

**WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD**

**SYNOPSIS REPORT**

**Decisions Issued in February 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.

**TOPICAL INDEX**  
**HIGHER EDUCATION EMPLOYEES**

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**KEYWORDS:** SALARY; FACULTY HANDBOOK; GREENBOOK; PROMOTION; RELIEF; NEW HIRES; INVERSION; SALARY ADJUSTMENT; POLICY VIOLATION

**CASE STYLE:** MUELLERLEILE v. MARSHALL UNIVERSITY  
DOCKET NO. 2010-0231-CONS (2/27/2012)

**PRIMARY ISSUES:** Whether Grievant was entitled to have her salary adjusted when a new faculty member was hired at a salary higher than Grievant's.

**SUMMARY:** Grievant asserted that Respondent acted in violation of The Greenbook when it hired a new faculty member in her Department at a salary in excess of her salary, without consulting her. Grievant further asserted that had she been advised of the situation, she could have withdrawn her promotion application, so that any salary adjustment given to her would have been made before her promotion, resulting in a higher salary after her promotion. Even though The Greenbook does not require that the salaries of faculty be adjusted when new faculty are hired at an enhanced salary, Respondent adjusted Grievant's salary so that it exceeded that of the new faculty member. No further relief can be granted. Grievant was, in fact, advised prior to her promotion of the possibility that new faculty would be offered higher salaries, and Grievant had already been promoted by the time the offer at issue had been made. Accordingly, this grievance is DENIED.

**TOPICAL INDEX**  
**COUNTY BOARDS OF EDUCATION**  
**SERVICE PERSONNEL**

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**KEYWORDS:** DISMISSAL ORDER; STANDING; EMPLOYER; EMPLOYEE; JURISDICTION

**CASE STYLE:** STILGENBAUER v. WOOD COUNTY BOARD OF EDUCATION  
DOCKET NO. 2012-0634-WOOED (2/27/2012)

**PRIMARY ISSUES:** Whether Grievant can pursue a grievance against an agency that is not her employer.

**SUMMARY:** Grievant filed a grievance after not being hired for a position with Respondent. The grievance procedure was put in place to provide a mechanism for resolution of problems which arise in the workplace, between employees and their employer. It does not, by statute, provide a mechanism for a grievant to bring a grievance against a state agency that is not her employer. Grievant was not an employee of Respondent, and cannot file a grievance. Accordingly, the grievance is DISMISSED.

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**KEYWORDS:** SUSPENSION; DISCRIMINATION; INSUBORDINATION; DISPARATE TREATMENT; EMPLOYEE CODE OF CONDUCT; MITIGATION

**CASE STYLE:** BRECK v. PUTNAM COUNTY BOARD OF EDUCATION  
DOCKET NO. 2011-1542-PUTED (2/13/2012)

**PRIMARY ISSUES:** Whether Grievant engaged in conduct constituting insubordination and whether his ten-day suspension was justified.

**SUMMARY:** Grievant received a ten-day suspension for insubordination for the conduct he displayed toward his supervisor during an argument stemming from a work assignment. Respondent met its burden of proving insubordination on the part of the Grievant. Grievant failed to offer sufficient evidence in support of mitigating his suspension. Further, Grievant failed to meet his burden of proving his claim of disparate treatment. Therefore, this grievance is DENIED.

**TOPICAL INDEX**  
**STATE EMPLOYEES**

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**KEYWORDS:** COMPENSATION; WORK TIME; SCHEDULE; HOURS; GRIEVANCE PROCEEDING; LEVEL ONE HEARING

**CASE STYLE:** FRAME v. DEPARTMENT OF HEALTH AND HUMAN RESOURCES/WILLIAM R. SHARPE, JR. HOSPITAL  
DOCKET NO. 2011-0877-DHHR (2/29/2012)

**PRIMARY ISSUES:** Whether Grievant should be compensated for attending a grievance hearing on a day that she was not scheduled to work.

**SUMMARY:** Grievant challenges Respondent's disapproval of her request to be paid for the time she spent at a level one grievance hearing related to a previous grievance. Respondent's policy makes clear that grievance hearings scheduled outside the employee's normally scheduled work hours are not compensable work time. The proceeding was scheduled by Respondent's level one designee during regular business hours. No objection to the hearing date was made by Grievant nor was a request to schedule during her work hours made prior to the hearing. No violation of any applicable statute related to scheduling of grievance hearings was demonstrated. In addition, Grievant suffered no loss of pay to attend her hearing. Accordingly, this grievance is denied.

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**KEYWORDS:** DAY SHIFT; SHIFT DIFFERENTIAL; PAY; POLICY; HOURS

**CASE STYLE:** GOFF v. DEPARTMENT OF HEALTH AND HUMAN RESOURCES/WILLIAM R. SHARPE, JR. HOSPITAL  
DOCKET NO. 2010-0524-DHHR (2/14/2012)

**PRIMARY ISSUES:** Whether Respondent abused it discretion by not paying Grievant shift differential for time that she worked past her regularly scheduled shift.

**SUMMARY:** The Bureau for Behavioral Health and Health Facilities adopted a shift differential pay policy in December 2002, the purpose of which was to provide a one dollar per hour pay differential when qualified non-exempt staff worked eight hours, provided that they do so one full shift during the hours of 3:00 p.m. to 11:00 p.m., or 11:00 p.m. to 7:00 a.m. This policy has since been revised to allow for other shifts to receive the pay differential. In an unusual turn of events, Grievant was able to establish by a preponderance of the evidence that Respondent's old policy on shift differential pay was clearly wrong. Accordingly, this grievance is GRANTED.

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**KEYWORDS:** SUSPENSION; PROGRESSIVE DISCIPLINE; DUTIES; RESPONSIBILITIES; EMPLOYEE PERFORMANCE APPRAISAL (EPA); INSPECTION; VOICE MAIL

**CASE STYLE:** WHITTINGTON v. DIVISION OF CORRECTIONS/MOUNT OLIVE CORRECTIONAL COMPLEX

DOCKET NO. 2012-0115-MAPS (2/2/2012)

**PRIMARY ISSUES:** Whether Grievant's three day suspension was in compliance with progressive discipline.

**SUMMARY:** On July 7, 2011, Grievant received a three day suspension without pay. Respondent asserts that Grievant's three day suspension was consistent with progressive discipline. Grievant asserts that Respondent failed to prove that he did not comply with Policy Directives, Operational Procedures, or Post Orders. Respondent has met its burden of proof in demonstrating that Grievant continuously violated West Virginia Division of Corrections Policy Directive 129.00. Grievant was given an improvement period and received a written warning, as well as warnings of the areas needing improvement in Employee Performance Appraisals, before he received the three day suspension. Grievant's three day suspension was in compliance with progressive discipline. Accordingly, this grievance is DENIED.

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**KEYWORDS:** TERMINATION; FALSIFICATION; GOOD CAUSE; LEAVE ABUSE; PHYSICIAN'S EXCUSE; IMPROVEMENT PLAN

**CASE STYLE:** MCMILLION v. DEPARTMENT OF HEALTH AND HUMAN RESOURCES/WILLIAM R. SHARPE, JR. HOSPITAL

DOCKET NO. 2011-1819-DHHR (2/14/2012)

**PRIMARY ISSUES:** Whether Grievant was terminated for good cause for falsifying a doctor's excuse.

**SUMMARY:** Grievant was charged with falsifying a physician's absence excuse, violating Respondent's policy on leave abuse, and violating the terms of her plan of improvement. 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.

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**KEYWORDS:** TERMINATION; SUSPENSION; SEXUAL HARASSMENT;  
ROMANTIC RELATIONSHIP; EVALUATION; HOSTILE WORK  
ENVIRONMENT; FAVORITISM; MITIGATION

**CASE STYLE:** VANCE v. REGIONAL JAIL AND CORRECTIONAL FACILITY  
AUTHORITY/SOUTHWESTERN REGIONAL JAIL

DOCKET NO. 2011-1705-MAPS (2/22/2012)

**PRIMARY ISSUES:** Whether Respondent proved Grievant created a hostile work environment by having a relationship with subordinates.

**SUMMARY:** Respondent suspended Grievant while conducting an investigation into charges against him and then terminated Grievant's employment. Grievant was dismissed for allegedly failing to timely report a sexual harassment claim, making a false report to concerning EEO issues, engaging in improper relationships with subordinates that led to sexual harassment and showing favoritism toward one of these subordinates. This conduct is alleged to violate a number of RJCFA policies rules and regulations. Grievant admits to having romantic relationships with two subordinates and participating in the evaluation and a promotion interview involving one of the women with whom he was involved. However, Grievant argues that the relationships did not lead to sexual harassment and he showed no favoritism to the subordinate he was involved with. Grievant acknowledges that he was guilty of bad judgement in some of his actions but believes dismissal is too severe a penalty given his long successful career and the nature of his offenses. Respondent proved that Grievant violated agency policy but failed to demonstrate that Grievant was guilty of sexual harassment. Given the totality of the circumstances, termination of Grievant's employment was disproportionate to the offenses he was proven to commit and mitigation of the discipline is appropriate . Consequently, the grievance is granted in part and denied in part.

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**KEYWORDS:** TERMINATION; VERBAL ABUSE; NEGLECT; RESIDENT ABUSE; MISCONDUCT; GOOD CAUSE

**CASE STYLE:** KEEFER v. DEPARTMENT OF HEALTH AND HUMAN RESOURCES/LAKIN HOSPITAL

DOCKET NO. 2011-1611-DHHR (2/17/2012)

**PRIMARY ISSUES:** Whether Respondent presented credible evidence to justify the termination of Grievant's employment based on the charge of patient abuse and continued disciplined actions.

**SUMMARY:** Respondent asserts that Grievant's actions were misconduct of a substantial nature directly affecting the rights and interest of the public, therefore constituting good cause to terminate Grievant. Grievant asserts that she did not verbally abuse a patient. Grievant argues that she should not have been terminated because Respondent did not prove that she verbally abused the patient. Respondent's termination of Grievant was not solely based upon its finding of verbal abuse, but upon Grievant's previous disciplinary actions as well. Due to the sensitive care of patients at Respondent's facility, Respondent has met its burden of proof in demonstrating that Grievant's continued actions constitute misconduct of a substantial nature directly affecting the rights and interest of the public. Accordingly, this grievance is DENIED.