

**THE WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD**

**MICHAEL WEAVER, et al.,  
Grievants,**

**v.**

**DOCKET NO. 2015-1445-CONS**

**MORGAN COUNTY BOARD OF EDUCATION,  
Respondent.**

**DECISION**

Nineteen Grievants filed this grievance against their employer, the Morgan County Board of Education, on May 29, 2015. The statement of grievance is concisely stated in the level three appeal, and reads:

Grievants contend that they were not compensated for mileage expenses incurred traveling to the board of education approved physician for their annual medi[c]al examinations in violation of W. Va. Code 18A-2-14.

As relief Grievants seek “compensation for mileage expenses incurred traveling to the board of education approved physician for their annual medical examinations.”

A hearing was held at level one on August 18, 2015, and a level one decision denying the grievance was issued on September 23, 2015. Grievants appealed to level two on various dates in October 2015, and a mediation session was held on July 28, 2016. Grievants appealed, or were deemed to have appealed, to level three on August 13, 2016. Telephonic conferences were held by the undersigned Administrative Law Judge in order to determine whether the parties would be able to stipulate to the facts in lieu of a level three hearing. On May 30, 2017, agreed stipulations of fact were submitted by Denise M. Spatafore, Esquire, Dinsmore & Shohl, PLLC, representing Respondent, and Joe

Spradling, West Virginia School Service Personnel Association, representing seven of the ten remaining Grievants.<sup>1</sup> The remaining three Grievants were representing themselves, and chose not to present any proposed stipulations of fact for consideration, nor did they request a hearing at level three by the deadline set by the undersigned for such a request. This matter became mature for decision on July 7, 2017, on receipt of the last of the parties' written Proposed Findings of Fact and Conclusions of Law. Those Grievants who were *pro se* did not submit written argument.

### **Synopsis**

Grievants are bus operators, and are required to have a physical examination each year. Respondent pays for the physical examination, but does not reimburse Grievants for their mileage to travel to the physician's office. The statutory provision which requires Respondent to pay for the cost of the examination does not require Respondent to reimburse employees for their mileage to travel to the doctor's office.

The undersigned adopts as the following Findings of Fact the stipulations of fact agreed to by the parties, with the modifications noted.

### **Findings of Fact**

1. Grievants are employed as regular, full-time bus operators by Respondent.
2. Respondent places out for bid a contract for physicians to perform the annual medical examinations necessary for bus operators to be certified as West Virginia School Bus Operators. The lowest bid is normally accepted.

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<sup>1</sup> The remaining Grievants are Michael Weaver, Donna Swaim, Tammi Day, Kimberly Khuen, Pamela MacCumbee, Angie Schmidt, Scott Waugh, Roger Steiner, Walter Stansbury, and John Munson.

3. Respondent pays the full cost of the medical examinations. Bus operators may go to another physician and be reimbursed for the amount agreed to between Respondent and the designated physician, but are personally responsible for any charge in excess of the fee agreed to by the physician with the successful bid.

4. For the 2014-2015 school year, the winning bid of \$85.00 per physical examination came from Dr. Terry Chambers, a physician in Martinsburg, West Virginia. Dr. Chambers' office is located at 319 Lutz Avenue, Martinsburg, West Virginia.

5. In years prior to the 2014-2015 school year, a doctor located in Berkeley Springs, West Virginia, was the designated physician for annual bus operator physical examinations.

6. Regardless of the actual location of the physician's office, Respondent has never reimbursed bus operators for mileage or any other expenses associated with obtaining a required physical examination, aside from the cost of the examination itself.

7. The cost of the annual physical examinations for Morgan County bus operators has been paid in full at all times at issue in this grievance.

8. All Grievants received physicals from Dr. Chambers during the spring of 2015, traveling to Martinsburg for their examinations, except Grievants Walter Stansbury and John Munson used their own physician for their physicals that year and received reimbursement in the amount of \$85.<sup>2</sup>

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<sup>2</sup> This stipulation of fact was modified by the undersigned by eliminating the period after "for their examinations," and the word "However" at the beginning of the second sentence, and inserting instead a comma and the word "except." The second sentence of the stipulation as presented contradicted the first sentence.

9. Some Grievants traveled from their homes to obtain their examinations, while some others traveled from the bus garage.<sup>3</sup>

10. Because of the change in the location of the designated physician for physicals, Grievants are requesting reimbursement for mileage expenses incurred while traveling to Dr. Chambers' office to obtain their examinations.

11. Respondent's policy and practice regarding permitted travel expenses has been to reimburse employee mileage expenses from their designated work location. However, Respondent has never paid for mileage expenses related to employee medical examinations.<sup>4</sup>

### **Discussion**

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *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).

WEST VIRGINIA CODE § 18A-2-10 provides:

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<sup>3</sup> The record does not reflect the physical location of the bus garage in Morgan County.

<sup>4</sup> If there is a written policy, it was not made a part of the record.

In case a medical or physical examination of any school board employee or qualified applicant who becomes an employee of the board for any school position is required by a board of education or by any administrator, department or agency of government which has authority to require such examination, *the cost* shall be paid in full by the employer.

It shall be unlawful for any board of education to require any employee or applicant who becomes an employee of the board to pay *the cost* of any medical or physical examination as a condition of employment.

(Emphasis added.)

Grievants are required to have an annual physical examination as a condition of retaining certification to drive a school bus, and Respondent paid the doctor for the examinations, up to the contracted amount. Grievants were required to travel from Morgan County to Martinsburg, in Berkeley County, for this examination if they used the doctor with whom Respondent contracted, and believe they should be reimbursed for mileage for this travel. Grievants argued that the above-cited statute does not address what costs are to be paid, but “the cost” of the examination should include mileage for travel to the physician’s office.<sup>5</sup> Respondent argues that mileage is an expense which is not included in the phrasing of the statute, relying on Grievance Board precedent.

The Grievance Board has not previously addressed this specific issue with regard to the above-cited statute. However, in *Eisentrout v. Preston County Board of Education*, Docket No. 05-39-264 (December 2, 2005), the meaning of the phrase “cost of acquiring” the license, in WEST VIRGINIA CODE § 18A-2-4(a), was interpreted to not include mileage reimbursement for travel to obtain a commercial driver’s license (“CDL”). The Administrative Law Judge stated, “[t]o infer that the ‘cost’ of the license should include

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<sup>5</sup> Grievants did not point to any policy or other law requiring mileage reimbursement for work-related travel.

individualized expenses like mileage goes far beyond the unambiguous language of this provision. There is no basis for the assumption that the cost of a CDL license should include anything more than the fees associated with the license itself. Accordingly, the undersigned finds that there is no basis in statute, policy, regulation or otherwise that would require Respondent to reimburse Grievant's mileage expenses for traveling to the [Division of Motor Vehicles]. As with its other employees, Respondent has no obligation to incur Grievant's expenses associated with renewing his CDL, other than the cost of the license itself, as required by statute."

*Eisentrout, supra.*, relied on *Teller v. Hancock County Board of Education*, Docket No. 97-15-457 (May 27, 1998), which stated that, "'school boards are not required to 'incur the costs, in the form of unproductive work hours, reimbursement or the like, of the qualifying minimal training or continuing education of any employee.' [Also,] 'workers are commonly required not only to finance any qualifying or continuing education relative to their jobs, but also to obtain said training on their own time.'" (citing *Zirkle v. Hancock County Bd. of Educ.*, Docket No. 94-15-441 (Feb. 24, 1995))."

The language in WEST VIRGINIA CODE § 18A-2-4(a) with regard to what a board of education is required to pay is nearly identical to the language in WEST VIRGINIA CODE § 18A-2-10, stating, "[i]f a commercial driver's license is required as a condition of employment . . . the cost is paid in full by the county board. A county board may not require any employee or applicant who becomes an employee of the board to pay the cost of acquiring a commercial driver's license as a condition of employment." The undersigned agrees with the conclusion reached in *Eisentrout, supra.*, and finds that case to be

controlling, with regard to the meaning of the statute. In fact, the statute seems clear. It states that the cost of the examination itself is to be paid by the board of education. The statute does not state that any and all expenses incident to obtaining the examination are to be paid by the board of education. Had the Legislature intended that expenses such as mileage also be reimbursed, such language could easily have been included. Respondent is not required to pay Grievants mileage for the travel to the physician's office for their annual physical examinations.

The following Conclusions of Law support the Decision reached.

### **Conclusions of Law**

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *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).

2. WEST VIRGINIA CODE § 18A-2-10 provides that the cost of a medical or physical examination required by a board of education of an employee "shall be paid in full by the employer."

3. "To infer that the 'cost' of the license should include individualized expenses like mileage goes far beyond the unambiguous language of this provision. There is no basis for the assumption that the cost of a CDL license should include anything more than the fees associated with the license itself. Accordingly, the undersigned finds that there

is no basis in statute, policy, regulation or otherwise that would require Respondent to reimburse Grievant's mileage expenses for traveling to the [Division of Motor Vehicles]. As with its other employees, Respondent has no obligation to incur Grievant's expenses associated with renewing his CDL, other than the cost of the license itself, as required by statute." *Eisentrout v. Preston County Bd. of Educ.*, Docket No. 05-39-264 (Dec. 2, 2005).

4. Respondent is not required to pay Grievants mileage for the travel to the physician's office for their annual physical examinations.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. See *also* 156 C.S.R. 1 § 6.20 (2008).

**Date: July 26, 2017**

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**BRENDA L. GOULD**  
**Deputy Chief Administrative Law Judge**