

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in November 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
COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

KEYWORDS: CONTINUING PRACTICE; TIMELINESS; COMPENSATION;
LUNCH DUTY; COOK RATIO

CASE STYLE: BROWN v. HANCOCK COUNTY BOARD OF EDUCATION
DOCKET NO. 2011-0894-HANED (11/23/2011)

PRIMARY ISSUES: Whether the grievance was filed under the continuing practice exception and whether Grievant should receive additional compensation for voluntarily assisting the Cook at her school in serving lunch to students.

SUMMARY: Grievant, a principal, perceived that she needed to assist in serving lunches at her school after Respondent eliminated a part-time Cook position at the school. She offered her assistance voluntarily, without any expectation of additional compensation, for about two years before she filed a grievance seeking additional compensation. Respondent argued the grievance was not timely filed. This scenario falls within the continuing practice exception, making the grievance timely filed, but any relief would be limited to 15 days preceding the filing of the grievance. Grievant offered no legal theory under which she would be entitled to additional compensation for voluntarily assisting in serving lunch. Accordingly, this grievance is DENIED.

KEYWORDS: DEFAULT; LEVEL ONE; HEARING; REMEDY; TIMELINES; REMAND

CASE STYLE: BARBER III v. MCDOWELL COUNTY BOARD OF EDUCATION AND DEPARTMENT OF EDUCATION

DOCKET NO. 2011-1304-MCDED (11/22/2011)

PRIMARY ISSUES: Whether default occurred at level one of the grievance process.

SUMMARY: Grievant argued that a default occurred because he was not given five days' notice of the Level One proceeding, and because that proceeding was scheduled at 3:30 p.m., that being outside his regular work day. Grievant was given only two days' notice of the Level One proceeding. Grievant made the Respondent aware of his default claim when he appeared in person at the Level One hearing, as scheduled, and read his written default notice into the record. At that point, Respondent, by Superintendent James G. Brown, stayed the Level One proceeding pursuant to the procedural rules. Respondent had no intent to delay the grievance procedure, and it was not negligent in scheduling the Level One hearing without providing Grievant five days' notice as required. In fact, the very opposite is true. In trying to grant Grievant an expeditious hearing, Respondent mistakenly scheduled the hearing too soon. Under these circumstances, the failure to provide Grievant five days' notice and the failure to schedule the Level One hearing during Grievant's regular work hours was not intended to delay the grievance process; therefore, default cannot be granted.

KEYWORDS: DISMISSAL ORDER; MOTION TO DISMISS; STANDING; RESIGNATION; EMPLOYER; EMPLOYEE

CASE STYLE: CAMPBELL v. RALEIGH COUNTY BOARD OF EDUCATION

DOCKET NO. 2011-1443-RALED (11/18/2011)

PRIMARY ISSUES: Whether Grievant had standing to file a grievance since she is no longer an employee of Respondent.

SUMMARY: Grievant was given a written notice that her employment as a substitute with the Raleigh County Board of Education may be terminated. Grievant voluntarily resigned her employment with the Respondent the day before she filed her grievance contesting the possible dismissal. In order to have standing to process a grievance, a person must be employed by the public employer she alleges has committed a grievable act. Because Grievant was not an employee of the Respondent at the time she filed her grievance she has no standing and the grievance is dismissed.

KEYWORDS: SUSPENSION; TEACHER; COACH; SEXUAL HARASSMENT;
EMPLOYEE CODE OF CONDUCT; CLASSROOM CONDUCT;
INSUBORDINATION; TITLE IX; DISCRIMINATION

CASE STYLE: TURNER v. PLEASANTS COUNTY BOARD OF EDUCATION
DOCKET NO. 2011-0177-PLEED (11/21/2011)

PRIMARY ISSUES: Whether the Respondent proved that Grievant's suspensions for alleged violations of Title IX, Policies 4200 and 2421, Employee Codes of Conduct and search procedures were justified.

SUMMARY: Respondent alleges that Grievant violated Title IX, West Virginia Board of Education Policies 4200 and 2421 by discriminating against female students while coaching a soccer team and female staff members in the high school. Respondent also alleges that Grievant violated Employees Codes of Conduct by discussing inappropriate topics in his classroom. Finally, Respondent claims Grievant violated county policy related to searching student property. Respondent suspended Grievant from coaching for seven days and teaching for four days for insubordination because he allegedly intentionally violated these laws and policies. Respondent was unable to prove that Grievant intentionally violated any law or policy. Additionally, any inappropriate conduct committed by Grievant was correctable and suspension was not consistent with the requirements of W. Va. Code § 18A-12a(b)(6). Accordingly, the grievance is GRANTED.

KEYWORDS: TERMINATION; REDUCTION IN FORCE; RIF; SENIORITY;
REPRISAL; RETALIATION; PROTECTED ACTIVITY

CASE STYLE: MCGUIRE v. MONROE COUNTY BOARD OF EDUCATION

DOCKET NO. 2011-1154-MNRED (11/7/2011)

PRIMARY ISSUES: Whether Grievant established a causal connection between her protected activity and the elimination of her position.

SUMMARY: Grievant asserts that Respondent's termination of her employment contract pursuant to a reduction-in-force (RIF) was contrary to RIF provisions in West Virginia Code § 18A-4-7a. Specifically, Grievant contends that Respondent was required to allow her to laterally "bump" a less senior employee in a professional position that only required a teaching certificate. Grievant contends that the curriculum of parenting education is required to be taught in West Virginia public schools, therefore her position of Family and Consumer Science teacher should not have been terminated. Also, Grievant argues that Respondent's decision to terminate her employment contract was in retaliation for her having engaged in protected activities. Respondent asserts a RIF was undertaken due to budget deficits and that the decision to terminate Grievant's employment contract was not motivated by reprisal. Respondent argues that it did not rescind its decision to eliminate the SAT Specialist position until after Grievant filed this grievance and that Grievant did not prove that she met the qualifications for the position. Grievant met her burden of proof and established that Respondent violated West Virginia Code § 18A-4-7a when it did not place her into the restored professional position of SAT Specialist. Grievant failed to establish that Respondent's decision to eliminate her position of Family and Consumer Science teacher was retaliation and that the policy required parenting education curriculum is not being taught at JMHS. Accordingly, this grievance is GRANTED, in part, and DENIED, in part.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
SERVICE PERSONNEL

KEYWORDS: DISCRIMINATION; FAVORITISM; BUS ROUTE; ROAD CONDITIONS; TWO-HOUR DELAY

CASE STYLE: BROWN v. HAMPSHIRE COUNTY BOARD OF EDUCATION
DOCKET NO. 2010-1686-HAMED (11/16/2011)

PRIMARY ISSUES: Whether Grievant was the victim of favoritism or discrimination.

SUMMARY: In February 2010, severe weather caused schools in Hampshire County to be closed for two weeks. The Superintendent decided to have the bus operators in the county drive their routes using the buses on a “dry run,” to determine what stops and turnaround areas needed to be plowed before students could return to school. Grievant claimed her supervisor showed favoritism and discriminated against her when the supervisor told some bus operators they did not have to drive their buses over Route 50 to check the road conditions on the dry run, while Grievant was required to take her bus over Route 50. Grievant’s supervisor already knew that Route 50 was clear, but she needed Grievant to make this part of her run because she needed to be sure that the fueling area where Grievant turned her 90-passenger bus around had been cleared enough for the larger bus to get through. Grievant did not run her entire route either during the “dry run,” because she felt that one of the side roads was too dangerous. All the bus operators were paid for the entire day, including Grievant. Grievant did not demonstrate that her supervisor engaged in discrimination or favoritism. Accordingly, this grievance is DENIED.

KEYWORDS: DISMISSAL ORDER; TIMELINESS; UNTIMELY; SUBSTANTIAL COMPLIANCE

CASE STYLE: DIETRICH-CRAWFORD v. MARSHALL COUNTY BOARD OF EDUCATION

DOCKET NO. 2010-0477-MARED (11/18/2011)

PRIMARY ISSUES: Whether the grievance was timely filed.

SUMMARY: A grievance is to be filed in writing with the Chief Administrator of an agency within fifteen (15) working days following the occurrence of the event upon which the grievance is based. W. Va. Code § 6C-2-4. Grievant contends she was unlawfully deprived of employment opportunity. Grievant alleges Marshall County Board of Education, Respondent, violated W. Va. Code § 18A-4-15 and 6C-2-2(d) & (h). As an employee with preferred recall status, Grievant maintains she should have been offered opportunity for employment in any substitute position prior to employees on the substitute list being given the opportunity. Respondent denies Grievant is entitled to relief of any kind for the alleged violation of law. Respondent further highlights that this grievance was not properly filed and request this matter be dismissed. Having only filed the written grievance statement by fax with the Grievance Board and not with Respondent's Chief Administrator, Grievant's actions might be viewed as substantially compliant but failing to file within the prescribed time constraint of W.VA. CODE § 6C-2-4 renders this grievance untimely. Grievant failed to properly file the instant grievance. This matter is denied and dismissed as untimely.

KEYWORDS: SUSPENSION; TRAFFIC ACCIDENT; MITIGATION; PENALTY;
WILLFUL NEGLIGENCE OF DUTY, INCOMPETENCY;
UNSATISFACTORY PERFORMANCE

CASE STYLE: BOORE v. MARION COUNTY BOARD OF EDUCATION
DOCKET NO. 2011-1306-MRNED (11/4/2011)

PRIMARY ISSUES: Whether a three-day suspension without pay was too severe a penalty for Grievant's minor traffic accident.

SUMMARY: Grievant is a bus operator, and was suspended for three days without pay after he was involved an "at-fault" accident in traffic. Grievant ran into the rear of the vehicle in front of him with his bus, when the cars in front of that car slammed on their brakes in response to the driver of the lead vehicle suddenly changing his mind about pulling out into traffic. This was a minor accident. Respondent did not take into consideration the circumstances of the accident or Grievant's work record. Grievant demonstrated that the penalty imposed was too severe under the circumstances. Accordingly, this grievance is GRANTED.

TOPICAL INDEX
STATE EMPLOYEES

KEYWORDS: CLASSIFICATION; POSITION DESCRIPTION FORM; PDF; RESPONSIBILITIES; DUTIES; JOB SPECIFICATIONS; REALLOCATION; SIGNIFICANT CHANGE

CASE STYLE: HADDAD v. CONSOLIDATED PUBLIC RETIREMENT BOARD AND DIVISION OF PERSONNEL
DOCKET NO. 2010-0725-DOA (11/9/2011)

PRIMARY ISSUES: Whether Grievant demonstrated that an ISM 3 classification is a better fit for her position rather than an ISM 2.

SUMMARY: Grievant believes she should be classified as an Information Systems Manager 3, rather than an Information Systems Manager 2. Grievant did not demonstrate that any of the changes in her duties were such that she should be reallocated to the requested classification. Further, Grievant did not demonstrate that the requested classification was a better fit for her position. Accordingly, this grievance is DENIED.

KEYWORDS: DEFAULT; LEVEL ONE; HEARING; TIME LINES; REMAND

CASE STYLE: PERRINE v. DIVISION OF VETERAN'S AFFAIRS
DOCKET NO. 2011-0926-MAPSDEF (11/4/2011)

PRIMARY ISSUES: Whether default occurred at level one of the grievance process.

SUMMARY: Grievant filed this grievance on December 27, 2010, requesting a hearing. A hearing on the grievance was scheduled for an agreed upon date of January 12, 2011. Neither Grievant nor her representative appeared for the hearing. A request that the hearing be continued was not filed. Respondent sent Grievant a request to set a new hearing date; however, the letter was sent to an incorrect address provided on the grievance form. No request for a hearing was made and no other action in the grievance was taken until April 18, 2011. At that time, Grievant's representative filed a motion to enforce the grievance by default judgment. This request is not timely. Accordingly, the request for default judgment is denied. The grievance is remanded to level one for hearing.

KEYWORDS: DISMISSAL ORDER; RES JUDICATA

CASE STYLE: LATIF v. DIVISION OF HIGHWAYS

DOCKET NO. 2011-0923-DOT (11/1/2011)

PRIMARY ISSUES: Whether the doctrine of res judicata was applicable to preclude the relitigation of the issues.

SUMMARY: This is the same grievance filed by Grievant in 2008. A level three decision was issued on that grievance by the Grievance Board on July 8, 2009, and Grievant did not appeal that decision. Grievant was given the opportunity to present evidence at the level three hearing that facts had arisen since his last grievance which have altered his rights. Grievant presented no such evidence. This grievance is barred by the doctrine of res judicata. Accordingly, this grievance is DISMISSED.

KEYWORDS: DISMISSAL ORDER; WRITTEN REPRIMAND; MOTION TO DISMISS; MOOT; ADVISORY OPINION

CASE STYLE: JONES v. TAX DEPARTMENT

DOCKET NO. 2010-1598-DOR (11/22/2011)

PRIMARY ISSUES: Whether Grievant's job abandonment rendered the grievance moot.

SUMMARY: Grievant was given a written reprimand for conduct which he grieved. Grievant severed his employment relationship with Respondent by abandoning his job on March 17, 2011. This was after the level three hearing, but before the matter became mature for a decision. Grievant's abandonment of his employment with Respondent rendered his grievance moot. Accordingly, this grievance is dismissed.

KEYWORDS: OVERTIME; FAIR LABOR STANDARDS ACT (FLSA); DISCRIMINATION; FAVORITISM; HOSTILE WORK ENVIRONMENT; WORK HOURS; SIMILARLY SITUATED

CASE STYLE: HAMMONDS v. DIVISION OF JUVENILE SERVICES/LORRIE YEAGER JR. JUVENILE CENTER

DOCKET NO. 2010-1622-MAPS (11/9/2011)

PRIMARY ISSUES: Whether Grievant established that the overtime system at her place of employment unfairly deprives female correction officers of overtime.

SUMMARY: Grievant contends she is entitled to overtime pay. Grievant alleges that Respondent's actions in making her take compensatory time while allowing another Correctional Officer to work and accrue overtime demonstrates favoritism for certain officers and discriminatory practices toward her resulting in what Grievant characterizes as a hostile work environment. Respondent disagrees. Grievant was not similarly situated to the employee to whom she compared herself in that the difference in treatment was related to the job responsibilities at the time pertinent to the overtime. Further, during the time period identified as relevant to this grievance, Grievant had the highest amount of overtime received by any correctional officer, male or female. Grievant did not prove her claims of favoritism, discrimination or a hostile work environment. Accordingly, this grievance is DENIED.

KEYWORDS: TERMINATION; PORNOGRAPHIC WEBSITES; COMPUTER USAGE; MISCONDUCT; MITIGATION; GOOD CAUSE

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

DOCKET NO. 2011-0216-DHHR (11/16/2011)

PRIMARY ISSUES: Whether Grievant's repeated misuse of his work computer was good cause for the termination of his employment.

SUMMARY: Grievant was terminated from his position as a Health Service Worker for viewing pornography on his work computer. Grievant admitted to the misconduct. Respondent proved by a preponderance of the evidence the charge of gross misconduct against the Grievant. On the issue of mitigation of the punishment, the record of this grievance does not present a showing that the particular disciplinary measure is so clearly disproportionate to the employee's offense that it indicates an abuse of discretion. This grievance is DENIED.