



**REPLY TO:**  
401 Davis Avenue  
Suite 315  
Elkins, WV 26241  
Telephone: 636-1123

**Members**  
James Paul Geary  
Orton A. Jones  
David L. White

**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**  
ARCH A. MOORE, JR.  
Governor

**Offices**  
240 Capitol Street  
Suite 508  
Charleston, WV 25301  
Telephone: 348-3361

**TAMMY SCROGGS**

**v.**

**Docket No. BOR1-87-054-2**

**WEST VIRGINIA UNIVERSITY**

**D E C I S I O N**

Grievant, Tammy Scroggs, is employed by the Board of Regents as a secretary assigned to the Department of Economics at West Virginia University. On March 13, 1987 Ms. Scroggs filed a grievance at level four following a University decision to change a letter of termination to a letter of warning. Although an evidentiary hearing was requested the examiner was later notified by telephone that both parties had agreed to submit the matter for decision based upon the record.

The information provided to the examiner consists of the level two grievance evaluator's report, the level two decision dated January 5, 1987 and written statements submitted by both parties at level four.

The level two decision indicates that the grievant was counseled regarding frequent absenteeism on June 10, 1986 and was issued a letter of warning on September 5, 1986. Following a subsequent absence on October 21 the grievant was notified by letter dated November 17 of her termination effective November 20, 1986. The termination date was later extended to the end of the calendar year and a grievance was filed. An evidentiary hearing was held at level two following which the President's designated representative determined that the grievant should not be terminated but that the letter of November 17 would be considered a second warning letter.

The grievant appealed the level two decision to level four and alleges that the charges leading to the termination were vague or related to days of annual or sick leave usage and do not establish cause for a second letter of warning. She asserts that the level two decision was based on an arbitrary disregard of the facts and was in violation of West Virginia University personnel policies.

In addition to the foregoing it is appropriate to make the following specific findings of fact and conclusions of law.

### Findings of Fact

1. Grievant is employed by the Board of Regents as a secretary assigned to the Department of Economics at West Virginia University.

2. Following termination of her employment an evidentiary hearing was held at level two. In his decision dated January 5, 1987 Herman Mertins, Jr., Vice President for Administration and Finance and the President's designated representative, determined that the termination was unwarranted but that the letter would be considered as a second letter of warning.

3. On March 13, 1987 the grievant filed an appeal to level four asking that the letter be removed from her file. She indicated that she had received the level two decision on March 9, 1987.

4. The grievant does not state which personnel policies were violated by the institution's action nor has there been a transcript of the level two hearing forwarded to this examiner. Therefore, there is no basis upon which it can be determined whether the decision was arbitrary or if cause existed to justify a second warning letter.

5. Grievant indicates that the decision was not received

until March 9, 1987; however, as she was reinstated to her position effective January 1, 1987 and as there is no indication that she had not worked during that three month period the grievant must have been aware of the level two decision.

### Conclusions of Law

1. In this instance it was incumbent upon the grievant to prove the elements of the grievance by a preponderance of the evidence. Robert L. Young v. Kanawha County Board of Education, Docket No. 20-86-254/250-1.

2. The grievant has failed to show the respondent's action to be a violation, misapplication or misinterpretation of any statute, policy, rule, regulation or written employment agreement as a matter of law.

3. W. Va. Code, 18-29-4 requires that grievance proceedings be initiated within fifteen (15) days of the date on which the event became known to the grievant or within fifteen (15) days of the most recent occurrence of a continuing practice giving rise to a grievance.

4. It is incumbent upon an employee to timely pursue his rights through the grievance process or to demonstrate a valid reason for the delay. Ruth Murphy v. Mingo County Board of Education, Docket No. 29-86-341-4; Scarberry v. Mason County Board of Education, Docket No. 26-86-291-1.

5. The grievant has failed to timely file an appeal to level four or to demonstrate a valid cause for the delay.

Accordingly the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia County and such appeal must be filed within thirty (30) days of receipt of this decision. (W. Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

DATED July 14, 1987

Sue Keller

SUE KELLER  
Hearing Examiner