

## **Canfield, et al v. WV Division of Corrections (No. 32287)**

On July 6, 2005, the West Virginia Supreme Court of Appeals issued an opinion which declared certain provisions of the Division of Personnel's *Workers' Compensation Temporary Total Disability Rule* (143 CSR 3), *Annual Increment Policy* (2004), and *Workers' Compensation/Sick Leave Policy* (2000) to be discriminatory. Notwithstanding the fact that the grievants in *Canfield, et al v. WV Division of Corrections* (No. 32287), as well as the circuit court, addressed the grievants' claims of discrimination as violations of the Workers' Compensation discrimination statute (*W. Va. Code* § 23-5A-1), the Supreme Court found that the appropriate analysis for these claims comes under the State's Equal Protection law. More specifically, the Court ruled that being denied various fringe benefits while not working and receiving Workers' Compensation temporary total disability (TTD) benefits - when employees who are not working but using their accrued sick leave benefits receive these fringe benefits - is not related to a proper government purpose and, therefore, violates the equal protection clause of Section 10, Article III, of the *West Virginia Constitution*.

Raymond Canfield, Gary Roy and Richard Teter, were all employees of the Division of Corrections at the Huttonsville Correctional Center, who sustained work-related injuries and received TTD benefits for a time. Each man was notified by Corrections that he could elect to receive TTD benefits, or he could use his accrued sick leave and annual leave, but not both. The men allegedly were also informed that, during the period TTD benefits were received, they would be considered to be on a leave of absence without pay. Accordingly, they would not accrue annual and sick leave, credit for years of service, or be paid for holidays. All three men elected to receive TTD benefits.

Each of the men had initially used sick days for their absences until their TTD benefits began. Once the men began receiving TTD benefits, they each bought back their sick leave time. Each of these men then filed a grievance claiming that the denial of certain fringe benefits during the period for which they received TTD benefits violated *W. Va. Code* § 23-5A-1. These grievances ultimately reached level IV, where the Administrative Law Judge (ALJ) determined that a State employee who suffers a job-related injury and elects to receive TTD benefits does not accrue the requested fringe benefits. The grievants appealed the ALJ's decision to the Circuit Court of Randolph County, which reversed the ALJ by finding that the administrative rules denying the accrual of fringe benefits to employees receiving TTD benefits violated *W. Va. Code* § 23-5A-1, by depriving these men of benefits enjoyed by other employees who are injured and miss work. Corrections appealed the Circuit Court's decision to the Supreme Court, and the Division of Personnel intervened.

In sum, the Court held that the Division of Personnel policies and rules prohibiting employees who are receiving TTD benefits from also accruing sick leave benefits and from receiving holiday pay are reasonably related to a proper government purpose and do not violate the equal protection clause of Section 10, Article III, of the *West Virginia Constitution*. However, they also held that Division of Personnel policies and rules prohibiting employees who are receiving TTD benefits from also accruing credit for years of service and annual leave are not related to a proper government purpose and, therefore, violate the equal protection clause of Section 10, Article III, of the *West Virginia Constitution*.

Effective July 6, 2005, certain provisions of the Division of Personnel's *Workers' Compensation Temporary Total Disability Rule* (143 CSR 3), *Annual Increment Policy* (2004), and *Workers' Compensation/Sick Leave Policy* (2000) are to be prospectively applied as follows, until such time as the Rule and policies are revised:

### **Workers' Compensation Temporary Total Disability Rule (143 CSR 3)**

#### **3.2 Annual increment pay**

- a. An employee electing to receive accumulated sick leave continues to accrue annual increment pay and years of service credit while being paid sick leave.
- b. An employee electing to receive temporary total disability benefits continues to accrue annual increment pay and years of service while on leave without pay and while receiving temporary total disability benefits. ~~but does not accrue credit for years of service.~~

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#### **Section 4. Leave**

- 4.1. An employee electing to receive accumulated sick leave continues to accrue sick and annual leave and service credit in accordance with the provisions of the Division of Personnel Administrative Rule 143CSR1.
- 4.2. An employee electing to receive temporary total disability benefits shall apply for a medical leave of absence without pay and, ~~for purposes of leave, is treated the same as any other employee granted a medical leave of absence without pay~~ shall continue to accrue annual leave, but not sick leave, in accordance with the provisions of the Division of Personnel Administrative Rule 143CSR1.

### **Annual Increment Policy (2004)**

B. Years of Service: Full years of totaled service as an employee of the State of West Virginia. Employees who work less than half-time, 0.5 full-time equivalent (FTE), shall not receive years of service credit for such employment. Eligible employees who work at least 0.5 but less than 1.0 FTE accumulate service pro-rata as specified in Subdivision III. A. 6. Years of service excludes any period in which an employee is in a no-pay status such as unauthorized leave, leave of absence (personal, medical, or parental), or suspension, except periods of military service and leave without pay while receiving Workers' Compensation temporary total disability (TTD) benefits, which shall be counted as tenure. ~~Provided, however, an employee electing to receive temporary total disability benefits continues to receive annual increment pay, while receiving temporary total disability benefits, but does not accrue credit for years of service.~~

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7. Employees in a No-Pay Status:

- a. An eligible employee who has been in no-pay status for a portion of the fiscal year for which payment is being made shall receive an annual increment, based on the employee's totaled full years of service credit as of close of business on June 30.

Example: If an employee had 10 years, 4 months total eligible service as of June 30, 2000, and is suspended without pay, placed on unauthorized leave, or granted a leave of absence (except military leave or leave without pay while receiving Workers' Compensation TTD benefits) without pay for six months during the next fiscal year, his or her full years of service on June 30, 2001, would remain 10 years and he or she would be entitled to an annual increment payment of \$500.00 (10 years x \$50.00 increment) for that fiscal year.

- b. Where the employee provided no service during the fiscal year, the employee shall receive no annual increment payment consistent with the provisions of W. Va. Code §12-3-13. ~~except for the special provisions made for employees receiving Workers' Compensation temporary total disability benefits as referenced in 143 CSR~~ However, an employee on leave without pay while receiving TTD benefits continues to accrue annual increment pay and years of service while on leave without pay and while receiving temporary total disability benefits.

**Workers' Compensation/Sick Leave Policy (2000)**

B. Election to receive TTD Benefits

1. An employee electing to receive TTD benefits must apply for a leave of absence without pay in accordance with the provisions of subsection 14.8 of the *Administrative Rule of the Division of Personnel* (143CSR1).

- a. Employees of the State of West Virginia continue to accrue annual increment pay and years of service while receiving TTD benefits during absences from work due to a work related, compensable injury. ~~but do not accrue credit for years of service. (See Annual Increment Policy.)~~

- b. Periods during which an employee is on a leave of absence without pay and receiving TTD benefits under the provisions of W. Va. Code §23-4-1, are included as tenure, regardless of job class or title, for purposes of order of separation as provided in subsection 12.4 of the Division of Personnel's *Administrative Rule* and Section 5 of the Workers' Compensation Temporary Total Disability Rule.

- c. ~~Annual and Sick~~ leave shall not accrue while an employee is on such leave of absence without pay and holidays occurring during this period will not be paid.

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C. Election to Receive Sick Leave

1. An employee electing to receive accumulated sick leave benefits, instead of TTD benefits, is treated the same as any other employee granted sick leave in accordance with the provisions of the *Administrative Rule* of the Division of Personnel.

2. After an employee exhausts his accrued sick leave and, if requested, accrued annual leave, the employee may then receive TTD benefits during the remaining absence from work due to the compensable injury pursuant to W. Va. Code §23-4-6.

a. After exhausting paid leave, the employee shall request a leave of absence without pay according to the provisions of subsection 14.8 of the *Administrative Rule*.

b. Employees of the State of West Virginia continue to accrue annual increment pay and years of service while receiving TTD benefits during absences from work due to a work related, compensable injury. ~~but do not accrue credit for years of service. (See Annual Increment Policy).~~

c. Periods during which an employee is on a leave of absence without pay and receiving TTD benefits under the provisions of W. Va. Code §23-4-1, are included as tenure, regardless of job class or title, for purposes of order of separation as provided in subsection 12.4 of the Division of Personnel's *Administrative Rule* and Section 5 of the Workers' Compensation Temporary Total Disability Rule.

d. ~~Annual and Sick~~ leave shall not accrue while an employee is on such leave of absence without pay and holidays occurring during this period will not be paid.