

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in December 2015

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: Misclassification; Position Information Questionnaire; Job Duties; Pay Grade; Point Factors; Burden of Proof; Review of Classification

CASE STYLE: Rowe, et al. v. West Virginia University

DOCKET NO. 2013-2258-CONS (12/23/2015)

PRIMARY ISSUES: Whether Grievants demonstrated that they are not properly classified.

SUMMARY: Grievants argued they should have been classified as Trade Specialists, pay grade 13 or 14, during the time they were working on the tree and shrub crew. Grievants, however, failed to challenge any point factors, nor did they place into evidence the differences in the degree levels assigned to the Landscape Worker classification and the Trade Specialist classification. Because Grievants failed to challenge any point factors assigned to their classification, they did not demonstrate they were misclassified at any time. Likewise, Grievants did not place into the record evidence to support a conclusion that Respondent did not properly review their classification.

KEYWORDS: Termination; Failure to Maintain Adequate Leave Balances; Absences; Leave Abuse; Unauthorized Leave

CASE STYLE: Slaughter v. West Virginia University

DOCKET NO. 2015-1640-WVU (12/10/2015)

PRIMARY ISSUES: Whether Respondent proved the charges against Grievant.

SUMMARY: Grievant's employment was terminated by Respondent for repeated instances of taking off work when he did not have enough accumulated leave time to cover his absence, referred to as unauthorized leave. Respondent demonstrated that Grievant was advised on multiple occasions that he was not to take time off work if he did not have enough leave time accumulated to do so, that he needed to better manage his leave, and that if he continued to take time off work when he did not have leave to cover it, more severe disciplinary consequences would follow. After taking 12 days of unauthorized leave in April and May, 2015, and receiving three written warnings, Grievant took yet another day of unauthorized leave on June 9, 2015, at which point Respondent decided Grievant had been given enough chances. Respondent proved the charges against Grievant.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

KEYWORDS: Uniformity; 240-Day Contract; Implement Budget; Similarly Situated Employees; Arbitrary and Capricious

CASE STYLE: Duncan v. Mingo County Board of Education
DOCKET NO. 2015-1625-MinED (12/7/2015)

PRIMARY ISSUES: Whether Grievant proved that Respondent violated policy or law, or acted unreasonably in refusing to extend Grievant's contract.

SUMMARY: Grievant is employed by Respondent under a 240-day contract as the Director of Human Resources. Grievant grieves Respondent's refusal to grant him a contract extension. Grievant's predecessor was granted 15-day contract extensions for multiple years and the Director of Facilities and Safety holds a 261-day contract. Grievant failed to prove that Respondent violated policy or law, or acted unreasonably or against the best interests of the schools in refusing to extend Grievant's contract like his predecessor. Grievant failed to prove that Respondent was required to extend his contract when funds for the extension had been included in the budget. Grievant failed to prove that the superintendent violated policy or law when he removed a measure to extend Grievant's contract from the Board's proposed agenda. Grievant failed to prove that Respondent violated the uniformity provision because he is not similarly-situated to the employees to which he compares himself. Accordingly, the grievance is denied.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
SERVICE PERSONNEL

KEYWORDS: Additional Pay; Recalculating Contract; Written Consent; Degrees

CASE STYLE: Snoderly v. Brooke County Board of Education
DOCKET NO. 2014-0732-BroED (12/4/2015)

PRIMARY ISSUES: Whether Grievance demonstrated that she was entitled to an additional salary.

SUMMARY: Grievant is employed by Respondent as a bus operator. A written contract was entered into between the parties for the 2013-2014 school year for the amount of \$22,280.00. Respondent perceived that they had made a mistake, after consultation with the State Department of Education, in calculating Grievant's annual salary in regard to a salary supplement for advanced degrees. Respondent notified Grievant by letter dated November 19, 2013, that her annual salary should be \$21,480.00. Grievant asserts that Respondent violated West Virginia code § 18A-4-8. Grievant asserts that the reduced salary was incorrect due to the failure to grant her an additional salary supplement. Grievant met her burden of proof in demonstrating that the reduced salary was incorrectly calculated. However, Grievant failed to prove by a preponderance of the evidence that Respondent violated West Virginia law when it reduced her contract in accordance with the directive of the State Superintendent of Schools. Therefore, the grievance is granted, in part, and denied, in part.

KEYWORDS: Bus Operator Trainer; Extracurricular Assignments; Selection; Employer

CASE STYLE: Freda v. Lewis County Board of Education
DOCKET NO. 2015-0597-LewED (12/22/2015)

PRIMARY ISSUES: Whether any relief can be granted.

SUMMARY: Grievant challenged the selection of bus trainer operators to be employed by RESA in the education and training of bus operators in the county. Grievant argued the selection violated various statutes involving the hiring and retention for extracurricular assignments. The decision to hire the bus operator trainers was made by RESA, albeit with input from the county board. As a county board employee, Grievant cannot use the grievance process to challenge a decision made by RESA regarding a position within its employ, and this grievance states a claim upon which relief cannot be granted.

KEYWORDS: Misclassification; Res Judicata; Duties; Preclusion

CASE STYLE: Wheeler v. Lincoln County Board of Education

DOCKET NO. 2015-0695-LinED (12/17/2015)

PRIMARY ISSUES: Whether Respondent proved that this grievance is barred by the doctrine of res judicata.

SUMMARY: Grievant previously filed a grievance alleging misclassification, and prevailed. Grievant filed this grievance again alleging misclassification. However, Grievant does not allege that her job duties and responsibilities have changed in any way since her last grievance. Grievant is alleging that she should be reclassified to another position, not raised in the prior grievance. Respondent argues that the doctrine of res judicata precludes Grievant from bringing this claim. Grievant denies the same, and arguing that the prior grievance has not effect on this matter. Respondent proved by a preponderance of the evidence that the doctrine of res judicata applies to preclude Grievant from pursuing this claim. Therefore, this grievance is Dismissed.

TOPICAL INDEX
STATE EMPLOYEES

<u>KEYWORDS:</u>	Motion to Dismiss; Lack of Jurisdiction; Employer
<u>CASE STYLE:</u>	<u>Samuels v. Adjutant General's Office/Mountaineer Challenge Academy</u> DOCKET NO. 2016-0769-MAPS (12/14/2015)
<u>PRIMARY ISSUES:</u>	Whether the Grievance Board has jurisdiction to hear this matter.
<u>SUMMARY:</u>	Grievant is employed by the West Virginia Military Authority at the Mountaineer Challenge Academy. Grievant's employment is specifically exempted from the grievance procedure by statute. The Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance is dismissed.

<u>KEYWORDS:</u>	Classification; Job Duties; Pay; Transporting Patients; Direct Care; Policy
<u>CASE STYLE:</u>	<u>Tuell v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital and Division of Personnel</u> DOCKET NO. 2014-1600-DHHR (12/1/2015)
<u>PRIMARY ISSUES:</u>	Whether Grievant established that Respondent's transportation policy was clearly wrong or the result of an abuse of discretion.
<u>SUMMARY:</u>	Grievant is employed by the Department of Health and Human Resources as a Driver 1 at the William R. Sharpe, Jr. Hospital, a state psychiatric facility. Grievant asserts that he is working as a Health Service Worker rather than a Driver when he is counted as the second staff member when transporting forensic patients. Grievant seeks to be paid as a Health Service Worker rather than a Driver, but seeks to maintain his class title. The undersigned as previously ruled on this same issue. As in the previous ruling, Grievant in the instant case did not establish by a preponderance of the evidence that the transportation policy in question was clearly wrong or the result of an abuse of discretion. In addition, the undersigned lacks authority to order Respondents to place Grievant in a higher pay grade than the pay grade assigned to his classification.

KEYWORDS: Co-Op Experience; Additional Pay; Rate of Pay; Time Limits

CASE STYLE: Hatfield v. Division of Highways and Division of Personnel

DOCKET NO. 2015-1522-DOT (12/2/2015)

PRIMARY ISSUES: Whether Respondent has proven that the grievance was untimely filed.

SUMMARY: Grievant was hired by Respondent as a Highway Engineer Trainee on September 3, 2013. Respondent had the discretion to appoint Grievant to her position at a rate higher than entry-level, but did not do so. The posting specifically notified Grievant of the availability of this discretionary pay at appointment to the position. The grievance was not timely filed. Accordingly, the grievance is dismissed.

KEYWORDS: Hartley Case; Pay Increase; Jurisdiction; Motion to Dismiss

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

DOCKET NO. 2016-0603-DHHR (12/7/2015)

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

SUMMARY: Grievant grieves Respondent failure to pay Grievant a salary set in a Circuit Court settlement agreement and order in an ongoing lawsuit. The Grievance Board lacks jurisdiction to enforce a Circuit Court settlement agreement or order. Accordingly, Respondent's motion to dismiss should be granted, and this grievance, DISMISSED.

KEYWORDS: Termination; Family Medical Leave Act; Job Abandonment; Retaliation; Reprisal; Due Process; Arbitrary and Capricious

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

DOCKET NO. 2014-1760-CONS (12/22/2015)

PRIMARY ISSUES: Whether Respondent proved the charges against Grievant, and demonstrated good cause for her dismissal.

SUMMARY: The record in this matter demonstrated preponderant evidence to support each of the reprimands issued to grievant for failure to comply with established agency procedures for requesting, taking and reporting leave. Grievant failed to establish that her supervisors abused their discretion in issuing an employee performance appraisal which gave unsatisfactory ratings for Grievant's failure to comply with agency leave and attendance policies. Grievant failed to establish that Respondent violated any applicable provision of the Family and Medical Leave Act ("FMLA") by denying requested FMLA leave to Grievant, interfering with Grievant's right to take FMLA leave by placing unwarranted and unjustified restrictions on her use of otherwise approved FMLA leave, or retaliated against Grievant for either exercising her right to seek and obtain FMLA leave, or filing and pursuing grievances against her employer. Respondent established by a preponderance of the evidence that Grievant failed to return to work following a medical leave of absence without pay, failed to provide required documentation for her continued absence from work, and failed to provide medical documentation to indicate when she would be able to return to work, or would be evaluated for being able to return to work, and that in the circumstances presented, Grievant engaged in job abandonment within the meaning of that term in the West Virginia Division of Personnel's Administrative Rule. Accordingly, Respondent established a factual and legal basis for Grievant's termination.

KEYWORDS: Pay Increase; WV-11 Process; Classification; Delay in Promotion

CASE STYLE: Collins, et al. v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital
DOCKET NO. 2015-0563-CONS (12/29/2015)

PRIMARY ISSUES: Whether Grievants proved that Respondent violated any law, rule, policy or regulation in this case.

SUMMARY: Grievants were employed as Health Service Workers at the William R. Sharpe, Jr. Hospital, and are now employed as Health Service Assistants. Delores McVay is no longer a party to t action. Matthew Collins and Rebecca Blake received a letter on or about September 16, 2014, informing them that they had been selected for Health Service Assistant positions. Grievants do not dispute that their letter advised them that Respondent would be contacting them at a later date regarding their salary and starting date. The Health Service Assistant positions were not vacant because numerous WV-11 forms were required to be processed to vacate the positions. Notwithstanding Respondent’s letter regarding the promotion, Grievants argued that they believed that they were already promoted into the Health Service Assistant positions in September 2014. The record supported a finding that the letter clearly informs each employee that Respondent will contact them regarding a starting date. Grievants failed to meet their burden of proof and demonstrate by a preponderance of the evidence that Respondent violated any law, rule, policy or regulation in this matter.

KEYWORDS: Denied Representation; Predetermination Conference; Written Reprimand; Inappropriate Physical Restraint; Suspension; Back Pay; Overtime

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

DOCKET NO. 2014-1784-CONS (12/16/2015)

PRIMARY ISSUES: Whether Grievant demonstrated that Respondent should remove the written reprimand from his personnel file. Whether Grievant establish that he was denied his right of representation at the predetermination conference.

SUMMARY: Grievant is employed at Sharpe Hospital as a Health Service Worker. In July 2014, a patient at Sharpe Hospital became violent and out-of-control. During the struggle with the patient, Grievant placed his arm near the patient's neck. The patient claimed he was being choked. Adult Protective Services concluded that Grievant's hold on the patient amounted to physical abuse. Grievant received a written reprimand regarding the improper hold. Grievant alleges that he was denied representation at his predetermination meeting prior to being issued the reprimand. The record did not support a ruling that Grievant was denied representation at the predetermination conferences conducted by Sharpe Hospital. Grievant was suspended, without pay, pending the completion of the Adult Protective Services' investigation. Since Grievant was disciplined by way of a written reprimand, he was paid for the period of time involving his suspension. However, he was not compensated for scheduled overtime for the relevant time frame. The record supported a finding that Grievant be paid for this scheduled overtime. Finally, Respondent met its burden of proof and demonstrated that a written reprimand was appropriate discipline in this case. The record also supported a ruling that the reprimand should be removed from his personnel file, if it still exists in that file. According, this grievance is granted, in part, and denied, in part.

KEYWORDS: Motion to Dismiss; temporary exempt employee; standing

CASE STYLE: Lockwood v. Department of Health and Human Resources/Welch Community Hospital

DOCKET NO. 2016-0419-DHHR (12/18/2015)

PRIMARY ISSUES: Whether Grievant has standing to file a grievance.

SUMMARY: Grievant was hired as a 1,000 hour temporary exempt employee. Temporary employees are not afforded the statutory right to file a grievance. Accordingly, this grievance is DISMISSED.

KEYWORDS: Termination; Gross Negligence; Medical Emergency; Nurse Responsibility; Nursing Report

CASE STYLE: Jones v. Department of Veterans Assistance
DOCKET NO. 2015-1150-CONS (12/9/2015)

PRIMARY ISSUES: Whether Respondent demonstrated good cause for Grievant's dismissal.

SUMMARY: Grievant was dismissed from her employment by Respondent for gross negligence when she failed to attend to the medical needs of a resident whose blood pressure was extremely high, failed to properly document the administration of medication, and failed to properly report the medical conditions of three patients to the next shift nurse. Respondent proved the most serious charges against Grievant, and that it had good cause for her dismissal.

KEYWORDS: Pay Increase; Dismiss; Hartley; Jurisdiction; Circuit Court Order

CASE STYLE: Mills v. Department of Health and Human Resources/Mildred Mitchell-Bateman Hospital
DOCKET NO. 2015-0945-DHHR (12/1/2015)

PRIMARY ISSUES: Whether the Grievance Board lacks jurisdiction to hear this grievance.

SUMMARY: Grievant is employed by Respondent as an Interpreter for the Deaf at Mildred Mitchell-Bateman Hospital. Grievant asserts that she was improperly denied a pay increase pursuant to a State Board of Personnel proposal, and that such was also discriminatory. Respondent denies Grievant's claims and asserts that the Grievance Board lacks jurisdiction to hear this matter pursuant to West Virginia Code § 5-5-4a, and as Grievant is seeking to enforce a circuit court order. Grievant is seeking a pay increase granted by Order of the Circuit Court of Kanawha County, West Virginia. The Grievance Board lacks jurisdiction to enforce a Circuit Court order, or to compel compliance therewith. Further, West Virginia Code § 5-5-4a specifically exempts pay increases granted pursuant thereto from the grievance process. Therefore, Respondent's Motion to Dismiss should be granted, and this grievance, DISMISSED.