

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in November, 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 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: Resignation; Voluntarily; At-Will Position; Classification

CASE STYLE: Ratliff v. Glenville State College
DOCKET NO. 2018-1158-GSC (11/27/2018)

PRIMARY ISSUES: Whether Grievant voluntarily resigned his position.

SUMMARY: Respondent asserts that Grievant voluntarily resigned his employment and Respondent accepted the same by letter dated April 19, 2018. Grievant counters that he did not resign from his employment. Alternatively, Grievant asserts that if it is found that his resignation was voluntarily given, that Grievant rescinded the same before Respondent had clearly communicated acceptance of the same or acted in good faith reliance upon the resignation. Grievant further asserts that he had contractual reversionary rights to move from his at-will position to a classified position and that these rights were denied. Given the totality of the evidence, Grievant proved that he did not resign from his position with Glenville State College. Therefore, the grievance is GRANTED.

KEYWORDS: Motion to Dismiss; Employee; Employer

CASE STYLE: Neff v. West Virginia University
DOCKET NO. 2019-0372-WVU (11/19/2018)

PRIMARY ISSUES: Whether this grievance must be dismissing because Grievant is not an employee of Respondent.

SUMMARY: West Virginia University offered Grievant a position on September 6, 2018. This offer clearly communicated that the position would be effective September 17, 2018. West Virginia University rescinded the offer of employment and notified Grievant on September 14, 2018, of this decision. Grievant was not an employee of West Virginia University at the time of the grieved event. Accordingly, this grievance is dismissed.

KEYWORDS: Termination; Credibility; Merits; Dishonesty; Theft; Due Process; Gross Misconduct

CASE STYLE: Sheffler v. Concord University

DOCKET NO. 2018-0955-CU (11/13/2018)

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

SUMMARY: Grievant was employed by Concord University as a tenured professor in the Art Department of the Institution. Respondent terminated Grievant's employment contending he is guilty of conduct which constituted dishonesty, insubordination and theft. Grievant contends the dismissal is improper. Grievant challenges Respondent's ability to lawfully terminate his employment for the rationale communicated and contends any other reason later concocted is in violation of his due process.

Respondent informed Grievant that identified behavior was unacceptable and that failure to rectify the situation would result in the termination of his employment. Grievant is of the position that it is beyond Respondent's scope of authority to mandate the requested restitution. Respondent's notice of termination indicates a violation of professional responsibility, theft and insubordination. Grievant denies wrongdoing and maintains his termination was for conduct outside of his employer's realm of authority. Respondent established a judicious connection between established conduct and the employment of Grievant. Respondent demonstrated by a preponderance of the evidence grounds for the termination of Grievant's employment.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
SERVICE PERSONNEL

KEYWORDS: Suspension; Termination; Code of Conduct; Insubordination; Immorality; Professionalism; Arbitrary and Capricious; Facebook; Social Media; Posts; Photos; Selfie; Comments; Flirtatious; Advance; Suggestive; Proposition; Training; Excessive; Abuse of Discretion; Disproportion

CASE STYLE: Shamblen v. Monroe County Board of Education

DOCKET NO. 2018-0458-MnrED (11/29/2018)

PRIMARY ISSUES: Whether Respondent proved by a preponderance of the evidence that Grievant engaged in conduct constituting insubordination and immorality thereby justifying his suspension and dismissal.

SUMMARY: Grievant was employed by Respondent as a custodian. Respondent terminated Grievant's employment after it was discovered that he posted inappropriate comments on a student's posts on Facebook in violation of the Employee Code of Conduct. Respondent asserts that the violations of the Employee Code of Conduct constitute insubordination and immorality. Grievant did not deny making the comments on the Facebook posts, but denied knowing that the posts were that of a student at one of the schools to which he is assigned. Therefore, Grievant denied violating the Employee Code of Conduct, and denied engaging in acts of insubordination and immorality. Respondent proved by a preponderance of the evidence that Grievant violated the Employee Code of Conduct and engaged in acts of insubordination and immorality thereby justifying his termination. Grievant failed to prove by a preponderance of the evidence that his termination from employment was excessive or an abuse of Respondent's discretion, or that there is an inherent disproportion between the offense and the personnel action. Accordingly, the grievance is DENIED.

KEYWORDS: Transfer; Special Education Classroom; Autism Classroom; Relief

CASE STYLE: Casteel v. Wayne County Board of Education
DOCKET NO. 2018-0317-WayED (11/21/2018)

PRIMARY ISSUES: Whether Grievant is entitled to be returned to his original classroom.

SUMMARY: Grievant is employed by Respondent as an itinerant Special Education Aide II. Grievant protested his transfer from a special education classroom to an autism classroom seeking only to be reinstated to his original classroom. However, since the filing of the grievance, Grievant was transferred from the autism classroom to a different special education classroom. Grievant still sought to be returned to his original classroom but attempted to amend his relief sought during the level three hearing to include back pay for working out of his classification. Respondent would clearly be prejudiced by allowing Grievant to orally amend his requested relief during the level three hearing. Therefore, Grievant's attempt to amend his requested relief must be denied, which renders that portion of his claim moot. Grievant is not entitled to be returned to his original classroom as his position is itinerant and he received the proper notice required under the statute to be transferred. Accordingly, the grievance is denied.

TOPICAL INDEX
STATE EMPLOYEES

<u>KEYWORDS:</u>	Termination; Probationary Employee; Unsatisfactory Job Performance; Training
<u>CASE STYLE:</u>	<u>Gouch v. Department of Health and Human Resources/Bureau for Children and Families</u> DOCKET NO. 2018-1207-DHHR (11/8/2018)
<u>PRIMARY ISSUES:</u>	Whether termination of Grievant's probationary employment was justified.
<u>SUMMARY:</u>	<p>Grievant's employment was terminated after completing less than five months of twelve-month probationary period. Respondent decided that Grievant's job performance was unsatisfactory because she had improperly reported her work time, violated the State Vehicle Use Policy, ignored or resisted specific directions from her supervisor after the issues were noted in her performance evaluation, and continuously failing to complete her training exercises by listing her own thoughts and experiences rather than copy and paste her responses from web resource.</p> <p>The time reporting problems Grievant experienced could be explained by not understanding the policies and procedures. However, her failure to properly complete her training exercises and her resistance to reasonable supervision were sufficient to support her dismissal from probationary employment for unsatisfactory performance.</p>

KEYWORDS: Functional; Demotion; Reprisal; Retaliation; Retaliatory; FMLA; Intermittent; Reassignment; Absences; Attendance; Interview; Performance; Supervisory; Disciplinary; Presumption; Accommodation.

CASE STYLE: Shirk v. Division of Highways

DOCKET NO. 2018-0938-CONS (11/14/2018)

PRIMARY ISSUES: Whether Grievant has proved by a preponderance of the evidence that Respondent functionally demoted her and engaged in acts of reprisal against her.

SUMMARY: Grievant was employed by Respondent as a Supervisor 1. Respondent approved Grievant for intermittent leave pursuant to Family Medical Leave Act (FMLA). Thereafter, Grievant's immediate supervisor took issue with her absences and imposed disciplinary action and Grievant grieved the same. While that grievance was pending, Grievant was denied an interview for a posted position, and she again grieved. Soon thereafter, Grievant's supervisor recommended to Human Resources that Grievant received a disciplinary demotion which would demote her to an Office Assistant III position. Grievant filed a grievance regarding that action as well. Human Resources did not approve the disciplinary demotion, but approved a "temporary reassignment of duties" for Grievant that resulted in her duties being those of an office assistant/receptionist. Grievant's pay and classification title were not changed. Grievant asserts claims of reprisal and functional demotion. Respondent denies all of Grievant's claims. Grievant proved by a preponderance of the evidence that Respondent engaged in acts of reprisal against her for her participation in the grievance process and for utilizing FMLA leave, and that Respondent functionally demoted her. Therefore, this grievance is GRANTED.

KEYWORDS: Termination; Patient Abuse; Patient Safety; Physical Restraint

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

DOCKET NO. 2017-2225-CONS (11/14/2018)

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

SUMMARY: Grievant was a Health Service Worker with the Department of Health and Human Resources at Sharpe Hospital for approximately two years. Grievant was charged with abuse of hospital patients while performing his duties. Respondent met its burden of proof and demonstrated by a preponderance of the evidence that Grievant's termination was for good cause. Accordingly, this grievance is denied.