

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in August, 2019

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

DEPARTMENT OF EDUCATION EMPLOYEES

KEYWORDS: Default; Timelines; Level One; At-will Employees; Dismissal; Substantial Public Policy

CASE STYLE: Gooding, et al. v. Department of Education

DOCKET NO. 2019-1533-CONS (8/9/2019)

PRIMARY ISSUES: Whether reinstatement of Grievants positions is a legal and appropriate remedy.

SUMMARY: Grievants claim that they are entitled to prevail on the merits of the grievances because Respondent failed to hold a level one hearing within the time limits prescribed by the grievance statute. Respondent admits that no level one hearing was held and initially argued that it was justifiably delayed. Respondent also argues that the remedy of reinstatement is unavailable to Grievants because they were at-will employees and did not provide credible proof that a substantial public policy was violated. The violation alleged in the consolidated grievance did raise a violation of a substantial public policy as a matter of law. Whether Grievants could have proven that violation by a preponderance of the evidence does not matter because they prevail on the merits by default. Since Grievants prevailed on the matter of a violation of substantial public policy, reinstatement is a legal and appropriate remedy.

TOPICAL INDEX
HIGHER EDUCATION EMPLOYEES

KEYWORDS: Dismissal; Selection; Retirement; Relief; Back Pay; Moot

CASE STYLE: Marshall v. West Virginia University

DOCKET NO. 2013-0122-WVU (8/19/2019)

PRIMARY ISSUES: Whether Respondent proved this matter is moot as Grievant voluntarily retired from employment.

SUMMARY: At the time of the filing of the grievance, Grievant was employed by Respondent as a Trade Specialist I. Grievant grieved his nonselection for a Trade Specialist Lead II position. The grievance was held in abeyance at the agreed request of the parties to allow a decision on the grievance of the employee who Grievant acknowledged had a superior claim to the position. Grievant voluntarily retired while that action was still pending. The grievance is moot due to Grievant's retirement because any relief that might be granted is speculative. Accordingly, the grievance is dismissed.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

KEYWORDS: Early Childhood Classroom Assistant Teachers; ECCAT; Seniority; Aide; Tie-breaker; Random; Rank; Multiclassified; Mistake; Error; Drawing; Identical; Certification; Classification; Category; Calculating; Decisions

CASE STYLE: Young, et al. v. Greenbrier County Board of Education
DOCKET NO. 2019-0840-CONS (8/29/2019)

PRIMARY ISSUES: Whether Grievants proved by a preponderance of the evidence that the random selection drawing was invalid and/or unnecessary and whether their overall Aide seniority should be used for ECCAT employment decisions.

SUMMARY: Grievants are employed by Respondent as Aides holding ECCAT certification, multiclassified as Aide/ECCATs. In the past, Respondent ranked these employees for seniority purposes based upon their overall Aide seniority for employment decisions. In late 2018 or early 2019, the Associate Superintendent was advised that Respondent needed to conduct random selection drawings to establish ECCAT seniority rankings for Grievants and other ECCAT employees who shared identical ECCAT seniority dates. Grievants were thereafter required to participate in the random selection process to determine their ECCAT seniority ranking. Eight of the Grievants shared the ECCAT seniority date of August 4, 2014. One of the Grievants shared the ECCAT seniority date of August 21, 2017, with a non-party employee. Grievants argue that their overall Aide seniority should control for employment decisions and that the random selection drawings held in January 2019 were invalid and unnecessary. Grievants failed to prove their claims by a preponderance of the evidence. Therefore, this grievance is DENIED.

KEYWORDS: Selection; Reposting; Job Posting; Regularly Employed Applicant; Substitute; Qualifications

CASE STYLE: Joy v. Jefferson County Board of Education
DOCKET NO. 2019-0374-JefED (8/1/2019)

PRIMARY ISSUES: Whether Grievant proved that Respondent should have hired her for the position(s) at issue.

SUMMARY: Grievant is regularly employed by Respondent, Jefferson County Board of Education, as a half-time high school math teacher. Respondent posted three full-time math teacher positions for the 2018-19 school year, one for Washington High School and two for Jefferson High School. Grievant was the only certified applicant for the Washington High School position and was one of two certified applicants for each of the Jefferson High School positions. The schools reposted the positions because fewer than three qualified persons applied for each position. When the number of qualified candidates did not change after the repostings, Respondent selected long-term substitutes to fill the positions.

Grievant contends that there were the requisite three applicants for each of the initial postings, triggering the requirement that each be filled with an existing qualified applicant. Grievant also contends that the schools erred in not filling the positions within 30 days of the initial postings and in doing so with substitutes when there were qualified regularly employed applicants. Respondent counters that, as it had not filled the positions at least 20 days prior to the staff starting date, Grievant would have been precluded from transferring to any of the posted positions for the 2018-19 school year had she been selected. Respondent argues that its protocol allows schools to repost when there are fewer than three qualified applicants. Grievant did not prove she was the more qualified of the two regularly employed applicants for the two Jefferson High School positions. Grievant proved that Respondent should have hired her over a substitute and that she was the only qualified applicant for the Washington High School position after its reposting. Grievant proved that, as she was the only qualified regularly employed applicant for the Washington High School position, she should have received the position within 30 days of reposting, making it probable that she would have received the position 20 days prior to the start of school. Accordingly, this grievance is GRANTED.

KEYWORDS: Letter of Reprimand; Disrespectful Conduct; Misconduct; Insubordination; Corrective Action Plan; Retaliation; Discrimination; Harassment; Due Process; Arbitrary and Capricious

CASE STYLE: Williams-Grant v. Jefferson County Board of Education

DOCKET NO. 2018-1479-CONS (8/2/2019)

PRIMARY ISSUES: Whether Respondent proved that Grievant was insubordinate on multiple occasions prior to being issued each letter of reprimand.

SUMMARY: Grievant has been employed by Respondent as a teacher at Jefferson High School for 36 years and is black. After determining that Grievant was disrespectful and insubordinate, Respondent placed her on a Corrective Action Plan (CAP) and issued her a letter of reprimand. When Grievant used her CAP assignments as a vehicle to criticize supervisors, Respondent issued a second letter of reprimand. Grievant contends that Respondent's actions were retaliatory, since she had previously filed a grievance against Respondent, and a denial of due process, since she had no disciplinary record, had never been asked for her version of events, and had never received lesser directives such as a Focused Support Plan (FSP) or verbal warning. Grievant asserts that Respondent's actions entailed race and age discrimination and harassment. Respondent proved a basis for its letters of reprimand. Grievant did not prove she was entitled to an FSP or verbal warning. Grievant did not make prima facie case for retaliation. Grievant did not prove that the discipline was arbitrary and capricious, that she was denied due process, or that she was subject to discrimination and harassment. Accordingly, this grievance is DENIED.

KEYWORDS: Selection; Summer School Position; Seniority; Certification

CASE STYLE: Escue v. Lincoln County Board of Education

DOCKET NO. 2018-1328-LinED (8/30/2019)

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

SUMMARY: Grievant is employed by Respondent as a classroom teacher. Grievant was not selected to fill a summer program position when Respondent determined both Grievant and the successful applicant held the appropriate certification and that the successful applicant had a greater length of service in the summer program. Grievant failed to prove Respondent's hiring decision was arbitrary and capricious. Accordingly, the grievance is denied.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
SERVICE PERSONNEL

KEYWORDS: Seniority; Early Childhood Classroom Assistant Teacher; Random Seniority Selection Process; Statutory Time Limit

CASE STYLE: Skaggs, et al. v. Ritchie County Board of Education
DOCKET NO. 2018-0990-CONS (8/12/2019)

PRIMARY ISSUES: Whether Grievants proved that ECCAT seniority should be determined by the time Grievants were employed as Aides.

SUMMARY: Respondent determined that Grievants were tied for Early Childhood Classroom Assistant Teacher (ECCAT) seniority and required Grievants to participate in a random selection process to determine their ECCAT seniority ranking. Grievants argue that their ECCAT seniority should be calculated the same as their Aide seniority. Additionally, they aver that the process for determining the seniority ranking was untimely (after the statutory time limit for that procedure). It is established that ECCAT seniority is not the same as Aide seniority. See *Mayle v. Barbour County Bd. of Educ.*, Case No. 17-0204 (January 8, 2018) ECCAT seniority accrual is independent of Aide seniority.

Grievants point out that Respondent failed to hold a random selection to set the seniority ranking for Grievants within thirty days of them all starting to work as ECCATs. Grievants seems to argue that Respondent is now stuck with computing the ECCAT seniority based upon Aide seniority because it did not hold the tie-breaker within the statutory time line. A school board cannot continue to calculate seniority in a manner inconsistent with the law simply because they failed to timely hold a tie-breaker. This Grievance Board has long recognized that boards of education should be encouraged to correct their errors as early as possible. Respondent's failure to hold a timely tie-breaker is understandable in the circumstance(s). The issue of ECCAT seniority accrual was less clear until the West Virginia Supreme Court addressed the issue. This Grievance is DENIED.

KEYWORDS: Early Childhood Classroom Assistant Teacher; Classification; Seniority; Transfer

CASE STYLE: Curtis v. Lewis County Board of Education

DOCKET NO. 2018-1223-LewED (8/26/2019)

PRIMARY ISSUES: Whether Grievant proved that Respondent acted improperly in determining her ECCAT seniority.

SUMMARY: Grievant has been employed by Respondent in the Aide classification since 2002. Grievant began working and accruing seniority as an ECCAT on November 15, 2017. Respondent ranked Grievant at the bottom of the ECCAT seniority list. After determining that fewer ECCAT positions would be needed for the 2018-19 school year, Respondent approved Grievant for a reduction in force from her ECCAT classification and transferred her to an Aide position. Grievant contends that if Respondent had properly used her Aide seniority in determining her ECCAT seniority, she would have ranked higher and remained in her ECCAT position. Grievant did not prove that Respondent should have calculated her ECCAT seniority using her Aide seniority.

KEYWORDS: Suspension; Misconduct; Willful Neglect of Duty; Insubordination

CASE STYLE: Pauley v. Kanawha County Board of Education

DOCKET NO. 2019-1394-KanED (8/26/2019)

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

SUMMARY: Grievant was employed by Respondent as a Custodian III at Dunbar Primary School. Grievant was suspended without pay and then terminated from employment for insubordination and willful neglect of duty for purposely overflowing a sink, turning the boilers off, and shutting off the gas to the school. Respondent failed to prove Grievant overflowed the sink or shut off the gas. Grievant admitted he turned the boiler off and on in an attempt to reset it to get the heat working and that he had never been instructed not to do so. Operating and making minor repairs to the heating and cooling system was part of Grievant's job description. Respondent failed to prove this action was insubordination or willful neglect of duty. Accordingly, the grievance is granted.

KEYWORDS: Seniority; Classification; Early Childhood Classroom Assistant Teacher

CASE STYLE: Shafer v. Lewis County Board of Education

DOCKET NO. 2019-0083-LewED (8/26/2019)

PRIMARY ISSUES: Whether Respondent acted improperly or discriminatorily in not using the date Grievant was employed as an Aide to determine her ECCAT seniority.

SUMMARY: Grievant has been employed by Respondent in the Aide classification since 2002. Grievant has never held an ECCAT position and was certified as an ECCAT only in 2018. Grievant contends that Respondent acted improperly and discriminatorily in not crediting her with ECCAT seniority using her Aide seniority after allowing its first group of ECCATs in 2014, to use their Aide seniority as an ECCAT seniority tie-breaker. Respondent argues that it is well-settled law that ECCATs and Aides are separate classifications, and seniority in one cannot be attributed to the other. Grievant did not prove Respondent acted improperly or discriminatorily in failing to credit her with ECCAT seniority using her Aide seniority.

TOPICAL INDEX
STATE EMPLOYEES

KEYWORDS: Motion to Dismiss; Employee; Employer; Jurisdiction
CASE STYLE: Washington v. Department of Veterans Assistance
DOCKET NO. 2020-0001-DVA (8/27/2019)
PRIMARY ISSUES: Whether Grievance Board has jurisdiction in this matter.
SUMMARY: Grievant was employed by a private corporation that provided staffing services to Respondent. As Grievant was employed by a private corporation and not Respondent, the Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance is dismissed.

KEYWORDS: Termination; Gross Misconduct; Employee Conduct Policy; Mitigation
CASE STYLE: Y. v. Department of Health and Human Resources/Bureau for Children and Families
DOCKET NO. 2018-0606-DHHR (8/26/2019)
PRIMARY ISSUES: Whether Respondent proved it had good cause to terminate Grievant's employment for gross misconduct and violation of Respondent's employee conduct policy.
SUMMARY: Grievant was employed by Respondent within the Bureau of Children and Families as an Economic Service Worker. Grievant was terminated from employment for gross misconduct. Respondent proved it had good cause to terminate Grievant's employment for gross misconduct and violation of Respondent's employee conduct policy when Grievant continuously accessed her boyfriend's case, assisted her boyfriend's mother in accessing and using her boyfriend's benefits that were improperly accruing while he was incarcerated, and then caused a new benefits card to be issued for her to also use her boyfriend's improperly accruing benefits. Grievant failed to prove mitigation of the punishment was warranted. Accordingly, the grievance is denied.

KEYWORDS: Favoritism; Discrimination; Overtime; Policy; Job Duties

CASE STYLE: Blankenship v. Department of Health and Human Resources/Mildred Mitchell-Bateman Hospital
DOCKET NO. 2017-2370-DHHR (8/13/2019)

PRIMARY ISSUES: Whether Grievant proved that she was the victim of discrimination or favoritism.

SUMMARY: Grievant is employed by Respondent as an Accounting Technician 3. Grievant asserts nepotism, favoritism, and discrimination by Respondent's Chief Financial Officer. The issue of nepotism is moot as the employee at issue is no longer employed by Respondent. Grievant failed to prove she was the victim of discrimination or favoritism as Grievant failed to prove she and the compared employee were similarly situated. Accordingly, the grievance is denied.

KEYWORDS: Selection; Most Qualified Candidate; Arbitrary and Capricious; Supervisory; Supervisor; Policy Memorandum 2106; Comparison; OPS-13; OPS-13A; Rank; Qualifications; Applicant Interview Rating Form; Candidate Comparison Chart; Scoring; Error

CASE STYLE: Bradley v. Department of Health and Human Resources/Bureau for Children and Families
DOCKET NO. 2018-0770-DHHR (8/14/2019)

PRIMARY ISSUES: Whether Grievant proved by a preponderance of the evidence that he was the most qualified candidate for a position and whether Respondent's selection was arbitrary and capricious.

SUMMARY: Grievant is employed by Respondent as a Family Support Specialist. Grievant was not selected for an Economic Service Supervisor position. Respondent selected for the position another employee who was an Economic Service Worker who had past supervisory experience. Grievant had no supervisory experience. Grievant argued that the Respondent's selection was arbitrary and capricious in that the selection panel failed to use required forms to evaluate applicants and that he was the most qualified candidate. Respondent denied Grievant's claims, asserting that it properly selected the most qualified candidate for the position. Grievant failed to prove his claims by a preponderance of the evidence. Accordingly, the grievance is DENIED.

KEYWORDS: Overtime; Policy; Similarly Situated Employees; Discrimination; Arbitrary and Capricious

CASE STYLE: Randolph v. Division of Highways

DOCKET NO. 2019-0287-CONS (8/6/2019)

PRIMARY ISSUES: Whether Grievant proved that Respondent abused its discretion or acted in an arbitrary and capricious manner in the distribution of overtime.

SUMMARY: There are recognized administrative operating procedure established for Respondent in granting overtime hours to its employees. Grievant firmly believes he is being overlooked for overtime opportunities. Respondent maintains that applicable overtime policy is properly being followed and overtime is distributed based on the needs of the organization. Respondent maintains the employees that Grievant focuses on having more overtime are not similarly situated employees.

There is scheduled and unscheduled overtime. Respondent's overtime assignments in Mason County vary and change with a variety of organizational needs., e.g., special projects, weather conditions and seasonal activities. Grievant reasonably harbors some concerns over the execution of Respondent's discretion in distributing overtime. Nevertheless, not all of the individuals Grievant highlights are similar situated employees, nor is it established the difference in treatment was unrelated to job assignment. Although it was established and recognized that not all of Respondent employees receive the same or an equivalently similar amounts of overtime, Grievant has failed to establish that he is entitled to the difference in total overtime paid to other employee as lost wages. A difference in overtime totals alone does not establish entitlement. The general rule with regard to proof of damages is that such proof cannot be sustained by mere speculation or conjecture. This case is not the exception to this principle. Accordingly, this grievance is denied.

KEYWORDS: Salary; Pay Plan Policy; Job Duties; Discrimination

CASE STYLE: Wise v. Division of Highways

DOCKET NO. 2018-1482-CONS (8/15/2019)

PRIMARY ISSUES: Whether Grievant is being compensated consistently with the pay plan policy.

SUMMARY: Grievant was hired on February 18, 2014, as a Highway Engineer Trainee, in District Six, and works out of the Moundsville, West Virginia office. Grievant asserts that he is entitled to 10% above the new minimum pay schedule and credit for all of his raises, and a 5% increase for the one year of service having received his EIT Certificate. Consistent with applicable case law, Grievant and other Highway Engineer Trainees are being paid in accordance with the pay scale for their employment classification. Grievant is being compensated consistently with the pay plan policy. The record of this case does not support a finding that Respondent engaged in discrimination. Grievant contends that when the Division of Highways appeared through Matt Ball, Assistant Human Resource Director over Administration of Employee Benefits, for a mediation, that Mr. Ball did not have the authority to resolve the grievance. The record reflected that Mr. Ball had the authority of the Division of Highways to resolve certain issues at the mediation session. That issue is essentially moot since the case was heard at Level Three. Accordingly, this grievance is denied.

KEYWORDS: Default; Level One Conference; Notice; Time Limits

CASE STYLE: Dunlap v. West Virginia State Police

DOCKET NO. 2019-1560-MAPS (8/12/2019)

PRIMARY ISSUES: Whether Respondent is in default at level one.

SUMMARY: Grievant filed a level one grievant form with the West Virginia Public Employees Grievance Board. Approximately twenty days after the grievance was sent to the Grievance Board, Grievant gave notice of a claim for default alleging Respondent failed to hold a conference within ten days of receiving the grievance form. Grievant failed to prove that Respondent received the original grievance form. Accordingly, Grievant's notice of default was file before Respondent had an opportunity to meet its statutory obligation.

KEYWORDS: Suspension; Credibility; Statements; Neglect and Psychological Abuse of Resident; Arbitrary and Capricious

CASE STYLE: Garrison v. Department of Veterans Assistance
DOCKET NO. 2019-0669-DVA (8/7/2019)

PRIMARY ISSUES: Whether Respondent's decision to impose an unpaid suspension was arbitrary and capricious.

SUMMARY: Grievant is employed by Respondent as a Licensed Practical Nurse at the West Virginia Veterans Nursing Facility located in Clarksburg, West Virginia. Grievant failed to provide a resident with a wheelchair that he requested to attend a church service on another floor of the facility. Record established that the Social Worker Supervisor investigated the incident and substantiated the allegation of neglect and psychological abuse of the resident. Respondent demonstrated by a preponderance of the evidence it was justified in suspending Grievant concerning her behavior in handling a resident in the Alzheimer's/Dementia unit of the facility.

KEYWORDS: Suspension; Sleeping on the Job; Public Safety; Progressive Discipline; Retaliation; Harassment; Mitigation

CASE STYLE: Henry v. Division of Highways
DOCKET NO. 2019-0378-DOT (8/15/2019)

PRIMARY ISSUES: Whether Respondent proved by a preponderance of evidence that it had good cause to suspend Grievant.

SUMMARY: Grievant has been employed as a lone night shift telecommunications worker in Wheeling Tunnel for the Division of Highways, Respondent. Grievant had previously been suspended by Respondent three times for sleeping on the job. After Grievant's current supervisor, Paul Hicks, returned to that role, he began making surprise visits and twice caught Grievant on camera sleeping. Mr. Hicks warned Grievant against sleeping on the job through a performance appraisal, but stated no action was being taken. When Grievant insisted on making a written contest of the facts, Mr. Hicks handed him a notice of recommendation for 20-day suspension. Grievant claims his eventual suspension was in retaliation for exercising his right to challenge his appraisal and an attempt to get back at his dad, a prior subordinate of Mr. Hicks. He further claims hostile work environment and implies that his suspension should be mitigated. While Grievant made a prima facie case of retaliation, Respondent rebutted the presumption and Grievant did not prove that the reasons were pretext for retaliation. Grievant did not prove harassment or mitigation. Accordingly, this grievance is Denied.

KEYWORDS: Position Description Form; Classification; Reallocation; Job Duties; Arbitrary and Capricious

CASE STYLE: Cobb v. Department of Health and Human Resources/Bureau for Child Support Enforcement AND Division of Personnel

DOCKET NO. 2019-0260-DHHR (8/21/2019)

PRIMARY ISSUES: Whether Division of Personnel's reallocation of Grievant's position was arbitrary and capricious or whether the classifications Grievant sought were the best fit.

SUMMARY: Grievant is employed by Respondent DHHR within the Bureau for Child Support Enforcement as a part-time Child Support Supervisor 1. Respondent Division of Personnel reallocated Grievant's position to a Child Support Specialist 2. Grievant asserts the position should remain classified as a Child Support Supervisor 1 or should be reallocated to a Child Support Specialist 3. Grievant failed to prove the classifications she sought were the best fit or that Respondent Division of Personnel's reallocation of her position was arbitrary and capricious. Accordingly, the grievance is denied.

KEYWORDS: Suspension; Progressive Discipline; Excessive Absenteeism; Attendance; Policy

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

DOCKET NO. 2019-1213-DHHR (8/28/2019)

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

SUMMARY: Grievant is employed as a Health Service Worker at the William R. Sharpe, Jr. Hospital. Grievant challenges her suspension for due to attendance, absenteeism and tardiness issues. The record established that Respondent met its burden of proof and established by a preponderance of the evidence that Grievant had a long history of absenteeism which warranted a 3-day suspension after past progressive discipline measures were ineffective.

KEYWORDS: Dismiss; Termination; Escape; Falsify; Identify; Gross Misconduct; Discrimination; Favoritism; Arbitrary and Capricious; Mitigation; Transport; Misconduct; Negligence; Unsatisfactory; Similarly Situated

CASE STYLE: Foutty v. Division of Corrections and Rehabilitation/Bureau of Prisons and Jails

DOCKET NO. 2019-1185-MAPS (8/26/2019)

PRIMARY ISSUES: Whether Respondent proved by a preponderance of the evidence that Grievant engaged in misconduct constituting good cause for his dismissal.

SUMMARY: Grievant was employed by Respondent as a Correctional Officer II. Respondent asserts that Grievant violated policy while performing his duties as a Transportation Officer for the North Central Regional Jail, and that such contributed to the escape of an inmate. Respondent dismissed Grievant from employment. Grievant denies Respondent's claims and asserts that while he may have violated one policy, he is not responsible for the inmate escape. Grievant further asserts that Respondent engaged in discrimination and favoritism as he was dismissed from employment when others involved were not. Respondent proved its claims by a preponderance of the evidence. Grievant failed to prove his claims of discrimination and favoritism by a preponderance of the evidence. Grievant also failed to prove that mitigation of his discipline was appropriate. Therefore, this grievance is DENIED.

KEYWORDS: Dismissed; Relief; Unsafe Working Conditions; Moot

CASE STYLE: Garnes v. General Services Division

DOCKET NO. 2019-1211-DOA (8/20/2019)

PRIMARY ISSUES: Whether Respondent proved this grievance is moot as Grievant is no longer an employee.

SUMMARY: Grievant grieved alleged unsafe working conditions and failure to accommodate his disability. Respondent moved to dismiss the grievance asserting mootness as Grievant was no longer an employee. As the grievance only involves conditions of employment, Respondent proved the grievance is now moot. Accordingly, Respondent's motion to dismiss should be granted, and this grievance, dismissed.

KEYWORDS: Termination; Minimum Qualifications; Essential Job Duties; Driver's License; Discrimination; Reprisal

CASE STYLE: Vance v. Department of Environmental Protection

DOCKET NO. 2019-1632-CONS (8/21/2019)

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

SUMMARY: Respondent argues that Grievant was properly disciplined for failure to meet the minimum qualifications of his classification. After an extended period Grievant lost his driver's license convicted of driving under the influence of alcohol. Grievant asserts Respondent can and should allow him to work in an alternative position, where the status of his license was not an issue. Grievant argues that he was treated differently than other employees, who have been allowed to work at desk duties for the periods of their license revocation and were not dismissed from employment by Respondent.

Grievant was employed as an Environmental Inspector. One of the specific qualifications of the position is "[m]ust be eligible for license to operate a motor vehicle in West Virginia." Respondent proved by a preponderance of the evidence that Grievant no longer met the minimum qualifications for his classification and position. It was not persuasively demonstrated that Respondent is obligated to provide Grievant with alternative employment position until such time as his ability to lawfully operate a motor vehicle is restored. Accordingly, this grievance is DENIED.