

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in May, 2021

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: Termination; Immorality; Insubordination; Misconduct; Mitigation; Vandalism

CASE STYLE: Courts v. Kanawha County Board of Education
DOCKET NO. 2019-1892-CONS (5/13/2021)

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

SUMMARY: Grievant was employed by Respondent, Kanawha County Board of Education, as an Aide/Autism Mentor. Grievant's employment was terminated for immorality and insubordination when Grievant vandalized a restroom by inappropriately urinating on the floor. Respondent proved Grievant vandalized the restroom. Respondent was justified in terminating Grievant's employment for this misconduct. Grievant failed to prove that mitigation is warranted. Accordingly, the grievance is denied.

KEYWORDS: Motion to Dismiss; Timeliness; Untimely; Order to Show Cause; Failure to Appear; Substitute; Excused; Unequivocally; Occurrence

CASE STYLE: White v. Kanawha County Board of Education
DOCKET NO. 2020-0867-KanED (5/4/2021)

PRIMARY ISSUES: Whether Respondent proved by a preponderance of the evidence that this grievance was untimely filed.

SUMMARY: Grievant is employed by Respondent as a substitute aide. Grievant was removed from a substitute position at Capital High School on October 29, 2019, and, thereafter, no longer allowed to substitute at Capital High School. Grievant remains employed by Respondent and has taken other substitute assignments since October 29, 2019. Grievant filed this grievance alleging "hostile work environment resulting in removal from assignment." Respondent denies Grievant's claims and asserts that this grievance was untimely filed. Respondent proved by a preponderance of the evidence that this grievance was untimely filed. Accordingly, this grievance is DISMISSED.

TOPICAL INDEX
STATE EMPLOYEES

KEYWORDS: Termination; Probationary Employee; Failed Drug Test; Arbitrary and Capricious

CASE STYLE: Anello v. Division of Highways

DOCKET NO. 2020-1066-DOT (5/7/2021)

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

SUMMARY: Grievant was employed by the Division of Highways (DOH) on a probationary basis when he failed a drug test. DOH dismissed Grievant for violating its drug policy. Grievant contends the test misidentified over-the-counter medication and that he requested but was not allowed further testing of the sample. DOH proved the test was accurate and that Grievant engaged in misconduct. Accordingly, this grievance is DENIED.

KEYWORDS: Reallocation; Pay Increase; Job Duties; Back Pay; Interest

CASE STYLE: Davis v. Division of Corrections and Rehabilitation/Bureau of Juvenile Services

DOCKET NO. 2020-0780-MAPS (5/11/2021)

PRIMARY ISSUES: Whether Grievant has proved by a preponderance of the evidence that he is owed back pay from Respondent as a result of its failure to timely submit the requisite paperwork to DOP.

SUMMARY: Grievant is employed by Respondent as a correctional officer. Grievant became eligible for a reallocation from the Correctional Officer I classification to the Correctional Officer II classification on August 21, 2018, and again on August 21, 2019, when he became eligible for reallocation to the Correctional Officer III classification, because his duties and responsibilities changed to those of the two higher classifications. Respondent failed to timely submit the requisite paperwork to DOP to officially reallocate Grievant's positions to those higher classifications. Such resulted in Grievant being denied two pay increases to which he was entitled. It is undisputed that Grievant is entitled to back pay, with statutory interest, for the period of August 21, 2018, to January 1, 2021, due to the late reallocations. Accordingly, the grievance is granted.

KEYWORDS: Reallocation; Pay Increase; Job Duties; Back Pay; Interest

CASE STYLE: Holley v. Division of Corrections and Rehabilitation/Bureau of Juvenile Services
DOCKET NO. 2020-0570-MAPS (5/11/2021)

PRIMARY ISSUES: Whether Grievant has proved by a preponderance of the evidence that he is owed back pay from Respondent as a result of its failure to timely submit the requisite paperwork to DOP.

SUMMARY: Grievant is employed by Respondent as a correctional officer. Grievant became eligible for a reallocation from the Correctional Officer I classification to the Correctional Officer II classification on June 1, 2018, and again on May 28, 2019, when he became eligible for reallocation to the Correctional Officer III classification, because his duties and responsibilities changed to those of the two higher classifications. Respondent failed to timely submit the requisite paperwork to DOP to officially reallocate Grievant's positions to those higher classifications. Such resulted in Grievant being denied two pay increases to which he was entitled. It is undisputed that Grievant is entitled to back pay, with statutory interest, for the period of June 1, 2018, to January 1, 2021, due to the late reallocations. Accordingly, the grievance is granted.

KEYWORDS: Classification; Pay Increase; Job Duties; Education; Arbitrary and Capricious

CASE STYLE: Jennings, et al. v. Department of Health and Human Resources/Bureau for Children and Families
DOCKET NO. 2019-0402-CONS (5/13/2021)

PRIMARY ISSUES: Whether Grievants proved that Respondent's decision to seek an incentive increase for only CPS Employees and Trainees was arbitrary and capricious.

SUMMARY: Respondent sought and received permission to grant an increase in pay for CPS Workers and CPS Trainees to attract and retain employees in those classifications. Grievants are employed in other classifications which require them to have similar education and perform a lot of the same duties as CPS Workers and Trainees with at-risk adults rather than children. They also note that there are shortages of staff in their classifications as well. Grievants argue that they are being subject to discrimination because they are not getting the incentive pay and they are similarly situated to CPS Workers and Trainees. Respondent provided sufficient justification for making the discretionary decision to limit the incentive increases to CPS Workers and Trainers.

KEYWORDS: Motion to Dismiss; Jurisdiction

CASE STYLE: Massey, IV v. Fayette County Health Department
DOCKET NO. 2021-2166-FayCH (5/14/2021)

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

SUMMARY: Grievant, a former employee of Fayette County Health Department, Respondent, filed this grievance before this the West Virginia Public Employees Grievance Board. Grievant protest the termination of his employment. The purpose of applicable West Virginia Grievance Statutes is to provide a procedure for the resolution of employment grievances raised by the public employees of the State of West Virginia. The scope of the authority of the Grievance Board is limited to that set forth in grievance statutes and applicable case law. Respondent highlights that given the circumstances of this matter the Grievance Board is without proper authority to adjudicate this grievance. Respondent moves for the dismissal of this grievance. This Grievance Board lacks jurisdiction in this matter. Accordingly, Respondent's Motion to Dismiss should be granted and this grievance Dismissed.

KEYWORDS: Reallocation; Pay Increase; Job Duties; Back Pay; Interest

CASE STYLE: McCoy v. Division of Corrections and Rehabilitation/Bureau of Juvenile Services
DOCKET NO. 2020-0781-MAPS (5/11/2021)

PRIMARY ISSUES: Whether Grievant has proved by a preponderance of the evidence that he is owed back pay from Respondent as a result of its failure to timely submit the requisite paperwork to DOP.

SUMMARY: Grievant is employed by Respondent as a correctional officer. Grievant became eligible for a reallocation from the Correctional Officer I classification to the Correctional Officer II classification on June 26, 2018, and again on June 26, 2019, when he became eligible for reallocation to the Correctional Officer III classification, because his duties and responsibilities changed to those of the two higher classifications. Respondent failed to timely submit the requisite paperwork to DOP to officially reallocate Grievant's positions to those higher classifications. Such resulted in Grievant being denied two pay increases to which he was entitled. It is undisputed that Grievant is entitled to back pay, with statutory interest, for the period of June 26, 2018, to January 1, 2021, due to the late reallocations. Accordingly, the grievance is granted.

KEYWORDS: Termination; Probationary Employee; Insubordination; Job Duties; Misconduct

CASE STYLE: Wentz v. Department of Health and Human Resources/Bureau for Public Health
DOCKET NO. 2021-1916-CONS (5/6/2021)

PRIMARY ISSUES: Whether proved by a preponderance of the evidence that her performance was satisfactory.

SUMMARY: Grievant was dismissed from her probationary employment in the Office of Subrecipient Grants for failing to meet employment standards during her probationary period. Among other reasons, Grievant allegedly failed to consistently complete grant submissions without numerous rejections for errors, including the same grants being rejected twice for the same reasons. Grievant argues that she did not receive an EPA 2 and the predetermination notice did not advise her that dismissal was being contemplated. She alleges that these errors resulted in her not receiving adequate notice that her performance was substandard. Grievant failed to prove by a preponderance of the evidence that her performance was satisfactory. Respondent demonstrated that Grievant was regularly counseled and advised that her performance needed to improve. Additionally, the predetermination conference notice set out specific allegations and Grievant was given the necessary written notice and opportunity to respond to the allegations before her dismissal.

KEYWORDS: Reclassification; Reallocation; Classification; Job Duties; Arbitrary and Capricious

CASE STYLE: Goddard v. Division of Corrections and Rehabilitation/Bureau of Juvenile Services AND Division of Personnel
DOCKET NO. 2019-0884-MAPS (5/24/2021)

PRIMARY ISSUES: Whether Grievant proved that DOP acted in an arbitrary and capricious manner when it determined that the best fit for the position occupied by Grievant was and continues to be Corrections Case Manager.

SUMMARY: Grievant is employed by the Division of Corrections as a Corrections Case Manager (CCM). Grievant requested that the Division of Personnel (DOP) reallocate his position to a Corrections Program Specialist, Senior. DOP determined that the primary duties of the position were best suited to a CCM. Grievant did not prove that this determination was arbitrary and capricious. Accordingly, this grievance is DENIED.

KEYWORDS: Selection; Interview Process; Arbitrary and Capricious

CASE STYLE: Jarrells v. Division of Highways
DOCKET NO. 2019-1508-CONS (5/28/2021)

PRIMARY ISSUES: Whether Grievant proved Respondent's selection decision was arbitrary and capricious.

SUMMARY: Grievant is employed by Respondent, Division of Highways, as a Transportation Worker 2. Grievant protests his nonselection for one of three Transportation Worker 3 Equipment Operator positions. Grievant failed to prove the selection decision was arbitrary and capricious. Grievant failed to prove the selection decision was arbitrary and capricious. Although there was a procedural error in the selection process, the error was harmless. Accordingly, the grievance is denied.

KEYWORDS: Promotion; Work Experience; Minimum Qualifications; Arbitrary and Capricious

CASE STYLE: Quimet v. Division of Corrections and Rehabilitation/Bureau of Prisons and Jails AND Division of Personnel
DOCKET NO. 2020-0409-MAPS (5/25/2021)

PRIMARY ISSUES: Whether Grievant proved that the determination by DOP that his Correctional Officer 1 and Correctional Officer 2 experience was not qualifying professional experience in adult or juvenile correctional custody or criminal justice program administration as required by the class specification was arbitrary and capricious.

SUMMARY: Grievant is employed by the Division of Corrections and Rehabilitation as a Correctional Officer 4. Grievant seeks to have his work experience as a Correctional Officer 1 and Correctional Officer 2 to count toward meeting the minimum qualifications of the Corrections Associate Superintendent 2 class specification in order for him to be eligible for a promotion. The Division of Personnel determined that Grievant failed to meet the minimum qualifications of the Corrections Associate Superintendent 2 position. The interpretation of the minimum requirements for the Corrections Associate Superintendent 2, and the determination that Grievant lacked the qualifications for the position, was reasonable. Grievant was not able to demonstrate that the work of positions assigned to the Correctional Officer 1 and Correctional Officer 2 met the definition of "professional" as defined in the relevant policy. Grievant failed to demonstrate that the Division of Personnel's interpretation of the definition of "professional" was arbitrary and capricious. The grievance is denied.

KEYWORDS: Internal Equity Pay Increase; Pay Plan Policy; Classification; Pay Range; Arbitrary and Capricious; Discrimination

CASE STYLE: Sheffield v. Division of Corrections and Rehabilitation/Bureau of Juvenile Services

DOCKET NO. 2020-0907-MAPS (5/20/2021)

PRIMARY ISSUES: Whether Grievant provided that Respondent denied her request for an internal equity pay increase in a manner that was discriminatory, or otherwise contrary to law, policy, or rule.

SUMMARY: Grievant is employed by Respondent as a Corrections Case Manager. Grievant sought an internal equity pay increase pursuant to the Division of Personnel Pay Plan Policy. Respondent reviewed Grievant's request and determined that, while Grievant may have met the criteria set forth in DOP's policy, it would not approve Grievant's pay raise. Grievant appears to argue that Respondent's decision to deny her an internal equity pay increase was incorrect, improper, or unlawful, and should be reversed. Respondent asserts that as internal equity pay increases are discretionary, it was not required to grant Grievant's internal equity pay increase and that the decision to deny the pay increase was lawful and reasonable. Grievant failed to prove her claims by a preponderance of the evidence. Accordingly, this grievance is DENIED.

KEYWORDS: Motion to Dismiss; Untimely; Fifteen Days

CASE STYLE: Shock v. West Virginia Lottery

DOCKET NO. 2021-2290-DOR (5/21/2021)

PRIMARY ISSUES: Whether this grievance was untimely filed.

SUMMARY: Grievant was employed by Respondent as a Lottery Marketing Specialist. Grievant filed the instant grievance as a result of a disciplinary suspension. The grievance was untimely filed as it was filed more than fifteen days after Grievant was unequivocally notified of the suspension. Accordingly, the grievance is dismissed.