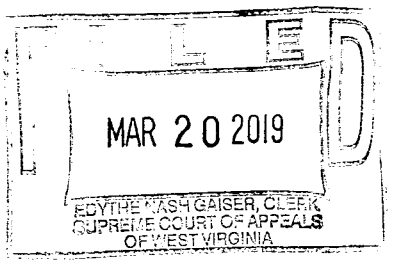
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 18-0932



DIVISION OF HIGHWAYS, and TERRA GOINS,

Petitioners,

v.

Appeal from final order of the Circuit Court of Kanawha County (Case No.: 17-AA-15)

MICHAEL A. POWELL,

Respondent.

Petitioner Terra Goins' Brief

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ASSIGNMENTS OF ERROR

I. THE CIRCUIT COURT INCORRECTLY CONCLUDED THAT THE DISCOVERY RULE APPLIES AND THAT MICHAEL POWELL'S FIFTEEN-DAY WINDOW TO FILE HIS GRIEVANCE BEGAN FOLLOWING HIS ALLEGED CONVERSATIONS WITH TERRA GOINS.

II. EVEN ASSUMING THAT THE DISCOVERY RULE APPLIES, THE RECORD IS INADEQUATE TO ESTABLISH THAT MICHAEL POWELL TIMELY FILED HIS GRIEVANCE.

III. EVEN IF THE CIRCUIT COURT CORRECTLY APPLIED THE DISCOVERY RULE, THE COURT MUST STILL REVERSE THE CIRCUIT COURT, IN PART, AND REMAND TO THE BOARD.

STATEMENT OF THE CASE

This is an appeal involving proceedings before the West Virginia Public Employees Grievance Board (the "Board") and the subsequent appellate proceedings before the Circuit Court of Kanawha County. In June of 2015, Appellant Terra Goins ("Terra"), a licensed professional engineer, was awarded the position of Highway Engineer with the West Virginia Division of Highways (the "DOH"). (A.R. 0006).[1] The Respondent, Michael Powell ("Powell"), and three other individuals had also applied for the Highway Engineer position. *Id.* Powell was informed in writing on June 29, 2015, that he was not selected for the position and that Terra had been selected for the position instead of him. (A.R. 0070).

Powell has maintained that in November of 2015, Terra visited the field office where Powell was working. (A.R. 0235). Powell contends that he spoke to Terra and asked questions regarding her prior work experience. (A.R. 0230). Despite the fact that Terra and Powell had known each other for more than a decade, Powell asserts that he was unfamiliar with Terra's work history before November and had previously made no efforts to discover that information. (A.R. 0230 – 0232). On November 20, 2015, Powell filed a level one grievance with the Board maintaining that Terra was not qualified for the Highway Engineer position. (A.R. 0001). As relief, Powell sought to be placed in the position with backpay for the accompanying salary increase. *Id.*

A level one decision was issued on December 15, 2015, denying Powell's grievance after finding that it was not timely filed. (A.R. 0078 – 0080). As the grievance advanced to level two, the DOH moved to dismiss the grievance for having been filed outside of the fifteen-day window afforded for such grievances to be filed pursuant to West Virginia Code § 6C-2-4(a)(1). (A.R.

[1] References to the Appendix Record are set forth as "A.R. ___." The contents have been agreed upon by the parties.

0081 – 0084). Level two mediation then occurred but was not successful. (A.R. 0085). Powell then elevated his grievance through level three, and a hearing was held before the Board on October 14, 2016. (A.R. 0087). On the timeliness issue, Powell maintained for the first time that he had a conversation with Terra in his field office – a conversation that he thought occurred on November 4, 2015 – and that this conversation revealed Terra's lack of qualifications for the position. (A.R. 0235). Based on the alleged November 4, 2015, conversation, Powell maintained that his initial grievance was timely filed.

On February 8, 2017, Administrative Law Judge William B. McGinley entered a Dismissal Order (the "Dismissal Order"). (A.R. 0343 – 0352). In the Dismissal Order, Judge McGinley agreed with the DOH and found that Powell had not timely filed his grievance with the Board because it was filed over three months late. *Id.* In finding so, Judge McGinley rejected Powell's contention that his fifteen-day deadline began after the alleged conversation on November 4, 2015. *Id.* Instead, Judge McGinley concluded that Powell's fifteen-day window to file a grievance began to run on June 29, 2015, the date he received notice that he was not selected for the position. (A.R. 0348). Judge McGinley also expressly concluded that Powell was aware that Terra had received the position shortly after he was notified that he did not receive the position, and that Powell made no attempt to investigate their comparative qualifications at that time. *Id.* Additionally, there was no evidence whatsoever presented that Terra wrongfully withheld that information from Powell. *Id.* Importantly, the Dismissal Order was silent on the substance of Powell's grievance – whether Terra was qualified for the Highway Engineer position. The Dismissal Order simply resolved whether Powell's grievance had been timely filed.

Powell then appealed the Board's decision to the Circuit Court of Kanawha County, West Virginia. (A.R. 0353 – 0376). On September 19, 2017, the circuit court entered its final order on

Powell's appeal and reversed the Board's decision that Powell's grievance was untimely filed by relying on an application of the discovery rule. (A.R. 0627 – 0631). The court then went much further and concluded that Terra was not qualified for the Highway Engineer position and that Powell was so qualified. *Id.* Although the Board had only determined below that Powell's grievance was not timely filed and even though that issue was the only issue presented on appeal to the circuit court, the court nevertheless ordered Powell to be promoted to the position and for the case to be remanded back down to the Board for a determination on Powell's monetary damages. *Id.*

SUMMARY OF THE ARGUMENT

The circuit court committed three errors. First, the circuit court incorrectly applied the discovery rule, to conclude that Powell's fifteen-day window to file his grievance began to run following his alleged conversation with Terra. As the Board correctly concluded, the event that triggered Powell's grievance deadline was the award of the position to Terra and his unequivocal notification of such. Powell missed the deadline by almost four months.

Second, even assuming that the discovery rule applies, the circuit court's findings of fact and conclusions of law were inadequate to establish that Powell had, in fact, timely filed his grievance. The record contains virtually no evidence from which any finder of fact could determine whether – or when, if at all any substantive conversation occurred between Terra and Powell. If the discovery rule applies, then further factual development must be conducted on these points.

Finally, the circuit court erred by exceeding its authority to review the decision issued by the Board. That is, the Board only determined that Powell's grievance was untimely filed. The Board made no determination on the merits of Powell's grievance. When the Board's decision

was appealed to the circuit court, the only decision that was subject to review was whether the grievance was timely filed. The circuit court well-exceeded its authority when it passed upon the merits of Powell's grievance and ordered that the DOH award him the Highway Engineer position.

Terra respectfully requests that this Court reverse the circuit court and conclude that the Board had correctly determined that Powell's grievance was untimely filed and appropriately dismissed. In the alternative, Terra requests that the Court remand the case to the Board for further factual development on the issue of timeliness and/or for a determination of whether Terra is qualified for the Highway Engineer position.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Appellant Terra Goins respectfully represents that oral argument is necessary in this appeal and that this case is appropriate for a Rule 20 oral argument. This case involves two critical issues of public importance. First, the Court will be called on to determine the appropriate application of the fifteen-day period afforded to public employees to file grievances of employment actions. Powell's interpretation of the permissible time for filing dramatically increases the potential for claims being filed long after the period contemplated by statute. Second, the trial court went far beyond determining the issues before it and invaded the province of the Administrative Law Judge by deciding factual issues on an incomplete record. This Court should make clear through its decision in this case the relative rules of circuit courts and underlying administrable panels in such circumstances.

ARGUMENT

I. The Circuit Court Incorrectly Concluded That the Discovery Rule Applies and That Michael Powell's Fifteen-Day Window to File His Grievance Began Following His Alleged Conversations with Terra Goins.

The Board correctly determined that Powell's grievance was untimely filed. Terra Goins was awarded the Highway Engineer position on June 29, 2015. (A.R. 0006). Powell concedes that he was advised, in writing, both that he had not been awarded the position and that Terra had been chosen over him on that same date or shortly thereafter. (A.R. 0229 – 0230). Thus, Powell's grievance was required to be filed in July of 2015. Powell missed his deadline by months.

West Virginia Code § 6C-2-4(a)(1) governs the time frames for the filing of grievances, as it provides:

> 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. ...

W. Va. Code § 6C-2-4(a)(1).

The West Virginia Code defines "days" as "working days exclusive of Saturday, Sunday, official holidays and any day in which the employee's workplace is legally closed under the authority of the chief administrator due to weather or other cause provided by statute, rule, policy or practice." W. Va. Code § 6C-2-2(c). Moreover, the only time an employee is excused from complying with the timeliness established in West Virginia Code § 6C-2-4 is when the employee "is not working because of accident, sickness, death in the immediate family or other cause for which the grievant was approved leave from employment." W. Va. Code § 6C-2-3(a)(2).

This Court has long-recognized that the time period for filing ordinarily begins to run when the employee is "unequivocally notified of the decision being challenged." *See Rose v. Raleigh*

Cnty. Bd. of Educ., 199 W. Va. 220, 222, 483 S.E.2d 566, 568 (1997) ("[T]he running of the relevant time period is ordinarily deemed to begin to run when the employee is unequivocally notified of the decision."). In this instance, Powell was unequivocally notified of Terra's employment on June 29, 2015, (A.R. 0070), and Powell concedes that he was aware that Terra had been selected for the position. (A.R. 0230). Thus, as the Board concluded, Powell's grievance had to be filed on or before July 21, 2015. (A.R. 0348). Powell did not file his grievance until November 20, 2015. (A.R. 0002). As such, Powell missed that deadline by nearly four full months.

In an effort to save his untimely grievance, Powell maintained before the Board and again before the circuit court that the discovery rule should operate under these circumstances and excuse his tardy filing. (A.R. 0326, 0357). According to Powell, he was unaware of Terra's allegedly inadequate qualifications until he had an informal and undocumented conversation with Terra at his office somewhere within the vicinity of the first week of November 2015. (A.R. 0235). On direct examination at the Level Three Board hearing, Powell and his counsel had the following exchange:

Powell: Yes, sir. I filed the grievance on November 18th.

Counsel: Did you file it within the time constraints after you –

Powell: Yes, sir.

Counsel: -- determined that, in your belief, she was not qualified?

Powell: Yes, sir.

See A.R. at 0232.

On cross examination, the entirety of Powell's testimony on the timing of that conversation is as follows: "I think it was November 4th." (A.R. 0235). Powell offered this assertion for the very first time just before the end of the Level Three hearing. Terra was never asked a single

question about the alleged conversation with Powell or when exactly the alleged conversation occurred.[2]

On appeal, Powell relied on *Spahr v. Preston County Bd. of Educ.*, 182 W. Va. 726, 391 S.E.2d 739 (1990), for the general proposition that the grievance procedure "does not begin to run until the grievant knows of the facts giving rise to the grievance." *Spahr*, 182 W. Va. at 729. Though the Board and the circuit court both acknowledged the holding of *Spahr*, each tribunal nevertheless reaches vastly different conclusions on how it applies to the instant facts. In *Spahr*, the Preston County Board of Education promised to pay a salary supplement to vocational education teachers. *Id.* at 727. Because of an administrative oversight, a certain group of teachers were not included on the list and did not actually know about the salary increase for several years. *Id.* After meeting with their union representative and learning that they were, in fact, entitled to the supplement, the teachers filed a written grievance within 15 days of that meeting. *Id.* The school board argued that the teachers' grievance for full backpay was untimely filed because the teachers, who had previously written to the school superintendent asking about the salary discrepancy, were generally aware at that time there was a problem with pay. *Id.* at 728.

The Court affirmed the lower court and held that the teachers' grievance was timely filed and applied the discovery rule exception to the time limits for instituting a grievance, namely because the teachers' inquiry letters to the superintendent could not be characterized as demonstrating actual knowledge of the facts of constituting their grievance. *Id.* at 729. Importantly, the key factor in *Spahr* was not that the teachers simply suspected something was amiss with pay; it was the fact that the teachers did not actually know of their entitlement to the supplement until they met with their union representative. *Id.* (emphasis added). In stark contrast

[2] Until the commencement of the instant appeal, Terra had been proceeding *pro se* and did not conduct an examination of any witness.

to *Spahr*, Powell was unequivocally notified and received actual knowledge that Terra had received the Highway Engineer position instead of him on June 29, 2015. Therefore, it cannot be said that Powell's window to file his grievance extended to November 2015. Excluding weekends and legal holidays, Powell's fifteen-day deadline to file a grievance expired on July 21, 2015.

Moreover, a vast amount of administrative authority exists on this point and the Board has routinely declined to apply the discovery rule exception to circumstances similar to the instant case. It is well-settled that a grievant must file a grievance within fifteen days of the event or occurrence if he knows of the event or occurrence. *See Lynch v. Dept. of Trans./Div. of Highways*, Docket No. 97-DOH-060 (July 16, 2017); *Harris v. Lincoln County Bd. of Educ.*, Docket No. 89-22-49 (Mar. 23, 1989); *Hines v. Division of Natural Resources*, Docket No. 18-0723-DOC (Jan. 12, 2018); *Palmer v. Dep't. of Health & Human Res.*, Docket No. 17-2308-DHHR (June 30, 2017). Likewise, in non-selection cases the Grievance Board has regularly held that an employee is obligated to file her claim within the applicable statutory time period after being informed that she has not been selected for the position. *Shay v. Monongalia County Bd. of Educ.*, Docket No. 01-30-024 (July 23, 2001); *Tuttle v. Dep't of Transp./Div. of Highways*, Docket No. 05-DOH-298 (Feb. 1, 2006); *Goodwin v. Dep't. of Transp./Div. of Highways*, Docket No. 2011-0604-DOT (Mar. 4, 2011). Importantly, the Grievance Board has also held that a grievant has a responsibility to act reasonably to discover the facts underlying the basis of his grievance. *See Goodwin v. Monongalia County Bd. of Educ.*, Docket No. 00-30-163 (Sept. 25, 2000). *See also Bailey v. McDowell County Bd. of Educ.*, Docket No. 07-33-399 (Nov. 24, 2008) (holding that a grievant may not fail to reasonably investigate a grievable event and then, at a later time, claim that he or she did not know the underlying circumstances of the grievable event).

The plain language and context of the statutory authority and interpretative case law cited herein makes clear that the "event" in this case was Terra's selection for the Highway Engineer position and Powell's rejection. Though this event was fully known to Powell in June 2015, he did nothing until November 2015. His grievance was not timely filed. Because the proper application of the discovery rule is an important and reoccurring issue in general, and particularly in employee grievance proceedings, the Court must reverse the lower court on this basis alone.

II. Even Assuming that the Discovery Rule Applies, the Record is Inadequate to Establish that Michael Powell Timely Filed His Grievance.

As the Board recognized, an employer bears the burden of demonstrating that a grievance was untimely filed to have a grievance dismissed. (A.R. 0346). However, once the employer has demonstrated that the grievance was not timely filed, the burden then shifts to the employee to demonstrate a proper basis to excuse his failure to file in a timely fashion. *Id.*

In this instance, the DOH amply demonstrated that Powell had failed to file his grievance within fifteen days of the hiring decision on June 29, 2015. (A.R. 0351 – 0352). Thus, the burden was on Powell before the Board to justify his untimely filing. The record establishes that Powell plainly failed to carry his burden, and the circuit court's final order is bereft of details to support such a finding. *Id.* Specifically, the Board concluded that Powell was aware that Terra had been awarded the position shortly after he was notified that he did not receive the position. (A.R. 0348). Nevertheless, Powell made no attempt whatsoever to investigate their comparative qualifications, and further failed to produce any evidence that would indicate that Terra wrongfully concealed or otherwise withheld that information from him. *Id.*

However, according to the circuit court, Powell "testified that he filed his grievance promptly upon learning of Terra Goins' . . . failure to meet the minimum qualifications . . . through a discussion with [her]." (A.R. 0628 – 0269). The standard to trigger the discovery rule and

demonstrate compliance therewith simply must be more stringent than requiring the interested party to testify that his filing was "prompt." As the Dismissal Order indicated, the Board has routinely held that an employee is obligated to file his or her claim within the applicable statutory time periods after being informed of their non-selection for the position. (A.R. 0349). In following that logic, ALJ McGinley further stated that, "[o]therwise, there would be virtually no finality to hiring decisions leaving employees and agencies in limbo unnecessarily." *Id.*

Again, as demonstrated above, Powell's own testimony was uncertain; he could merely maintain that he "thought" the alleged conversation with Terra occurred on November 4, 2015. (A.R. 0235). This is a far cry from establishing that Powell's grievance was, in fact, timely filed within fifteen days of the alleged conversation. Even Powell's testimony on the date that he filed his grievance is demonstrably wrong. Powell testified that he filed his grievance on November 18, 2015. *Id.* Per Section 156-1-2.14 of the West Virginia Code of State Rules, a grievance is deemed filed on the date of its postmark. *See* W. Va. CSR § 156-1-2.14. Here, Powell's original grievance was postmarked on November 20, 2015. (A.R. 0002).

Generally speaking, the discovery rule is an equitable doctrine that must be applied "with great circumspection on a case-by-case basis" and only "where there is a strong showing by the plaintiff that he was prevented from knowing of the claim at the time of the injury." *Cart v. Marcum*, 188 W. Va. 241, 245, 423 S.E.2d 644, 688 (1992). Under the discovery rule, whether a plaintiff "knows of" or "discovered" a cause of action is an objective test. *Dunn v. Rockwell*, 225 W. Va. 43, 53, 459 S.E.2d 255, 265 (2009). As such, the plaintiff is charged with the knowledge of the factual, rather than the legal, basis for the action. *Id.* This objective test focuses upon whether a reasonable prudent person would have known, or by the exercise of reasonable diligence should have known, of the elements of a possible cause of action. *Id.* (emphasis added). *See* also

Merrill v. W. Va. Dep't of Health & Human Res., 219 W. Va. 151, 157, 632 S.E.2d 307, 313 (2006) ("[A] lack of knowledge of a legal duty will not toll the statute of limitations.").

Here, Powell knew more than enough to question the hiring decision immediately had he wished to do so. By the time that the hiring decision was made, Powell and Terra had known each other for more than 13 years, and they had been co-workers at the DOH for more than two years. Indeed, Powell was already working for the DOH when he first met Terra, which occurred when they were both taking classes at Bluefield State College. Thus, even if the discovery rule applied as Powell alleges, it was incumbent upon him to act to preserve his interests based on the facts that he knew and should have known at the time.

In short, the record is woefully inadequate to justify the circuit court's conclusion that Powell carried his burden of establishing that he met the deadline to file his grievance. The testimony on the timing of Powell's alleged conversation is equivocal at best, and Powell had abundant personal knowledge regarding Terra's work and education history. Thus, even if the Court concludes that the discovery rule applies, the case must be remanded for further factual development on the issues of what exactly Powell knew and when he knew it.[3]

III. Even if the Circuit Court Correctly Applied the Discovery Rule, the Court Must Still Reverse the Circuit Court, In Part, and Remand to the Board.

A final order of a hearing examiner for the West Virginia Public Employees Grievance Board, made pursuant to W. Va. Code § 6C-2-1, *et. seq.*, and based upon findings of fact, should not be reversed unless it is clearly erroneous. *Randolph Cnty. Bd. of Educ. v. Scalia,* 182 W. Va. 289, 387 S.E.2d 524 (1989). Furthermore, it is well-established West Virginia precedent that "grievance rulings involve a combination of deferential and plenary review. Since a reviewing

[3] Should the court remand the case for further factual development, Terra expects to be able to conclusively demonstrate that she and Powell did not speak on November 4, 2015.

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. Credibility determinations made by an administrative law judge are similarly entitled to deference. Plenary review is conducted as to the conclusions of law and application of law to the facts, which are reviewed *de novo*." *See* Syl. Pt. 1, *Cahill v. Mercer Co. Bd. of Educ.*, 208 W. Va. 177, 539 S.E.2d 437 (2000). *Cahill* goes on to further state that "just as this Court is not permitted to reassess the qualifications of the applicants due to the constraints of appellate review, neither [is] the lower court free to engage in a wholesale reassessment of qualifications under sua sponte standards never employed during either the application or grievance processes." *See id.* at 181.

The Board made no substantive factual findings concerning the merits of Powell's grievance. (A.R. 0343 – 0352). The Dismissal Order focused solely on one dispositive issue – whether Powell filed his grievance beyond the allotted fifteen days. *Id.* Accordingly, when Powell appealed the Board's decision to the circuit court, the circuit court's review should have been constrained to determining whether the Board correctly ruled upon the timeliness issue. *See* W. Va. Code § 6C-2-5(b) (providing that "a party may appeal the decision of the administrative law judge.") (emphasis added). Instead, the circuit court went much further and made entirely new findings of fact and conclusions of its own about the qualifications of Terra and Powell and about Powell's alleged entitlement to the position of Highway Engineer. (A.R. 0630 – 0631). Specifically, the circuit court found that: (1) Powell was qualified for the position of Highway Engineer; (2) Terra was not qualified for the position of Highway Engineer; and (3) Powell was "improperly denied" the position of Highway Engineer. *Id.* Thus, the circuit court ordered that

Powell should be awarded the position. *Id.* None of these issues were before the circuit court for decision.

Likewise, in addition to overstepping its bounds in determining substantive issues with respect to the merits of Powell's grievance, the circuit court also improperly considered and otherwise failed to adhere to the Board's factual findings as to the timeliness of Powell's grievance. This Court's recent decision in *Reed v. Grillot*, 2019 W. Va. LEXIS 62, 2019 WL 1012160 (March 4, 2019) provides clear instruction on the circuit court's authority to review administrative decisions as a whole and further speaks to the deference it must afford the administrative agencies.

In *Reed*, the grievant, Grillot, was pulled over by a police officer and suspected of driving under the influence of alcohol ("DUI"). *Id.* at *1. Though the facts surrounding the traffic stop and subsequent arrest were mostly disputed by the parties, the Commissioner of the Division of Motor Vehicles entered an order revoking Grillot's driver's license based on the allegations. *Id.* at *1-2. Grillot appealed the Commissioner's order to the Office of Administrative Hearings ("OAH"). *Id.* at *5. The OAH held an evidentiary hearing and ultimately affirmed the Commissioner's order revoking Grillot's driver's license. *Id.* Grillot then appealed the OAH's decision to the circuit court which reversed the OAH's decision, finding that the OAH had not fully considered all of the evidence presented in the case. *Id.* The circuit court's decision was thereafter appealed by the OAH to the West Virginia Supreme Court of Appeals. *Id.*

On appeal, this Court concluded that the circuit court erred in reversing the OAH's order because sufficient record evidence existed to support a finding of Grillot's DUI, which therefore supported the administrative revocation of her driver's license. *Id.* at *11. Importantly, in so doing, the Court further underscored the obligation of a reviewing court to defer to the factual findings rendered by an ALJ and reiterated that a circuit court is not permitted to substitute its

judgment for that of a hearing examiner with regard to factual determinations. *Id.* at *9. A circuit court must uphold any of the ALJ's factual findings that are supported by substantial evidence, and it owes "substantial deference" to inferences drawn from those facts. *Id.* "Further, the ALJ's credibility determinations are binding unless patently without basis in the record." *Id.* (citing *Martin v. Randolph Cty. Bd. of Educ.*, 195 W. Va. 297, 304, 465 S.E.2d 399, 406 (1995)).

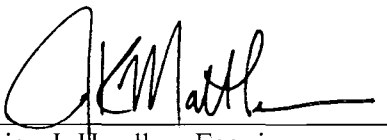
Here, substantial evidence supported the Board's finding that Powell's grievance was not timely filed. Specifically, based on the evidence presented at the level three hearing, ALJ McGinley determined that Powell was unequivocally notified of the DOH's decision to hire Terra as the Highway Engineer and deemed that a timely filed grievance would have necessarily been submitted on or before July 21, 2015 – not in November of 2015. The circuit court was required to defer to the Board's factual findings on timeliness and failed to do so. Moreover, assuming arguendo that the discovery rule applies and Powell's grievance was timely filed, the Court must still remand the matter to the Board for full and proper factual development and determination of the issues that have not yet been considered whatsoever by the Board.

CONCLUSION

The circuit court plainly erred in its Final Order. First, it improperly applied the discovery rule under circumstances where the actionable and operative facts were known to the grievant nearly four months before he filed his grievance. Second, even assuming that the discovery rule could be massaged to fit these circumstances, the circuit court erred in finding that Powell had satisfied his burden of showing that he complied with the relaxed filing deadline. Quite simply, the record evidence does not establish that Powell filed his grievance within fifteen days of his purported discovery of Terra's inadequate qualifications. Indeed, there was virtually no factual development of this issue before the Board, and the circuit court's findings are insufficient to

justify the conclusion that Powell's grievance was timely filed. Finally, even if the circuit court properly applied the discovery rule and appropriately concluded that Powell's grievance was timely filed, this Court must still remand the case to the Board for further proceedings, namely, to determine the merits of Powell's grievance and whether Terra was qualified for the Highway Engineer position that she was awarded nearly four years ago.

Respectfully submitted:



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v.

Appeal from final order of the
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(Case No.: 17-AA-15)

MICHAEL A. POWELL,

Respondent.

CERTIFICATE OF SERVICE

I, Jonathan K. Matthews, do hereby certify that I have served a true and correct copy of the foregoing ***Petitioner Terra Goins' Brief*** on this 19th day of March 2019 by depositing a copy of the same in the regular United States Mail, postage prepaid, to the following:

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