

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in May 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: Written Reprimand; Job Performance; Corrective Disciplinary Action; Arbitrary and Capricious

CASE STYLE: Dyer v. Lincoln County Board of Education

DOCKET NO. 2022-0039-LinED (5/6/2022)

PRIMARY ISSUES: Whether Respondent met the burden of proving by a preponderance of the evidence that the written reprimand issued to Grievant was justified.

SUMMARY: Grievant is employed by a county school board as a transportation coordinator/chief mechanic. Grievant was given a Letter of Reprimand noting that there was a failure to perform the requisite amount of Preventative Maintenance Inspections on school buses from the time period of September 2020 through February 2021. Grievant is of the opinion that he is being erroneously blamed for the shortcoming of the Administration that has failed to meet the expectations of the West Virginia Department of Education resulting in a state of emergency and threatened takeover.

Grievance alleges that he was wrongfully reprimanded. The written reprimand expressed dissatisfaction and concern regarding Grievant's job performance and conduct. Respondent used a lesser corrective disciplinary action. Respondent decision to issue a corrective letter of reprimand does not constitute an abuse of discretion. Respondent established appropriate grounds for disciplinary action. Grievant did not establish that the letter of reprimand was unreasonable, arbitrary, and/or capricious. Respondent's disciplinary action is not established to be a violation of any statute, policy, rule, or regulation. By a preponderance of the evidence, Respondent demonstrated justification for the issuance of a written reprimand to Grievant. Accordingly, this grievance is denied.

KEYWORDS: Suspension; Termination; Insubordination; Willful Neglect of Duty; Correctable Conduct; Arbitrary and Capricious; Performance; Improve; Policy 4336; Cellphone; Video; Speeding; Safety; Electronic Device; Left of Center; Railroad; Pothole; Damage; Infraction; Recordings; Stop Sign

CASE STYLE: Shantee v. Putnam County Board of Education

DOCKET NO. 2020-1468-PutED (5/16/2022)

PRIMARY ISSUES: Whether Respondent proved that Grievant engaged in conduct constituting insubordination and/or willful neglect of duty justifying suspension and dismissal.

SUMMARY: Grievant was employed by Respondent as a Bus Operator. Respondent suspended Grievant then subsequently terminated her contract of employment for violating safety policies and the Employee Code of Conduct. Respondent alleges that Grievant's conduct constituted insubordination and willful neglect of duty. Grievant denies Respondent's allegations and asserts that her suspension and subsequent dismissal were the result of reprisal and discrimination. Grievant further argues that because her conduct was correctable, Respondent was required to give her an opportunity to improve before terminating her employment contract. Respondent failed to meet its burden of proving insubordination or willful neglect of duty by a preponderance of the evidence. The conduct for which Grievant was disciplined was correctable. As such, Respondent was required to grant Grievant an opportunity to improve before terminating her employment contract. Accordingly, the grievance is GRANTED.

TOPICAL INDEX
STATE EMPLOYEES

<u>KEYWORDS:</u>	Reallocation; Minimum Qualifications; Classification; Pay Plan Policy
<u>CASE STYLE:</u>	<u>Harper v. Department of Administration/AND Division of Personnel</u> DOCKET NO. 2022-0057-DOA (5/5/2022)
<u>PRIMARY ISSUES:</u>	Whether Grievant proved that DOP's determination that he lacked the necessary supervisory experience to meet the minimum qualification for a position in the ASM 1 classification were clearly wrong or arbitrary and capricious.
<u>SUMMARY:</u>	Respondent Division of Purchasing sought to have Grievant's position at Surplus Property reallocated to the Administrative Services Manager 1 ("ASM 1") classification and allow Grievant to remain in that position. DOP determined that Grievant did not meet the minimum qualifications to hold a position in the ASM 1 classification because he did not hold a college degree or the requisite supervisory experience to substitute for such degree. Grievant argues that his duties in the Shopkeeper 1 and 3 classifications as well as his work for WACO Scaffolding included supervisory duties. He avers that experience qualifies him for the ASM 1 classification. DOP found that his duties in these jobs did not meet the definition for supervisory work found in the DOP policies. Grievant did not prove by a preponderance of the evidence that DOP's determination was clearly wrong or arbitrary and capricious.

KEYWORDS: Termination; Suspension; Attendance; Absenteeism; Medical Condition; FMLA; MLOA; Unauthorized Leave; Leave Abuse; Due Process; Arbitrary and Capricious; Improvement Plan; Call-in; Policy Memorandum 2107

CASE STYLE: Miller v. Department of Health and Human Resources/Welch Community Hospital

DOCKET NO. 2020-1569-CONS (5/4/2022)

PRIMARY ISSUES: Whether Respondent proved that Grievant's absenteeism was excessive and constituted good cause justifying Grievant's suspension and her dismissal.

SUMMARY: Grievant was employed by Respondent as a Health Service Worker at Welch Community Hospital. Respondent dismissed Grievant for excessive absenteeism and unauthorized leave in September 2021. Grievant had a history of attendance issues and had received two disciplinary suspensions, but only grieved the one issued in May 2020, which is part of this consolidated grievance. Grievant does not deny her history of absenteeism, but asserts that her chronic medical condition caused her attendance issues. Grievant also alleges that Respondent violated her due process. Respondent proved its claims by a preponderance of the evidence and proved that the disciplinary actions taken were justified. Grievant's due process rights were not violated. Therefore, this grievance is DENIED.

KEYWORDS: Motion to Dismiss; Timelines; Untimely Filed

CASE STYLE: Vandevander v. Division of Corrections and Rehabilitation/Bureau of Prisons and Jails AND Division of Personnel

DOCKET NO. 2021-1461-MAPS (5/9/2022)

PRIMARY ISSUES: Whether this grievance was timely filed.

SUMMARY: Grievant is employed by Respondent as a Correctional Officer III, K9 Handler. Grievant contests a pay differential he received in 2013 through action of a policy, alleging it should have been greater. Respondent moved to dismiss alleging the grievance was untimely filed both initially and at level three. Respondent failed to prove the grievance was untimely filed at level three as Grievant testified he did not receive the level two order in the mail and filed the same day he was informed the order had been previously mailed. Respondent proved the initial filing was untimely as the application of the policy simply caused continuing damage that cannot be converted to a continuing practice under which the grievance could be timely filed. Grievant failed to prove a proper excuse for his untimely filing. Accordingly, the grievance is dismissed.

KEYWORDS: Termination; Probationary Employee; Job Duties; Unsatisfactory Performance; Arbitrary and Capricious

CASE STYLE: Church v. Department of Health and Human Resources/Bureau for Medical Services

DOCKET NO. 2022-0411-DHHR (5/24/2022)

PRIMARY ISSUES: Whether Grievant proved that her services were satisfactory or that Respondent's decision to terminate her employment was arbitrary and capricious.

SUMMARY: Grievant was a probationary employee employed by Respondent within the Bureau for Medical Services' Finance Division as an Administrative Services Manager III serving as the Director of Finance. Grievant protests the termination of her employment for unsatisfactory performance. Grievant failed to prove that her services were satisfactory or that Respondent's decision to terminate her employment was arbitrary and capricious. Accordingly, the grievance is denied.

KEYWORDS: Discretionary Pay Increase; Pay Plan Policy; Arbitrary and Capricious

CASE STYLE: Fallon v. Division of Corrections and Rehabilitation/Bureau of Prisons and Jails AND Division of Personnel

DOCKET NO. 2021-2469-MAPS (5/16/2022)

PRIMARY ISSUES: Whether Respondent acted erroneously or abused its discretion in choosing not to pursue Grievant's request for a discretionary pay increase under the Internal Equity provision of the Pay Plan Policy.

SUMMARY: Grievant was employed the Division of Corrections and Rehabilitation in a position classified as a Correctional Counselor II. Grievant seeks a discretionary pay increase for Internal Equity under the Division of Personnel's Pay Plan Policy. Eastern Regional Jail and Correctional Facility submitted a request for a discretionary pay increase for her to the Division of Corrections and Rehabilitation central office. At that time, the Division of Corrections and Rehabilitation management opted not to pursue such an increase considering existing fiscal constraints. Grievant failed to meet her burden of proof that Respondents misapplied or misinterpreted the Pay Plan Policy concerning Internal Equity or that they abused their discretion in not granting the salary increase. The grievance is denied.

KEYWORDS: Motion to Dismiss; Family and Medical Leave Act/Parental Leave Act; Policy; Relief; Advisory Opinion

CASE STYLE: Hollandsworth v. Workforce West Virginia/ AND Division of Personnel
DOCKET NO. 2021-0316-DOC (5/19/2022)

PRIMARY ISSUES: Whether there is an relief available to Grievant through the grievance process.

SUMMARY: Grievant has needed to utilize unpaid leave provided by the federal Family and Medical Leave Act as well as the Parental Leave Act to care for her daughter who contracted a life-threatening medical condition. When she first applied for these leave programs, Grievant was allowed to use the Parental Leave after she had exhausted her eligibility for federal Family Leave in a twelve-month period. During a subsequent twelve-month period, Grievant was informed that a DOP policy provides that Family and Medical Leave Act benefits and Parental Leave Act benefits are utilized concurrently. Therefore, if Grievant exhausted her Family Leave benefits during a twelve-month period, her Parental Leave benefits would also be exhausted.

Grievant seeks an decision finding that the DOP policy is inconsistent with the two leave acts. Respondents argue that such a ruling would be an advisory opinion which the Grievance Board may not issue. Grievant has not been denied leave under either act, therefore, she has not suffered an injury-in-fact and any decision in this matter would be an advisory opinion. Accordingly, the grievance must be dismissed.

KEYWORDS: Discrimination; Favoritism; Policy; Transportation Worker Apprenticeship Program; Arbitrary and Capricious

CASE STYLE: Hunter v. Division of Highways

DOCKET NO. 2019-1704-CONS (5/23/2022)

PRIMARY ISSUES: Whether Grievant demonstrated that he was a victim of discrimination or favoritism.

SUMMARY: Grievant alleges that he was subject to discriminatory treatment. Grievant, tended to focus and refocus allegations of wrong doings to the point of inconsequential and/or an inability to establish damages. Nevertheless, Grievant failed to meet his burden and demonstrate that Respondent's highlighted actions were unlawful or detrimental to his positioning within the recognized workforce hierarchy. Grievant failed to establish by a preponderance of the evidence that Respondent or a responsible agent acted in violation of any statute, policy, or rule in the implementation of the Transportation Worker Apprenticeship Program. Grievant failed to demonstrate that he was the victim of discrimination. Respondent's actions are not established to be impermissible, arbitrary and/or capricious. Accordingly, this grievance is DENIED.

KEYWORDS: Suspension; Training; Policy; Discrimination; Reprisal; Arbitrary and Capricious

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

DOCKET NO. 2021-2543-CONS (5/16/2022)

PRIMARY ISSUES: Whether Respondent had good cause to suspend Grievant.

SUMMARY: Grievant was employed by Respondent as an Economic Service Worker. Grievant protests her three-day suspension from employment. Respondent proved Grievant failed to comply with her supervisor's directive to complete training and that it was justified in suspending her for three days for this failure pursuant to its policy. Grievant failed to prove that Respondent's action was discriminatory, retaliatory, or untimely. Accordingly, the grievance is denied.

KEYWORDS: Termination; Misconduct; Excessive Use of Force; Failing to File an Incident Report; Policies and Procedures; Code of Conduct; Arbitrary and Capricious

CASE STYLE: Ramsey v. Department of Homeland Security/Bureau of Prisons and Jails

DOCKET NO. 2022-0400-DHS (5/24/2022)

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

SUMMARY: Grievant was employed by Respondent as a Correctional Officer IV. Respondent dismissed Grievant from employment for excessive use of force on an inmate, failing to report the use of force, and attempting a cover-up of the same, all of which violate numerous West Virginia Division of Corrections and Rehabilitation (WVDCR) policies and procedures. Grievant denies Respondent's claims. Respondent proved its claims by a preponderance of the evidence and was justified in dismissing Grievant from employment. Therefore, this grievance is DENIED.