

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in August 2016

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

<u>KEYWORDS:</u>	Termination; Suspension; Attendance Issues; Failing to Give Adequate Notice; Planned Absences; Call-In Policy; Hearsay Statements
<u>CASE STYLE:</u>	<u>Kenney v. Department of Education/Schools for the Deaf and the Blind</u> DOCKET NO. 2016-1132-DOE (8/29/2016)
<u>PRIMARY ISSUES:</u>	Whether Respondent proved that Grievant violated its attendance policies.
<u>SUMMARY:</u>	Grievant was employed as a Residential Care Specialist and Classroom Aide in the Multi-Sensory Program of the West Virginia Schools for the Deaf and the Blind. Grievant had been reprimanded and suspended for prior attendance issues. In January 2016, Grievant was terminated based upon alleged attendance policy violations on six occasions between December 6, 2015, and January 7, 2016, and her alleged unwillingness to follow established leave procedures. The primary evidence that Grievant violated any established attendance policies on the occasions alleged was derived from hearsay evidence, which was found unreliable and unpersuasive when compared against Grievant's credible testimony, and certain information contained in the agency's own attendance records. The testimony and documents presented failed to provide preponderant evidence that Grievant violated the employer's attendance policies as alleged.

TOPICAL INDEX
HIGHER EDUCATION EMPLOYEES

KEYWORDS: Termination; Insubordination; Ethics Act; Public Employee; Neglect of Duty; Dishonesty; Business Relationships; Hearsay

CASE STYLE: Perry v. Mountwest Community and Technical College
DOCKET NO. 2016-1192-MCTC (8/19/2016)

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

SUMMARY: Grievant was terminated from his position as Program Director for Mountwest Community and Technical College's Culinary Arts Program based upon charges of insubordination, violations of state ethics laws, and ancillary derelictions and failures to perform assigned duties related to the more serious charges. Based upon a fairly complicated factual scenario, it appears that Respondent failed to question Grievant regarding the details of these charges, and afford him a reasonable opportunity to explain his actions until the Level Three hearing. Consequently, Respondent failed to establish the more serious ethics and insubordination charges by preponderant evidence, as well as some of the ancillary allegations. The remaining charge, which was at least partially established, involved little more than a technical violation of local procedures which would not have warranted discipline in normal circumstances, given Grievant's otherwise outstanding record as a faculty member and program manager. Therefore, this grievance will be Granted.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

KEYWORDS: Selection; Third Grade Teaching Experience; 11-Factor Assessment; Arbitrary and Capricious

CASE STYLE: Rhett v. Mineral County Board of Education
DOCKET NO. 2016-0006-MnIED (8/24/2016)

PRIMARY ISSUES: Whether Grievant proved that her non-selection for a posted third grade classroom teaching position was arbitrary and capricious

SUMMARY: Grievant filed this action following her non-selection for the position of a third grade teacher at Keyser Primary School. The hiring committee members and principal determined that the successful applicant provided superior answers to the questions asked in regard to third grade common core and curriculum. Both the faculty senate hiring committee and the school principal recommended the successful applicant, Stephanie Stephen, to fill the teaching vacancy. The county superintendent concurred with their recommendation and nominated Ms. Stephen to be hired by Respondent. In accordance with applicable law, the county board was required to appoint the successful applicant to the teaching vacancy at Keyser Primary School. Grievant failed to establish, by a preponderance of the evidence, that her non-selection for a posted third grade classroom teaching position at Keyser Primary was arbitrary and capricious, an abuse of Respondent's discretion, or otherwise contrary to any applicable law, rule or regulation.

KEYWORDS: Suspension; Code of Conduct; Posting Pictures; Social Media

CASE STYLE: Simmons, et al. v. Hardy County Board of Education

DOCKET NO. 2016-1749-CONS (8/9/2016)

PRIMARY ISSUES: Whether Respondent's suspension of Grievants is justified as a violation of the Code of Conduct.

SUMMARY: Grievants were disciplined by Respondent for violating the applicable Code of Conduct. In particular, the Superintendent was concerned that pictures of an event in which underage drinking was alleged to have taken place were posted on one of the Grievant's Facebook page. Respondent was unable to prove by a preponderance of the evidence that either Grievant had any part in posting the pictures on their Facebook page, that they hosted the event, or that they had any reason to know that underage drinking had occurred. Respondent failed to meet its burden of proof in this grievance. Accordingly, this is granted.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
SERVICE PERSONNEL

KEYWORDS: Transfer; Reassignment; Early Childhood Classroom Assistant Teacher (“ECCAT”) Certification; Fingerprinting Requirements; Class Titles; Certification Date; Kindergarten Aide; Surplus Personnel; Seniority

CASE STYLE: Lipps v. Lewis County Board of Education
DOCKET NO. 2016-0486-LewED (8/2/2016)

PRIMARY ISSUES: Whether Grievant demonstrated that she held ECCAT certification at the time her reassignment from a Pre-kindergarten Aide position was approved.

SUMMARY: Grievant is employed by Respondent as an Aide, and was assigned to a Pre-kindergarten classroom. Grievant was aware that as a Pre-kindergarten Aide she was required to comply with recent State Board of Education requirements for obtaining certification as an Early Childhood Classroom Assistant Teacher (ECCAT) in order to remain in a Pre-kindergarten classroom, but took no steps to do so until January 2015. Grievant had not completed the application process for her ECCAT certification when the 2015-2016 school year began, at which time Respondent discovered that enrollment at Grievant’s assigned school was lower than anticipated and the number of Kindergarten and/or Pre-kindergarten personnel would need to be reduced by one Teacher and one Aide. In September 2015, Respondent reassigned Grievant from a Pre-kindergarten classroom to a special education Aide position at the same school because, even though Grievant was not the least senior Pre-kindergarten Aide, she did not have any type of ECCAT certification. At the time Respondent reassigned Grievant, she had submitted her ECCAT application and had started taking ECCAT classes, but the record does not reflect that Grievant made Respondent aware of this. The State Superintendent of Schools issued temporary ECCAT authorization to Grievant on November 20, 2015, with an effective date of July 1, 2015. Respondent received this certificate on November 23, 2015.

KEYWORDS: Termination; Willful Neglect of Duty; Insubordination; Correctable Conduct; Sexual Assault on a School Bus; Arbitrary or Capricious

CASE STYLE: Riffe v. Monroe County Board of Education

DOCKET NO. 2016-1219-MnrED (8/25/2016)

PRIMARY ISSUES: Whether Respondent proved that Grievant's misconduct constituted willful neglect of duty and insubordination.

SUMMARY: Respondent terminated the employment of Grievant after it was discovered that a student has sexually assaulted another student on his bus. Grievant argued that there was no way for him to have been aware of the activity because he could not see it from his seat, no one complained to him and he had not been previously warned to watch particular students for behavioral issues. Grievant also argued that other incidents had occurred on a bus and the drivers were not disciplined.

KEYWORDS: Selection; Job Posting; Early Childhood Classroom Assistant Teacher Certification; Classification

CASE STYLE: Paugh v. Barbour County Board of Education

DOCKET NO. 2015-1574-BarED (8/26/2016)

PRIMARY ISSUES: Whether Grievant demonstrated that she held the required certification for the position at issue.

SUMMARY: Grievant was employed by Respondent as an Aide when she filled this grievance. She bid on a posted Aide/Early Childhood Classroom Assistant Teacher position, which required Early Childhood Classroom Assistant Teacher certification. Although Grievant was the most senior applicant in the Aide classification, she did not at any time hold Early Childhood Classroom Assistant Teacher certification, nor had she held an Early Childhood Classroom Assistant Teacher position. In addition, Grievant did not possess an Early Childhood Classroom Assistant Teacher Temporary Certification, nor had she completed any of the requirements necessary to obtain such a certification. Grievant did not demonstrate she entitled to placement in the posted position.

KEYWORDS: Selection; Job Posting; Early Childhood Classroom Assistant Teacher Certification; Classification

CASE STYLE: Mayle v. Barbour County Board of Education

DOCKET NO. 2016-0113-BarED (8/26/2016)

PRIMARY ISSUES: Whether Grievant demonstrated that she held the required certification for the position at issue.

SUMMARY: Grievant was employed by Respondent as a Substitute Aide when she filed this grievance. She was considered as an applicant for a posted Aide/Early Childhood Classroom Assistant Teacher position, which required Early Childhood Classroom Assistant Teacher certification. Although Grievant was a more senior applicant in the Aide classification, she did not at any time hold Early Childhood Classroom Assistant Teacher certification, nor had she held an Early Childhood Classroom Assistant Teacher position. In addition, Grievant did not possess an Early Childhood Classroom Assistant Teacher Temporary Certification, nor had she completed any of the requirements necessary to obtain such a certification. Grievant did not demonstrate she entitled to placement in the posted position. In addition, her contention that it was error on the part of Respondent in failing to notify her of the position is moot given the undisputed fact that she was considered an applicant.

KEYWORDS: Summer Employment; Qualifications; Autism Mentor; Certification; Reduction in Force; Seniority; Priority in Reemployment

CASE STYLE: Lahita v. Brooke County Board of Education

DOCKET NO. 2015-1572-BroED (8/31/2016)

PRIMARY ISSUES: Whether Grievant should have been placed in a summer Autism Mentor position after a reduction in force when she did not hold Autism Mentor certification.

SUMMARY: Grievant was not recalled to a summer aide position after a reduction in force, because the two positions posted were for Autism Mentor/Aides, and she was not certified as an Autism Mentor. The employees selected for these positions had less summer seniority than Grievant, but were certified as Autism Mentors. Grievant was selected for a half-time Autism Mentor/Aides summer position based on her summer seniority, because no one applied for the position who held certification as an Autism Mentor. Grievant argued that the reduction in force provision of West Virginia Code § 18-5-39(g) should apply here, and that the only issue is which candidate had the most seniority. Grievant was not reduced in force from an Autism Mentor/Aide position, nor was she entitled to priority in reemployment as an Autism Mentor/Aide. Grievant did not meet the qualifications for the position of Autism Mentor, and was not entitled to be placed in either of the positions over any individual who met the qualifications to be certified and classified as an Autism Mentor.

KEYWORDS: Paid Vacation Days; Contract Terms; Policy; Continuing Practice; Non-Relegation Clause; Altered Benefit

CASE STYLE: Hardman, et al. v. Gilmer County Board of Education

DOCKET NO. 2016-0059-CONS (8/11/2016)

PRIMARY ISSUES: Whether the elimination of Grievants' vacation days is in violation of the non-relegation clause.

SUMMARY: Grievants are employed by Respondent as Custodians, under 230-day contracts. In prior years they had 9 paid vacation days. Respondent eliminated all paid vacation days without Grievants' consent, altering one of the benefits of their employment, without increasing their compensation for the 9 additional days they are working. Grievants demonstrated that Respondent violated the non-relegation clause.

KEYWORDS: Suspension; Termination; Insubordination; Willful Neglect of Duty; Unsatisfactory Performance; Student Left on Bus; Mitigation

CASE STYLE: Blankenship v. McDowell County Board of Education
DOCKET NO. 2016-0772-McDED (8/15/2016)

PRIMARY ISSUES: Whether Respondent lawfully sanctioned Grievant for willfully neglected his duty as a bus operator.

SUMMARY: Grievant was suspended and terminated from his employment as a bus operator for his failure to adequately perform his duties, resulting in a disabled child being unattended and neglected. Grievant maintains the penalty levied is too severe. Grievant does not dispute the facts of the event, but contends he is entitled to another chance and an opportunity to improve. Amidst his argument for mitigation Grievant maintains the misconduct complained of requires utilization of the evaluation and plan of improvement process prior to termination. Respondent maintains Grievant's irresponsible conduct was an inexcusable failure to perform work-related responsibility and it is within its discretion to terminate Grievant's employment without an improvement plan or another opportunity to demonstrate he will follow recognized and established rules of employee conduct.

KEYWORDS: Selection; Extracurricular Duties; Job Responsibilities

CASE STYLE: Wilt v. Marshall County Board of Education
DOCKET NO. 2016-0448-MarED (8/12/2016)

PRIMARY ISSUES: Whether Grievant was entitled to an extracurricular position.

SUMMARY: Grievant is employed by Respondent as a bus operator. Grievant applied for an extracurricular position, but was not a successful applicant. It is undisputed that Grievant has more seniority than the successful applicants, but the record demonstrated that Grievant is unavailable to perform all the duties of the position. It has been established that availability to perform all duties of a job to the satisfaction of the employing school board is an implicit requirement of all job postings. Accordingly, this grievance is denied.

KEYWORDS: Contract; Discrimination; Daily Work Schedule; Work Hours; Job Responsibilities

CASE STYLE: Lawton v. Hancock County Board of Education

DOCKET NO. 2016-0346-HanED (8/22/2016)

PRIMARY ISSUES: Whether Grievant was discriminated against due to difference in work hours.

SUMMARY: Grievant was employed by Respondent as a Transportation Aide, and bid on and was assigned to a particular special needs bus, as was the case with every other Transportation Aide employed by Respondent. Respondent does not require Transportation Aides to perform any duty except monitoring and assisting the special needs students while they are on the bus. Some Transportation Aides employed by Respondent worked fewer hours than Grievant, and some worked more hours than Grievant, because the number of hours worked by each was dependent on the schedule of the bus to which they were assigned. The difference in the number of hours worked was related to the actual job responsibilities of these Aides, and did not constitute discrimination.

TOPICAL INDEX
STATE EMPLOYEES

KEYWORDS: Termination; Conflict of Interest; Employee Conduct; Homeless Services Policy; Hostile Work Environment; Discrimination; Mitigation

CASE STYLE: Hopson v. Department of Health and Human Resources/Bureau for Children and Families
DOCKET NO. 2015-0944-DHHR (8/9/2016)

PRIMARY ISSUES: Whether Respondent proved it had good cause to dismiss Grievant from employment for violation of multiple policies when Grievant had previously been suspended for willfully violating policy.

SUMMARY: Grievant was employed by Respondent as a Social Service Supervisor. Respondent dismissed Grievant from employment for willful violation of multiple policies in two separate instances. Respondent proved Grievant, a veteran supervisor, violated multiple policies when she authorized benefits for a co-worker who was not entitled to the benefits. Respondent did not prove Grievant violated the policy relating to criminal background checks when she allowed an adult disabled client to remain in a specialized family care home that had been closed for failure to report a criminal charge. Respondent proved it had good cause to dismiss Grievant for her improper authorization of benefits for a co-worker in violation of multiple policies when Grievant had previously been suspended for willfully violating policy to benefit a co-worker. Grievant failed to prove that the decision to dismiss her from employment was discriminatory. Grievant failed to prove she was subjected to a hostile work environment or that the alleged hostile work environment related to her dismissal from employment. Grievant failed to prove mitigation of her dismissal from employment is warranted. Accordingly, the grievance is denied.

KEYWORDS: Termination; Nominal Gift; Gift Card; Good Cause; Mitigation; Ethics; Excessive

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

DOCKET NO. 2016-0957-DHHR (8/22/2016)

PRIMARY ISSUES: Whether Respondent proved by a preponderance of the evidence that it had good cause to terminate Grievant's employment.

SUMMARY: Grievant was employed by Respondent as the Coordinator of the J1 Visa Waiver Program for approximately ten years. Grievant received a \$500 Visa gift card from a representative of a consulting firm that had business dealings with Grievant's program. Grievant accepted the gift card and used the same to purchase personal items for herself. Respondent learned of Grievant's acceptance and use of the gift card. Respondent charged Grievant with violations of DHHR policy and the West Virginia Ethics Commission's Legislative Rule regarding the acceptance of gifts, and dismissed Grievant from employment. Grievant alleges that she was dismissed without good cause. Respondent denies Grievant's claims. Respondent proved its claims by a preponderance of the evidence. Grievant failed to prove that mitigation of her discipline was warranted. Therefore, the grievance is DENIED.

KEYWORDS: Termination; Good Cause; Drug and Alcohol-Free Workplace Policy; Alcohol; Drug; Test; Intoxicated; Arbitrary and Capricious; Treatment; Mitigation; Excessive

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

DOCKET NO. 2016-1157-DHHR (8/31/2016)

PRIMARY ISSUES: Whether Respondent proved by a preponderance of the evidence that it had good cause to terminate Grievant, and whether Grievant proved that mitigation of the discipline was warranted.

SUMMARY: Grievant was employed as a Health Service Worker at Mildred Mitchell-Bateman Hospital. On December 9, 2015, Grievant reported to work under the influence of alcohol. Grievant was reported to management by his coworkers, and was subsequently tested for alcohol and drugs. The test results indicated that Grievant had a high blood alcohol level, but his drug testing was negative. Respondent first suspended Grievant without pay for thirty days pending investigation following the receipt of the alcohol testing results. Thereafter, Respondent dismissed Grievant's employment for violation of hospital policies. Grievant admitted being under the influence of alcohol on December 9, 2015, and cooperated fully with the alcohol and drug testing. Grievant asserts that his dismissal was arbitrary and capricious, and excessive. Respondent denied the same. Respondent proved that Grievant violated policy and that the imposition of discipline was proper. Grievant proved by a preponderance of the evidence that his dismissal was excessive and disproportionate to his offense and personnel action. Therefore, the grievance is GRANTED IN PART, and DENIED IN PART.

KEYWORDS: Harassment; EEO; False Statement; Lack of Any Available Remedy; Relief

CASE STYLE: Viers v. Division of Highways

DOCKET NO. 2016-1281-DOT (8/16/2016)

PRIMARY ISSUES: Whether the remedy Grievant seeks available through this grievance procedure.

SUMMARY: The sole remedy sought by Grievant is that the person who filed an initial statement against him be punished by Respondent for making a false EEO accusation. Because the Grievance Board does not have the authority to order an agency to impose discipline on an employee, Grievant seeks a remedy which is wholly unavailable and the grievance must be DISMISSED.

KEYWORDS: Suspension; Progressive Discipline; Aggressive Behavior; Offensive and Rude Language; Arbitrary and Capricious; Mitigation

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

DOCKET NO. 2015-0163-DHHR (8/29/2016)

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

SUMMARY: Grievant is employed as a Health Service Assistant (Charge Aide). Grievant protests his suspension for three days for his involvement in an altercation in the work place, involving loud, offensive and rude language. Respondent proved by a preponderance of the evidence that Grievant engaged in the behavior set forth in his suspension letter. Moreover, the suspension was proper and justified as Grievant's behavioral issues had been addressed with him for several years, and had not improved, even after having been placed on employee performance improvement plans. Therefore, the grievance is DENIED.

KEYWORDS: Dismissal; Non-Profit Corporation; Employer; Jurisdiction

CASE STYLE: Bowyer v. Lewis County Senior Citizens Center, Inc.

DOCKET NO. 2016-1811-LewSC (8/31/2016)

PRIMARY ISSUES: Whether the Grievance Board has jurisdiction to hear this matter.

SUMMARY: Grievant is employed by the Lewis County Senior Citizens Center, Inc. The Lewis County Senior Citizens Center, Inc. is a private, non-profit corporation and is not an employer subject to the grievance procedure. The Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance is dismissed.

KEYWORDS: Job Duties; Improper Classification; Out of Class Duties

CASE STYLE: Barker v. Department of Health and Human Resources/Bureau for Children and Families
DOCKET NO. 2015-0422-DHHR (8/22/2016)

PRIMARY ISSUES: Whether Grievant proved by a preponderance of the evidence she has intentionally been assigned substantial and predominate duties which are outside her classification.

SUMMARY: Grievant applied for and received a full-time position in the Family Service Specialist Classification. After taking that position, the Community Service Manager required her to continue performing substantial duties which she performed in the Economic Service Worker classification even though those duties were not consistent with her new classification. These duties took up approximately half of Grievant's work day. Grievant complained about being forced to perform duties outside of her classification and ultimately filed a grievance to end the practice. Grievant's supervisor knew that these duties were outside of Grievant's classification but required her to perform those duties for more than eighteen months.

KEYWORDS: On-Call Time; Compensation; On Call; Emergency Call; Shift Coverage

CASE STYLE: Harris v. Division of Corrections/Anthony Correctional Center
DOCKET NO. 2016-0344-MAPS (8/26/2016)

PRIMARY ISSUES: Whether Grievant demonstrated that he was entitled to compensation when he was on-call.

SUMMARY: Grievant asserted that he should have been paid for four hours each day he was on-call. Grievant was not confined to a particular area when he was on-call, and could leave any telephone contact number, or call in from any telephone number to check to see whether he would need to report to work. Grievant was not restricted in the activities he could undertake. Grievant did not demonstrate that the on-call time was compensable work time.

KEYWORDS: Termination; Probationary Employee; Attendance Issues; Misconduct; Progressive Discipline; Prohibited Workplace Harassment Policy; Performance Evaluations

CASE STYLE: Quigley v. Department of Health and Human Resources/Bureau for Children and Families

DOCKET NO. 2016-0822-DHHR (8/30/2016)

PRIMARY ISSUES: Whether Respondent proved it was justified in dismissing Grievant from employment for policy violation and poor attendance.

SUMMARY: Grievant was a probationary employee employed by Respondent as a Family Support Specialist. Respondent dismissed Grievant from his probationary employment for violation of the Division of Personnel's Prohibited Workplace Harassment Policy and for poor attendance. Grievant denied he had violated the policy and asserted that his poor attendance was excused by a medical condition. Respondent proved Grievant violated the Prohibited Workplace Harassment Policy for his repeated undesired touching of another employee. Grievant failed to prove that his services as a probationary employee were satisfactory. Respondent proved it was justified in dismissing Grievant from employment for his policy violation and poor attendance. Accordingly, the grievance is denied.

KEYWORDS: Termination; Motion to Dismiss; Misconduct; Untimely; Statutory Time Limit

CASE STYLE: Robertson v. Department of Health and Human Resources/Bureau for Children and Families

DOCKET NO. 2016-1768-DHHR (8/17/2016)

PRIMARY ISSUES: Whether Respondent established by preponderant evidence that Grievant failed to properly file her grievance within the time limits.

SUMMARY: Respondent established by preponderant evidence that Grievant failed to file her grievance challenging her termination within the time limits established by statute. Grievant failed to establish any circumstance excusing her failure to file a timely grievance. Therefore, Respondent's Motion to Dismiss must be granted.

KEYWORDS: Job Duties; Classification; Relief; Moot; Advisory Opinions
CASE STYLE: Lester v. Department of Health and Human Resources/Office of the Inspector General
DOCKET NO. 2015-1078-DHHR (8/11/2016)
PRIMARY ISSUES: Whether this matter is moot because Grievant has received all of the remedy that she requested.
SUMMARY: Subsequent to the filing of this grievance, Grievant has received all of the remedy she requested on her grievance forms. Additionally, there is no further remedy which is available to Grievant through the grievance procedure based upon the allegation set out in those forms.

KEYWORDS: Dismiss; Untimely; Notified; Deadline; Transfer; Raise
CASE STYLE: Nichols v. Division of Motor Vehicles
DOCKET NO. 2015-1619-DOT (8/12/2016)
PRIMARY ISSUES: Whether Respondent proved that the grievance was untimely filed.
SUMMARY: Grievant filed a grievance alleging that she was denied a pay raise at the time she received a transfer. Respondent asserts that the grievance was untimely filed as it was filed more than two years after her transfer, and well past the deadline to file the same. Respondent has moved to dismiss the grievance as untimely. Respondent has proved that the grievance was untimely filed. Accordingly, Respondent's Motion to Dismiss is granted.

KEYWORDS: Written Reprimand; Docked; Unauthorized Leave; Leave Request; Justified; Mitigation

CASE STYLE: Miller, et al. v. Alcohol Beverage Control Administration
DOCKET NO. 2016-0347-CONS (8/10/2016)

PRIMARY ISSUES: Whether Respondent was justified in docking Grievants' pay and issuing them written reprimands for being on unauthorized leave.

SUMMARY: Grievants were employed by Respondent at its Nitro, West Virginia, warehouse. A water outage on June 24, 2015, resulted in there being no running water to the warehouse facility during work hours. After working six hours of their shifts, Grievants decided to leave work early because of the water outage. Grievants submitted their leave requests through the computerized system, but did not verbally seek permission for taking leave. Further, Grievants left work before their leave requests were reviewed or approved by their supervisors. Respondent issued Grievants written reprimands for taking unauthorized leave, and docked their pay for the hours they took off that day. Grievants assert that they were justified in leaving work early that day because of the water outage, and that their pay should not have been docked. Respondent proved its claims by a preponderance of the evidence. Therefore, the grievance is DENIED.

KEYWORDS: Termination; Verbal Abuse; Sexual Harassment

CASE STYLE: Collins v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital
DOCKET NO. 2016-1273-DHHR (8/2/2016)

PRIMARY ISSUES: Whether Respondent was correct in dismissing Grievant for verbal abuse and sexual harassment of patients.

SUMMARY: Grievant was employed as a Health Service Assistant at the William R. Sharpe, Jr. Hospital, a state psychiatric facility. A patient alleged verbal abuse and harassment against the Grievant. Respondent's investigation showed that Grievant initiated several sexually inappropriate conversations with patients. Thereafter, Respondent made the decision to discharge Grievant from his employment. Respondent demonstrated by a preponderance of the evidence that Grievant engaged in this misconduct of a substantial nature and the dismissal is upheld. This grievance is denied.

KEYWORDS: Termination; Employee Performance Appraisal; Quality Assurance Check; Misconduct; Willful Negligence; Policy; FACTS Database; Hearsay

CASE STYLE: Seese v. Department of Health and Human Resources/Bureau for Children and Families

DOCKET NO. 2015-1063-DHHR (8/16/2016)

PRIMARY ISSUES: Whether Respondent proved that Grievant knowingly and willfully violated specific DHHR policies.

SUMMARY: Grievant is a CPS worker for the DHHR with three years of acceptable performance. Respondent initiated an investigation of Grievant's pending cases after receiving a telephone complaint from an individual with a personal grudge against Grievant. Respondent found no evidence to support the allegations made by the caller, but terminated Grievant's employment based upon charges that Grievant willfully put false documentation of client contacts on the FACTS database to cover her failure to make sufficient contacts with clients.

Grievant argues that the contacts are valid and the written statements relied upon by Respondent are mistaken and unreliable as hearsay. Respondent did not prove by a preponderance of the evidence that Grievant had made willfully entered contact notes on the FACTS database for clients she had not met.

KEYWORDS: Suspension; Absenteeism; Attendance Improvement Plan; Employee Conduct; Policy; Employee Performance Appraisal Form; Due Process Rights; Mitigation

CASE STYLE: Greene v. Department of Health and Human Resources/Jackie Withrow Hospital

DOCKET NO. 2016-0884-DHHR (8/16/2016)

PRIMARY ISSUES: Whether Respondent proved it was justified in disciplining Grievant for violation of her Attendance Improvement Plan.

SUMMARY: Grievant is employed by Respondent as a Health Service Worker at Jackie Withrow Hospital. Grievant was suspended for three days for violating her Attendance Improvement Plan with continuing unscheduled absences and tardiness. Grievant asserted she was suspended without good cause and that her due process rights had been violated. Grievant's due process rights were not violated because her suspension letter provided adequate notice and opportunity to be heard. Respondent proved it was justified in disciplining Grievant for violation of her Attendance Improvement Plan. Grievant proved that her suspension for three days for violating her Attendance Improve Plan was clearly disproportionate. Grievant's three day suspension should be mitigated to a one day suspension. Accordingly, the grievance is denied, in part, and granted, in part.

KEYWORDS: Bi-Weekly Pay; Enterprise Resource Planning Board; Employer; Jurisdiction; Treasurer; Auditor

CASE STYLE: Price, et al. v. Department of Health and Human Resources/Bureau for Children and Families, Bureau for Public Health, Division of Natural Resources, Bureau of Senior Services, General Services Division and Division of Personnel

DOCKET NO. 2016-0653-CONS (8/16/2016)

PRIMARY ISSUES: Whether the Grievance Board has jurisdiction to resolve a dispute between Grievants and the ERPB, Treasurer's Office and Auditor's Office.

SUMMARY: Grievants assert that the change from twice monthly pay to bi-weekly pay has caused them to be paid less than their annual salary, or has reduced their cash flow for 10 out of 12 months. The West Virginia State Auditor's Office and Treasurer's Office are the entities charged with assuring that state employees are paid their salaries, not Respondents, and it is the Enterprise Resource Planning Board which required the change in the pay cycle. The grievance procedure is in place to allow grievants to pursue grievances against the agency which employs them. Inasmuch as Respondents are not responsible for the action about which Grievants complain, and has no authority to resolve the grievance, this grievance will be dismissed.

KEYWORDS: Temporary Upgrade; Rotation System; Selection Method; Policy; Reprisal

CASE STYLE: Groves, et al. v. Division of Highways

DOCKET NO. 2015-1077-CONS (8/17/2016)

PRIMARY ISSUES: Whether Grievants proved that the reasons for the change in the upgrade procedure were a pretext for retaliatory motives.

SUMMARY: Grievants are transportation workers in the Amma facility. In July 2014, the supervisor of that facility decided to change the manner in which workers were picked to serve in the crew leader position when the regular crew leader was on leave. The person selected receives a temporary upgrade in classification and pay while performing those duties. Grievants allege that the selection method was changed from a rotation to having a consistent substitute as a reprisal for the filing of a prior grievance.

Grievants made out a prima facie case of reprisal. Respondent rebutted by showing legitimate non-retaliatory reasons for the change in selection methods. Grievants did not prove that the reasons offered by Respondent were merely pretexts for retaliatory motives.