

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in February 2013

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
COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

KEYWORDS: Posted Position; Qualifications; Certification; Experience; Abuse of Discretion

CASE STYLE: Paolo, Jr. v. Hancock County Board of Education and Alyssa Mick, Intervenor
DOCKET NO. 2012-0311-HanED (2/11/2013)

PRIMARY ISSUES: Whether the Respondent is in violation of West Virginia Code § 18A-4-7a or that Grievant was a victim of unlawful discrimination.

SUMMARY: Grievant argued he should have been selected for a middle school assistant principal position at Oak Glen Middle School in Hancock County. Grievant was the assistant principal at Weir Middle School in Hancock County and requested to be transferred to Oak Glen by written application. Grievant and six other applicants were interviewed for the position by an interview committee of five people. The committee met and selected Alyssa Mick to fill the position at Oak Glen Middle School. Grievant argues Hancock County Board of Education abused its discretion in the selection process by giving more weight to the interview process than Grievant's experience as an administrator in their school system.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
SERVICE PERSONNEL

KEYWORDS: Guidelines for Substitute Teachers and Service Personnel; Substitute Service Contract; Contract Violation; Requested Exemptions; Exempt from Certain Schools; Declines Service Calls

CASE STYLE: Cox v. Boone County Board of Education
DOCKET NO. 2012-0942-BooED (2/25/2013)

PRIMARY ISSUES: Whether Grievant was in violation of the GCA policy and whether her contract was wrongfully terminated as a result.

SUMMARY: Respondent has proven by a preponderance of the evidence that Grievant was in violation of the Guidelines for Substitute Teachers and Service Personnel policy and that her contract was not wrongfully terminated as a result thereof.

KEYWORDS: Willful Neglect of Duty; Insubordination; End of Year Bus Check In; Inspection; Failure to Comply

CASE STYLE: Graham v. Wetzel County Board of Education
DOCKET NO. 2013-0014-WetED (2/15/2013)

PRIMARY ISSUES: Whether Grievant's actions were insubordinate.

SUMMARY: Grievant is a bus operator employed by the Wetzel County Board of Education. He was suspended for failing to complete a required check-in procedure implemented by Respondent. Grievant had previously been admonished for failing to complete this same bus check-in process. Respondent met its burden of proof in establishing that Grievant was insubordinate due to his failure to comply with a reasonable directive. Grievant failed to establish that mitigation of the punishment was appropriate. This grievance is denied.

KEYWORDS: Written Reprimand; Timely Filed; Affirmative Defense

CASE STYLE: Graham v. Wetzel County Board of Education

DOCKET NO. 2011-1648-CONS (2/14/2013)

PRIMARY ISSUES: Whether this grievance was timely filed at level one.

SUMMARY: A letter of reprimand was issued by Respondent to Grievant on April 2, 2010. The grievance contesting this discipline was filed on May 9, 2011. Respondent raises the defense of timeliness. Respondent was able to demonstrate by a preponderance of the evidence that the issues raised in this grievance were not timely filed at level one.

TOPICAL INDEX
STATE EMPLOYEES

<u>KEYWORDS:</u>	Insubordination; Uncooperative; Job Duties; Non-Discriminatory Hostile Workplace Harassment; Electronic Recording
<u>CASE STYLE:</u>	<u>Dyer v. Office of Administrative Hearings</u> DOCKET NO. 2013-0548-DOT (2/12/2013)
<u>PRIMARY ISSUES:</u>	Whether Respondent established the insubordination charge against Grievant and whether her suspension for insubordination was based upon just cause.
<u>SUMMARY:</u>	Grievant was suspended for insubordination arising from her conduct during a work-related meeting with her immediate supervisor and Deputy Director wherein Grievant allegedly “became uncooperative and left the room . . . effectively refusing to communicate with [her] supervisor regarding work matters.” Although the supervisors described a scenario in their testimony which supported these allegations, Grievant produced a tape recording of at least part of the conversation that took place during this meeting. The recording demonstrated that, in fact, Grievant did cooperate, providing responsive answers to her supervisor’s questions, and stating specific information when asked for an explanation. Therefore, the charge of insubordination was not proven.

<u>KEYWORDS:</u>	Leave of Absence; Certificate of Candidacy; Paid Public Office; Board of Education Members
<u>CASE STYLE:</u>	<u>Schwarz v. Department of Health and Human Resources/Bureau for Children and Families</u> DOCKET NO. 2012-0816-DHHR (2/20/2013)
<u>PRIMARY ISSUES:</u>	Whether a county board of education member is a paid public office pursuant to W. Va. Code §§ 29-6-29 (g), and West Virginia Division of Personnel Administrative Rule 143 C.S.R.1 § 16.
<u>SUMMARY:</u>	Grievant filed a certificate of candidacy for the office of Mason County Board of Education. Because Grievant is a classified state employee, Respondent required her to take an unpaid leave of absence while she ran for a “paid public office” as required by state statute and rule. Grievant argues that this office is not actually a paid office as contemplated by statute because board of education members do not receive a salary. County board of education members receive pay for attending meetings and are paid public officials. The grievance is DENIED.

KEYWORDS: Probationary Employment; Workplace; Sexual Harassment; Unsatisfactory Performance; Confidentiality Agreement; Personal Life; Professional Responsibilities; Job Performance; Child Abuse; Reporting Requirements

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

DOCKET NO. 2011-1855-DHHR (2/15/2013)

PRIMARY ISSUES: Whether Grievant prove that her probationary employment met agency standards. Whether Grievant proved she was dismissed in reprisal for her reporting suspected child abuse and suspected workplace sexual harassment.

SUMMARY: Respondent dismissed Grievant from her probationary position, claiming that Grievant was having difficulty fitting in with the remaining staff and separating her personal experiences from her work as a Child Protective Services Worker (“CPSW”). Grievant was not able to prove that her performance was satisfactory to require that she remain employed past her probationary period. Additionally, Grievant was unable to prove that she was dismissed as reprisal for her protected activities of reporting suspected child abuse and suspected workplace sexual harassment.

KEYWORDS: Relief; Moot; Remedy Wholly Unavailable; Non-Employee, Non-Selection

CASE STYLE: Keenan v. Division of Corrections/Mount Olive Correctional Complex
DOCKET NO. 2012-0716-MAPS (2/21/2013)

PRIMARY ISSUES: Motion to Dismiss

SUMMARY: Grievant filed this grievance challenging his non-selection by Respondent for the position of Correctional Programming Specialist, Senior. Subsequent to the interview process, (twice) an employee other than Grievant was deemed more qualified for the position. Grievant asserts he should have been awarded the position rather than reposting of the job. Grievant argues that the selection process was flawed in various ways. Respondent maintains its administrative decisions with regard to this matter were not improper, nor arbitrary and capricious. Further, Respondent avers this matter is moot in that Grievant has resigned from employment with Respondent. Grievant failed to establish facts essential to his contentions and allegations. Grievant did not present evidence at the level three hearing. Grievant is no longer an employee of Respondent. Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not proper issues before the Public Employees Grievance Board. Because there is no actual relief to be granted, any ruling issued regarding the questions raised by this grievance would merely be an advisory opinion. This Grievance Board does not issue advisory opinions, therefore this grievance is dismissed.

KEYWORDS: Sleeping on Duty; Witness Testimony; Fact Witnesses; No Evidence; Good Cause

CASE STYLE: Elkins v. Regional Jail and Correctional Facility Authority/Southwestern Regional Jail
DOCKET NO. 2013-0178-MAPS (2/8/2013)

PRIMARY ISSUES: Whether Respondent proved it had good cause for terminating Grievant for allegedly sleeping on the job.

SUMMARY: Respondent terminated Grievant from his position as a Correctional Officer II. Respondent provided neither documentary evidence, testimony from the termination decision-maker, nor testimony from the investigator to justify the termination. As proof of the alleged wrongdoing, Respondent presented only the testimony of Grievant's accuser. Grievant denies all allegations. Neither the testimony of the accuser nor the Grievant's testimony can be found completely credible. Therefore, it being no more likely than not that the allegations are true, Respondent has failed to meet its burden of proof. Accordingly, the grievance is granted.

KEYWORDS: Time Limits; Written Notice; Failure to Schedule a Level One

CASE STYLE: Bishop, et al. v. Department of Veterans Assistance
DOCKET NO. 2013-0185-CONSDEF (2/7/2013)

PRIMARY ISSUES: Whether Respondent defaulted by not scheduling a level one conference within the time period required by the applicable statutory provisions, and by failing to send written notice.

SUMMARY: The default provisions require that written notice of the level one conference be given, and that the level one conference be held within ten days of receipt of a grievance by Respondent. No written notice was provided to any of the Grievants of the level one conference, and no level one conference was scheduled within ten days of receipt of the grievance. Respondent defaulted.

KEYWORDS: Timeliness

CASE STYLE: Dyer v. Office of Administrative Hearings
DOCKET NO. 2013-0885-DOT (2/27/2013)

PRIMARY ISSUES: Whether Grievant failed to timely file her expedited Level Three grievance.

SUMMARY: Grievant filed her expedited Level Three grievance fifteen days after her suspension ended. Grievant contends that her filing was timely, arguing that the statute allows for the filing of a grievance fifteen days from any time during the suspension, or even from the last day of such. Respondent asserts that the grievance was untimely filed as it was filed more than fifteen days after the Grievant had been notified of her suspension, and, as such, has moved to dismiss this grievance. For the reasons more fully set out below, Respondent's Motion to Dismiss is granted.

KEYWORDS: Vacancy; Job Posting; Qualifications; Relevant Experience; Job Classification; Salary; Arbitrary and Capricious

CASE STYLE: Hill v. Division of Highways
DOCKET NO. 2012-0154-DOT (2/5/2013)

PRIMARY ISSUES: Whether Respondent's determination that the successful applicant was the best qualified applicant for the position was arbitrary, capricious, or unlawful.

SUMMARY: Grievant is classified as a Transportation Worker 3 Craft Worker with the Department of Transportation/Division of Highways, Respondent. Grievant applied for a mail runner position with Respondent in District Nine and was not the successful applicant. Subsequent to the interview process, an employee, other than Grievant, was awarded the posted position. Grievant has not established by a preponderance of the evidence that Respondent's selection was improper. Grievant failed to demonstrate that the selection decision made was arbitrary, capricious or clearly wrong. Most importantly, Grievant did not demonstrate he was the most qualified applicant. Accordingly this grievance is DENIED.