DEBORAH KAY SCHRADER,

Grievant,

v. **Docket No. 99-AUD-078**

WEST VIRGINIA STATE AUDITOR,

Respondent.

D E C I S I O N

Grievant, Deborah Kay Schrader, employed by the Department of Tax and Revenue, Chief Inspector Division, as a Tax and Revenue Auditor II, filed a level one grievance on December 16, 1998, in which she alleged that she was misclassified, and that her duties and responsibilities better fit the classification of Tax and Revenue Auditor III. Grievant's immediate supervisor, at level one, and the Director of the Chief Inspector Division, at level two, lacked authority to grant the requested relief. An evidentiary hearing was conducted by the Tax Department at level three, although neither the Tax Department nor the Division of Personnel appeared. The level three grievance evaluator concluded that Grievant was misclassified and ordered her reclassification to Tax and Revenue Auditor III. However, Grievant's request for back pay, with interest, from December 31, 1995, was denied based upon the failure of the parties to reach a “satisfactory agreement”. Grievant advanced her claim to level four on February 25, 1999, for review of the back pay issue.

Following a continuance to allow the parties an opportunity to resolve the issue, a level four hearing was conducted by telephone, by agreement of the parties, on July 30, 1999. Grievant represented herself, Tax and Revenue was represented by Joy Cavallo,Assistant Attorney General. Also present was Barbara Harmon-Schamberger, Deputy Commissioner of the Auditor's Office.

As a preliminary matter, Ms. Cavallo advised the undersigned that the Chief Inspector Division had been transferred to the Auditor's Office, which should now be designated as Respondent in this matter. (See footnote 1) Ms. Harmon-Schamberger concurred, and the matter was noted. (See footnote 2)

Addressing the merits of the matter, Grievant asserted that she had worked out of classification for a period of three years prior to her reclassification, and was entitled to back pay of $6,965.81.

Respondent did not present a case, or in any manner oppose the request. Neither party elected to file post hearing submissions, and the matter became mature for decision at the close of the hearing.

The following limited findings of fact may be made based upon the lower level record and the level four proceedings.

Findings of Fact

1. Grievant was employed by the Department of Tax and Revenue as a Tax and Revenue Auditor II, assigned to the Chief Inspector Division, until that Division was transferred to the State Auditor's Office in July 1999.

2. Grievant was misclassified for a period of time as a Tax and Revenue Auditor II. Her proper classification was Tax and Revenue Auditor III.

3. Respondent does not contest Grievant's claim that she was misclassified for a period of three years, or that she is entitled to back pay for that period of time.

Conclusion of Law

Grievant has established that she is entitled to back pay for the period of her misclassification.

Accordingly, the grievance is **GRANTED**, and Respondent ORDERED to compensate Grievant for back pay, with interest, consistent with this decision.

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred. Any such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §29-6A-7 (1998). 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. However, the appealing party is required by W. Va. Code §29- 5A-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

Date: August 31, 1999 _____

Sue Keller

Senior Administrative Law Judge

Footnote: 1

The Chief Inspector Division was transferred to the Auditor's Office effective July 1, 1999.

Footnote: 2

This grievance procedure is not applicable to employees of any constitutional officer, such as the Auditor, unless they are covered under the civil service system. W. Va. Code §29-6A-1.