



REPLY TO:
101 Harper Park Drive
Suite D
Beckley, WV 25801
Telephone: 255-6155

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

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

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

CAROL THOMAS

v.

Docket No. 03-88-087

BOONE COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Carol Thomas, is employed by the Boone County Board of Education as a secretary assigned to Ashford-Rumble School. She filed a grievance in November 1987 alleging she had been improperly denied pay for holidays and accumulation of personal leave as a consequence of an injury-related absence. A Level II hearing was held March 16, 1988 and a decision at that level was adverse to the grievant. The Board waived Level III proceedings and upon appeal to Level IV, the parties indicated a decision could be made on the record developed at lower levels and supplemental briefs. A transcript of the Level II hearing (T. __) was not received until September 23, 1988.

The parties do not dispute the facts giving rise to the grievance. Because of a recurrence of a work-related injury grievant was not able to work during the 1987-88 school term. In November 1987 the Board stopped paying grievant for holidays and stopped crediting her with accumulation of personal leave. Grievant contends the provisions of W.Va. Code, 18A-4-10 and W.Va. Code, 18A-5-2 prohibit a county board of education from withholding these benefits from disabled employees receiving Workers Compensation benefits. The pertinent part of W.Va. Code, 18A-4-10 provides:

At the beginning of his employment term, any full-time employee of a county board of education shall be entitled annually to at least one and one-half days personal leave for each employment month or major fraction thereof in the employee's employment term. Unused leave shall be accumulative without limitation and shall be transferrable within the State. A change in job assignment during the school year shall in no way affect the employee's rights or benefits.

A regular full-time employee who is absent from assigned duties due to accident, sickness, death in the immediate family, or other cause authorized or approved by the Board, shall be paid his full salary from his regular budgeted salary appropriation during the period when he is absent, but not to exceed the total amount of leave to which he is entitled.

W.Va. Code, 18A-5-2 provides:

Schools shall not be kept open on any Saturday nor on the following days which are designated as legal school holidays...When any such holiday falls within the employment term, it shall be considered as a day of the employment term and the full-time school personnel shall receive his pay for same.

Grievant asserts W.Va. Code, 18A-4-10 contains no language which excludes an employee from accruing personal leave because of a disability and she should therefore have continued to accumulate and be compensated for those days. Ms. Thomas similarly argues that since W.Va. Code, 18A-5-2 contains no exceptions to its provisions for compensation of recognized holidays, she should have been paid for all such days during the 1987-88 school term. Grievant cites Aftanas v. Brooke County Board of Education, Docket No. 05-87-295-3 and an Interpretation of the State Superintendent of Schools dated November 7, 1983 in support of her position.

The Board places an interpretation upon W.Va. Code, 18A-4-10 whereby an employee who is on an extended leave of absence because of a work-related injury ceases to be an employee for the purposes of accruing personal leave and compensation for holidays.¹ This position is purportedly based on a State Superintendent of Schools Opinion dated September 4, 1985 and the holdings in Varney v. Logan County Board of Education, Docket No. 23-86-374-1, and McGinnis v. Logan County Board of Education, Docket No. 23-86-077.

¹Though not stated as such, the Board's basic objection to paying employees for the leave is that they would then be receiving compensation for those days from two different sources.

An analysis of the cases cited by the parties and the relevant portions of the West Virginia Code indicate grievant's interpretations concerning personal leave is the more logical. W.Va. Code, 18A-4-10 contains no language which would operate to preclude employees receiving Workers Compensation benefits from receiving personal leave days. Certainly such employees fall within the category of "a regular full-time employee who is absent from assigned duties due to accident". Those employees clearly continue to accrue personal leave days although their leaves of absence obviously require the use of and compensation for the leave. It must be assumed that, if there had been a legislative intent to differentiate between employees who are absent because of accident and those who are absent because of accident and receiving Workers Compensation benefits, there would have been a provision to that effect contained in W.Va. Code, 18A-4-10.² The Board's reliance on Varney v. Logan County Board of Education, supra and McGinnis v. Logan County Board of Education, supra, in support of its argument on this particular part of the grievance is misplaced as those cases dealt with holidays and snow days and did not specifically address the issue of personal leave days. In Aftanas v. Brooke County Board of Education, supra, it was held that an employee who remains under contract with a county

²It should be noted that a recent amendment to this section of the West Virginia Code authorizes the West Virginia State Board of Education to promulgate rules effective January 1, 1989 to restrict the payment of personal leave benefits in certain circumstances.

board of education is entitled to his or her personal leave days granted by statute. The controlling factor in that case was the continuation of the employee's contract during the term of her disability.³ In the present case the Boone County Board of Education continued the grievant's contract and its argument that she was no longer an employee for the purpose of accruing personal leave days is therefore without basis or validity.

The question grievant raises concerning compensation for holidays which fall within the employment term has been previously addressed by the State Superintendent of Schools in the opinion dated September 4, 1985 upon which the Board relies. In that opinion the Superintendent took the position that employees who had exhausted all personal leave days because of a medically certified disability were not entitled to be paid when a school was closed pursuant to the provisions of W.Va. Code, 18A-5-2. This opinion was followed in Varney v. Logan County Board of Education, supra, and McGinnis v. Logan County Board of Education, supra. The opinion and these decisions recognize the inherent differences between personal leave and holidays plus the fact that an employee who has been compensated for his or her statutorily granted personal leave is no longer receiving a salary. Pay

³If and when a county board of education could terminate an employee's contract because of an extended absence is a question of law not raised by the facts in the present case and is not addressed herein.

for holidays which fall within the employment term would be considered salary and it would be inconsistent and illogical for a county board of education to grant an employee on extended leave of absence a salary for days on which school is officially closed.

In grievant's case the record indicates she was credited with fifteen (15) days of personal leave at the beginning of the 1987-88 school term and until November 1987 was being paid for those days on a monthly basis. (T.9) She was also being compensated for holidays until Thanksgiving. (T.8)⁴ Under the provisions of W.Va. Code, 18A-4-10 the Board could have reimbursed grievant for the full fifteen personal leave days during the first fifteen days of her absence but, because it chose to reimburse her on a monthly basis, she was also entitled to compensation for holidays which arose during those months as she had not exhausted her personal leave.

In addition to the foregoing, the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Grievant is employed by the Boone County Board of Education as a secretary assigned to Ashford-Rumble School.

⁴Grievant would turn in two days of personal leave each month but, if there was a holiday in a particular month, she would only turn in one day of personal leave.

2. Because of a recurrence of a work-related injury, grievant was not able to work during the 1987-88 school term and was awarded Workers Compensation benefits for that period of time.

3. Grievant was compensated for personal leave days and holidays on a monthly basis until November 1987 when the Board discontinued this pay.

4. At no time during the 1987-88 school term was grievant's contract with the Board terminated.

CONCLUSIONS OF LAW

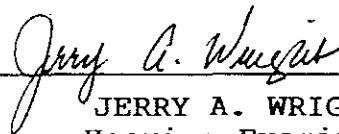
1. Pursuant to the provisions of W.Va. Code, 18A-4-10 all regularly employed school employees are entitled to fifteen (15) personal leave days per school year and any employee who is absent because of injury must accordingly be reimbursed for those days.

2. Employees absent because of an injury are not entitled to compensation for those days enumerated in W.Va. Code, 18A-5-2 once they have been compensated for their personal leave days. Varney v. Logan County Board of Education, supra; McGinnis v. Logan County Board of Education, supra.

3. If a county board of education elects to compensate an employee for personal leave days on a monthly basis, it must also compensate that employee for holidays on a monthly basis until his or her personal leave days have been exhausted.

Accordingly, the grievance is **GRANTED** and the Boone County Board of Education is hereby **ORDERED** to compensate the grievant, Carol Thomas, for any personal leave days which she was denied during the 1987-88 school term and for any days on which her school was closed pursuant to the provisions of W.Va. Code, 18A-5-2 provided such days occurred prior to the exhaustion of her personal leave days.

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



JERRY A. WRIGHT
Hearing Examiner

Dated: October 18, 1988