

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in February 2022

The Board's monthly reports are intended to assist public employers covered by a grievance procedure to monitor significant personnel-related matters which came before the Grievance Board, and to ascertain whether any personnel policies need to be reviewed, revised or enforced. W. Va. Code §18-29-11(1992). Each report contains summaries of all decisions issued during the immediately preceding month.

If you have any comments or suggestions about the monthly report, please send an e-mail to wvgb@wv.gov.

NOTICE: These synopses in no way constitute an official opinion or comment by the Grievance Board or its administrative law judges on the holdings in the cases. They are intended to serve as an information and research tool only.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
SERVICE PERSONNEL

KEYWORDS: Extracurricular Assignment; Compensation; Grounds Keeping Duties; Arbitrary and Capricious

CASE STYLE: Lovejoy, et al. v. Lincoln County Board of Education
DOCKET NO. 2021-0905-CONS (2/25/2022)

PRIMARY ISSUES: Whether Grievants proved that they are entitled to a higher rate of compensation for their current extracurricular positions and/or whether they are due compensation for unassigned work.

SUMMARY: Grievants, at the time of relevant incidents, were maintenance service employees, performing various assignments which including mowing and other grounds keeping duties for Respondent. Grievants contend that they were improperly denied extra mowing work and proper compensation.

Until the 2020-2021 school year, certain maintenance assignments had not been posted by Respondent, and employees were compensated pursuant to their regular pay rates for duties. Once identified, duties were posted as extracurricular. The pay for the assignment(s) were established pursuant to the new position. Grievant alleges this is a violation of the non-relegation clause in the statutory provisions for public school service employees. Grievants contend Respondent is obligated to pay the wages they were receiving prior to the grass cutting duties being recognized as extracurricular mowing positions, this wage being 1½ time normal pay (not the dollar amount an hour established by the extracurricular assignment). Further, Grievants contend not being offered mowing and weed-eating duties for an athletic field the school district leased was improper. Grievants allege entitlement to the Lions Club Field assignment and the compensation associated with performing the duties.

Grievants failed to establish by a preponderance of the evidence a mandatory higher rate of compensation for their current extracurricular mowing positions. Further, Grievants did not establish that Respondent violated any rule or statute in not offering duties Respondent was not required to perform, nor is it established Grievants are entitled to compensation for work they did not perform. This Grievance is DENIED.

KEYWORDS: Extracurricular Bus Runs; Contract; As Needed Basis; Arbitrary and Capricious; Non-relegation Clause

CASE STYLE: Francis, et al v. Lewis County Board of Education

DOCKET NO. 2021-0074-CONS (2/18/2022)

PRIMARY ISSUES: Whether Respondent was under any obligation to use available funds to pay Grievants for extracurricular runs they had not driven.

SUMMARY: Grievants are employed by Respondent as full-time school bus drivers and have extracurricular run contracts for extra pay. The COVID pandemic resulted in school closings and the cancellation of all bus runs, during which Grievants received their regular but not their extracurricular pay. The West Virginia Department of Education's COVID guidance suggests that drivers be paid for their extracurricular runs if their contracts are ambiguous. Grievants' contracts unambiguously indicate that extracurricular runs operate and are paid on an "as needed" basis. Accordingly, the grievance is DENIED.

TOPICAL INDEX
STATE EMPLOYEES

<u>KEYWORDS:</u>	Termination; Medical Leave of Absence; Personal Leave of Absence; Return to Work
<u>CASE STYLE:</u>	<u>A. v. Department of Health and Human Resources</u> DOCKET NO. 2022-0146-DHHR (2/3/2022)
<u>PRIMARY ISSUES:</u>	Whether Respondent had good cause to terminate Grievant's employment.
<u>SUMMARY:</u>	<p>Grievant was a successful and valued employee who is liked and respected by her coworkers. She became extremely ill and was not able to work. Respondent's agents helped Grievant utilize all the leave she had accumulated as well as unpaid leave under the Family and Medical Leave Act. Grievant's medical condition took a severe turn for the worse rendering her unable to return to work. Respondent's agents helped Grievant apply for and receive unpaid personal leaves of absence while she struggled with her medical issues. Additionally, many employees donated leave so Grievant could receive pay while she was on unpaid leave.</p> <p>Ultimately, Respondent sent a letter to Grievant advising her that her leave had expired on an earlier date and asked if she intended to return to work. Respondent set a date for Grievant to return to work or she would be dismissed. Grievant was unable to return to work and her employment was terminated. Grievant argues that Respondent's agents had helped her navigate her leave applications throughout the process but stopped assisting her when a decision was made to dismiss her. She was not specifically notified that she was out of leave nor that she could apply for another discretionary leave of absence. Respondent provided Grievant with all the leave opportunities to which she was entitled. Grievant notes that she had donated leave available at the time she was dismissed and should have been paid until that leave ran out. However, the eligibility for donated leave payments ends when an employee is no longer employed.</p>

KEYWORDS: Termination; Probationary Employee; Unsatisfactory Performance; Training

CASE STYLE: Burkett v. Department of Health and Human Resources/Bureau for Children and Families

DOCKET NO. 2021-2106-DHHR (2/4/2022)

PRIMARY ISSUES: Whether Grievant proved that his services were satisfactory.

SUMMARY: Grievant was employed by Respondent as a probationary Child Protective Services Worker. Grievant was dismissed from his probationary employment for unsatisfactory performance. Grievant failed to complete required mandatory training. Grievant failed to prove that his services were satisfactory. Accordingly, the grievance is denied.

KEYWORDS: Termination; Probationary Employee; Misconduct; Felony Conviction; Misleading Information on Employment Application; Arbitrary and Capricious

CASE STYLE: Carter v. Department of Health and Human Resources/Bureau for Public Health

DOCKET NO. 2022-0148-DHHR (2/3/2022)

PRIMARY ISSUES: Whether Respondent had good cause to terminate Grievant's employment.

SUMMARY: Grievant was employed by Respondent as a Program Manager 1 and was a probationary employee. Respondent dismissed Grievant for misconduct alleging that Grievant provided false and misleading information on his employment application and asserting that Grievant was ineligible for employment as a Program Manager 1 because of his criminal background. Grievant denied Respondent's allegations and argued that he should not have been dismissed from employment because his position was not connected to his past conviction, and it did not violate the terms of his extended release from incarceration. Respondent proved that Grievant provided misleading information on his employment application, that his past conviction was connected to the position he had thereby justifying his dismissal, and that Respondent's decision to dismiss Grievant from employment was not arbitrary and capricious, or unreasonable. Therefore, the grievance is DENIED.

KEYWORDS: Position Description Form; Reallocation; Classification; Back Pay

CASE STYLE: Sims v. Department of Health and Human Resources/Bureau for Children and Families AND Division of Personnel
DOCKET NO. 2020-1037-DHHR (2/23/2022)

PRIMARY ISSUES: Whether Grievant demonstrated that the delay by Respondent in processing her reallocation was unreasonable and a violation of the applicable policy.

SUMMARY: Grievant is employed by the Department of Health and Human Resources in a position classified as a Child Protective Service Worker. The position was reallocated from a Child Protective Service Worker Trainee to a Child Protective Service Worker after the Division of Personnel received a Position Description Form for the position. The Division of Personnel made a classification determination that resulted in reallocation after the Grievant completed a one-year training in September of 2019. The Division of Personnel reviews and makes a classification determination on a Position Description Form. The Division of Personnel policy applicable to the case sets out the payment of back pay in reallocations. Grievant failed to prove her claim of back pay to September 2019. The record did establish by a preponderance of the evidence that Grievant was entitled to back pay due to the delay of the Department of Health and Human Resources to timely process the reallocation after receiving the determination from the Division of Personnel. This grievance is granted, in part, and denied, in part.

KEYWORDS: Termination; Patient Abuse; Administrative Rule

CASE STYLE: Arthur v. Department of Health and Human Resources/Mildred Mitchell-Bateman Hospital
DOCKET NO. 2021-2120-DHHR (2/16/2022)

PRIMARY ISSUES: Whether Respondent proved it had good cause to terminate Grievant's employment for striking a patient in violation of the state administrative rule.

SUMMARY: Grievant was employed by Respondent as a Health Service Worker at Mildred Mitchell Bateman Hospital. Grievant was terminated from his employment for patient abuse after Grievant struck a patient while Grievant was being attacked. Respondent proved it had good cause to terminate Grievant's employment for striking a patient in violation of the above state administrative rule even if Grievant did not have an intent to harm the patient. Accordingly, the grievance is denied.