



**Kelly Morgan,
Equity Member**

Bailey & Wyant PLLC rewarded Final Order and Level III Grievance denied

Bailey & Wyant, PLLC's Equity Member Kelly C .Morgan obtained a final order in defense of Bluefield State College. At Level III, the employee alleged retaliation because BSC would not allow him to take catastrophic leave; however, BSC terminated the employee based on the medical verification provided by his own doctor stating that he was permanently incapacitated from performing his job duties which was reasonable. While the employee made a prima facie case of retaliation, BSC provided credible evidence of legitimate nondiscriminatory reasons for its actions and the employee failed to provide that those reasons were pretextual.

Judge Bloom addressed three issues on appeal. First, the employee alleged that he had additional time available at his termination. The Court noted that said employee never argued this before the Grievance Board and thus is improper on appeal. However, if the argument had been properly raised, this argument would not change the result as remaining leave for which he was paid was not relevant.

Second, the employee argued that BSC failed to prove that the reasons for termination were a pretext. The Court finds that said employee did not cite to any authority and simply attacks the Grievance Board's factual findings and weighing of the evidence. The allegation that the Board resolved the issue in a single sentence is patently false and a mischaracterization of the Decision.

Finally, the employee argued that the ALJ refused to address his request for catastrophic leave. The Court found that the Grievance Board's findings that catastrophic leave was discretionary and his request considering his permanent incapacitation was not a reasonable request.