

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in September, 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
HIGHER EDUCATION EMPLOYEES

<u>KEYWORDS:</u>	Motion to Dismiss; Employee; Remedy; Moot
<u>CASE STYLE:</u>	<u>Ashby v. West Virginia University Potomac State College/ AND</u> DOCKET NO. 2019-0737-PSCWVU (9/4/2019)
<u>PRIMARY ISSUES:</u>	Whether Respondent proved the grievance is now moot as Grievant is no longer an employee.
<u>SUMMARY:</u>	Grievant filed this grievance protesting a written warning and the extension of her probationary period and alleging harassment/hostile work environment. Respondent moved to dismiss the grievance asserting mootness as Grievant had resigned from employment. Relief for the allegation of harassment/hostile work environment is unavailable as the Grievance Board has no authority to award tort-like damages. Relief for the written warning is moot as Grievant suffered no loss of pay. Accordingly, Respondent's motion to dismiss should be granted, and this grievance, dismissed.

KEYWORDS: Salary; Pay Increase; Pay Equity Adjustment; Arbitrary and Capricious

CASE STYLE: Frost v. New River Community and Technical College

DOCKET NO. 2018-1139-NRCTC (9/9/2019)

PRIMARY ISSUES: Whether Grievant proved by that Respondent was required by statute, rule or policy to use the additional allocation received from the General Revenue in the Budget Bill to provide the a salary increase.

SUMMARY: Grievant alleges that Respondent was required to spend the entire additional appropriation in the 2019 budget bill to provide a \$2,160.00 raise to the 75 employees it pays from funds it receives from the State General Revenue Fund. Grievant argues that these funds were appropriated from the General Revenue Fund, were part of a state-wide raise for state employees contemplated by the legislature and were required to be spent for that limited purpose.

Respondent counters that it gets its funding from four separate sources: The General Revenue Fund; student tuition and fees; state grants; and, federal grants. Respondent funds salaries for positions from all these areas but only received an additional appropriation from general revenue which was insufficient to provide a \$2160.00 raise to all its employees. Additionally, in recent years Respondent was forced to reduce all employee salaries to meet budget shortfalls. Respondent used the general revenue appropriation to give most employees and smaller raise and raise some employees to the level they were before the prior cuts were implemented. Finally, Respondent argues that Grievant failed to prove that the legislature placed and restrictions on how the colleges could spend the additional funds provided in the budget bill.

Grievant did not prove that Respondent was legally bound to spend the additional allocation it received in the budget bill from the General Revenue Fund to provide a specific raise to specific employees.

KEYWORDS: Motion to Dismiss; Annual Contract; Timelines; Untimely Filed; Relief

CASE STYLE: Copenhaver-Bailey v. West Virginia University
DOCKET NO. 2019-1338-WVU (9/6/2019)

PRIMARY ISSUES: Whether Respondent proved that this grievance was not timely filed.

SUMMARY: Grievant is employed by WVU via annual contract. While Respondent triggered the filing of this grievance by notifying Grievant of the non-renewal of her annual contract on March 7, 2019, Grievant affirms that she is not grieving the non-renewal. Rather, Grievant contends that from February 14, 2017, until March 7, 2019, Respondent failed to provide her with an accurate job description or any information on her job duties. As relief, Grievant requests either a retirement severance package or a different position with WVU. Grievant also seeks an order directing WVU to admit it failed to follow statutes, policy, rules, and regulations, that WVU deal with similar situations more fairly and transparently in the future, and that WVU compensate Grievant for damages to her health and earning potential by awarding her another position commensurate with her skills. Respondent moves to dismiss this grievance, alleging that the grievance is untimely and that it seeks relief unavailable through the grievance process. Respondent has proven that this grievance is untimely and seeks relief unavailable through the grievance process. Accordingly, this grievance is dismissed.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

KEYWORDS: Motion to Dismiss; Relief; Remedy; Moot

CASE STYLE: Williams v. Braxton County Board of Education
DOCKET NO. 2019-0296-BraED (9/13/2019)

PRIMARY ISSUES: Whether Respondent proved that all relief requested is either moot or wholly unavailable from the Grievance Board.

SUMMARY: Respondent moved to dismiss the present grievance because Grievant has suffered no actual employment harm rendering the remedies she seeks to be moot or unavailable. Respondent proved their allegations by a preponderance of the evidence. The grievance is dismissed.

KEYWORDS: Suspension; Demotion; Suspicious Behavior with Students; Investigation; Misconduct; Wrongdoing; Failure to Monitor Students; Willful Neglect of Duty; Credibility; Insubordination; Mitigation

CASE STYLE: Gonzales v. Cabell County Board of Education

DOCKET NO. 2018-1255-CabED (9/27/2019)

PRIMARY ISSUES: Whether Respondent established that Grievant's actions were deliberate and intentional to the degree that the conduct constituted insubordination and willful neglect of duty.

SUMMARY: Grievant worked as the Assistant Principal of Huntington Middle School until Respondent suspended and demoted him to a 200-day teaching position within Cabell County. Grievant filed this grievance alleging Respondent's actions were reprisal and unsubstantiated claim of malfeasance in violation of West Virginia Code and West Virginia common law. Grievant avers that Respondent fails to meet its burden of proof on the demotion.

Grievant was repeatedly made aware of Respondent's expectations regarding his administrative position. Grievant was either unwilling or unable to perform the duties as reasonably required. A board of education's decision to terminate an employee's administrative contract and place him or her in a teaching position is a disciplinary demotion, pursuant to W. Va. Code § 18A-2-8. This grievance matter was not a straight forward, cut-and-dry, disciplinary scenario; nevertheless, Grievant was aware and responsible for his own actions. Respondent established by a preponderance of the evidence that Grievant's actions were deliberate and intentional to the degree that the conduct constituted insubordination and/or willful neglect of duty.

Respondent's demotion of Grievant to a 200-day teacher position was not excessive in that termination was a distinct disciplinary option available and contemplated. Mitigation of the demotion is not found to be suitable in the circumstance of this matter. This grievance is denied.

KEYWORDS: Motion to Dismiss; Employee; Employer; Resignation; Moot; Relief

CASE STYLE: Ottley v. Berkeley County Board of Education
DOCKET NO. 2019-1171-BerED (9/25/2019)

PRIMARY ISSUES: Whether the issues raised in this grievance are moot since Grievant is no longer an employee of Respondent.

SUMMARY: Grievant, Summer Ottley, was employed by Respondent, Berkeley County Board of Education, as a Guidance Counsel. Grievant is no longer employed by Respondent. Grievant's resignation from her employment with Respondent rendered this grievance moot. Accordingly, this Grievance is dismissed.

KEYWORDS: Motion to Dismiss; Employee; Employer; Resignation; Moot; Relief

CASE STYLE: Ottley v. Berkeley County Board of Education
DOCKET NO. 2019-0745-BerED (9/25/2019)

PRIMARY ISSUES: Whether the issues raised in this grievance are moot since Grievant is no longer an employee of Respondent.

SUMMARY: Grievant, Summer Ottley, was employed by Respondent, Berkeley County Board of Education, as a Guidance Counsel. Grievant is no longer employed by Respondent. Grievant's resignation from her employment with Respondent rendered this grievance moot. Accordingly, this Grievance is dismissed.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
SERVICE PERSONNEL

KEYWORDS: ECCAT; Aide; Seniority; Ranking; Invalid; Tie-Breaker; Multiclassified; Random Selection Drawing; Early Childhood Classroom Assistant Teachers; Mistake; Timeline

CASE STYLE: Gibson, et al. v. Fayette County Board of Education
DOCKET NO. 2019-0783-CONS (9/26/2019)

PRIMARY ISSUES: Whether Grievants proved by a preponderance of the evidence that the random selection drawings were invalid, or otherwise improper.

SUMMARY: Grievants are employed by Respondent as Aides holding ECCAT certification, multiclassified as Aide/ECCATs. Grievants all shared the seniority date of August 8, 2014, along with other Aide/ECCAT employees. In November 2018, the Associate Superintendent determined that seniority tie-breaker drawings had to be conducted because employment decisions were going to have to be made because of county school consolidations, or mergers. The Associate Superintendent organized and conducted the tie-breaker drawings in December 2018. As a result of the drawings, Aide/ECCAT employees who shared the same seniority date for their ECCAT classification were assigned seniority rankings. Grievants argue that the drawings conducted in December 2018 were invalid and that their overall Aide seniority should control for employment decisions. Grievants failed to prove their claims by a preponderance of the evidence. Therefore, this grievance is DENIED.

TOPICAL INDEX
STATE EMPLOYEES

<u>KEYWORDS:</u>	Motion to Dismiss; Resignation; Employee; Relief; Moot
<u>CASE STYLE:</u>	<u>Messer v. Division of Highways</u> DOCKET NO. 2018-0935-CONS (9/11/2019)
<u>PRIMARY ISSUES:</u>	Whether Respondent has proven the grievance must be dismissed as moot and as the remaining relief is wholly unavailable.
<u>SUMMARY:</u>	Grievant was employed by Respondent as a Transportation Worker II. Grievant protests an alleged hostile work environment and retaliation. Respondent moved to dismiss the grievance as moot due to Grievant's resignation from employment. Respondent has proven the grievance must be dismissed as moot and as the remaining relief is wholly unavailable. Accordingly, the grievance is dismissed.

<u>KEYWORDS:</u>	Salary; Pay; Discrimination; Pay Grade; Job Classification
<u>CASE STYLE:</u>	<u>Walker v. Public Service Commission</u> DOCKET NO. 2019-0358-PSC (9/12/2019)
<u>PRIMARY ISSUES:</u>	Whether Grievant met his burden of proof and demonstrated that he was the victim of discrimination or that he is entitled to an increase in pay.
<u>SUMMARY:</u>	Grievant is employed by Respondent as a Technical Analyst. Grievant seeks an increase in salary under a claim of discrimination and, generally, pursuant to a claim of equal pay for equal work. The record did not support a finding that Grievant was the victim of discrimination. Under applicable law, it is not considered discriminatory for employees in the same classification to be paid different salaries. The record did not support a finding that Grievant was entitled to an increase in pay under the applicable pay policy.

<u>KEYWORDS:</u>	Motion to Dismiss; Resignation; Employee; Relief; Moot
<u>CASE STYLE:</u>	<u>Messer v. Division of Highways</u> DOCKET NO. 2018-0436-DOT (9/9/2019)
<u>PRIMARY ISSUES:</u>	Whether Respondent has proven this grievance is moot and must be dismissed due to Grievant's resignation from employment.
<u>SUMMARY:</u>	Grievant was employed by Respondent as a Transportation Worker II. Grievant protests his non-selection for a crew chief position. Respondent moved to dismiss the grievance as moot due to Grievant's resignation from employment. Respondent has proven the grievance is moot and must be dismissed due to Grievant's resignation from employment. Accordingly, the grievance is dismissed.
<u>KEYWORDS:</u>	Termination; Probationary Employee; Unsatisfactory Performance; Job Duties; Arbitrary and Capricious; Mitigation
<u>CASE STYLE:</u>	<u>Hayhurst v. Division of Highways</u> DOCKET NO. 2019-1391-DOT (9/20/2019)
<u>PRIMARY ISSUES:</u>	Whether Grievant proved that his dismissal was arbitrary and capricious.
<u>SUMMARY:</u>	Grievant was employed on a probationary basis by Respondent Division of Highways as an Occupational Safety Specialist. Respondent terminated Grievant for infractions that amount to unsatisfactory performance. Grievant contests these allegations and implies that termination is too severe. Grievant did not prove that his performance was satisfactory or that mitigation of termination is warranted. Accordingly, this grievance is Denied.

KEYWORDS: Evaluation; Employee Performance Appraisal; Rating; Arbitrary and Capricious

CASE STYLE: Urban v. General Services Division

DOCKET NO. 2019-0570-DOA (9/16/2019)

PRIMARY ISSUES: Whether Grievant proved Respondent abused its discretion in rating Grievant as only meeting expectations in his employee performance appraisal.

SUMMARY: Grievant is employed by Respondent as a Facilities Equipment Maintenance Technician. Grievant protests his employee performance appraisal. Grievant had attended webinar trainings and held a licensure he asserts should have entitled him to being rated as exceeds expectations in several categories. Grievant failed to prove Respondent abused its discretion in rating Grievant as only meeting expectations in his employee performance appraisal. Accordingly, the grievance is denied.