

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Anna-Marie Wilson, M.D.,
Petitioner Below, Petitioner**

vs) **No. 11-0600** (Monongalia County 07-C-AP-26)

**West Virginia University School of Medicine,
Department of OB/GYN,
Respondent Below, Respondent**

FILED
October 21, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Anna-Marie Wilson, M.D., appeals the circuit court's order affirming the decision of the Public Employee's Grievance Board to deny her employment grievance.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Petitioner asserts that she was wrongfully terminated from a residency program operated by the Respondent West Virginia University School of Medicine. Respondent asserts that petitioner's residency was terminated because of deficient performance. The grievance board and circuit court upheld the termination.

"This Court reviews decisions of the circuit court under the same standard as that by which the circuit court reviews the decision of the [administrative law judge]." *Martin v. Randolph County Bd. of Educ.*, 195 W.Va. 297, 304, 465 S.E.2d 399, 406 (1995). Pursuant to this standard, a party may appeal the decision of an administrative law judge on the grounds that the decision is, *inter alia*, contrary to law or a lawfully adopted rule or written policy of the employer; is clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or is arbitrary or capricious or characterized by abuse of discretion. W. Va. Code § 6C-2-5(b)(1), (4), and (5), in part.

Petitioner argues that the circuit court was clearly wrong in affirming the grievance board's decision as there was evidence that her skills were the equivalent of, or better than,

other residents, and the issues cited by respondent did not warrant her termination. The circuit court found that while there were differences in opinion amongst respondent's faculty concerning petitioner's competency, the court would not supplant its own judgment for that of the respondent and grievance board. Indeed, this Court has held that "[s]ince a reviewing court is obligated to give deference to factual findings rendered by an administrative law judge, a circuit court is not permitted to substitute its judgment for that of the hearing examiner with regard to factual determinations." Syl. Pt. 1, in part, *Cahill v. Mercer County Bd. of Educ.*, 208 W.Va. 177, 539 S.E.2d 437 (2000).

Both parties have made numerous allegations, all of which this Court has carefully reviewed. Upon a review of the arguments and record on appeal, we conclude that the circuit court's order is not contrary to law or written policy, clearly wrong, arbitrary or capricious, or characterized by an abuse of discretion. We attach and incorporate by reference the circuit court's well-reasoned "Order Dismissing Petition" entered on November 23, 2010.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: October 21, 2011

CONCURRED IN BY:

Acting Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Thomas E. McHugh

DISQUALIFIED:

Chief Justice Margaret L. Workman

**Appendix to Memorandum Decision
Supreme Court of Appeals Case No. 11-0600**

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
DIVISION II

ANNA-MARIE WILSON, M.D.,

Petitioner,

v.

CASE NO.: 07-C-AP-26
Judge Russell M. Clawges, Jr.

WEST VIRGINIA UNIVERSITY,

Respondent.

ORDER DISMISSING PETITION

Presently pending before the Court is a "Petition for Administrative Appeal" filed on September 28, 2007 by the Petitioner, Anna-Marie Wilson; "Petitioner's Memorandum of Law in Support of Petition for Administrative Appeal," filed May 29, 2009; and Respondent's Brief filed on July 15, 2009. The parties agreed that a hearing was not needed and the Court could rule on the pleadings.

Having read the pleadings, considered the pertinent law, and reviewed the administrative record, the Court hereby AFFIRMS the findings and conclusions of the Administrative Law Judge.

FACTS and PROCEDURAL HISTORY

The Petitioner appeals an adverse ruling entered by an Administrative Law Judge (hereinafter, "ALJ") on August 29, 2007. Petitioner filed two grievances against West Virginia University ("WVU") School of Medicine, Department of Obstetrics and Gynecology. The first grievance challenged a non-promotion of Dr. Wilson in July 2004 and her assignment to Fairmont,

**Appendix to Memorandum Decision
Supreme Court of Appeals Case No. 11-0600**

West Virginia. The second involves Respondent's termination of Dr. Wilson in December 2004. These grievances were consolidated. Following an extensive Level Three hearing¹, the grievances were denied by WVU Associate Provost for Academic Personnel. The parties agreed to submit the grievances to Level Four based on the extensive record developed at Level Three.

Petitioner is originally from the English-speaking Commonwealth of Dominica, an island nation in the Caribbean Sea. She graduated from medical school in Andhra Pradesh, India, in 1992 and practiced medicine for approximately ten years. She began her four-year residency program with the WVU School of Medicine, OB/Gyn Department on August 1, 2002, through the National Residency Matching Program. The first year of residency is designated PGY 1, the second year PGY 2, and so forth. Petitioner completed the first year satisfactorily, although with some issues of professionalism. During her second year, Petitioner developed problems in both professionalism and clinical competencies.

Dr. Mahreen Hashmi became the Residency Program Director on July 1, 2003. Petitioner contends that after Dr. Hashmi achieved a position of authority, a confrontation arose between the two and Dr. Hashmi then began efforts to have negative documents placed in Dr. Wilson's personnel file in order to have her terminated.

After Dr. Hashmi was contacted by two physicians regarding several concerns, Dr. Wilson was placed on probation for professionalism issues in March 2004 for a period of three (3) months. After soliciting written assessments of Dr. Wilson from all members of the faculty, the Education Committee recommended that the Petitioner be placed on probation for six (6) months for clinical

¹

Level three hearings were held on 22 separate days from April 21, 2005, through March 28, 2006.

**Appendix to Memorandum Decision
Supreme Court of Appeals Case No. 11-0600**

competencies issues and that Petitioner not be advanced to PGY 3 status. The Education Committee consists of the Program Director, representative faculty members, and at least one resident. By letter dated June 23, 2004, Respondent informed Dr. Wilson that she would not be promoted to PGY 3 and she was placed on a six-month remediation/probation period for clinical competencies issues.

For the first part of the remediation, Petitioner was assigned to an OB/Gyn practice in Fairmont, West Virginia. Respondent believed this experience in a private practice would be beneficial to Petitioner. The placement in Fairmont would be additional experience in a different environment and setting from WVU Hospital and would result in an objective, unbiased assessment of her skills. Dr. Wilson grieved this placement and her request to be removed from the Fairmont office was granted. However, the probation was upheld.

On December 9, 2004, the Education Committee met to discuss Petitioner's probation status. After extensive review, the Education Committee unanimously recommended that Dr. Wilson's employment as a resident be terminated effective December 31, 2004.

Dr. Wilson alleges that the action to terminate her from the OB/Gyn program was arbitrary and capricious, contrary to department bylaws and policy, discriminatory, and the result of retaliation by her immediate supervisor for filing previous grievances. Petitioner seeks reinstatement to the OB/Gyn program, promotion to PGY 3, back pay, damages, and attorney fees.

The ALJ determined that WVU was able to prove by a preponderance of the evidence that Petitioner was properly terminated from employment as a resident due to her failure to achieve promotion based on her performance. The ALJ also determined that Respondent's actions were not discriminatory or a result of reprisal. Petitioner failed to meet her burden of proving that Respondent arbitrarily and capriciously terminated her.

**Appendix to Memorandum Decision
Supreme Court of Appeals Case No. 11-0600**

WVU asserts that Petitioner could not be retained because she failed to meet the standards required for promotion to PGY 3. Hence, the Defendant asks this Court to affirm the findings and conclusions of the ALJ and dismiss the Petition for Appeal.

DISCUSSION

“The decision of the hearing examiner is final upon the parties and is enforceable in circuit court.” W. Va. Code § 29-6A-7(a). “Either party or the director of the division of personnel may appeal to the circuit court of Kanawha County or to the circuit court of the county in which the grievance occurred on the grounds that the hearing examiner’s decision:

- (1) Is contrary to law or a lawfully adopted rule or written policy of the employer;
- (2) Exceeds the hearing examiner’s statutory authority;
- (3) Is the result of fraud or deceit;
- (4) Is clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
- (5) Is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

W.Va. Code § 29-6A-7(b).

Thus, this Court must apply the “arbitrary or capricious” standard of review. “The scope of review under the arbitrary and capricious standard is narrow, and a court is not to substitute its judgment for that of the [ALJ].” Martin v. Randolph County Bd. of Educ., 195 W. Va. 297, 304, 465 S.E.2d 399, 406 (1995). Such a standard affords the ALJ a great deal of deference by the reviewing court. Thus,

We must uphold any of the [ALJ’s] factual findings that are supported by substantial evidence, and we owe substantial deference to inferences drawn from these facts. Further, the [ALJ’s] credibility determinations are binding unless patently without

Appendix to Memorandum Decision
Supreme Court of Appeals Case No. 11-0600

basis in the record. Nonetheless, this Court must determine whether the [ALJ's] findings were reasoned, *i.e.*, whether he or she considered the relevant factors and explained the facts and policy concerns on which he or she relied, and whether those facts have some basis in the record. Id.

Therefore, while a strong presumption favoring the ALJ's decision arises in this case, this Court is not convinced that the ALJ's decision was "arbitrary and capricious" and against the clear weight of the evidence, facts, and relevant law. A circuit court must reverse the findings of an administrative agency, if the decision was "clearly wrong in view of reliable, probative, and substantial evidence on the whole record." Montgomery General Hosp. v. West Virginia Human Rights Com'n, 176 W.Va. 580, 584, 346 S.E.2d 557, 561 (1986).

In this case, the record clearly supports the findings and conclusions of the ALJ. During a May 2004 meeting of the Education Committee, it was decided that the concerns of Petitioner's surgical skills, professionalism, and treatment of patients should be discussed at a full faculty meeting. Written assessments of Dr. Wilson were then solicited from all faculty members. Petitioner was placed on probation due to concerns about her surgical and clinical skills. Seven areas were identified as deficient.

The Education Committee meeting of December 9, 2004, during which it was decided to terminate Petitioner, was a lengthy one. Each member independently reviewed all evaluations of Dr. Wilson and then the Committee deliberated for several hours. The Committee found that Petitioner had failed to correct three of the areas of deficiency. The Committee then voted 7-0 to terminate. Not all staff and faculty members agreed that Petitioner should be dismissed from the program. However, the Education Committee members unanimously determined that she had not met the established criteria for promotion. Approximately ten physicians testified at the Level Three

**Appendix to Memorandum Decision
Supreme Court of Appeals Case No. 11-0600**

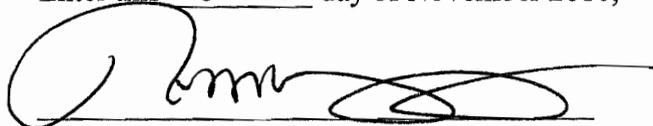
hearing with differences in opinion of Petitioner's competency. Nevertheless, the ALJ's findings are supported by "substantial evidence" and its conclusions of law cannot be characterized as an abuse of the ALJ's discretion nor clearly erroneous. The evidence in its entirety supports the decisions of the Education Committee. The actions taken by the Respondent, as the ALJ found, appear to be well within the discretion of the Respondent. To find otherwise would be to supplant this Court's judgment for that of the Education Committee, the Level Three Grievance Evaluator, and the ALJ. This the Court cannot do.

CONCLUSION

WHEREFORE, it is ORDERED that the Petition for Administrative Appeal presented by the Petitioner, Anna-Marie Wilson, be, and hereby is, REFUSED and that the findings of fact and conclusions of law of the Administrative Law Judge must be, and hereby are, AFFIRMED. Therefore, the Petition for Administrative Appeal is DISMISSED with prejudice.

The Court further DIRECTS the Clerk of the Circuit Court of Monongalia County to distribute copies of this order to the parties and/or counsel of record.

Enter this 23^d day of November 2010,



Russell M. Clawges, Jr., Chief Judge
17th Judicial Circuit, Division II.

ENTERED Nov. 23, 2010
CIVIL ORDER BOOK 128 PAGE 386

JEAN FRIEND, CLERK