

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in September 2011

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: SELECTION; AGE DISCRIMINATION; EXPERIENCE; POSTING; EXEMPT POSITION; ARBITRARY AND CAPRICIOUS

CASE STYLE: KISNER v. WEST VIRGINIA UNIVERSITY
DOCKET NO. 2011-0695-WVU (9/2/2011)

PRIMARY ISSUES: Whether Grievant demonstrated the selection process was flawed or that she was the victim of discrimination.

SUMMARY: Grievant has been employed by Respondent for 30 years, and is a Food Service Supervisor at Boreman Hall. She asserted she was not hired for a posted retail Food Service Manager II position because her salary, acquired through her many years of service at WVU, would have been higher than the successful applicant, and this would have cut into the profit of the retail operation. She asserted this was indirect age discrimination. Grievant did not prove discrimination, nor did she demonstrate a flaw in the selection process, or that the selection decision was arbitrary and capricious. Grievant's further assertion that WVU Policy required that she be placed in the position over an outside candidate was not applicable, because this was an exempt position, and the Policy applies to non-exempt positions. Accordingly, this grievance is DENIED.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

KEYWORDS: PLANNING PERIOD; COMPENSATION; TESTING; RELIEF; STUDENTS

CASE STYLE: BRAUN v. BROOKE COUNTY BOARD OF EDUCATION
DOCKET NO. 2011-0674-BROED (9/9/2011)

PRIMARY ISSUES: Whether Grievant should be compensated for administering an achievement test as required by Respondent during her planning period.

SUMMARY: Grievant complains that she was asked by Respondent to administer an achievement test during her planning periods. The plain meaning of W. Va. Code § 18A-4-14 requires that each teacher must be provided with at least one planning period of the length of the usual class period in the school. A teacher cannot be required to give up his or her planning period. However, Grievant refused to administer the test and did not compromise any of her planning period time. Grievant did not meet her burden of proof and demonstrate that Respondent required her to give up her planning period. In addition, the relief requested is speculative or premature. Accordingly, the undersigned is without authority to address issues which call for such relief. Accordingly, this grievance is DENIED.

KEYWORDS: REDUCTION IN FORCE; RIF; RETALIATION; REPRISAL;
POSTING; QUALIFICATIONS; CERTIFICATIONS;

CASE STYLE: FRIEND, SR. v. NICHOLAS COUNTY BOARD OF EDUCATION
DOCKET NO. 2010-1409-NICED (9/6/2011)

PRIMARY ISSUES: Whether Grievant proved that Respondent's RIF of the full-time Assistant Principal position was arbitrary and capricious.

SUMMARY: Respondent eliminated Grievant's full-time Assistant Principal Position at Richwood High School at the end of the 2009-2010 school year. A full-time Social Studies teacher for grades 9-12 at Richwood High School retired at the end of the 2009-2010 school year. Based on student enrollment and budget concerns, Respondent decided to eliminate the full-time Social Studies position and create a joint position of Half-Day Assistant Principal/Half-Day Social Studies Teacher for the 2010-2011 school year. The vacancy posting required certifications in West Virginia Secondary Principal Certification (9-12) and Secondary Social Studies Certification (9-12). Grievant is certified to teach Social Studies in grades 1-9. Grievant argues that Respondent should have posted the vacancy with the requirement of certification in grades 7-9 instead of 9-12 so that he would have met the qualifications. Grievant asserts that the elimination of the full-time Assistant Principal position and the requirement for Social Studies certification in grades 9-12 for the vacant joint position were intentional acts of retaliation. Respondent argues that it reasonably exercised its discretion in a manner that was not arbitrary and capricious. Grievant failed to demonstrate that Respondent's decision to require Social Studies certification in grades 9-12 in the new joint position was unreasonable and in a manner that was arbitrary and capricious. Grievant failed to prove that Respondent's elimination of the full-time Assistant Principal position was arbitrary and capricious. Grievant failed to establish reprisal by Respondent. Therefore, this grievance is DENIED.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
SERVICE PERSONNEL

KEYWORDS: DISMISSAL ORDER; RELIEF; TERMINATION; WILLFUL NEGLECT OF DUTY; WORKERS' COMPENSATION; DOCTOR'S RESTRICTIONS

CASE STYLE: MICHAEL-PLATI v. HAMPSHIRE COUNTY BOARD OF EDUCATION
DOCKET NO. 2010-0954-HAMED (9/21/2011)

PRIMARY ISSUES: Whether the grievance stated a claim upon which relief could be granted.

SUMMARY: Grievant was off of her job as a classroom aide beginning September 23, 2005, continued to be off work for the following two years while on Workers' Compensation. Respondent provided Grievant with three different aide positions at three different schools between February of 2008 and September of 2008 in an attempt to accommodate Grievant. Each time, Grievant provided a medical statement that she could not perform the duties of the position. Grievant did not return to work at the beginning of the 2009-2010 school year due to a compensable injury. Grievant's refusal to fulfill her contractual role as a classroom aide constituted willful neglect of duty. Grievant has presented no claim on which relief can be granted. Accordingly, Respondent's Motion to Dismiss is granted and this grievance is DISMISSED.

KEYWORDS: EXTRA DUTY ASSIGNMENTS; SENIORITY; TRIP; ROTATION LIST

CASE STYLE: HAINES v. HAMPSHIRE COUNTY BOARD OF EDUCATION
DOCKET NO. 2011-0484-HAMED (9/8/2011)

PRIMARY ISSUES: Whether the change made by Respondent to the procedure for making extra-duty assignments amounted to an alternative procedure requiring bus operator approval.

SUMMARY: Grievant believes she was denied an extra-duty assignment when Respondent changed its procedure for making extra-duty assignments. Both the old method used by Respondent and the new method used fulfilled the statutory requirement of assigning the trips by seniority on a rotating basis. Neither of these methods was an alternative procedure which required the approval of the bus operators. Accordingly, this grievance is DENIED.

KEYWORDS: REMAND; DISCRIMINATION; FAVORITISM; CONTRACT;
SIMILARLY SITUATED

CASE STYLE: TONEY v. RALEIGH COUNTY BOARD OF EDUCATION

DOCKET NO. 07-41-365R1 (9/9/2011)

PRIMARY ISSUES: Was it discriminatory or a uniformity violation for Grievant to be employed under a 240-day contract while the comparison employee was employed at the same time under a 261-day contract.

SUMMARY: Grievant, a 240-day employee, argues that she is similarly situated to an employee working under a 261-day contract. The main issue on remand is whether the comparison employee, Gloria Freeman, was employed at the same time Grievant was employed. The parties agree that Ms. Freeman was employed under a 261-day contract for the same position and at the same time Grievant was employed. The record established that Ms. Freeman was performing like assignments and duties to Grievant at that time. Grievant has met her burden that she was subjected to discrimination. The remaining directive of the remand order is a determination of whether relief is warranted, and, if so, what is the appropriate remedy. Grievant is entitled to a 261-day contract, with back pay and benefits for a period of one year prior to the filing of the grievance. Accordingly, this grievance is GRANTED on remand.

KEYWORDS: SUMMER ASSIGNMENTS; EXTENDED YEAR; SENIORITY; AIDE;

CASE STYLE: HAYHURST v. WEBSTER COUNTY BOARD OF EDUCATION

DOCKET NO. 2010-1456-WEBED (9/26/2011)

PRIMARY ISSUES: Whether Grievant was entitled to a summer aide assignment.

SUMMARY: Grievant is employed by the Webster County Board of Education as a 200-day aide. She alleges that the Respondent employed, in summer 2010 assignments, two aides with less regular and summer seniority than Grievant. The two aides that Grievant identifies were properly restored to the same positions for the summer of 2010 that they held in the summer of 2009. Grievant did not meet her burden to demonstrate that Respondent breached the agreement by which her prior grievance was settled. Grievant was given the opportunity to bid on all summer 2010 aide positions; however, she chose not to apply for an aide position at Webster Springs Elementary/Middle School. Accordingly, this grievance is DENIED.

KEYWORDS:

SUSPENSION; SENIORITY DATE; BUS OPERATOR
CERTIFICATION; CONTRACT

CASE STYLE:

SIMPSON v. TAYLOR COUNTY BOARD OF EDUCATION

DOCKET NO. 2011-1305-TAYED (9/30/2011)

PRIMARY ISSUES:

Whether Grievant continued to accumulate seniority during the summer during the time he was not certified to operate a bus, but was not required to report to work and was not under suspension by the board of education.

SUMMARY:

Grievant, a bus operator, was suspended through the end of the 2007-2008 school year following an accident, and his school bus operator certification was suspended for this period also. Further, his school bus operator certification was not renewed until he had completed additional training, which he did in mid-August 2008. Grievant returned to work on August 21, 2008, fully certified to operate a bus. Respondent adjusted Grievant's seniority date by 204 days, reflecting every day between January 30 and August 20, 2008. Grievant argued Respondent could not adjust his seniority date for any period not covered by his suspension, and that his suspension ended on the last day bus operators reported to work for the 2007-2008 school year, on June 10, 2008. The applicable statutory language provides for seniority to be adjusted during any period of time when an employee is suspended without pay. The suspension ended on the last day of the school year, and that is the last day that could be used in the calculation of the adjustment of Grievant's seniority. Accordingly, this grievance is GRANTED in part, and DENIED in part.

TOPICAL INDEX
STATE EMPLOYEES

KEYWORDS: CLASSIFICATION; POSITION DESCRIPTION FORM (PDF); PREDOMINATE DUTIES; DISCRIMINATION; PAY GRADE; SALARY; REALLOCATION; NATURE OF WORK

CASE STYLE: CABELL, ET AL. v. DIVISION OF HIGHWAYS AND DIVISION OF PERSONNEL
DOCKET NO. 2010-1552-CONS (9/16/2011)

PRIMARY ISSUES: Whether the positions held by the Grievants are properly classified and if Grievants were subjected to pay discrimination.

SUMMARY: Grievants contend that their positions are misclassified as Investigator 2. They believe that they should be in the Investigator 3 classification because they perform the most complex and complicated investigations conducted by the Division of Highways. Respondents do not dispute that Grievants conduct complex and complicated investigations. They note that, by and large, Grievants perform the entire gamut of investigations undertaken by the DOH Claims Section. Division of Personnel finds that the classification of Investigator 3 is reserved for positions which are assigned the most complex and complicated investigations to the exclusion of less complex and routine tasks. Because the DOH has not chosen to assign the most complex investigations to specific individuals no employees have these assignments as their predominate duties. Grievants' positions are appropriately in the Investigator 2 classification. Grievants argue that they have been subjected to pay discrimination because there are DOH employees who are in Investigator 1 positions who are paid more than Grievants. They also note that DOH employees in Investigator 2 positions are paid more than Grievants even though these employees were hired after Grievants and perform similar duties. Grievants and all of the other Investigators they point to are paid within the pay grade assigned to their particular classification. Therefore, Grievants are not being subjected to pay discrimination within the state compensation system. See, *Largent v. West Virginia Division of Health and Division of Personnel*, 192 W. Va. 239, 452 S.E.2d 42 (1994). Accordingly, the grievance is DENIED.

KEYWORDS: DISMISSAL ORDER; RELIEF; ADVISORY OPINION; MOOT;
RETALIATION

CASE STYLE: WELLS v. HUMAN RIGHTS COMMISSION

DOCKET NO. 2011-0025-HRC (9/20/2011)

PRIMARY ISSUES: Whether this grievance should be dismissed because the relief requested by the Grievant is moot due to his dismissal from employment with Respondent.

SUMMARY: The issues of retaliation raised in this grievance is a moot point since Grievant is no longer an employee of Respondent. Under these circumstances, there is no additional relief that could be granted by the Grievance Board even if Grievant were to prevail on the merits. Accordingly, the grievance is dismissed.

KEYWORDS: DISMISSAL ORDER; RELIEF; ADVISORY OPINION; MOOT;
WRITTEN REPRIMAND; RETALIATION

CASE STYLE: WELLS v. HUMAN RIGHTS COMMISSION

DOCKET NO. 2011-0156-HRC (9/20/2011)

PRIMARY ISSUES: Whether this grievance should be dismissed because the relief requested by the Grievant is moot due to his dismissal from employment with Respondent.

SUMMARY: The issues of a written reprimand, and retaliation raised in this grievance are a moot point since Grievant is no longer an employee of Respondent. Under these circumstances, there is no additional relief that could be granted by the Grievance Board even if Grievant were to prevail on the merits. Accordingly, the grievance is dismissed.

KEYWORDS:

PAY GRADE; HOUSING BENEFIT; SALARY; SIMILARLY SITUATED; PUCCIO MEMORANDUM; DISCRIMINATION

CASE STYLE:

HENDLEY v. DEPARTMENT OF ENVIRONMENTAL PROTECTION/DIVISION OF WATER AND WASTE MANAGEMENT
DOCKET NO. 2010-1545-DEP (9/9/2011)

PRIMARY ISSUES:

Whether Grievant proved that he is similarly situated to three DNR employees who received exceptions from the Governor's Office to include the housing benefit amount in calculating base salary, or that he was a victim of discrimination.

SUMMARY:

Grievant was previously employed by the Division of Natural Resources as a Park Superintendent II. As part of his compensation package as a park superintendent with DNR, Grievant lived in a house provided by DNR on State owned property in the area he was employed. This housing benefit amounted to six thousand dollars (\$6,000) annually. When Grievant transferred from that position to his current employer, Respondent, the \$6,000 housing benefit amount was not included in calculating his base salary. Grievant asserts that his housing benefit amount of \$6,000 while working for DNR, should have been included in calculating his base salary when he accepted a job for Respondent. Grievant argues that similarly situated employees for DNR received promotions and were allowed to include the housing benefit amount in calculating base salary. Respondent asserts that DNR received three exceptions from the Governor's Office to allow the housing benefit amount to be included in base salary as a recruitment incentive. Grievant has failed to demonstrate that he is similarly situated to the DNR employees who received exceptions from the Governor's Office to include the housing benefit amount in calculating base salary, or that he was a victim of discrimination. Therefore, this grievance is DENIED.

KEYWORDS: PROBATIONARY EMPLOYEE; CLASSIFIED SERVICE; VACANCY; INTERVIEW; REGISTER; TRANSFER

CASE STYLE: CECIL v. DEPARTMENT OF HEALTH AND HUMAN RESOURCES/WELCH COMMUNITY HOSPITAL
DOCKET NO. 2010-1601-DHHR (9/20/2011)

PRIMARY ISSUES: Whether Grievant had a right to be interviewed, and if Respondent was clearly wrong or acted in an arbitrary and capricious manner in denying her an interview.

SUMMARY: Grievant asserts that she should have been allowed to interview for the vacant LPN position at the Rural Health Clinic. Grievant argues that she could have been transferred from her current LPN position to the vacant LPN position. Grievant asserts that because the vacant position was within the same class as her current position, Respondent was not prohibited from transferring her even though she was a probationary employee. Respondent argues that its actions were not arbitrary and capricious or in violation of a statute, policy or rule. Although Respondent had the discretion to transfer Grievant within her classification, Respondent was not required to do so. Likewise, although Respondent had the discretion to interview an applicant that was neither a permanent employee nor on the register, it was not required to do so. Upon learning that Grievant could not be hired unless she was a permanent employee or on the register, Respondent decided not to interview her. Grievant has failed to prove that Respondent's actions were arbitrary and capricious or clearly wrong. Therefore, this grievance is DENIED.

KEYWORDS: PROMOTION; SELECTION; INTERVIEW; BEHAVIOR; ARBITRARY AND CAPRICIOUS; CLEARLY WRONG

CASE STYLE: JANES v. DEPARTMENT OF HEALTH AND HUMAN RESOURCES/BUREAU FOR CHILDREN AND FAMILIES
DOCKET NO. 2010-1225-DHHR (9/20/2011)

PRIMARY ISSUES: Whether Grievant's behavior kept her from being promoted to supervisor.

SUMMARY: Grievant was initially chosen to be awarded a supervisor's position with Respondent. Thereafter, she exhibited behavior which caused her supervisors concerns that she was not the best candidate for the position. Respondent then halted the approval process for the Grievant's promotion. Grievant has failed to establish by a preponderance of the evidence that Respondent's selection decision was arbitrary and capricious or clearly wrong. Accordingly, this grievance is DENIED.

KEYWORDS: RECLASSIFICATION; REALLOCATION; PAY EQUITY; DISCRIMINATION; DUTIES; RESPONSIBILITIES; POSITION DESCRIPTION FORM (PDF); SALARY; CLASS SPECIFICATIONS

CASE STYLE: KETCHUM II v. REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY/WESTERN REGIONAL JAIL AND DIVISION OF PERSONNEL

DOCKET NO. 2010-1340-MAPS (9/30/2011)

PRIMARY ISSUES: Whether DOP properly reclassified the Grievant's position when it was brought into the classified service. Whether the difference in pay between Grievant and a co-worker violated pay equity principles.

SUMMARY: Grievant argues that the initial placement of his position into the classified service should have been a reallocation rather than a reclassification, which would have resulted in him receiving at least a five percent increase since his position was upgraded one paygrade. Grievant also argues that his position has significant managerial responsibilities which should have resulted in a classification of Corrections Program Manager 1 at paygrade sixteen rather than Corrections Program Specialist , Senior, at paygrade thirteen. Finally, he notes that a co-worker who was transferred a year after Grievant, into the same type of position held by Grievant, is paid significantly more. Grievant argues this is a violation of the principle of equal pay for equal work. Respondent DOP demonstrated that positions are brought into the merit classification system for the first time through the reclassification process. A reallocation results from a significant change in the position after it is initially classified. Consequently, the first merit system classification cannot be a reallocation. Respondent DOP took Grievant's supervisory duties into consideration, which resulted in his position being initially upgraded to Corrections Program Specialist, Senior from Corrections Program Specialist. However, those duties were not sufficient to warrant a Management classification. Finally, both Grievant and his co-worker are paid in the appropriate paygrade for the classification they hold. Thus, the requirements of pay equity are met. Accordingly, the grievance is DENIED.

KEYWORDS: REMEDIES; DEFAULT; TEMPORARY TOTAL DISABILITY BENEFITS; WORKERS' COMPENSATION; LEAVE OF ABSENCE; DISCRIMINATION

CASE STYLE: STUART v. DIVISION OF JUVENILE SERVICES/LORRIE YEAGER JR., JUVENILE CENTER AND DIVISION OF PERSONNEL
DOCKET NO. 2011-0171-MAPS (9/23/2011)

PRIMARY ISSUES: Whether the remedies Grievant seeks are contrary to law or are contrary to proper and available remedies.

SUMMARY: The only issue in this matter is whether the remedies Grievant seeks are contrary to law or are contrary to proper and available remedies. Such is because Grievant is viewed as having prevailed on the merits of his Grievance by default as Respondent conceded default. The remedy sought by Grievant requesting an order directing his employer to cease discriminating against him is GRANTED as such is not contrary to law and is an available and proper remedy. The remedies sought by the Grievant relating to penalty wages and attorney's fees are DENIED as such are contrary to law and not proper and available remedies. The remedies requested seeking orders directing Respondent to place Grievant in the status of "off work due to workers' compensation injuries" and directing Respondent to pay its contribution to Grievant's health insurance so long as he is "off work due to workers' compensation injuries" are DENIED as they are contrary to law and not proper and available remedies. Accordingly, this Grievance is GRANTED in part and DENIED in part.

KEYWORDS: SALARY; COMPENSATION; EQUAL PAY; CLASSIFICATION; PAY GRADE; PUCCIO MEMORANDUM; GOVERNOR'S MORATORIUM; DISCRETIONARY; DISCRIMINATION; FAVORITISM

CASE STYLE: CHAPMAN, ET AL. v. LOTTERY COMMISSION

DOCKET NO. 2010-1293-CONS (9/27/2011)

PRIMARY ISSUES: Whether Respondent violated State pay plan policies by not paying Grievants the same as new hires.

SUMMARY: An employee, hired as a Lottery Video Technical Support Specialist 1 by Respondent, was hired at a rate of pay higher than Grievants, more senior employees with the same classification. Grievants contend this is improper. Grievants allege entitlement to an increase in pay, and further contends Respondent's failure to grant merit increases pursuant to the Puccio Memorandum invalidates the current classification system. Respondent disagrees. Applicable statutes, rules and regulations, coupled with relevant case law provide that classified employees are to be compensated within their pay grade. It is a well-discussed concept that state employees in the same classification need not receive identical pay, so long as they are paid in accordance with the pay scale for their proper employment classification. Further, during the time period relevant to this grievance a moratorium on discretionary salary increases was in place, discretionary pay increases for state employees are restricted. Grievants are being paid within the pay range of the pay grade assigned by the Division of Personnel to their respective classification. The salary of the newest hire in Grievants' classification is consistent with the pay grade of her job classification. Grievants did not establish by a preponderance of the evidence that they are mandated a pay increase. Nor did Grievants prove that Respondent, the employer, has violated any rule, regulation, policy or statute in the circumstances presented. This grievance is DENIED.

KEYWORDS: SELECTION; QUALIFICATIONS; CLEARLY WRONG; DISCRIMINATION; EXPERIENCE; INTERVIEW

CASE STYLE: LATIF v. DIVISION OF HIGHWAYS
DOCKET NO. 2011-0924-DOT (9/29/2011)

PRIMARY ISSUES: Whether Grievant proved that there was a flaw in the selection process.

SUMMARY: This grievance was filed when Grievant was not selected for any of the newly created Regional Program Manager positions. The qualifications of the applicants were evaluated by the persons conducting the interview, and the top five applicants were selected for the positions. While it was important that the applicants have engineering experience, it was also critical that the applicants have excellent communication skills, and the ability to diffuse conflicts. Grievant did not demonstrate that he one of the best five candidates, or that there was any flaw in the selection process. The selection decision was not arbitrary and capricious or clearly wrong. Accordingly, this grievance is DENIED.

KEYWORDS: SUSPENSION; MISCONDUCT; INVESTIGATION; INSUBORDINATION; VERBAL ALTERCATION; REPRISAL; FREEDOM OF SPEECH

CASE STYLE: KOBLINSKY v. PUTNAM COUNTY HEALTH DEPARTMENT
DOCKET NO. 2011-0892-CONS (9/14/2011)

PRIMARY ISSUES: Whether the disciplinary action taken by Respondent was proper, excessive, arbitrary and/or capricious.

SUMMARY: Grievant was involved in verbal confrontations with co-workers. After litigation regarding Grievant's statutory right to representation in any meeting held in which disciplinary action is being considered, a meeting was scheduled regarding Grievant's workplace conduct. Grievant contends the disciplinary action(s) taken by Respondent was improper, discriminatory and retaliatory in nature. Grievant has disciplinary history and has received several prior written warnings concerning her conduct in opposition to internal policy and/or supervisor's directives. Grievant acknowledged conduct sufficient to warrant disciplinary action. Respondent established rational justification for administering disciplinary action. Grievant was suspended for misconduct articulated as insubordination. Grievant did not establish unlawful conduct by Respondent. By a preponderance of the evidence, Respondent proved the charges against Grievant and met its burden proving good cause for disciplinary action. This grievance is DENIED.

KEYWORDS: TERMINATION; PORNOGRAPHIC WEBSITES; COMPUTER USAGE; INFORMATION SECURITY POLICY; MISCONDUCT; NETWORK VIOLATION; PASSWORD PROTECTION

CASE STYLE: LITTEN v. DIVISION OF HIGHWAYS

DOCKET NO. 2011-0862-DOT (9/27/2011)

PRIMARY ISSUES: Did Respondent prove that Grievant accessed or attempted to access websites on a work computer which were categorized by the Office of Technology as pornographic.

SUMMARY: Grievant was dismissed from his employment by Respondent for accessing and attempting to access pornographic websites on a state computer. Grievant acknowledged that someone had committed this network violation utilizing the identification number assigned to him, but denied that it was he. Grievant's explanation was that he had left his password and user identification number on the bulletin board in the break room, and that someone else had been able to log onto the group computer using his identification number and password. Respondent did not demonstrate that it was more likely than not Grievant who had committed this violation on the date in question. Respondent's request to have backpay awarded offset by wages earned by Grievant during the period after his dismissal is granted. Accordingly, this grievance is GRANTED.