**JESSIE RICHARDSON .**

**and GLENDA JONES, .**

**.**

**Grievants, .**

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**.**

**v. . Docket No. 94-HHR-076**

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**WEST VIRGINIA DEPARTMENT OF .**

**HEALTH AND HUMAN RESOURCES .**

**at CHILD ADVOCATE OFFICE / .**

**WEST VIRGINIA DIVISION OF .**

**PERSONNEL, .**

**.**

**Employer. .**

## D E C I S I O N

Jessie Richardson and Glenda Jones (hereinafter Grievants or Ms. Richardson or Ms. Jones) filed a grievance against the Employer pursuant to West Virginia Code §29-6A-1 et seq., on January 11, and January 13, 1993, respectively. Grievants alleged that they were both misclassified as Child Advocate Legal Assistants and requested that they be reclassified to the position of Quality Control Reviewer. Grievants also requested a pay increase to pay grade ten of the pay plan adopted by the West Virginia Division of Personnel (hereinafter Personnel). Grievants waived levels one and two of the grievance procedure and appealed to level four February 8,1994. At the level four hearing, the parties relied upon the evidence developed at level three and simply provided legal argument in support of their respective positions. The following findings of facts are deduced from the record.

## Findings of Fact

1. Ms. Richardson was hired by the Employer to work at its Child Advocate Office in September, 1991, as a temporary legal assistant.
2. Ms. Jones was hired as a legal assistant in October 1991.
3. Grievants were classified as Child Advocate Legal Assistants in December 1992 pursuant to Personnel's statewide reclassification project. Thereafter, Grievants filed an appeal of the December 1992 classification determination with Personnel.
4. Grievants' appeal was granted by Personnel and they were notified by letter dated July 7, 1993, that they were to be classified as Quality Control Reviewers at a pay grade ten, effective December 16, 1992.
5. The current salary of both Grievants is above the minimum salary established for the position of Quality Control Reviewer at pay grade ten.

## Positions of the Parties

Grievants contend that their salaries are lower than legally permissible under Personnel's Statewide Reclassification Project Pilot Administrative Guidelines. They contend that they were, in fact, promoted when Personnel reclassified them in July 1993; therefore, they should have received a salary based uponPersonnel's regulations dealing with the establishment of pay on promotion. Grievants argue that if they had been properly classified when they were hired, they would have received a higher salary than they are currently paid based upon their education, skills and abilities. They contend that if it had not been for Personnel's error, they would be making more money within their current position. The Employer and Personnel both contend that Grievants are paid consistent with the applicable administrative regulations. They deny that Grievants would have been paid at a higher rate of pay had they been initially hired and placed within the proper classification on December 16, 1992.

The foregoing discussion of the facts of the case is hereby supplemented by the following appropriate conclusions of law.

## Conclusions of Law

1. Under Personnel's Reclassification Pilot Administrative Guidelines, the section titled

Implementation, states in pertinent part,

> Effective on the date of the reclassification of the respective department or agency, all positions in the department or agency shall be moved to a revised classification in the classified or classified-exempt service. This transaction shall be a reclassification and the rules and regulations on promotion, demotion, and transfer shall not apply to incumbents of positions. (Emphasis added).

2. Under Personnel's Reclassification Pilot Administrative Guidelines, the subsection titled Implementation, under section five dealing with Compensation Plans, states in pertinent part,

> Compensation of Incumbents - Effective on the date of the reclassification in the respective department or agency, all employees in the classified or classified-exempt services shall be placed in the pay grade on the pilot compensation plan assigned to their respective classification. The allocation of the position to which the employee is reclassified shall determine the employee's new pay grade.

. . .

> b. Employees whose salaries fall within the new salary range shall retain their current salary rate.

3. Under Personnel's Reclassification Pilot Administrative Guidelines, the section titled Reclassification, states in pertinent part,

> The incumbent or the appointing authority shall have the right to a review of the classification action by submitting a written request to the Director of Personnel within ten (10) working days of receipt of notification of the action.

4. In the instant case, Grievants' request for reconsideration of Personnel's reclassification decision of December 1992, was a part of the procedure established by Personnel under which the reclassification project was conducted.

5. Further, the decision of Personnel made July 7, 1993, was part of the reclassification project conducted by Personnel and the result of that decision triggered the application of the Compensation of Incumbents subsection of the Compensation Plans section of the Reclassification Pilot Administrative Guidelines. Therefore, Grievants' salaries were properly established consistent with

the applicable regulations of Personnel.

6. Grievants have failed to establish any violation, misapplication or misinterpretation of any statutes, policies, rules, regulations or written agreements under which theiremployment is governed. See, Payne v. W.Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1989).

Accordingly, this grievance is hereby **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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**ALBERT C. DUNN, JR.**

**Administrative Law Judge**

**June 7, 1994**