

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in June, 2018

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 wvwb@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

KEYWORDS: Default; Level One Hearing; Working Days; Statutory Time Limits

CASE STYLE: Dewitt v. West Virginia University
DOCKET NO. 2017-1503-WVUDEF (6/29/2018)

PRIMARY ISSUES: Whether default occurred at level one.

SUMMARY: Grievant contends that WVU is in default because a Level One hearing was not held within 15 days of the filing of the grievance. The evidence indicates that the parties made a good-faith effort to find a mutually agreeable date for holding the Level One hearing but were unable to agree on a date and time, in some significant part because Grievant's designated representative needed to travel from South Carolina to participate in the hearing. In these circumstances, WVU was neither negligent nor shown to have deliberately delayed the grievance process. Thus, any delay which occurred was justified within the meaning and intent of W. Va. Code § 6C-2-3(b)(1). Accordingly, a finding of default is denied.

KEYWORDS: Graduate Faculty Membership Status; Policy; Requirements; Favoritism; Arbitrary and Capricious

CASE STYLE: Chaudri v. Marshall University

DOCKET NO. 2017-1220-MU (6/15/2018)

PRIMARY ISSUES: Whether Respondent unlawfully denied Grievant Graduate Faculty status.

SUMMARY: Grievant is employed as a full professor with tenure at Marshall University. Grievant contends that Respondent illicitly denied him "Graduate Faculty" status. Grievant avers that Respondent's agent(s) inequitably applied determining factors to access his application and qualifications. Grievant alleges discriminatory analysis of his accomplishments coupled with an arbitrary and capricious assessment process. Respondent maintains they followed appropriate policy and criteria in review of Grievant's application. Respondent maintains, despite providing Grievant ample opportunity to document prerequisites, Grievant's application was denied due to lack of evidence of continuing scholarly or creative activity over the five-year period immediately preceding his application, as required by relevant policy. Grievant did not establish Respondent violated germane procedure, policy, or law. Grievant did not persuasively convey the non-renewal (denial) of his Graduate Faculty Membership Status is arbitrary and capricious, or discriminatory. Grievant did not achieve the burden of proof. This Grievance is denied.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

KEYWORDS: Selection; Qualifications; Interview; Arbitrary and Capricious

CASE STYLE: McPeake v. Raleigh County Board of Education
DOCKET NO. 2018-0820-RaIED (6/29/2018)

PRIMARY ISSUES: Whether Respondent acted in an arbitrary and capricious manner or otherwise overstepped its discretion in making the selection for a particular professional position.

SUMMARY: Grievant filed this grievance contesting her non-selection of principal at Woodrow Wilson High School. West Virginia Code § 18A-4-7a sets out specific criteria the Board must use in determining which candidate is the most qualified for a particular professional position. While each of the factors listed in W. Va. Code § 18A-4-7a must be considered, this Code Section permits county boards of education to determine the weight to be applied to each factor when filling an administrative position, so long as this does not result in an abuse of discretion. A county board of education may determine that the factor "other measures or indicators" is the most important factor.

Respondent placed a weighted value on the interview process. In the statutory category of "other measurers or indicators" of the applicants' qualifications, this is permissible conduct in the circumstances of an administrative selection. Grievant has failed to prove by a preponderance of the evidence that the decision-making process was fatally flawed, that Respondent acted in an arbitrary and capricious manner, or that Respondent otherwise overstepped its broad discretion as described in W. VA. CODE § 18A-4-7a. This Grievance is DENIED.

KEYWORDS: Written Reprimand; Insubordination; Willful Neglect of Duty; Code of Conduct; Harassment; Reprisal

CASE STYLE: Mize v. Cabell County Board of Education

DOCKET NO. 2017-2145-CabED (6/18/2018)

PRIMARY ISSUES: Whether Respondent proved by a preponderance of the evidence that Grievant was guilty of insubordination or neglect of duty.

SUMMARY: Grievant was given a written reprimand for allegedly ordering her secretary to listen in on meetings Grievant was conducting, from a position where the secretary could not be seen. Respondent argued that this activity was in violation of a directive Grievant had been given to not request her secretary to sit in on meetings as a witness. Grievant alleged that she merely asked her secretary to stay in the office and listen in case the meeting got out of hand. The secretary was not to take notes or serve as a witness to the meetings. Respondent did not prove the reasons for the written reprimand.

TOPICAL INDEX
STATE EMPLOYEES

KEYWORDS: Termination; Gross Misconduct; Technical Violation of Policy; Job Performance

CASE STYLE: Hazlett v. Department of Health and Human Resources/Mildred Mitchell-Bateman Hospital
DOCKET NO. 2017-1434-DHHR (6/27/2018)

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

SUMMARY: Grievant was employed by Respondent as a Registered Nurse. Grievant was terminated from employment for gross misconduct based on the discovery of an unusually large amount of improperly labeled prescription and over-the-counter medication in a tote belonging to Grievant and a co-worker. Respondent alleged this violated the Joint Commission's Hospital Accreditation Standards, Respondent's policy, and placed the Respondent at risk of violating state law. Respondent failed to prove the majority of the allegations against Grievant and did not have good cause to terminate Grievant's employment for the technical violation of policy that was proven given Grievant's eight years of employment with no history of prior disciplinary action and job performance that had otherwise met expectations for the entirety of her employment. Accordingly, the grievance is granted.

KEYWORDS: Motion to Dismiss; Moot; Relief

CASE STYLE: Cunningham v. Division of Motor Vehicles
DOCKET NO. 2018-0535-DOT (6/28/2018)

PRIMARY ISSUES: Whether Respondent established that this grievance is now moot.

SUMMARY: Grievant was employed by Respondent and filed the instant grievance contesting her non-selection for another position with Respondent. Following the filing of this grievance, Grievant's employment was terminated by Respondent, and Grievant has not filed an appeal contesting her termination. Respondent filed a Motion to Dismiss this grievance as moot. Grievant was provided an opportunity to respond to the motion but failed to do so. As Grievant is no longer employed by Respondent, any relief she seeks would be speculative, and this grievance must accordingly be dismissed.

KEYWORDS: Leave; Winter Weather; Inclement Weather Policy; Arbitrary and Capricious

CASE STYLE: Calhoun, et al. v. Division of Motor Vehicles

DOCKET NO. 2016-1345-CONS (6/19/2018)

PRIMARY ISSUES: Whether it was arbitrary and capricious for Respondent to comply with the Inclement Weather Policy by requiring Grievants to use annual leave for their absences.

SUMMARY: All thirteen Grievants in this consolidated case were or are employees at the Division of Motor Vehicles Regional Office in Charles Town, West Virginia. Grievants contend that they were improperly charged leave following two winter weather events in 2016. Record established that Grievants were properly charged leave consistent with the West Virginia Division of Personnel's Emergency Situations/Inclement Weather Policy. Because the Governor did not direct non-essential personnel to not report to work on the days in question, employees who were unwilling or unable to report to work as scheduled were charged with annual leave. Record supports a finding that this policy was properly applied and Respondent did not act in an arbitrary and capricious manner.

KEYWORDS: Pay; Voluntary Demotion; Policy; Arbitrary and Capricious

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

DOCKET NO. 2018-0451-DHHR (6/21/2018)

PRIMARY ISSUES: Whether the reduced pay Grievant received upon accepting a voluntary demotion without prejudice the result of arbitrary and capricious decision making or otherwise improper.

SUMMARY: Grievant is currently employed by Respondent as a Health Service Worker. Grievant was employed as a Health Service Assistant until September 16, 2017, when he accepted a voluntary demotion without prejudice to Health Service Worker. Grievant was informed that his annual salary upon acceptance of the voluntary demotion to Health Service Worker would be \$27,734.75. Grievant filed this grievance upon learning that the new salary represented a 6.541 percent reduction from his previous salary, a reduction which Grievant believes to be excessive. However, Grievant failed to show that the reduction to the lowest permissible amount violated any applicable law, rule or regulation, or that the reduction was the result of arbitrary and capricious decision making. Accordingly, this grievance will be denied.

KEYWORDS: Selection Process; Interview; Best Qualified Applicant; Discrimination; Arbitrary and Capricious

CASE STYLE: Morrall v. Division of Highways
DOCKET NO. 2017-2093-DOT (6/6/2018)

PRIMARY ISSUES: Whether Grievant proved that there was unlawful discrimination in the selection process.

SUMMARY: Grievant failed to meet her burden and demonstrate that Respondent's selection process was flawed. Grievant did not demonstrate that the decision in not selecting her for the position in question was unlawful or an action that was arbitrary and capricious. In addition, Grievant failed to establish that she was the victim of discrimination.

KEYWORDS: Staffing; Predetermination Meeting; Rules; Policy; Arbitrary and Capricious

CASE STYLE: Britton v. Department of Health and Human Resources/Hopemont Hospital
DOCKET NO. 2017-2497-CONS (6/11/2018)

PRIMARY ISSUES: Whether Grievant demonstrated that Hopemont Hospital's staffing decisions are arbitrary and capricious.

SUMMARY: Grievant is employed at Hopemont Hospital and also serves as a union representative in disciplinary meetings conducted at Hopemont Hospital. Grievant was instructed to allow her co-worker to answer questions directed to the co-worker during a predetermination meeting. Grievant alleges that this is a violation of her statutory rights. Respondent denies that Grievant was instructed that she could not speak during the meeting. Grievant did not establish by a preponderance of the evidence that Respondent violated her rights as set out in the applicable statute. Grievant also alleges that Respondent is working the patient care staff under acuity and does not have enough staff employed in order to meet the needs of the patients at the hospital. Grievant has failed to demonstrate by a preponderance of the evidence that Hopemont Hospital's staffing decisions are contrary to applicable law or otherwise, arbitrary and capricious.

KEYWORDS: Termination; Abandonment; No Call/No Show; Dismissed; Leave; Good Cause; Call-In; Absence; Unscheduled; Unapproved; Unauthorized

CASE STYLE: Molina v. Department of Health and Human Resources/Mildred Mitchell-Bateman Hospital

DOCKET NO. 2018-0781-DHHR (6/19/2018)

PRIMARY ISSUES: Whether Respondent proved that Grievant failed to appear for work without calling-in or being on approved leave constituting job abandonment.

SUMMARY: Grievant was employed by Respondent as a Nurse III at Mildred Mitchell-Bateman Hospital. Respondent dismissed Grievant for job abandonment after not appearing for, or calling-in prior to, four consecutive shifts. Grievant admits that she was not at work on the days in question, but denies Respondent's claims that she was a no call/no show on those days. Grievant asserts that she was on approved leave on the days in question. Grievant further argued that she was dismissed not for job abandonment, but for an incident with a coworker and for advocating for patients. Respondent proved by a preponderance of the evidence that Grievant failed to appear for the four consecutive shifts without calling-in or being on approved leave constituting job abandonment, and that such was good cause for dismissal. Therefore, the grievance is DENIED.

KEYWORDS: Suspension; Refusing Mandatory Overtime; Improper Inmate Count; Abandoning Post

CASE STYLE: Taylor v. Division of Corrections/Beckley Correctional Center

DOCKET NO. 2018-0860-MAPS (6/19/2018)

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

SUMMARY: Grievant was given a fifteen-day suspension for refusing mandatory overtime, abandoning his post, making an improper inmate count, and breaching facility security. Grievant does not dispute most of the facts but argues that he did not technically abandon his post since another officer was present when he left and that requiring him to work overtime caused problems with his child care arrangements. Respondent proved the reasons for the suspension by a preponderance of the evidence.

KEYWORDS: Classification; Minimum Qualifications; Administrative and Supervisory Duties; Arbitrary and Capricious

CASE STYLE: Westfall v. Division of Motor Vehicles and Division of Personnel
DOCKET NO. 2017-1093-DOT (6/26/2018)

PRIMARY ISSUES: Whether Grievant proved that Respondent Division of Personnel's interpretation of the classification specification and related definitions was erroneous.

SUMMARY: Grievant is employed by Respondent Division of Motor Vehicles as a Supervisor 2. Grievant protests Respondent Division of Motor Vehicles' determination that she did not meet the minimum qualifications for a Transportation Services Manager 2 position. Respondent Division of Motor Vehicles based its decision of Respondent Division of Personnel's interpretation of the relevant classification specification and definitions. Although Respondent Division of Personnel had previously interpreted the relevant classification specification and definitions to allow lead worker experience to qualify for the position, its management team had determined that interpretation was in error and directed a change in the interpretation. Grievant failed to prove Respondent Division of Personnel's interpretation of the classification specification and related definitions was clearly erroneous, that Respondent Division of Personnel was prohibited from correcting its mistake, or that she was entitled to relief based on other employees receiving the benefit of Respondent Division of Personnel's prior erroneous interpretation. Accordingly, the grievance is denied.