

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

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**Debra Shantie,
Petitioner Below, Petitioner**

v.) No. 24-89 (ICA No. 22-ICA-287)

**Putnam County Board of Education,
Respondent Below, Respondent**

MEMORANDUM DECISION

Petitioner Debra Shantie appeals the December 15, 2023, memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”), affirming the order of the Circuit Court of Kanawha County entered on October 31, 2022.¹ The circuit court’s order reversed the decision of the West Virginia Public Employees Grievance Board (“Grievance Board”) and ordered the decision of Respondent Putnam County Board of Education to terminate the petitioner’s employment be upheld and affirmed. *See Shantie v. Putnam Cnty. Bd. of Educ.*, No. 22-ICA-287, 2023 WL 8680690 (W. Va. Ct. App. Dec. 15, 2023) (memorandum decision). The petitioner argues that the lower courts erred in finding that the term “use” within the applicable policy language was unambiguous and in failing to determine that the petitioner’s conduct was correctable, therefore entitling her to an improvement plan. Upon our review, finding no substantial question of law and no prejudicial error, we determine that oral argument is unnecessary and that a memorandum decision affirming the ICA’s memorandum decision is appropriate. *See W. Va. R. App. P. 21(c)*.

The respondent employed the petitioner as a school bus operator, and the underlying case involves allegations that the petitioner, among other things, handled or utilized her cellular phone in some manner while operating a school bus during the course of her employment. *See generally Shantie*, 2023 WL 8680690, at *1-3. The respondent terminated the petitioner’s employment based on her conduct, and, thereafter, she exercised her right to a hearing before the Grievance Board. The Grievance Board found that what constitutes cellular phone “use” within the applicable policy language to be vague. Despite finding that the respondent proved that the petitioner had, among other things, utilized her cellular phone in some manner while operating a school bus in violation of policy, the Grievance Board concluded that the petitioner’s actions constituted “correctable” conduct entitling her to an opportunity to improve her performance before being terminated.

¹ Petitioner Ms. Shantie is represented by counsel Andrew J. Katz. Respondent Putnam County Board of Education is represented by counsel George “Trey” B. Morrone, III and Joshua A. Cottle.

Therefore, the Grievance Board granted the petitioner’s grievance, reinstated her employment, and awarded back pay. The respondent appealed the Grievance Board’s decision to the Circuit Court of Kanawha County. The circuit court reversed and vacated the Grievance Board’s decision, denied the petitioner’s grievance, and affirmed the petitioner’s termination by the respondent. In its order, the circuit court determined that the term “use” did not require a strict legal definition and that the act of using a cellular phone was readily identifiable. The circuit court determined that the plain language of the applicable policy prohibited any use of a cellular phone and that the petitioner had used her cellular phone in some manner while operating the bus. The circuit court concluded that the petitioner violated the applicable policy; the petitioner’s conduct was not “correctable”; and the Grievance Board erred in finding that the petitioner’s conduct was correctable. In concluding that the petitioner’s conduct was not correctable, the court determined that the petitioner was not entitled to a period of improvement since her conduct impacted the health or safety of others. The petitioner appealed to the ICA, which affirmed the circuit court’s order.

“When reviewing the appeal of a public employee[’s] grievance, 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.” Syl. Pt. 1, *Martin v. Barbour Cnty. Bd. of Educ.*, 228 W. Va. 238, 719 S.E.2d 406 (2011).² A party may appeal the decision of the Grievance Board 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.

W. Va. Code § 6C-2-5(b) (2007).³

Grievance rulings involve a combination of both deferential and plenary review. Since 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

² This Court has consistently reviewed appeals of ICA decisions involving circuit court orders by considering the circuit court order under relevant and well-settled standards of review. *See, e.g.*, Syl. Pt. 3, *Christopher P. v. Amanda C.*, 250 W. Va. 53, 902 S.E.2d 185 (2024) (reviewing appeal of a final order of a family court); Syl. Pt. 1, *Folse v. Rollyson*, 251 W. Va. 566, 915 S.E.2d 344 (2025) (reviewing appeal of circuit court order involving a motion to dismiss); Syl. Pt. 1, *Moorhead v. W. Va. Army Nat’l Guard*, 251 W. Va. 600, 915 S.E.2d 378 (2025) (reviewing appeal of a circuit court order involving summary judgment).

³ The statute was amended, effective March 1, 2024; however, the former version was in effect at the time the Grievance Board’s decision was entered and applies to this case.

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.

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

Here, having reviewed the record on appeal and considered the ICA's memorandum decision, we find no error in the ICA's analysis of the circuit court's order. *See Shantie*, 2023 WL 8680690, at *6-8. We agree that, in these circumstances, the circuit court did not err in finding the term "use" was unambiguous in the context of the applicable policy and as applied to the facts in this case. We further agree that the circuit court did not err in determining that the petitioner's conduct was not correctable and in reversing and vacating the Grievance Board's decision. Accordingly, we affirm.

Affirmed.

ISSUED: November 25, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice C. Haley Bunn
Justice Charles S. Trump IV
Justice Thomas H. Ewing
Senior Status Justice John A. Hutchison