

**WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD**

**SYNOPSIS REPORT**

**Decisions Issued in April 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](mailto: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**  
**HIGHER EDUCATION EMPLOYEES**

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<b><u>KEYWORDS:</u></b>	Remedy; Default; Relief; Merits
<b><u>CASE STYLE:</u></b>	<u>Bejou v. West Virginia State University</u> DOCKET NO. 2021-0075-WVSU (4/18/2022)
<b><u>PRIMARY ISSUES:</u></b>	Whether Respondent proved that the remedy requested by Grievant was contrary to law or contrary to proper and available remedies.
<b><u>SUMMARY:</u></b>	Grievant filed this action to remedy Respondent's rejection of her request for promotion to full Professor. Respondent had a duty to respond in a timely manner or face default. Default entails separate hearings: one to determine if a default occurred and another on the availability of the relief requested. Respondent conceded default, meaning Grievant prevails on the merits. The only matter at issue is whether promoting Grievant to Professor, with backpay and benefits, is lawful, proper, and available relief. The Faculty Handbook requires that a candidate for full Professor have a terminal degree in a "field appropriate" to the field of her appointment. Even though Grievant's terminal degree is in education and her field of appointment is business administration, Respondent did not meet its burden of proving that the terminal degree was not in a "field appropriate" to business administration. Accordingly, the remedy is GRANTED.

**TOPICAL INDEX**  
**COUNTY BOARDS OF EDUCATION**  
**PROFESSIONAL PERSONNEL**

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**KEYWORDS:** Motion to Dismiss; Lack of Jurisdiction; COVID-19 Jobs Protection Act; Contract Days

**CASE STYLE:** Abbott, et al. v. Marion County Board of Education  
DOCKET NO. 2021-0928-CONS (4/26/2022)

**PRIMARY ISSUES:** Whether the Grievance Board has jurisdiction in this matter.

**SUMMARY:** Grievants are employed as teachers by Respondent, Marion County Board of Education. During the COVID-19 pandemic, Grievants were assigned additional duties involving remote teaching. Grievants allege these are positions for which they did not apply. This assignment of additional duties was in response to the pandemic and an attempt by Respondent to stem the spread of COVID-19. As this grievance does not allege a violation of contract, the COVID-19 Jobs Protection Act applies. Grievants argue that the Act is both inapplicable and unconstitutional. However, the Act explicitly deprives the Grievance Board of jurisdiction over this grievance. Further, the Grievance Board does not have authority to address constitutionality of a statute. Thus, this grievance is DISMISSED.

**TOPICAL INDEX**  
**COUNTY BOARDS OF EDUCATION**  
**SERVICE PERSONNEL**

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**KEYWORDS:** Employee Code of Conduct; Written Reprimand; Correctable Conduct; Insubordination; Arbitrary and Capricious

**CASE STYLE:** Thornton v. Mercer County Board of Education  
DOCKET NO. 2021-2337-CONS (4/20/2022)

**PRIMARY ISSUES:** Whether Respondent proved that Grievant was insubordinate and that he violated the Employee Code of Conduct numerous times and that the disciplinary actions imposed on him were justified.

**SUMMARY:** Grievant was employed by Respondent as a custodian. Respondent issued Grievant two separate written reprimands for alleged violations of the Employee Code of Conduct and insubordination dated February 9, 2021, and March 18, 2021. Sometime later, Respondent issued him three more written reprimands in May 2021 that pertained to his conduct toward the principal, failing to complete his assignments, and failing to follow the protocol for being late to work. Grievant did not specifically grieve those. It appears though, that he was suspended without pay as a result of one, or more, of the May 2021 written reprimands, which he mentioned in his statement of grievance. Respondent subsequently terminated Grievant's employment contract for misconduct and insubordination. Grievant denies Respondent's allegations. Grievant raises harassment, reprisal, and hostile work environmental as defenses to the charges.

Respondent proved by a preponderance of the evidence that Grievant was insubordinate and that he violated the Employee Code of Conduct by his actions toward the school principal and his coworkers. Respondent failed to prove that Grievant violated Policy 3.2 which was the subject of the February 9, 2021, grievance. Respondent proved the charges against Grievant set forth in the March 18, 2021, written reprimand. Accordingly, the discipline imposed was justified. Grievant failed to prove that Respondent's actions in imposing discipline were the result of harassment, reprisal, or hostile work environment. Accordingly, the grievance is DENIED.

**TOPICAL INDEX**  
**STATE EMPLOYEES**

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**KEYWORDS:** Motion to Dismiss; Failure to State a Claim; Remedy Wholly Unavailable; Relief

**CASE STYLE:** Hall v. Division of Motor Vehicles

DOCKET NO. 2022-0519-DOT (4/6/2022)

**PRIMARY ISSUES:** Whether Grievant's request for tort-like damages is wholly unavailable from the Grievance Board.

**SUMMARY:** Grievant filed the instant grievance alleging retaliation, harassment, and discrimination. For relief, Grievant sought only money damages of one million dollars (\$1,000,000). Respondent moved to dismiss the grievance alleging Grievant failed to state a claim upon which relief can be granted. Grievant stated a claim upon which relief can be granted but he seeks a remedy wholly unavailable through the grievance process. The Grievance Board does not have the authority to award tort-like damages. Accordingly, the grievance is dismissed.

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**KEYWORDS:** Motion to Dismiss; Moot; Relief

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

DOCKET NO. 2020-1441-DHHR (4/6/2022)

**PRIMARY ISSUES:** Whether this grievance matter is moot.

**SUMMARY:** Grievant, Nancy A. Holcomb, was employed by Respondent, Department of Health and Human Resources. Respondent, by counsel, moved for this grievance to be dismissed as moot because the position Grievant seeks no longer exists. Grievant, by her representative, agrees that this grievance is moot, and that this grievance should be dismissed, as does Intervenor. Respondent's decision to dissolve and eliminate the position at issue has rendered this grievance moot. Accordingly, this Grievance must be DISMISSED.

**KEYWORDS:** Termination; Misconduct; State Vehicle; Standards of Work Performance and Conduct; Arbitrary and Capricious; Mitigation

**CASE STYLE:** Myers v. Division of Highways

DOCKET NO. 2022-0068-DOT (4/11/2022)

**PRIMARY ISSUES:** Whether Grievant's dismissal from employment was disproportionate to his offenses, clearly excessive, or arbitrary and capricious.

**SUMMARY:** Grievant was employed by Respondent as a Transportation Worker 3 Crew Chief. Grievant was dismissed from employment after a GPS tracking device placed on his state vehicle revealed that he was using his state vehicle for personal use and leaving work for lengthy stretches of time without taking leave or receiving permission. Respondent asserts that its decision to dismiss Grievant was proper given the level of misconduct. Grievant admits his misconduct and does not dispute that discipline was justified. Grievant only asserts that dismissal was excessive for his offenses based upon his tenure and the agency's past practices. Respondent proved its case by a preponderance of the evidence. Grievant failed to prove that mitigation was warranted. Accordingly, this grievance is DENIED.

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**KEYWORDS:** Employer; Employee; Jurisdiction

**CASE STYLE:** Reed v. Workforce West Virginia

DOCKET NO. 2022-0575-MISC (4/4/2022)

**PRIMARY ISSUES:** Whether the Grievance Board has jurisdiction in this matter.

**SUMMARY:** Grievant is employed by the Region 1 Workforce Development Board. The regional workforce development boards are created under federal law and are defined as a local boards by state law. Local boards are not subject to the West Virginia Public Employees Grievance Procedure. The Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance is dismissed.

**KEYWORDS:** Employee; Employer; Jurisdiction

**CASE STYLE:** Sayre v. Department of Administration  
DOCKET NO. 2022-0634-MISC (4/6/2022)

**PRIMARY ISSUES:** Whether the Grievance Board has jurisdiction in this matter.

**SUMMARY:** Grievant is employed by the Enterprise Resource Planning Board and protests the alleged failure of the Board to accommodate her request for remote work. The Enterprise Resource Planning Board consists of the Governor, Auditor, and Treasurer of the State of West Virginia, all of whom are constitutional officers. Employees of constitutional officers cannot avail themselves of the West Virginia Public Employees Grievance Procedure unless the employee is otherwise covered under the civil service system. As it does not appear the Grievant is covered under the civil service system, the Grievance Board lacks jurisdiction in this matter.

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**KEYWORDS:** Motion to Dismiss; Timelines; Untimely Filed; Relief; Moot

**CASE STYLE:** Beafore v. Division of Natural Resources  
DOCKET NO. 2022-0602-DOC (4/19/2022)

**PRIMARY ISSUES:** Whether Respondent proved that the grievance was not timely filed.

**SUMMARY:** Grievant was employed by Respondent, Division of Natural Resources. Grievant grieved Respondent's alleged failures regarding the reclassification and reallocation of his position over a period of two years. Grievant filed the grievance approximately two months after he retired. Respondent moved to dismiss the grievance as untimely filed and moot. The grievance was untimely filed. Accordingly, the grievance is dismissed.

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**KEYWORDS:** Termination; Fraudulent Timekeeping; Work Conduct Violations; Misconduct; Policy

**CASE STYLE:** Bosserman v. Division of Highways  
DOCKET NO. 2021-2237-DOT (4/27/2022)

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

**SUMMARY:** Grievant was dismissed for timekeeping and work conduct violations. Respondent proved that Grievant regularly spent worktime at a shoe store, once went hunting with a coworker during work, processed the timesheets for that occasion as an eight-hour workday, and took a firearm to work even after being reprimanded against it. This constitutes misconduct and good cause for dismissal. Accordingly, this grievance is DENIED.

**KEYWORDS:** Termination; Suspension; Abnormal Drug Screening Test; Mitigation; Employee Conduct; Gross Misconduct

**CASE STYLE:** Shortridge v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital

DOCKET NO. 2021-2316-DHHR (4/18/2022)

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

**SUMMARY:** Grievant was employed as a housekeeper at the William R. Sharpe, Jr. Hospital. Grievant was dismissed from employment due to an abnormal drug screening test result and for gross misconduct. Respondent did not meet its burden of proof in establishing that Grievant was dismissed for good cause due to an abnormal drug screening test result. Respondent did meet its burden of proof that Grievant engaged in gross misconduct. Grievant was able to demonstrate that the termination of his employment was clearly excessive and reflected an inherent disproportion between the offense and the personnel action. Accordingly, this grievance is granted, in part, and denied, in part.