EARLENE BLANKENSHIP,

Grievant,

v.

DOCKET NO. 97-29-386

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Earlene Adkins, filed this grievance protesting a miscalculation in seniority that resulted in loss of pay. A level two hearing was held on August 14, 1997, and the Superintendent's designee, John Fullen, rendered a decision denying the grievance on August 22, 1997. The grievance was by-passed at level three, and Grievant appealed to level four on August 25, 1997. The matter was held in abeyance pending settlement negotiations, and those failing, was set for hearing on January 20, 1998, at which time this case became mature for decision.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Grievant began regular employment with the Mingo County Board of Education ("Board") as a bus operator on September 13, 1982.

2. Grievant was continuously employed by the Board until April 13, 1993, when she received an on-the-job injury and had to go on workers' compensation. 3. Grievant returned to work following her compensable injury on March 1, 1994.

4.

Grievant has remained continuously employed by the Board since that time.

DISCUSSION

When Grievant returned to work, the Board did not credit Grievant with seniority or years of experience for the portions of the 1992-93 or 1993-94 school years she was off on workers' compensation. Grievant contends this is an erroneous calculation of her seniority and years of experience for pay purposes. Prior to the level four hearing, as part of the settlement negotiations, the Board agreed to recalculate Grievant's seniority, pursuant to W. Va. Code § 18A-4-8g, which states, in pertinent part, that:

> Seniority shall not cease to accumulate when an employee is absent without pay as authorized by the county board or the absence is due to illness or other reasons over which the employee has no control as authorized by the county board.

However, the Board, while agreeing to adjust Grievant's seniority calculation, did not agree to adjust her years of employment for pay purposes following her return to work from workers' compensation. Thus, the issue is whether Grievant should be credited with experience credit for incremental pay purposes for the time she was off on workers' compensation.

This issue has been addressed by this Grievance Board before and is well-settled. Experience credit for incremental pay purposes and seniority are separate and distinct aspects of employment. Seckman v. Brooke County Bd. of Educ., Docket No. 91-05-251 (Nov. 27, 1991). 126 C.S.R. 151, West Virginia State Board of Education Policy 5610, requires than an employee work a minimum of 133 days for a year's employment credit for pay purposes and a May 14, 1984 advisory of the State Superintendent of Schoolsexcludes non-working employees receiving workers' compensation from accumulating days of employment credit for calculating yearly pay increments. Aftanas v. Brooke County Bd. of Educ., Docket No. 05-87-295-3 (Jan. 29, 1988). This Grievance Board has previously upheld the interpretation of Policy 5610 by the State Superintendent of Schools. Wilson v. Monongalia County Bd. of Educ., Docket No. 92-30-306 (Jan. 7, 1993); Thompson v. Kanawha County Bd. of Educ., Docket No. 20-86-366-1 (July 31, 1987).

This cases control and Grievant is not entitled to work experience credit for salary increment purposes for the school years in which she was off on workers' compensation.

CONCLUSIONS OF LAW

1. "An interpretation by the State Superintendent of Schools of State Board of Education Policy is considered as persuasive authority and will be applied unless clearly erroneous. Smith v. Logan County Bd. of Educ., 341 S.E.2d 685 (W. Va. 1985)[additional case omitted]. Grievant has failed to show that the opinion of the State Superintendent is erroneous [cite omitted]." Aftanas v. Brooke County Bd. of Educ., Docket No. 05-87-295-3 (Jan. 29, 1988).

2. Regularly-employed board of education personnel must work 133 days in any given year in order to be credited with a year's experience for incremental pay purposes. Id., 126 C.S.R. 151, West Virginia State Board of Education Policy 5610.

3. Work-experience credit which is attained for incremental pay purposes is separate and distinct from seniority; seniority is earned by way of accruing years of employment with a particular board of education and is used for other purposes. Wilson v. Monongalia County Bd. of Educ., Docket No. 92-30-306 (Jan. 7, 1993); Seckman v.Brooke County Bd. of Educ., Docket No. 91-05-251 (Nov. 27, 1991), Thompson v. Kanawha County Bd. of Educ., Docket No. 20-86-366-1 (July 31, 1987).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo County and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

_____

MARY JO SWARTZ

Administrative Law Judge

Dated: February 6, 1998