

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in August 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
HIGHER EDUCATION EMPLOYEES

KEYWORDS: Motion to Dismiss; Remedy; Relief; Moot

CASE STYLE: Attarabeen v. Marshall University
DOCKET NO. 2022-0452-MU (8/30/2022)

PRIMARY ISSUES: Whether this grievance is moot.

SUMMARY: Grievant claims that Respondent has missed deadlines and improperly delayed the process through which he would receive a promotion and tenure. Grievant wants Respondent to process his application for tenure and promotion expeditiously. Grievant also seeks that he be treated fairly. Respondent argues that Grievant voluntarily left employment with MU and is no longer eligible for the tenure and promotion he seeks. Since Grievant is no longer employed by Respondent, the remedy he seeks is unavailable. This matter is Moot.

TOPICAL INDEX
STATE EMPLOYEES

KEYWORDS: Motion to Dismiss; Timelines; Untimely Filed; Appeal; Notice

CASE STYLE: Brown et al v. Division of Corrections and Rehabilitation/Parole Services AND Division of Personnel

DOCKET NO. 2021-1474-CONS (8/31/2022)

PRIMARY ISSUES: Whether this grievance should be dismissed for untimeliness.

SUMMARY: Respondent DOC's Motion to Dismiss contends that this grievance is untimely because it was not initiated within the timelines set forth in WEST VIRGINIA CODE § 6C-2-4(c)(1). Grievants are employed by Respondent DOC as Parole Officers. On September 20, 2020, Grievants, and Respondents, via legal counsel, participated in an unsuccessful mediation session. Grievants filed their level three appeal in May 2022. Approximately seven (7) months after the notice of the Order of Unsuccessful Mediation, entered on September 22, 2021. Counsel for Grievants presents for consideration the contention that proper notice was not established. The Order was mailed to the addresses of sixteen individual Grievants, and to the address of Grievants' legal counsel.

An Order of Unsuccessful Mediation was addressed and sent by U. S. Mail service to each individual Grievant, and to the law office recognized as providing legal representation to the Grievants. Grievants had specific and/or constructive notice of the unsuccessful mediation. The argument that one or two individual Grievants may not have received his/her notice is not found to be an acceptable justification to remedy a seven (7) month lapse of time for the entire group of Grievants to appeal to level three.

It is established by a preponderance of the evidence that the level three appeal of the instant grievance was untimely filed. Accordingly, Respondent's motion is GRANTED, and this grievance is DISMISSED.

KEYWORDS: Dismissal; Estate; Abandoned

CASE STYLE: Richmond v. Division of Natural Resources/ AND Division of Personnel
DOCKET NO. 2022-0216-DOC (8/17/2022)

PRIMARY ISSUES: Whether this grievance has been abandoned.

SUMMARY: Grievant was employed by Respondent DNR at Pipestem Resort as a Tram Supervisor. Grievant grieved his employer's failure to provide a pay increase to him as a supervisor when his subordinates had received a pay increase. Respondent employer moved to dismiss the grievance alleging Grievant had passed away. Neither Grievant nor his estate responded to the motion to dismiss despite notice. Grievant or his estate has abandoned the grievance. Accordingly, the grievance is dismissed.

KEYWORDS: Motion to Dismiss; Abandoning a Grievance; Failure to Respond

CASE STYLE: Payne v. Division of Motor Vehicles
DOCKET NO. 2020-0686-DOT (8/10/2022)

PRIMARY ISSUES: Whether Grievant has abandoned her grievance.

SUMMARY: Grievant was employed by the Division of Motor Vehicles as a Customer Service Representative. Grievant filed this grievance disputing her dismissal from employment. After continuances of the scheduled level three hearings and an abeyance period granted at the request of Grievant, Respondent moved to dismiss the matter. Grievant has failed to respond to Respondent's motion or otherwise communicate with the Grievance Board. The record supports a finding that a preponderance of evidence exists that leads to the conclusion that the grievance should be dismissed for abandonment. Accordingly, the grievance should be dismissed.

KEYWORDS: Classification; Salary; Pay Grade; Minimum Qualifications

CASE STYLE: Paxton v. Department of Homeland Security/Division of Emergency Management AND Division of Personnel

DOCKET NO. 2021-2342-MAPS (8/16/2022)

PRIMARY ISSUES: Whether Grievant proved by a preponderance of the evidence that DOP's allocation of her position was improper or arbitrary and capricious.

SUMMARY: Grievant alleges that she was offered and accepted a significant promotion both by the State Emergency Response Commission and her supervisors in the Division of Emergency Management. When she did not receive the raise, she filed a grievance arguing, among other things, that she had a binding contract to receive the promotion to a difference classification with a higher salary. She also argues that she had relied to her detriment upon the promises of her supervisors that she was getting this promotion by taking on more numerous and complex duties than she had been performing, while she waited for the raise to be processed.

The DEM was transferred from the Military Authority to Homeland Security which required the DOP to place Grievant's position in the state classification system. The DOP determined that the predominate duties of Grievant's position did not fit into the position Grievant thought she was performing. Homeland declined to exercise its discretion to pay Grievant a salary approximately \$20,000 more per year than the paygrade for the classification which DOP concluded was the best fit for her position. Grievant did not prove that DOP's classification allocation decision was arbitrary and capricious. Nor did she prove that Homeland's decision regarding granting her a discretionary raise was arbitrary or capricious.

Any promises or assurances made by the SERC or Grievant's supervisors regarding a promotion did not create a binding obligation of the Military Authority or Homeland because neither of these groups had authority to grant the promotion or raises. Grievant did not prove that there was sufficient inequity in this situation to force Respondent's to honor the assertions of Grievant's supervisors.

KEYWORDS: Classification; Reallocation; Job Duties; Supervisory Work; Arbitrary or Capricious

CASE STYLE: Melrose v. Division of Corrections and Rehabilitation/Bureau of Juvenile Services AND Division of Personnel

DOCKET NO. 2021-2043-MAPS (8/15/2022)

PRIMARY ISSUES: Whether Grievant proved that the Division of Personnel's classification determination was arbitrary or capricious.

SUMMARY: Grievant is employed by Respondent within the Bureau of Juvenile Services at Lorrie Yeager Jr. Juvenile Center as a Supervisor 3. As part of a general review, the Division of Personnel reviewed the position Grievant occupies and determined it should be reallocated to an Administrative Services Assistant 2. Grievant asserts the position should remain classified as a Supervisor 3. Grievant failed to prove the best fit for the position she occupies is a Supervisor 3. Accordingly, the grievance is denied.

KEYWORDS: Classification Specification; Reallocation; Job Duties

CASE STYLE: McGraw v. Division of Corrections and Rehabilitation/Bureau of Juvenile Services AND Division of Personnel

DOCKET NO. 2021-2005-MAPS (8/3/2022)

PRIMARY ISSUES: Whether Grievant proved by a preponderance of the evidence that her duties more closely match those of the Supervisor 3 classification to which she is currently assigned.

SUMMARY: Grievant was requested by the DOP to provide a Position Description Form for her Supervisor 3 position so DOP could conduct a classification review. DOP determined that the initial approval of the position in the Supervisor 3 classification granted in November of 2014 was incorrect. DOP determined that the Supervisor 3 position should be reallocated to the Administrative Services Assistant 2 (ASA 2) classification. Grievant contested the reallocation of her position and argues that the best fit for her position remains the Supervisor 3 classification. Grievant did not prove by a preponderance of the evidence that the ASA 2 classification was not the best fit for her position. The Grievance is denied.

KEYWORDS: Suspension; Misconduct; Throwing a Plastic Cup; Arbitrary and Capricious; Mitigation

CASE STYLE: Jones v. Workforce West Virginia
DOCKET NO. 2022-0669-DOC (8/9/2022)

PRIMARY ISSUES: Whether Grievant's three-day suspension without pay was excessive.

SUMMARY: Grievant is employed by Respondent as an Interviewer 2. Respondent suspended Grievant from employment without pay for three working days citing unacceptable conduct and behavior in violation of Workforce West Virginia's Administrative Directive. Grievant denies Respondent's claims and asserts that the three-day suspension was excessive, thereby warranting mitigation. Respondent proved its claims by a preponderance of the evidence and that it was justified in suspending Grievant from employment. Grievant failed to prove that the discipline imposed was excessive. Therefore, this grievance is DENIED.

KEYWORDS: Retaliation; Temporary Upgrade Policy; Classification; Arbitrary and Capricious

CASE STYLE: James v. Division of Highways
DOCKET NO. 2021-2542-CONS (8/3/2022)

PRIMARY ISSUES: Whether Grievant proved Respondent's change in policy was improper or that Respondent's application of the policy to him was arbitrary and capricious.

SUMMARY: Grievant is employed by Respondent as a Transportation Worker 1 Laborer. Grievant alleges retaliation and protests Respondent's change in its temporary upgrade policy and in the application of the policy to him. The incidents Grievant asserts were retaliatory were not a part of the consolidated grievance. Grievant failed to prove Respondent's change in policy was improper, that Respondent's application of the policy to him was arbitrary and capricious, or that he was entitled to back pay. Accordingly, the grievance is denied.

KEYWORDS: Motion to Dismiss; Work Location; Transfer; Moot; Relief; COVID-19 Jobs Protection Act

CASE STYLE: Endicott v. Department of Health and Human Resources/Bureau for Public Health

DOCKET NO. 2022-0608-DHHR (8/4/2022)

PRIMARY ISSUES: Whether this grievance is moot and whether the Grievance Board has jurisdiction in this matter.

SUMMARY: Grievant protests a change in her work location. Grievant was employed by Respondent within the Office of Human Resources Management as a Human Resource Generalist I. Grievant was stationed at Jackie Withrow Hospital. Jackie Withrow Hospital employees were required to be vaccinated so Grievant's work location was changed because she was not vaccinated. Since the grievance was filed, Grievant transferred her employment to the Bureau for Social Services as a Human Resource Associate. Respondent moved the Grievance Board to dismiss the grievance as moot. Respondent proved the grievance is moot as Grievant is no longer employed within the same agency or position. The Grievance Board lacks jurisdiction to hear the grievance as the grievance is effectively precluded by state law. Accordingly, the grievance is dismissed.

KEYWORDS: Motion to Dismiss; Relief; At-Will Employee; Public Policy

CASE STYLE: Christian, II v. Department of Homeland Security/Emergency Management Division

DOCKET NO. 2022-0679-DHS (8/3/2022)

PRIMARY ISSUES: Whether Grievant stated a claim on which relief can be granted.

SUMMARY: Grievant was employed by Respondent, Department of Homeland Security, within the Emergency Management Division as an Information Systems Manager. Grievant's employment as at will pursuant to statute. Respondent terminated Grievant's employment. Respondent's employee handbook did not create a contract that would prevent the termination of Grievant's employment. Grievant did not allege that Respondent was motivated to terminate his employment to contravene some substantial public policy. As Grievant failed to state a claim on which relief can be granted the grievance must be dismissed. Accordingly, the grievance is dismissed.