

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

DR. RADHEY S. SHARMA,
Grievant,

v.

Docket No. 2025-0522-WVU

WEST VIRGINIA UNIVERSITY,
Respondent.

DECISION

Dr. Sharma was a tenured Associate Professor of West Virginia University's Civil and Environmental Engineering Department of the Statler College of Engineering and Mineral Resources. Dr. Sharma was terminated as part of a reduction in force by notice dated October 13, 2023. Dr. Sharma contends that the termination was arbitrary and capricious, and violated his constitutional rights, contractual rights, and WVU policies. Dr. Sharma seeks the cancellation of the termination, reinstatement of his position at WVU, and back pay.

Dr. Sharma filed a previous grievance in which he challenged his termination, which resulted in a final decision by the West Virginia Public Employees Grievance Board dated December 30, 2024. It was ordered that WVU consider the seniority RIF factor for each of the faculty members that were part of the RIF process. Thereafter, WVU was ordered to reassess its RIF rankings of faculty for any changes. If the reassessment by WVU resulted in Grievant's retention, WVU was ordered to reinstate Grievant with back wages and benefits. Grievant was not reinstated after this reassessment of seniority and filed the instant grievance on February 12, 2025.

Dr. Sharma proceeded directly to level three. A level three hearing was conducted before the undersigned on October 6, 2025, at the Westover office of the West Virginia

Public Employees Grievance Board. Grievant appeared in person and by his counsel, Drew M. Capuder. WVU appeared by counsel, Samual Spatafore, Assistant Attorney General, Carol Maunich, WVU Deputy General Counsel, Dr. Tracy Morris, Provost, and Human Resources Director, Chris Staples. This case became mature for consideration upon receipt of the last of the parties' proposed Findings of Fact and Conclusions of Law on October 31, 2025.

Synopsis

Grievant was employed by West Virginia University as an Associate Professor with tenure in the Civil and Environmental Engineering Department of the Statler College of Engineering. West Virginia University in 2023 conducted a reduction in force in the department and ranked for termination 4 of the 18 faculty members in the department. Grievant was one of the faculty members who was terminated. In response to a Grievance Board order, West Virginia University conducted a second reduction in force ranking on February 6, 2025. Grievant was again terminated pursuant to this ranking. The record of this case does not establish by a preponderance of the evidence that the actions of West Virginia University were arbitrary and capricious. This grievance is denied.

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

Findings of Fact

1. Grievant was formerly employed by WVU, but his position was eliminated and his employment was terminated as part of a reduction in force effective May 9, 2024.
2. Grievant filed a previous grievance in which he challenged his termination, which resulted in a final decision by the West Virginia Public Employees Grievance Board

dated December 30, 2024. It was ordered that WVU consider the seniority RIF factor for each of the faculty members that were part of the RIF process. Thereafter, WVU was ordered to reassess its RIF rankings of faculty for any changes. If the reassessment by WVU resulted in Grievant's retention, WVU was ordered to reinstate Grievant with back wages and benefits.

3. The Grievance Board's December 30, 2024, Decision stated that reinstatement would only occur if WVU's reassessment of seniority under Rule 4.7 resulted in Grievant's retention.

4. WVU complied with the Grievance Board decision. WVU did consider seniority for each of West Virginia University's Civil and Environmental Engineering Department of the Statler College of Engineering and Mineral Resources faculty members that were part of the reduction in force. Upon WVU's reassessment of seniority the reduction in force rankings of the faculty did not change.

5. The record of this case consisted entirely of opinions of Grievant's work and Grievant's witness, Dr. Hota GangaRao.

6. The record did not contain any evidence that WVU violated any law, rule or policy in the reassessment of the seniority factor.

7. The applicable Board of Governor Rule 4.7 outlines "guiding principles" for carrying out a reduction in force. It does not specify any weighting or application of the outlined criteria.

8. WVU's senior leadership determined that performance was the most important factor of Rule 4.7. The Committee applied a 90% weight to the performance factor and a 10% weight to the seniority factor.

9. The record contains no evidence to establish that WVU was under any obligation to assign more weight to the seniority factor assessment.

10. The record is clear that WVU applied the same weighting to all the faculty in the Civil and Environmental Engineering Department of the Statler College of Engineering and Mineral Resources.

11. The reassessment of the seniority factor was approved by the RIF Review Committee. It was determined that Grievant did not meet the threshold for reinstatement under the RIF criteria.

12. Grievant continuously proffered that tenure should have been relevant to the knowledge and skill criterion of Rule 4.7. Grievant also proffered that tenure should be a factor that exempted him from the reduction in force.

13. West Virginia University Board of Governor Rule 4.7 provides, in pertinent part, “A RIF may result in a tenured, tenure-track, teaching-track, or service-track faculty member’s appointment being terminated.” Rule 4.7 does not list tenure as a criterion to be considered when a RIF is to be implemented.

14. Associate Provost of Academic Personnel at West Virginia University, Dr. Tracy Morris, recognized that Rule 4.7 did not include tenure as a factor to be considered for a RIF analysis. Pursuant to Rule 4.7, tenure was not a relevant variable, and knowledge and skills are not associated with tenure. Pursuant to Rule 4.7, tenured faculty are to be treated like tenure-track, teaching-track and service-track faculty as stated in the rule.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). See also *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). "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).

Grievant was formerly employed by West Virginia University but was terminated as part of a Reduction in Force effective May 9, 2024. Grievant previously filed a grievance challenging his termination, which resulted in a decision by the West Virginia Public Employees Grievance Board, dated December 30, 2024. The Grievance Board decision ordered West Virginia University to "consider the Rule 4.7 'seniority' RIF factor for each of the CEE faculty members that were part of the RIF process and to thereafter reassess its RIF rankings of CEE faculty for any changes. If the reassessment by WVU results in Grievant's retention, WVU shall reinstate Grievant with back wages and benefits." The decision stated that reinstatement would only occur if West Virginia University's reassessment of seniority under Rule 4.7 resulted in Grievant's retention.

The record of this case supports a finding that West Virginia University complied with the Grievance Board order as directed. The record also supports a finding that West Virginia University did reconsider seniority for each of the faculty members that were part

of the RIF process, and after its reassessment of seniority the RIF ranking of faculty did not change. Grievant argues that West Virginia University's weight for seniority was arbitrary and capricious.

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); *Burgess v. Div. of Highways*, Docket No. 2019-0576-DOT (Nov. 22, 2019).

The "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. *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001). In addition, the Grievance Board has previously ruled that an employer may refuse to allow an employee to return to work at less than full duty. *Griffon v. Div. of Motor Vehicles*, Docket No. 2008-1271-DOT (Aug. 17, 2009).

The record of this case indicates that Grievant failed to meet his burden of establishing that West Virginia University's application of Rule 4.7 was arbitrary and

capricious. Despite repeated efforts by the undersigned for the parties to address that issue, it was either ignored, or the evidence offered at the level three hearing did not support that argument. The applicable Board of Governor Rule 4.7 outlines “guiding principles” for carrying out a reduction in force. It does not specify any weighting or application of the outlined criteria. WVU’s senior leadership determined that performance was the most important factor of Rule 4.7. The Committee applied a 90% weight to the performance factor and a 10% weight to the seniority factor. The record contains no evidence to establish that WVU was under any obligation to assign more weight to the seniority factor assessment. The record is clear that WVU applied the same weighting to all the faculty in the Civil and Environmental Engineering Department of the Statler College of Engineering and Mineral Resources. The reassessment of the seniority factor was approved by the RIF Review Committee. It was determined that Grievant did not meet the threshold for reinstatement under the RIF criteria.

Finally, Grievant proffered that tenure should have been relevant to the knowledge and skill criterion of Rule 4.7. Grievant also proffered that tenure should be a factor that exempted him from the reduction in force. West Virginia University Board of Governor Rule 4.7 provides, in pertinent part, “A RIF may result in a tenured, tenure-track, teaching-track, or service-track faculty member’s appointment being terminated. Rule 4.7 does not list tenure as a criterion to be considered when a RIF is to be implemented.

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 his grievance by a preponderance of the evidence. Procedural Rules

of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). See also *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). "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).

2. 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); *Burgess v. Div. of Highways*, Docket No. 2019-0576-DOT (Nov. 22, 2019).

3. The record did not establish by a preponderance of the evidence that the reassessment of the seniority factor was arbitrary and capricious or clearly wrong.

Accordingly, this grievance is **DENIED**.

"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: December 18, 2025

Ronald L. Reece
Administrative Law Judge