

**WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD**

**SYNOPSIS REPORT**

**Decisions Issued in November 2012**

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](mailto: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.

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**COUNTY BOARDS OF EDUCATION**  
**PROFESSIONAL PERSONNEL**

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**KEYWORDS:** Worked performed outside of 210-contract, compensation, annual seniority list for professional personnel to all employees.

**CASE STYLE:** Redd v. McDowell County Board of Education  
DOCKET NO. 2008-1773-McDED (11/9/2012)

**PRIMARY ISSUES:** Whether Grievant proved that Respondent failed to comply with W. Va. Code § 18A-4-7a(s) by maintaining a posting of its professional personnel seniority list on the official bulletin boards at Mount View High School during the 2007-2008 school year, and whether Grievant proved that she should have been compensated for two days during the school year that she performed her duties as an Assistant Principal that were outside of her 210-day contract.

**SUMMARY:** Grievant established that she was required to perform duties as an Assistant Principal on two days during the school year that were not part of her 210-day contract and for which she was not otherwise compensated. Grievant also established that her employer failed to comply with W. Va. Code 18A-4-7a(s) by properly making copies of its professional seniority list available to all employees. Grievant was not entitled to a default based on the Grievance Board's failure to timely schedule a mediation at Level Two or a hearing at Level Three.

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**KEYWORDS:** Employee Conduct; Inappropriate Comments, Harassment

**CASE STYLE:** Manning v. Kanawha County Board of Education  
DOCKET NO. 2012-0664-KanED (11/14/2012)

**PRIMARY ISSUES:** Whether termination of Grievant's services was lawfully.

**SUMMARY:** Grievant was suspended and ultimately terminated by Kanawha County Board of Education, Respondent. Grievant has previously been required to undertake training on sexual harassment issues pursuant to a prior event. Grievant was or should have been aware that his comments were inappropriate. Grievant, by Counsel, contends termination should be overturned in that the established conduct doesn't warrant discharge from employment. Respondent maintains Grievant has demonstrated conduct which constituted violation of applicable standards of employee conduct, ie., Kanawha County Schools Administrative Regulation; Series G50A (Racial, Sexual, Religious/Ethnic Harassment and Violence Policy).

An employee of a county board of education may be suspended or dismissed for immorality, incompetency, cruelty, insubordination, willful neglect of duty or unsatisfactory performance of duties. Respondent, by a preponderance of the evidence, met its burden of proof and established that Grievant's conduct violated applicable sexual harassment policy. Grievant has not established Respondent's disciplinary action was unlawful, arbitrary and/or capricious. Respondent demonstrated cause for termination of Grievant's employment. This grievance is DENIED.

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**KEYWORDS:** Harassment; Negative Work Environment; Complaints; Reasonable Exercise Of Discretion; Hostile Work Place

**CASE STYLE:** Skidmore v. Braxton County Board of Education

DOCKET NO. 2011-1665-BraED (11/27/2012)

**PRIMARY ISSUES:** Whether Grievant was subjected to harassment and a hostile work environment.

**SUMMARY:** Grievant alleges that she has been subject to a course of harassing conduct by her supervisor that created a hostile work environment. While Grievant and her supervisor do not always get along, Grievant did not prove that her supervisor subjected her to harassment or that she suffers from a hostile work environment. Additionally, while Superintendent Albright denied the grievance at level one, he took steps to address many of the concerns Grievant raised in her grievance, in an effort to soothe the friction between Grievant and her supervisor.

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**KEYWORDS:** Postings; Vacancies; Discrimination; 20 Days; Time Period For Filling Position

**CASE STYLE:** Butts v. Ohio County Board of Education

DOCKET NO. 2011-1592-OhiED (11/27/2012)

**PRIMARY ISSUES:** Whether Respondent filled the position at issue within the time period required by statute.

**SUMMARY:** Grievant asserted he was discriminated against because Respondent did not take action to approve his hiring for a posted half-day bus run at the first available opportunity, while, Grievant asserted, Respondent acted on the hiring of an aide the day after the posting closed. Grievant's hiring was approved by Respondent within 20 days of the date the posting closing, as required by statute. Grievant did not demonstrate that he was treated differently from any other similarly-situated employee.

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**KEYWORDS:** Summer Substitute; Summer Employment; Classification Category; Seniority

**CASE STYLE:** Young v. Kanawha County Board of Education

DOCKET NO. 2011-1845-KanED (11/19/2012)

**PRIMARY ISSUES:** Whether Respondent improperly denied Grievant the opportunity to substitute during a portion of the summer term.

**SUMMARY:** Grievant, a 200-day school service employee, alleges Respondent improperly denied her the opportunity to substitute during a portion of the summer. Grievant was not entitled to first opportunity to substitute under W. Va. Code § 18-5-39 for the position she sought because the position was not a summer position and because the position was not within the same classification category as Grievant's regular employment contract. Grievant did not prove she was next in line to substitute under W. Va. Code § 18A-4-15, and despite Grievant's argument that this should be a defense proven by the Respondent, the weight of precedent requires Grievant to prove she was next in line in order to be granted relief.

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<b><u>KEYWORDS:</u></b>	Dismissed, Moot, Settled, Remedy Wholly Unavailable, Advisory Opinions
<b><u>CASE STYLE:</u></b>	<u>Robinson v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital</u> DOCKET NO. 2010-1579-DHHR (11/9/2012)
<b><u>PRIMARY ISSUES:</u></b>	Whether this Grievance is now moot because Grievant has been provided complete relief from the employee that allegedly created the hostile work environment.
<b><u>SUMMARY:</u></b>	Respondent asserts that Grievant received her relief requested in this matter, and the grievance is now moot. Grievant argues that her supervisor created a hostile work environment. The proposed Settlement Agreement moved Grievant so that she was no longer supervised by the same co-worker. In addition, her co-worker left employment at Sharpe Hospital on April 2, 2011. Grievant has received complete relief in this grievance, and the case is now moot.

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<b><u>KEYWORDS:</u></b>	Drug Testing; Drug And Alcohol Free Workplace Policy; Good Cause
<b><u>CASE STYLE:</u></b>	<u>Jones v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital</u> DOCKET NO. 2011-1212-CONS (11/20/2012)
<b><u>PRIMARY ISSUES:</u></b>	Whether Respondent abused its discretion by relying completely on an outside source as cause for dismissal of Grievant.
<b><u>SUMMARY:</u></b>	Grievant was dismissed after she tested positive for the presence of marijuana in her system. Grievant was asked by her supervisor to report to a local emergency room for treatment after she inadvertently drank from a glass that contained gasoline. Grievant argues that there was not a sufficient reason to require her to report the local hospital, the urine sample was not correctly collected, and that dismissal was too severe under all the circumstances of the case. Under the very unique circumstances of this case, it was improper for Grievant to be disciplined because no reasonable basis for drug testing existed, and Respondent abused its discretion in dismissing Grievant.

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**KEYWORDS:** Employee; Jurisdiction; Division Of Powers

**CASE STYLE:** Wolfe v. Supreme Court of Appeals  
DOCKET NO. 2013-0713-SCA (11/30/2012)

**PRIMARY ISSUES:** Whether the Public Employees Grievance Board has jurisdiction to hear grievances filed by employees of the judicial branch.

**SUMMARY:** The Supreme Court of Appeals of West Virginia is responsible for personnel matters regarding its own staff, and Grievant is not an “employee” under the definition found in W. Va. Code 6C-2-2(e)(3). Respondent’s request is granted and the grievance is dismissed due to lack of jurisdiction.

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**KEYWORDS:** Probationary Employment; Unsatisfactory Job Performance, Cell Phone Usage

**CASE STYLE:** Roy v. Division of Highways  
DOCKET NO. 2012-0950-DOT (11/15/2012)

**PRIMARY ISSUES:** Whether Grievant demonstrated that his performance was satisfactory during his probationary period.

**SUMMARY:** Grievant was dismissed from his probationary employment as a Transportation Worker I because of unsatisfactory performance. Grievant did not demonstrate that his performance was satisfactory as a probationary employee.

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**KEYWORDS:** Suspension; Reprimand; Insubordination; Discipline; Representative

**CASE STYLE:** Cobb v. Division of Highways  
DOCKET NO. 2012-0604-CONS (11/16/2012)

**PRIMARY ISSUES:** Whether the Respondent proved the charges against Grievant, and whether Grievant was improperly denied representation at a disciplinary meeting.

**SUMMARY:** Grievant was charged with violating the DOH Standards of Work Performance and Conduct by withholding information about the cause of a workplace accident, and was suspended for three days without pay. Grievant denied the charges against him, and asserted that he was wrongfully denied the right to have his union representative present with him during the disciplinary meeting. Respondent also charged Grievant with insubordination for the use of profanity and inappropriate conduct during the same disciplinary meeting. Grievant denied the charge of insubordination as well. Respondent failed to meet its burden of proving the charges against Grievant by a preponderance of the evidence. Respondent wrongfully denied Grievant his right to have a union representative present during a disciplinary meeting. However, given the facts of this case, and in this very limited situation, Respondent's denial was harmless error. Accordingly, this grievance is GRANTED.

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**KEYWORDS:** Transition Living Facility, Passive Suicidal Thoughts, Relief from Management Decisions, Health and Safety

**CASE STYLE:** Coleman v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital  
DOCKET NO. 2011-1204-DHHR (11/9/2012)

**PRIMARY ISSUES:** Whether Respondent's management decision constituted a substantial detriment to, or interference with, Grievant's health and safety.

**SUMMARY:** Grievant claims she should obtain relief from management decisions that constitute a substantial detriment to, or interference with, her health and safety. In particular, she claims she should not have been required to escort a patient who is actively suicidal. The record established that the patient's psychiatrist and therapist determined that the patient was merely having passive suicidal thoughts. In addition, the record established that the patient made no attempt to leave Grievant's presence or harm himself or others. Grievant failed to demonstrate that Respondent's decision was contrary to applicable law and policy, or was arbitrary and capricious. Accordingly, this grievance is DENIED.

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**KEYWORDS:** Unauthorized Leave; Leave Restriction; Dependability; Disciplinary Action

**CASE STYLE:** Tanner v. Division of Motor Vehicles

DOCKET NO. 2012-0668-DOT (11/30/2012)

**PRIMARY ISSUES:** Whether Respondent's action in imposing a 3-day suspension on Grievant was excessive or arbitrary and capricious.

**SUMMARY:** Grievant was issued a 3-day suspension. Grievant has disciplinary history relevant to the instant matter and has been issued several verbal and written warnings concerning unauthorized leave. Respondent maintains Grievant's attendance practices and use of leave is detrimental to the operation(s) of Respondent's work force. Respondent met its burden of proof and demonstrated cause for disciplinary action. Grievant did not establish a hostile work environment. The determination to suspend Grievant was within the discretionary authority of Respondent. Accordingly this Grievance is denied.

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**KEYWORDS:** Unsatisfactory Job Performance; Probationary Period; Production Goals; Performance Improvement Plan

**CASE STYLE:** Teets v. Division of Rehabilitation Services

DOCKET NO. 2012-0180-DEA (11/30/2012)

**PRIMARY ISSUES:** Whether Respondent's determination to not hire Grievant was properly exercised within its range of discretion and authority.

**SUMMARY:** Grievant was a probationary employee who was dismissed for unsatisfactory job performance. Such dismissals are not considered to be disciplinary in nature. Grievant has the burden to prove by a preponderance of the evidence that his job performance was satisfactory and/or his dismissal was unlawful. Grievant's direct supervisor(s) who monitored Grievant's work on a regular basis established that Grievant's work quantity was below the standard Respondent measures disability evaluation specialists (Grievant's job classification). Grievant was aware and acknowledges the production standards of the position. Grievant is of the opinion an exception is warranted. Probationary employees may be dismissed at any time for unsatisfactory job performance. Grievant did not demonstrate that his performance was satisfactory as a probationary employee. Grievant failed to establish that he should not have been dismissed. It was within Respondent's discretion to dismiss Grievant from probationary employment. This grievance is DENIED.