

**WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD**

**SYNOPSIS REPORT**

**Decisions Issued in October 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](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.

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**HIGHER EDUCATION EMPLOYEES**

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<b><u>KEYWORDS:</u></b>	Annual Contract of Employment; Statutory Timelines; Time Limits; Faculty Retention; Arbitrary and Capricious; Discovery Rule Exception; Reasons
<b><u>CASE STYLE:</u></b>	<u>Conteh v. West Liberty University</u> DOCKET NO. 2013-1725-WLU (10/11/2013)
<b><u>PRIMARY ISSUES:</u></b>	Whether this grievance was not filed within the statutory time lines for filing a grievance.
<b><u>SUMMARY:</u></b>	Grievant was employed pursuant to an annual contract. Grievant was notified in early January 2013 that his contract would not be renewed for 2013-2014, but did not file a grievance until April 2013. Grievant contended that his failure to timely file the grievance should be excused because he did not know that he had grounds for questioning the reasons given for not renewing his contract until April 2013, when he requested and received enrollment data. The evidence demonstrates that Grievant filed this grievance the day before he requested the enrollment data, and two days before he received the data. His alleged excuse is not supported by the facts. Further, the undersigned concludes that nothing precluded Grievant from promptly requesting this data, and nothing occurred that caused him to suddenly question and request the data, and that this situation does not fall within the discovery rule exception to the statutory timelines for filing a grievance.

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

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**KEYWORDS:** Termination; Suspension; Rational Nexus; Off-Duty Conduct; Criminal Offense; Misdemeanor; Misconduct

**CASE STYLE:** Ellison v. Fayette County Board of Education  
DOCKET NO. 2013-0298-FayED (10/10/2013)

**PRIMARY ISSUES:** Whether Grievant was properly terminated from his employment, and whether Respondent proved that a rational nexus existed between Grievant's off-duty conduct and the performance of his duties as a bus operator.

**SUMMARY:** Grievant was employed by Respondent as a bus operator. While he was off work due to a work-related injury, Grievant stole merchandise from a retail store. Grievant was arrested and was charged with petit larceny, a misdemeanor. Respondent did not take disciplinary action against Grievant upon learning of his misconduct. Respondent made attempts to bring Grievant back to work on light duty, but that was unsuccessful. Soon thereafter, Grievant pled guilty to petit larceny and made restitution to the retail store. Months later, while Grievant was still off work due to his injury, Respondent suspended Grievant without pay then terminated him for his misconduct at the retail store. Respondent alleged Grievant engaged in insubordination, immorality, intemperance and violated the Employee Code of Conduct. Grievant denies Respondent's allegations, and asserts that there is no rational nexus between his off-duty conduct at the retail store and the performance of his duties as a bus operator. Respondent failed to meet its burden of proving a rational nexus. Therefore, this grievance is GRANTED.

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**KEYWORDS:** Substitute rotation list; assignments; mistake; cancelation of assignment; arbitrary and capricious

**CASE STYLE:** Bohan v. Lewis County Board of Education

DOCKET NO. 2013-0242-LewED (10/3/2013)

**PRIMARY ISSUES:** Whether Respondent violated any statute, regulation, rule, policy, or procedure, or acted in an arbitrary and capricious manner by putting Grievant's name at the bottom of the rotation list.

**SUMMARY:** Grievant was called by the automated calling system on July 29, 2012, to substitute for a secretary at Jane Lew Elementary School. Grievant was skeptical as to whether this was a vacancy that Respondent needed to fill since it was during the summer, but she accepted the assignment anyway. She then contacted the county office and inquired about whether she should report to work, and was told that she should not have been called out because the absence would not need to be filled by a substitute, and the substitute assignment was canceled. Grievant did not report to Jane Lew Elementary, and was not paid for the day. Grievant also was not returned to the top of the substitute rotation list, in accordance with Respondent's practice. Grievant did not demonstrate that Respondent's practice of placing a substitute at the bottom of the rotation list when the assignment is canceled violated any statute, regulation, rule or policy, or that it was arbitrary and capricious to do so.

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**KEYWORDS:** Extracurricular Bus Run; "As Needed" Contract; Additional Compensation; Untimely Filing; Non-Relegation Clause

**CASE STYLE:** Shantie v. Putnam County Board of Education

DOCKET NO. 2013-1104-PutED (10/17/2013)

**PRIMARY ISSUES:** Whether Grievant filed her grievance within the time limits established by statute.

**SUMMARY:** Grievant contends the extracurricular "supplemental" bus run she drove during both semesters of the 2011-12 school year which entitled her to the benefits of a "200-day contract" in accordance with this Grievance Board's ruling in Lanham v. Putnam County Bd. of Educ., Docket No. 2008-1691-CONS (July 14, 2009), further entitled her to continue receiving those same benefits during the following semester, the first semester of the 2012-13 school year. However, Grievant failed to timely file her grievance asserting that PCBOE violated the non-relegation clause in W. Va. Code § 18A-4-8(m) within fifteen days of the date when Grievant knew, or reasonably should have known, that she would not receive these additional benefits, unless her services were needed for the same four or five day per week extracurricular run during the second semester of the 2012-13 school year.

Although this grievance was not timely initiated, the merits of this grievance were considered to make a complete record. Grievant failed to establish that PCBOE's failure to award Grievant additional compensation during the first semester of the 2012-13 school year violated the non-relegation clause in W. Va. Code § 18A-4-8(m).

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**KEYWORDS:** Willful Neglect of Duty; Attendance Issues; Improvement Plan; Correctable Conduct; Performance Evaluations

**CASE STYLE:** Byers v. Wood County Board of Education

DOCKET NO. 2013-2075-WooED (10/31/2013)

**PRIMARY ISSUES:** Whether Respondent was justified in terminating Grievant without providing her the opportunity to improve.

**SUMMARY:** Grievant, a school service employee, was terminated for willful neglect of duty for failing to call off work properly. Grievant was previously placed on improvement plans and had been suspended for attendance issues, but had changed positions and had good evaluations for several years. Grievant was entitled to evaluation and an opportunity to improve. Grievant's previous improvement plans and discipline were not sufficient notice and opportunity to improve as Grievant's position had changed, she had received two years of good evaluations, and the circumstances of her conduct were different. Accordingly, the grievance is granted.

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

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**KEYWORDS:** Patient Neglect; Required Care; Gross Resident Neglect; Misconduct

**CASE STYLE:** Simpson v. Department of Veterans Assistance  
DOCKET NO. 2013-0842-DVA (10/17/2013)

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

**SUMMARY:** Grievant was dismissed from her employment by Respondent for patient neglect. Respondent demonstrated that Grievant did not provide proper care for three of the residents to whom she was assigned on one shift, and that this constituted good cause for dismissal.

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**KEYWORDS:** Medical Leave of Absence; Personal Leave of Absence; Return to Work; Modified Duty; Unauthorized Leave; Job Abandonment

**CASE STYLE:** Dalton v. Department of Health and Human Resources/Jackie Withrow Hospital

DOCKET NO. 2013-1547-DHHR (10/10/2013)

**PRIMARY ISSUES:** Whether Respondent had good cause for dismissing Grievant from employment for job abandonment.

**SUMMARY:** Grievant sustained an injury while at work and was granted a six month medical leave of absence, followed by a personal leave of absence of approximately 3 months. Grievant returned to work for several weeks and was absent for nearly 10 months afterward, during which time Respondent sought to obtain medical documentation from Grievant authorizing her absence from employment. Respondent terminated Grievant for job abandonment. Grievant argued that she was not required to take medical or personal leaves of absence while absent from work due to a work-related injury. However, Grievant was required to take these leaves of absence pursuant to the DOP Administrative Rules at 143 C.S.R. 1 §§ 14.8.(c) "Medical Leave, Notice to Employee"; 143 C.S.R. 1 §14.4.f.7.; "Work Related Illness or Injury," and 143 C.S.R. 1 § 18.8.a, "Personal Leave."

Respondent demonstrated that Grievant's extended absence from work was unauthorized. Grievant failed to provide medical evidence confirming the necessity for her leave or a medical release to her employer indicating a date when she would be physically able to return to perform the essential duties of her position, as required by the DOP Administrative Rule at 143 C.S.R. 1 § 14.4.g.4, "Physician's Statement," with or without a reasonable accommodation for her PPD she incurred from an on-the-job injury, and failed to return to work. Respondent gave Grievant every opportunity to provide the necessary medical evidence to justify her leave, but Grievant consistently failed to cooperate. In addition, Grievant argued that Respondent improperly required her to return to work, without a physician's release, and did not accommodate her disability. Grievant failed to timely file a grievance protesting these matters and, therefore, the Grievance Board is prohibited from considering them.

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**KEYWORDS:** Selection; Qualifications; Selection Process; Arbitrary and Capricious

**CASE STYLE:** Meadows v. Division of Juvenile Services/Sam Perdue Juvenile Center  
DOCKET NO. 2013-0566-MAPS (10/11/2013)

**PRIMARY ISSUES:** Whether Grievant demonstrated a flaw in the selection process.

**SUMMARY:** Grievant alleged that he should have been selected over the successful applicant for the position of Juvenile Facility Director at Sam Perdue Juvenile Center. Grievant has the burden in this non-disciplinary grievance. Grievant did not establish that there was a flaw in the selection process which necessitates the reversal of Respondent's discretion. Selection decisions are largely the prerogative of management. Grievant failed to demonstrate that the selection process was flawed, or that the decision made was arbitrary and capricious. Accordingly this grievance is DENIED.

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**KEYWORDS:** Constructive Discharge; Involuntary Resignation

**CASE STYLE:** Perkins v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital  
DOCKET NO. 2012-0885-DHHR (10/1/2013)

**PRIMARY ISSUES:** Whether Grievant has proven that her resignation was the result of deception on the part of Respondent's management.

**SUMMARY:** Grievant worked as a Health Service Worker at Sharpe Hospital from March 2010 until her last day of work on March 1, 2012. Grievant made clear to management that she could only work day shift. When Respondent first hired Grievant as a full-time employee, Grievant worked as a "float" assigned to a particular patient. In February 2012, Grievant was informed by her supervisor that Grievant would be moving to another unit since her assigned patient was being moved. In addition, it was explained that Grievant's schedule would be changed to either an evening or midnight shift. Grievant contends her resignation was forced by the schedule change, and amounted to a constructive discharge. Grievant established by a preponderance of the evidence that a material fact that would have avoided her resignation was concealed from Grievant. Grievant's resignation was not voluntary thereby rendering her resignation void and of no effect.

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**KEYWORDS:** Selection Process; Interviews; Qualifications; Arbitrary and Capricious

**CASE STYLE:** Robinson v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital  
DOCKET NO. 2012-1231-DHHR (10/2/2013)

**PRIMARY ISSUES:** Whether Respondent's decision was arbitrary and capricious, or clearly wrong due to a pre-selection.

**SUMMARY:** Grievant claimed the selection for the position for which she applied was flawed because Grievant believes the successful applicant was preselected. Grievant's claim was not substantiated by the evidence. Nothing about the selection decision was arbitrary and capricious, nor so fundamentally flawed as to require that it be once again conducted.

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**KEYWORDS:** Suspension; Threat; Security; Comment

**CASE STYLE:** Furphy v. Division of Corrections/Mount Olive Correctional Complex  
DOCKET NO. 2013-1128-MAPS (10/2/2013)

**PRIMARY ISSUES:** Whether Grievant's conduct violated DOC and DOP policies and whether the discipline imposed upon Grievant was appropriate.

**SUMMARY:** Grievant is a Correctional Officer II at Mount Olive Correctional Complex. On December 17, 2012, Grievant commented to a co-worker that her doctor had put her off work due to work stress after she had told the doctor, something to the effect of, "if I had a gun, I would shoot Major Rhodes in the face." The co-worker did not perceive Grievant's statement as a threat; therefore, she did not report the comment. Days later, the co-worker decided to report Grievant's comment to her supervisor. After Mount Olive administration received the report, an inquiry was initiated. Grievant admitted making the comment, but insisted that she did not mean it as a threat. Grievant was charged with violating the Workplace Security Policy and various provisions of DOC Policy Directive 129. Grievant was suspended without pay for eighty hours, or ten traditional working days. Grievant denies Respondent's allegations. Respondent failed to prove by a preponderance of the evidence that Grievant violated the Workplace Security Policy or DOC Policy Directive 129. Therefore, this grievance is granted.

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**KEYWORDS:** Vehicle Use Revoked; Routine Job Site Inspections; Transportation Vehicles; Arbitrary and Capricious

**CASE STYLE:** Underwood v. Division of Highways

DOCKET NO. 2012-1159-DOT (10/1/2013)

**PRIMARY ISSUES:** Whether Respondent's application of the Assignment and Use of Transportation Vehicles Policy to Grievant was arbitrary and capricious.

**SUMMARY:** Grievant alleges Respondent's application of a vehicle use policy to Grievant was arbitrary and capricious. Grievant did not prove by a preponderance of the evidence the necessary facts to show the policy was incorrectly applied to him. Respondent's application of the policy to Grievant was not arbitrary and capricious as the criteria used to make the decision were reasonable. Accordingly, the grievance is denied.

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**KEYWORDS:** Overtime Hours; State of Emergency; Compensation; Arbitrary and Capricious, Discretion

**CASE STYLE:** Simons v. Division of Highways

DOCKET NO. 2013-0083-DOT (10/1/2013)

**PRIMARY ISSUES:** Whether Respondent's actions in the circumstances of this case were in violation of applicable Overtime Worked/Emergency procedure.

**SUMMARY:** There was a state of emergency declared by the West Virginia Governor on or about June 30, 2012, or July 1, 2012, as a result of severe storms. Because of the damage and other ramification generated by the line of storms, the Division of Highways, Respondent, was called upon to provide emergency services. Grievant contends because she was not called out for overtime work and others with less seniority were, Respondent violated its policy on Overtime Worked/Emergency. Respondent maintains it is authorized to use discretion in selecting employees best suited for emergency work. Respondent identified a rational basis for its actions. Grievant has the burden in this non-disciplinary grievance matter. Grievant failed to demonstrate that Respondent acted in an arbitrary and capricious manner or violated its Overtime Worked/Emergency Policy in the circumstances of this matter. Accordingly this grievance is DENIED.

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**KEYWORDS:** Resignation; Voluntarily; Dismiss

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

DOCKET NO. 2013-1475-DHHR (10/29/2013)

**PRIMARY ISSUES:** Whether Grievant voluntarily resigned or was improperly dismissed from her employment.

**SUMMARY:** Grievant was in the hospital being treated for a suspected heart attack after spending the two previous days on bereavement leave related to death of her step-father. While in the hospital, Grievant was sending a series of texts to her sister complaining about her work situation. She was also sending texts to her supervisor regarding her available leave and her absence from work. While sending a text to her sister Grievant's telephone battery died. Grievant later recharged the battery and attempted to complete the text to her sister describing a resignation she would send to her employer if she had another job. Rather than going to her sister, the resignation discussion was attached to her previous message to her supervisor and sent to her. The supervisor took the message as a resignation and terminated Grievant's employment. Grievant, without success, told her supervisor and other management representatives that she never intended to resign. The Grievance Board has consistently held that a resignation must be voluntary to be effective. Grievant proved, in this factual situation, that she did not intend to resign, but sent a text discussing resignation to her supervisor by accident. Grievant's resignation was not voluntary thereby rendering it void and of no effect.

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**KEYWORDS:** Resident Neglect and Abuse; One-On-One Supervision; Misconduct; Mitigating Circumstances

**CASE STYLE:** Felder v. Department of Health and Human Resources/Mildred Mitchell-Bateman Hospital

DOCKET NO. 2013-2241-CONS (10/4/2013)

**PRIMARY ISSUES:** Whether Respondent proved Grievant's actions relating to two patients constituted patient neglect and physical abuse, and whether Respondent had good cause to terminate Grievant for the proven conduct.

**SUMMARY:** Grievant was dismissed from employment as a Health Service Worker for resident neglect and abuse. Respondent proved by a preponderance of the evidence Grievant physically abused a resident, but did not prove Grievant neglected a resident. Respondent had good cause to dismiss Grievant for physical abuse. Mitigation of the penalty is not warranted despite Grievant's work history, due to the seriousness of the offense. Accordingly, the grievance is denied.

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**KEYWORDS:** Failure to Decontaminate Cell; Bio-Hazard Clean-Up Procedures; Biohazard Kit; Progressive Discipline; Mitigation

**CASE STYLE:** Cummings, Jr. v. Division of Corrections/Mount Olive Correctional Complex  
DOCKET NO. 2013-2072-MAPS (10/31/2013)

**PRIMARY ISSUES:** Whether the evidence presented shows that Respondent's five-day suspension of Grievant was an abuse of discretion.

**SUMMARY:** Grievant was suspended for five days for his asserted failure, as Supervisor of his Unit, to have a cell decontaminated after the removal of an inmate who was found injured and bleeding in a cell. Grievant argues that his suspension was improper because neither he nor his subordinates at the time of the incident were properly trained, and the Unit was understaffed. Grievant further asserts that he ordered his subordinates to disinfect the cell and they did not, and that a biohazard kit for cleanup was either unavailable or not fully equipped. Grievant also contends that the officers and staff involved in the incident could not properly recall the facts surrounding the incident because investigation was improperly delayed. Respondent proved that Grievant reviewed the relevant procedures mandating decontamination and cleaning of the cell a week prior to the incident, staffing was adequate to allow the decontamination, and fully equipped biohazard kits were available, if they had been sought out. The Respondent proved that Grievant did not ensure decontamination of the cell. Grievant further asserts that a five-day suspension was unjustified and inappropriate. Respondent proved that the discipline was justified and appropriate. The grievance is DENIED.

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**KEYWORDS:** Non-Selection; Promotion; Selection Process; Favoritism; Arbitrary and Capricious

**CASE STYLE:** Tucker v. Division of Rehabilitation Services and John Haier, Intervenor

DOCKET NO. 2013-1046-DEA (10/31/2013)

**PRIMARY ISSUES:** Whether Grievant established that her non-selection for the District Manager's position was the result of favoritism.

**SUMMARY:** Grievant is currently employed by Respondent DRS as a Branch Office Manager, working in the agency's Teays Valley Branch Office in Hurricane, West Virginia. Grievant applied for a posted managerial position in the Charleston District Office and was not selected for the position. She alleged that the interview process was flawed because the interview panel did not ask the same questions of all applicants, and there was a pattern of favoritism demonstrated which favored applicants who worked in the Huntington District Office at the time they applied for promotion to any key position. However, Grievant failed to demonstrate that either of these factors tainted the selection process to the extent that the decision reached represented an arbitrary and capricious result, or that the outcome of the process would have changed had the selection interviews been conducted differently. Grievant was thus unable to meet her burden of proof where the selection decision to promote Intervenor was supported by substantial evidence and a rational basis. Accordingly, this grievance will be denied.

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**KEYWORDS:** Probationary Employee; Six-Month Trial Period; Absenteeism; Poor Attendance; Leave Without Pay; Satisfactory Work

**CASE STYLE:** Swiger v. Department of Veterans Assistance

DOCKET NO. 2012-1386-DVA (10/7/2013)

**PRIMARY ISSUES:** Whether Grievant proved that her work for Respondent was satisfactory.

**SUMMARY:** Grievant was employed at the West Virginia Veterans Nursing Facility as a Health Service Worker, on probationary employment status. During her probationary period of employment, Grievant missed fourteen days of work. Grievant was dismissed from her employment for unsatisfactory attendance during her probationary period. Grievant did not meet her burden of proof and establish that her services were satisfactory as a probationary employee.

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**KEYWORDS:** Relief; State Classification/Compensation Plan; Moot

**CASE STYLE:** Goff, et al. v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital and Division of Personnel  
DOCKET NO. 2013-0513-CONS (10/22/2013)

**PRIMARY ISSUES:** Whether the relief sought by Grievants is available from the Grievance Board.

**SUMMARY:** Grievants, filed a Level One grievance in September 2012, against Respondent, Department of Health and Human Resources/William R. Sharpe, Jr. Hospital stating “Pay grade 8 is inappropriate for LPN given education & certification requirements.” As relief, Grievants seek “To be made whole including raise of pay grade to 9 or higher.” Respondent, Division of Personnel, filed a Joint Motion to Dismiss on the grounds the relief sought by Grievants is not available from the Grievance Board. Because the relief is not available from the Board, the grievance is moot and must be dismissed pursuant to Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 6.11 (2008).

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**KEYWORDS:** Posting Notice; Interview Process; Additional Duties; Arbitrary and Capricious

**CASE STYLE:** Heater, et al. v. Division of Highways  
DOCKET NO. 2012-0934-CONS (10/30/2013)

**PRIMARY ISSUES:** Whether Grievants established that the posting of the position was properly done pursuant to procedures enacted to insure that the interview process treats all applicants in a fair and equitable manner.

**SUMMARY:** Grievants filed this action challenging what they described as an improper posting of upgrade. At level one, the hearing examiner ruled that Grievants met the burden of proof required to establish that the Respondent failed to properly post additional duties in the Lewis County garage. However, the hearing examiner ruled that Grievants did not request that the additional duties upgrade be re-posted, and, therefore, were not entitled to relief. Grievants established at level three that they were seeking to have the additional duties posting re-posted and to allow for the selection process to be undertaken once again.

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**KEYWORDS:** Leave Slips; Assigned Duties; Progressive Discipline; Reprisal; Retaliation; Union; Representative; Dismissal; Termination

**CASE STYLE:** Warner v. Department of Health and Human Resources/Lakin Hospital

DOCKET NO. 2012-0986-DHHR (10/21/2013)

**PRIMARY ISSUES:** Whether Respondent proved legitimate, non-retaliatory reasons for terminating Grievant's employment.

**SUMMARY:** Respondent dismissed Grievant from employment because she spent forty-two minutes away from work without reporting that time on her timesheet on one day, and 2.22 hours away from work on a subsequent day also without reporting that time on her timesheet. Given Grievant's prior disciplinary history, Respondent felt that dismissal was appropriate. Grievant argues that Respondent did not have good cause to terminate her employment, and the dismissal was an act of reprisal for her filing a previous grievance, and acting as a representative for other employees in the grievance procedure. Grievant did participate in a protected activity, and made a prima facie showing of reprisal. Respondent was able to demonstrate valid nondiscriminatory reasons for the disciplinary action it took. Accordingly the grievance is DENIED.

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**KEYWORDS:** Structured Break Period; Compensable Meal Break; Polices

**CASE STYLE:** Powers, et al. v. Division of Highways

DOCKET NO. 2012-0935-CONS (10/21/2013)

**PRIMARY ISSUES:** Whether Grievants established that the failure to provide two scheduled work breaks violates the provisions of any statute, policy, rule, regulation, or written agreement applicable to their employment situation.

**SUMMARY:** Grievants claim that Respondent has failed to provide structured breaks available for them throughout the course of their workday. The record of the case did not establish that Grievants were deprived of the ability to take breaks throughout the day for personal needs or refreshments. Grievants failed to meet their burden by a preponderance of the evidence that Respondent violated any applicable statute, rule, or regulation.

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**KEYWORDS:** Mandatory Overtime; Discrimination; Arbitrary And Capricious

**CASE STYLE:** Pringle v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital  
DOCKET NO. 2012-1424-DHHR (10/22/2013)

**PRIMARY ISSUES:** Whether Grievant established that the decision to mandate overtime represented an arbitrary and capricious decision.

**SUMMARY:** Grievant is employed by Respondent DHHR as a Health Service Worker assigned to William R. Sharpe, Jr., Hospital. Grievant complains that he was unfairly mandated to work overtime to take the place of an evening shift Health Service Worker in his unit who had been previously identified to work on a separate unit, in exchange for a Licensed Practical Nurse from that other unit working the evening shift in Grievant's unit. Grievant failed to establish that this involuntary assignment involved prohibited discrimination, was made in an arbitrary and capricious manner, or otherwise violated any identified law, rule, policy, or regulation. Accordingly, this grievance must be denied.

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**KEYWORDS:** Harassment; Intimidation; Policies and Procedures; Available Remedy; Relief

**CASE STYLE:** Bishop, et al. v. Department of Veterans Assistance  
DOCKET NO. 2013-0185-CONS (10/21/2013)

**PRIMARY ISSUES:** Whether ordering the intimidation and harassment to cease immediately is proper, available and not contrary to law.

**SUMMARY:** Grievants prevailed on the merits by virtue of Respondent's default. Grievants are entitled to relief unless the remedies sought are contrary to law or not proper or available at law. Harassment is a grievable event, for which remedy is available. Ordering Respondent to follow DOP policies and procedures would be meaningless, and relief for violations that have not already occurred would be speculative. Accordingly, the grievance is granted, in part, and denied, in part.

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**KEYWORDS:** Dismissal; Moot; Resignation

**CASE STYLE:** Hale v. Cabell-Huntington Health Department and Stanley Mills, Intervenor  
DOCKET NO. 2012-1167-CabCH (10/29/2013)

**PRIMARY ISSUES:** Whether Grievant's resignation from her employment has rendered the issues raised in her grievance moot.

**SUMMARY:** Grievant filed this grievance on April 19, 2012, alleging hostile work environment sexual harassment and nondiscriminatory hostile workplace harassment. Grievant resigned her position with Respondent effective June 21, 2013, while this matter was pending at level three of the grievance process. Grievant's resignation from her employment with Respondent rendered her grievance moot. Accordingly, this grievance is DISMISSED.

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**KEYWORDS:** Progressive Discipline; Personal Dispute; Unsatisfactory Work Performance; Workplace Behavior; Mitigation; Arbitrary and Capricious

**CASE STYLE:** Furphy v. Division of Corrections/Mount Olive Correctional Complex  
DOCKET NO. 2013-1827-MAPS (10/22/2013)

**PRIMARY ISSUES:** Whether Grievant demonstrated that the disciplinary measure levied was disproportionate to the offense, arbitrary and capricious, or an abuse of discretion by Respondent.

**SUMMARY:** Grievant was employed as a Correctional Officer II at Mount Olive Correctional Complex. Grievant employment was terminated after she disobeyed instructions from the Associate Warden of Programs to not bring a personal dispute she had with another employee into the workplace, to address any issues with the other employee through her chain of command and to keep the contents of the matters discussed in a meeting with the Associate Warden confidential. Respondent avers Grievant was dismissed due to continued unsatisfactory work performance, and continued failure to follow the instructions of her superiors at work. Within the last year Grievant has had received several disciplinary actions for unsatisfactory performance, alleged failure to follow instructions, and disruptive workplace behavior. Respondent's decision to terminate Grievant employment is not inconsistent with the principles of progressive discipline. It is not established that mitigation is warranted by the facts, circumstance or severity of the discipline levied. Respondent's disciplinary action is not clearly excessive or an abuse of discretion. Accordingly, this grievance is DENIED.