental Enforcement, as a twelve-month probationary Environmental Inspector-in-Training for the geographical region of Boone and Lincoln Counties.

2. Grievant's duties as an Environmental Inspector-in-Training included performing technical and field inspections related to solid waste management and water pollution control programs, as detailed in the job posting. Further, Grievant's EPA-1 dated March 8, 2024, contained functional and practical goals and standards for the position, including the expectation for empathy, courtesy, respect, and professionalism in dealing

with coworkers and the facility operators or permittees. R. Ex. 3, 7; Ryan Harbison testimony.

3. The job posting specifically stated that the position will be "subject to emergency response" and "being on-call." "Selected candidate must reside within a reasonable driving distance/time of the geographic area of assigned counties of responsibility." Further, this requirement to maintain a permanent residence within a reasonable driving distance of his assigned area of Boone and Lincoln Counties was emphasized during the interview. R. Ex. 2; R. Harbison testimony.

4. Grievant was aware of the residency requirement. He was advised at the job interview, in the EPA-1 review with Ryan Harbison on March 8, 2024, and by letter from Brad Wright, DEP Chief Inspector, dated March 29, 2024, which reminded Grievant's permanent residence within reasonable distance of his district must be established no later than August 26, 2024. R. Ex. 3; R. Harbison, Brad Wright, and Grievant testimony.

5. Although Grievant may have stayed in a house in Charleston during the workweek, Grievant continuously maintained his permanent residence in Spencer, Roane County, as reflected by the records of the West Virginia Department of Motor Vehicle Driver Record. Spencer is not situated within a reasonable driving distance from Grievant's district of Boone and Lincoln Counties. R. Ex. 4, 5, 6; Matthew Arrowood and Grievant testimony.

6. Grievant made inappropriate statements to Samantha Blair and Morgan Agee regarding gender-biased "privilege," that men would be more kind to a woman. S. Blair, M. Agee, and Grievant testimony.

7. On June 4, 2024, Grievant had difficulty navigating and following Ms. Blair's step-by-step instructions to write an inspection report during remote training with Ms. Blair. Grievant requested additional time to review, yet he was not prepared when the remote training reconvened and requested in-person training. Despite his request, Grievant was unwilling to plan a date for the in-person training. R. Ex. 1; S. Blair testimony.

8. On June 21, 2024, Grievant stated to Morgan Agee, "You don't have kids yet? How old are you, 27? You better get on that stick." R. Ex. 1; Grievant and M. Agee testimony.

9. About June 27, 2024, Grievant received instruction from Mr. Harbison on his first inspection report, including a template and list of issues to be included. Ms. Blair provided further assistance but Grievant still only partially completed the inspection reports. R. Ex. 1; S. Blair and R. Harbison testimony.

10. Grievant was confrontational, disrespectful, and rude to Mr. Pruitt during the spill at Buffalo Creek Public Service District on August 26, 2024, stating that Mr. Pruitt "had let everything go to shit." R. Ex. 1; J. Bandy and M. Agee testimony.

11. On September 20, 2024, Grievant was assigned to lead an inspection in Logan County which escalated into a heated exchange. This required Ms. Blair to intervene and complete the inspection. Afterwards, Ms. Blair explained to Grievant the need to always be respectful and professional. R. Ex. 1; S. Blair and R. Harbison testimony.

12. On Friday, September 27, 2024, Grievant was not available to respond to a tractor-trailer crash and spill. Because he was residing in Spencer, West Virginia, and

not residing within a reasonable distance, Grievant was unable to fulfill his job duty to timely respond to the spill in his assigned area. R. Ex. 1; Grievant and M. Agee testimony.

13. In October, Grievant received instructions from Ms. Blair, then Ms. Agee provided further assistance and feedback to Grievant on the Major/Minor Facilities Report, which was always assigned to the inspector-in-training to familiarize them with the facilities and systems in their district. Grievant resisted this assignment and attempted to obtain Ms. Agee's prior report to "update," rather than simply complete the report as instructed. R. Ex. 1; S. Blair and M. Agee testimony.

14. Grievant attempted to project himself as the "man in charge" or the superior representative of DEP. While observing inspections in the field, Grievant frequently disrespected female coworkers by speaking over, interrupting, and attempting to take over the conversation with permittees or operators. R. Ex. 1; M. Agee and S. Blair testimony.

15. On October 30, 2024, Grievant proposed to Ms. Agee that he should actually pose as her supervisor to intimidate the permittee. Although he did not present himself as her supervisor, Grievant interrupted Ms. Agee and behaved in an aggressive, rude, and sarcastic manner to the permittee. R. Ex. 1; M. Agee testimony.

16. It is crucial to build and maintain friendly relationships with the permittees and wastewater plant operators to ensure these individuals will report spills and incidents to DEP that may affect the health and safety of residents. Nevertheless, Grievant was disrespectful, condescending, combative, negative, and rude when interacting with them. R. Ex. 1; B. Wright, M. Agee, and S. Blair testimony.

17. On the return drives from facility inspections, Ms. Blair and Ms. Agee provided feedback to Grievant, including instruction and explanation of the need to be professional and respectful at all times. S. Blair and M. Agee testimony.

18. Grievant's job application states he retired from teaching; however, Grievant was discharged for improper behavior. R. Ex. 8; Grievant testimony.

19. At the meeting on January 29, 2025, regarding his EPA-2, Grievant advised that he maintained his permanent residency in Roane County but stayed in Charleston during the workweek. That arrangement does not satisfy Respondent's residency requirement.

20. By letter dated February 19, 2025, Director Jeremy Bandy dismissed Grievant from employment as an Environmental Inspector-in-Training, stating, "Having evaluated your work performance and conduct during your probationary period, I have concluded that you have not made a satisfactory adjustment to the demands of your position, nor have you met the required work standards." The nine-page termination letter detailed twenty-four examples of Grievant's unsatisfactory performance, including the specific instances described above. R. Ex. 1.

21. Director Bandy identified at least seven times that Grievant was disrespectful and rude to the operators and permittees during inspections with training inspectors and five times in which he disrespected female coworkers. He found that these behaviors were in violation of DEP Employee Handbook, page 24, "Workplace Behavior," as well as DOP Employee Conduct Expectations, Workplace Behavior. Further, Director Bandy stated, "A WV DEP Environmental Inspector must consistently demonstrate

professionalism and respect, especially in public interactions. Your actions were disrespectful and do not reflect our agency's values." R. Ex. 1, 9, and 10.

22. West Virginia Division of Personnel ("DOP") "Employee Conduct Expectations," page 12-13, "Workplace Behavior" states,

> "While on duty, on meal breaks, travel, and/or social occasions having a connection with the job, employees shall not:
> a) Engage in intimidating and/or threatening behavior;
> b) Engage in sexual innuendos such as sounds, expressions, gestures, etc.;
> c) Use foul or abusive language;
> d) Make disrespectful, humiliating, insulting, or degrading comments to or about others;
> e) Engage in inappropriate public displays of affection;
> f) Make individuals the subject of practical jokes, pranks, gags, or ridicule;
> g) Engage in any behavior that is disruptive to orderly operations; or,
> h) Sleep while on duty unless specifically authorized by the appropriate authority.
>
> The foregoing is by no means an all-inclusive list. Employees are not to engage in such behavior when dealing with any individual, including but not limited to coworkers, customers, clients, residents, inmates, consumers, vendors, citizens, etc. When responding to inappropriate behavior, agencies must take into consideration the subjective nature of such offenses. The behavior must be evaluated based upon what would be considered offensive to a reasonably prudent person."

R. Ex. 1 and 9.

Discussion

When a probationary employee is terminated on grounds of unsatisfactory performance, rather than misconduct, the termination is not disciplinary, and the burden of proof is upon the employee to establish that his services were satisfactory. *Bonnell v. W. Va. Dep't of Corrections*, Docket No. 89-CORR-163 (Mar. 8, 1990); *Roberts v. Dep't of Health and Human Res*., Docket No. 2008-0958-DHHR (Mar. 13, 2009). Grievant "is required to prove that it is more likely than not that his services were, in fact, of a

satisfactory level." *Bush v. Dep't of Transp.,* Docket No. 2008-1489-DOT (Nov. 12, 2008). "However, the distinction is one that only affects who carries the burden of proof. As a practical matter, an employee who engages in misconduct is also providing unsatisfactory performance." *Livingston v. Dep't of Health and Human Res*., Docket No. 2008-0770-DHHR (Mar. 21, 2008) (citing *Johnson v. Dep't of Transp./Div. of Highways*, Docket No. 04-DOH-215 (Oct. 29, 2004)).

"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. W. Va. Dep't of Health & Human Res*., Docket No. 92-HHR-486 (May 17, 1993). If the evidence is equally balanced, the party with the burden of proof has not met that burden. *See Leichliter v. W. Va. Dep't of Health and Human Res.,* Docket No. 92-HHR-486 (May 17, 1993).

The Division of Personnel's administrative rule discusses the probationary period of employment, describing it as "a trial work period designed to allow the appointing authority an opportunity to evaluate the ability of the employee to effectively perform the work of his or her position and to adjust himself or herself to the organization and program of the agency." W. VA. CODE ST. R. § 143-1-10.1.a. (2016). The same provision goes on to state that the employer "shall use the probationary period for the most effective adjustment of a new employee and the elimination of those employees who do not meet the required standards of work." *Id*. A probationary employee may be dismissed at any point during the probationary period that the employer determines his services are unsatisfactory. *Id*. at § 10.5(a). Therefore, the Division of Personnel's administrative rules

establish a low threshold to justify termination of a probationary employee. *Livingston v. Dep't of Health and Human Res.*, Docket No. 2008-0770-DHHR (Mar. 21, 2008).

> A probationary employee is not entitled to the usual protections enjoyed by a state employee. The probationary period is used by the employer to ensure that the employee will provide satisfactory service. An employer may decide to either dismiss the employee or simply not to retain the employee after the probationary period expires.

Hammond v. Div. of Veteran's Affairs, Docket No. 2009-0961-MAPS (Jan. 7, 2009) (citing *Hackman v. W. Va. Dep't of Transp.*, Docket No. 01-DMV-582 (Feb. 20, 2002)).

Still, "while an employer has great discretion in terminating a probationary employee, that termination cannot be for unlawful reasons, or arbitrary or capricious. *McCoy v. W. Va. Dep't of Transp.*, Docket No. 98-DOH-399 (June 18, 1999); *Nicholson v. W. Va. Dep't of Health and Human Res.*, Docket No. 99-HHR-299 (Aug. 31, 1999*)." Lott v. W. Va. Div. of Juvenile Serv.*, Docket No. 99-DJS-278 (Dec. 16, 1999). 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*., 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).

Grievant asserts that he provided satisfactory services to Respondent and he received the highest grade in Respondent's training class. Grievant asserts that Respondent failed to comply with policy regarding performance evaluations and claims that Respondent provided no feedback prior to eleven months on the job; therefore, he should be granted an additional six months to improve his performance. Respondent asserts that Grievant provided unsatisfactory performance during his probationary period. It is Grievant's burden to prove that his services were satisfactory. Grievant claimed, but did not prove, that he received the highest grade of the class during the week-long DEP training. Even assuming that is accurate, Grievant's grade would only demonstrate knowledge of the subject matter presented during the class—whatever that may have been. Grievant presented no testimony or documentation to support the proposition that

he provided satisfactory services to Respondent. He did not provide preponderant evidence of daily satisfactory work performance in his job duties. On the other hand, it is quite clear from the evidence, including Grievant's own testimony, that Grievant failed to provide services that were satisfactory. Grievant failed to relocate his permanent residence as required and Grievant's behavior was unprofessional and did not align with DEP's high standard of professionalism.

Grievant asserts that his termination was arbitrary and capricious, because Respondent did not follow DOP's policy titled "Employee Performance Appraisal." Grievant states that Respondent mismanaged the time and did not comply with policy that requires Respondent to provide six months, after the mid-term EPA-2 evaluation, to correct Grievant's errors described by Respondent. Following an employee's initial six months, DOP policy requires formal feedback of employee performance and expectations, using the EPA-2. If necessary, a performance improvement plan can be implemented to document the expectations, gaps, and guidance with precise steps for an employee's improvement. Although Respondent performed the employee performance appraisal EPA-2 eleven months into the probationary period, Respondent presented several credible witnesses to attest that Grievant received significant on-the-job training with consistent and timely feedback and guidance from his supervisor and other inspectors during his entire probationary period informing Grievant that his performance was not satisfactory. Rather than a "formal" one-time discussion or written feedback, his colleagues expressed feedback to Grievant contemporaneously.

Grievant argued that, prior to his EPA-2 in January, no one had advised that his performance was unsatisfactory and he would do better if given the chance. All inspectors

were aware that training of Grievant was their objective. Grievant's claim that he was unaware of any unsatisfactory work performance is implausible. Grievant was aware of the areas of performance that needed improvement. That was Grievant's notice and opportunity to correct the problems.

Moreover, Grievant did not dispute the instances of unprofessional conduct asserted by Respondent. In defense, Grievant declared that his unprofessional or inappropriate statements were justified, misunderstood, or taken out of the context in which he intended. Grievant completely failed to recognize the gravity of his unprofessional behavior during his probationary period and, furthermore, conducted himself in like manner during the level three hearing. Grievant's apologies for his chauvinistic statements to Ms. Blair and Ms. Agee, offered during their testimony, were self-serving and disingenuous.

Grievant failed to prove his services to Respondent were satisfactory during his probationary period. Clearly, Grievant was unable to conform to the professional standards and requirements of an Environmental Inspector-in-Training. Moreover, Grievant did not reflect proper respect for the grievance proceeding, making it apparent that Grievant still has not learned how to behave in a professional manner. Respondent did not act in an arbitrary or capricious manner and did not act contrary to rule, law, or policy in terminating Grievant's probationary employment. The unsatisfactory performance of Grievant warranted his dismissal. Accordingly, the grievance must be denied.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. When a probationary employee is terminated on grounds of unsatisfactory performance, rather than misconduct, the termination is not disciplinary, and the burden of proof is upon the employee to establish that his services were satisfactory. *Bonnell v. W. Va. Dep't of Corrections*, Docket No. 89-CORR-163 (Mar. 8, 1990); *Roberts v. Dep't of Health and Human Res*., Docket No. 2008-0958-DHHR (Mar. 13, 2009).

2. Grievant "is required to prove that it is more likely than not that his services were, in fact, of a satisfactory level." *Bush v. Dep't of Transp.,* Docket No. 2008-1489-DOT (Nov. 12, 2008). If the evidence is equally balanced, the party with the burden of proof has not met that burden. *See Leichliter v. W. Va. Dep't of Health and Human Res.,* Docket No. 92-HHR-486 (May 17, 1993).

3. "However, the distinction is one that only affects who carries the burden of proof. As a practical matter, an employee who engages in misconduct is also providing unsatisfactory performance." *Livingston v. Dep't of Health and Human Res*., Docket No. 2008-0770-DHHR (Mar. 21, 2008) (citing *Johnson v. Dep't of Transp./Div. of Highways*, Docket No. 04-DOH-215 (Oct. 29, 2004)).

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. W. Va. Dep't of Health & Human Res*., Docket No. 92-HHR-486 (May 17, 1993). If the evidence is equally balanced, the party with the burden of proof has not met that burden. *See Leichliter v. W. Va. Dep't of Health and Human Res.,* Docket No. 92-HHR-486 (May 17, 1993).

5. The Division of Personnel's administrative rule discusses the probationary period of employment, describing it as "a trial work period designed to allow the appointing authority an opportunity to evaluate the ability of the employee to effectively perform the work of his or her position and to adjust himself or herself to the organization and program of the agency." W. VA. CODE ST. R. § 143-1-10.1.a. (2016). The same provision goes on to state that the employer "shall use the probationary period for the most effective adjustment of a new employee and the elimination of those employees who do not meet the required standards of work." *Id*.

6. A probationary employee may be dismissed at any point during the probationary period that the employer determines his services are unsatisfactory. W. VA. CODE ST. R. § 143-1-10.5(a) (2022).

7. The Division of Personnel's administrative rules establish a low threshold to justify termination of a probationary employee. *Livingston v. Dep't of Health and Human Res.*, Docket No. 2008-0770-DHHR (Mar. 21, 2008).

8. "A probationary employee is not entitled to the usual protections enjoyed by a state employee. The probationary period is used by the employer to ensure that the employee will provide satisfactory service. An employer may decide to either dismiss the employee or simply not to retain the employee after the probationary period expires." *Hammond v. Div. of Veteran's Affairs,* Docket No. 2009-0161-MAPS (Jan. 7, 2009) (citing *Hackman v. Dep't of Transp.*, Docket No. 01-DMV-582 (Feb. 20, 2002)).

9. Because Grievant was a probationary employee, he was "not entitled to the usual protections enjoyed by state employees," such as progressive discipline (to which Grievant seems to elude). *Hammond v. Div. of Veteran's Affairs,* Docket No. 2009-0161-

MAPS (Jan. 7, 2009) (citing *Hackman v. Dep't of Transp.*, Docket No. 01-DMV-582 (Feb. 20, 2002)).

10. Still, "while an employer has great discretion in terminating a probationary employee, that termination cannot be for unlawful reasons, or arbitrary or capricious. *McCoy v. W. Va. Dep't of Transp.*, Docket No. 98-DOH-399 (June 18, 1999); *Nicholson v. W. Va. Dep't of Health and Human Res.*, Docket No. 99-HHR-299 (Aug. 31, 1999*)." Lott v. W. Va. Div. of Juvenile Serv.*, Docket No. 99-DJS-278 (Dec. 16, 1999). 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).

11. "'[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).

12. Grievant did not prove by a preponderance that he rendered satisfactory quality and quantity of services.

13. Respondent's dismissal of Grievant during his probationary period based on unsatisfactory performance was proper

14. Respondent did not act in an arbitrary or capricious manner and did not act contrary to rule, law, or policy in the termination of Grievant as a probationary employee. The unsatisfactory performance of Grievant warranted his dismissal.

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). 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: December 5, 2025

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Kimberly D. Bentley
Administrative Law Judge