

18-0776

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MELISSA WILFONG,
Petitioner/Appellant,

v.

RANDOLPH COUNTY
BOARD OF EDUCATION,
Respondent/Appellee.

Civil Action No. 18-AA-188
Judge Louis H. Bloom

2018 AUG -6 AM 10:32
FILED
CATHY S. GATTSCH, CLERK
KANAWHA COUNTY CIRCUIT COURT

FINAL ORDER

Pending before the Court is a *Petition for Appeal* filed by the Petitioner/Appellant herein, Melissa Wilfong (“Petitioner”), through counsel, Andrew J. Katz, on March 9, 2018. The Petitioner appeals a *Decision* entered by the West Virginia Public Employees Grievance Board (“the Board”) on January 25, 2018. On May 14, 2018, the Petitioner filed her *Brief* in support of said *Petition*. On June 14, 2018, the Respondent/Appellee herein, the Randolph County Board of Education (“Respondent”), filed a *Response* thereto, through counsel, Denise M. Spatafore. Upon review of the record and the applicable law and giving deference to the Board’s pertinent findings of fact, the Court finds and concludes as follows.

FINDINGS OF FACT

1. During the 2016-2017 school year, Petitioner was employed by Respondent as a half-time principal and half-time teacher at Valley Head Elementary School.¹ Petitioner served in this capacity for approximately six years.
2. On March 17, 2017, Pamela Hewitt, then Superintendent of Randolph County Schools, informed Petitioner via letter that she was being considered for transfer for the 2017-2018 school year due to “Lack of need; Lack of Funding; School Closure.”²

¹ November 13, 2017, *Level III Hr’g Tr.* at 7.

² *Id.* at Ex. 1.

3. On April 18, 2017, Respondent approved Petitioner's transfer and informed her of such via letter on April 20, 2017.³ This letter provided that Petitioner would be notified when Respondent made its final recommendation for her 2017-2018 school year assignment.
4. On July 12, 2017, Petitioner submitted an online application for a Principal position at George Ward Elementary School.⁴ Petitioner did not receive this position.⁵
5. On July 26, 2017, Petitioner submitted an online application for a Remedial Specialist position at Tygarts Valley Middle & High School.⁶ Petitioner's application was approved and she was given the Remedial Specialist position.⁷
6. On August 1, 2017, Petitioner filed a grievance with the Board regarding her transfer.⁸

STANDARD OF REVIEW

Review of a Grievance Board decision is governed by W.Va. Code § 6C-2-5(b), which provides the grounds upon which a decision may be reviewed for error:

A party may appeal the decision of the administrative law judge on the grounds that the decision:

- (1) Is contrary to law or a lawfully adopted rule or written policy of the employer;
- (2) Exceeds the administrative law judge'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.

Review of a Grievance Board decision involves a combination of deferential and plenary review.

A reviewing court must give deference to the Board's factual findings, while conclusions of law

³ *Id.* at Ex. 2.

⁴ *Id.* at Ex. 6.

⁵ *Id.* at 30.

⁶ *Id.* at Ex. 6.

⁷ *Id.* at 9.

⁸ Aug. 1, 2017, *W. Va. Pub. Employees Grievance Bd. Grievance Form for Levels 1, 2, and 3.*

and applications of law to the facts are reviewed *de novo*.⁹ Further, the highly deferential “clearly wrong” and “arbitrary and capricious” standards of review presume an administrative agency’s actions to be valid as long as the decision is supported by substantial evidence or a rational basis.¹⁰

DISCUSSION & CONCLUSIONS OF LAW

1. As the Board correctly noted below, the burden is on the grievant to prove her grievance by a preponderance of the evidence in non-disciplinary matters.¹¹ To prove her case by a preponderance of the evidence, the grievant must produce evidence that “shows that the fact sought to be proved is more probable than not.”¹²

2. W. Va. Code § 6C-2-4(a)(1) provides time limits for the filing of grievances:

Within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing

3. Here, the event upon which Petitioner claims to have predicated her August 1, 2017, grievance is her transfer to a non-administrative position. Petitioner does not dispute that Respondent made no assurance that Petitioner would be transferred to an administrative position and in fact admits that during five meetings with the Superintendent at the time, she was never offered to be transferred into a position similar to her former position.¹³

⁹ Syl. pt. 1, *Cahill v. Mercer Cnty. Bd. of Educ.*, 208 W.Va. 177, 539 S.E.2d 437 (2000).

¹⁰ *Webb v. W. Va. Bd. of Med.*, 212 W. Va. 149, 155, 569 S.E.2d 225, 231 (2002) (Per Curiam) (internal quotation marks and citations omitted).

¹¹ W. Va. C.S.R. § 156-1-3; W. Va. Pub. Employees Grievance Bd., *Decision* at 4, Docket No. 2018-0177-RanED.

¹² *Darby v. Kanawha Cty. Bd. Of Educ.*, 227 W. Va. 525, 530; 711 S.E.2d 595, 600 (2011).

¹³ November 13, 2017, *Level III Hr’g Tr.* at 8-9.

4. Therefore, if Petitioner sought to file a grievance on the basis of her transfer to a non-administrative position,¹⁴ she was required to do so within fifteen days of April 20, 2017, the date on which she learned she was being transferred with no assurances of being transferred to an administrative position to which she believed to be entitled.

5. Petitioner did not file within fifteen days of April 20, 2017, but instead on August 1, 2017. Again, under W. Va. C.S.R. § 156-1-3 it is Petitioner's burden to prove that she timely filed her grievance by a preponderance of evidence with facts in the record. Petitioner did not produce sufficient evidence regarding why August 1, 2017, was within fifteen days of "the occurrence of the event upon which the grievance is based"¹⁵ and thus did not satisfy her burden.

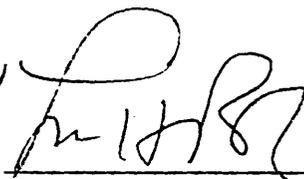
6. Accordingly, this Court **FINDS** that the grievance was not timely filed when Petitioner filed on August 1, 2017, as Petitioner did not file her grievance within the fifteen-day limitation set forth in W. Va. Code § 6C-2-4(a)(1).

DECISION

Accordingly, the Court does **AFFIRM** the *Decision* of the Board entered on January 25, 2018, and does **DENY** the instant *Petition for Appeal*. There being nothing further, the Court does **ORDER** that the above-styled appeal be **DISMISSED** and **STRICKEN** from the docket of this Court. The Clerk is **DIRECTED** to send a certified copy of this *Final Order* to the parties and counsel of record.

ENTERED this 3 day of August 2018.

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. BATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY,
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT,
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS
DAY OF _____, 2018.
CATHY S. BATSON, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA



Louis H. Bloom, Judge

¹⁴ Petitioner may have been able to file a timely grievance based upon Respondent's denial of her July 12, 2017, application for the George Ward Principal position. However, because Petitioner did not include this argument in her grievance, the possible success of this ground is not addressed herein.

¹⁵ W. Va. Code § 6C-2-4(a)(1)

sh/18
C. Edens
Circuit Clerk