RHONDA NOLAN,

Grievant,

v. Docket No. 01-HHR-384

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/BATEMAN HOSPITAL,

Respondent.

D E C I S I O N

This grievance was filed by Grievant, Rhonda Nolan, against her employer, Respondent, Department of Health and Human Resources ("HHR"), contesting her performance appraisal, or evaluation, for the period October 1, 1999, through August 31, 2000. The statement of grievance reads:

> On the evaluation I wasn't given exceeding on any catergories [sic]. I feel that with all the duties I perform outside of my regular duties I deserve a better score. Plus I was given 2 need improvements, and was told because I went to the Adminstr. and she jumped on him I wasn't open to new skills. Was never given any other reason why, no PIP done.

As relief she sought, "[f]eel my score should be higher, where I can at least get the same merit increase as my co-workers who do less than I do." The Level III decision ordered that the two "needs improvement" ratings on the performance appraisal be replaced with "meets expectations" ratings, and that Grievant's merit raise be adjusted accordingly, if necessary. The parties agreed that this action had been taken by Respondent by the time of the Level IV hearing, and the only issue was whether Grievant should have received a rating of "exceeds expectations" in any category. (See footnote 1) The following Findings of Fact are made based upon the evidence presented at Levels III and IV.

FINDINGS OF FACT

1. Grievant has been employed by HHR at Mildred Mitchell-Bateman Hospital for 21 years.

She is a Supervisor II, and supervises the Housekeeping and Laundry units, and approximately 15 employees.

2. Grievant's supervisor, Randy Fetty, Building and Grounds Manager, completed Grievant's performance appraisal for the period October 1, 1999, through August 31, 2000. The performance appraisal form has three rating categories: needs improvement, meets expectations, and exceeds expectations. Grievant was rated in 37 categories, under 9 general areas. The 9 general areas were, maintains flexibility, demonstrates credibility, customer service, quantity of work, quality of work, availability for work, leadership, management, and work environment. Only supervisors and managers are rated in the last 3 general areas. Mr. Fetty rated Grievant as meets expectations in all categories, except in 2 categories under the general area maintains flexibility. He rated Grievant as needs improvement in the categories “adapts to new situations in a positive manner,” and “displays an openness to learning and applying new skills.” These 2 needs improvement ratings were changed to meets expectations after the Level III decision ordered this action. Grievant's overall rating after these changes was a 2.0, meets expectations.

3. Mr. Fetty wrote on Grievant's evaluation that Grievant is well organized, efficient, thorough, she exhibits businesslike conduct, she gives good direction, and she achieves her goals.

4. Grievant was assigned supervisory responsibility over the Laundry unit in January 2000. Upon taking over this unit, she found old sheets which were not usable andhad been stored in the Laundry area for years, and had them made into pillow cases, saving $606.00 on the cost of new pillow cases.

5. Grievant gets her paperwork in on time, and often ahead of the due date, and responds to her supervisor's requests immediately.

6. Grievant has been voluntarily relieving the switchboard operator for a long time, so she could have a lunch break. Grievant has also volunteered to fill in for her when she was late arriving at work. Grievant allowed her subordinates in Housekeeping to train on the switchboard, and to relieve the switchboard operator.

7. Grievant regularly takes broken furniture off the floor if maintenance is busy or if she sees it in the hallway. She ordered bedspreads when she saw they were needed, which is the nursing department's responsibility. She performs minor maintenance on Housekeeping equipment when necessary. She served on the credit and Christmas committees. She trains CWEP (“Welfare to

Work") employees. She had keys made for persons who needed them, which was the switchboard operator's responsibility. She moved all the bio-hazardous waste room materials to another room, when those responsible for the move did not complete this task when she thought it should be completed.

DISCUSSION

An employee grieving his evaluation must establish by a preponderance of the evidence that his evaluation is wrong because his evaluator abused his discretion in rating the grievant, Messenger v. W. Va. Dep't of Health & Human Resources, Docket No. 92- HHR-388 (Apr. 7, 1993); Wiley v. W. Va. Workers' Compensation Fund, Docket No. WCF- 89-015 (July 31, 1989); or the performance evaluation was the result of some misinterpretation or misapplication of established policies or rules governing the evaluation process. Maxey v. W. Va. Dep't of Health & Human Serv., Docket Nos. 92-HHR- 088/224/362 (Aug. 16, 1993); Hurst v. W. Va. Dep't of Transp., Docket No. 91-DOH-326(Feb. 27, 1992). Wiley v. W. Va. Div. of Natural Resources, Docket No. 97-DNR-397 (Mar. 26, 1998). In order to prove that a supervisor has acted in a manner that constitutes an abuse of discretion, the grievant must prove that the evaluation was the result of arbitrary or capricious decision-making. Kemper v. W. Va. Dep't of Transp., Docket No. 91-DOH- 325 (Mar. 2, 1992).

In determining that a discretionary decision was arbitrary and capricious, a reviewing body applies a narrow scope of review, limited to considering whether relevant factors were considered in reaching the decision, and whether there has been a clear error of judgment. Generally, an agency's decision is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. Moreover, under the arbitrary and capricious standard of review, an administrative law judge may not simply substitute his or her judgment for that of the agency decision maker. Bradley v. Bd. of Directors, Docket No. 96-BOD-030 (Dec. 29, 1997); Bedford County Memorial Hosp. v. Health and Human Services, 769 F.2d 1017 (4th Cir. 1985).

Grievant stated she believed her work performance exceeded expectations in willingly accepting responsibilities, because she was given the extra duty of taking responsibility for the Laundry, she volunteered to relieve the switchboard operator every day so she could have a lunch break, or when

the operator was late, she had worked overtime on the switchboard and in Housekeeping, she had taken broken furniture off the floor to the storeroom when maintenance was busy, and she had taken a cart to the storeroom which was sitting out in the hallway. She believed she exceeded expectations in “Leadership,” because she sees that her employees are trained in other areas. She felt she exceeded expectations in the area of responding in a timely manner, because she responds to requests immediately, and gets her paperwork in before the deadline. Grievant testified that Mr. Fetty told her she was not to give any of her subordinates an exceeds expectations, because he and the administrator felt that an employee could exceed only if they worked out of their class, in other areas. Grievant believed this was what she did when she worked at the switchboard, when she performed minor maintenance on the Housekeeping equipment when maintenance was busy, when she did all her paperwork, when she took computer training in order to be able to perform her time-keeping duties, when she told employees they had to wear gloves in order to move bio- hazardous medical waste boxes, when she moved these boxes, and when she ordered bedspreads, which was nursing's responsibility. Anything she saw which needed to be done, she would check with Mr. Fetty to see about going ahead and doing it. She felt that with all the positive comments made by Mr. Fetty on her evaluation, she should have received an exceeds expectations in some areas.

Grievant also did not understand why she received no exceeds expectations on this evaluation, when she had received a rating of exceeds expectations in almost all categories the preceding rating period, and Mr. Fetty said her performance had improved this year. Grievant acknowledged that the rating system the preceding year was different.

Mr. Fetty testified that it would be very hard for Grievant to attain an exceeds expectations using the current rating system, and noted that the preceding year he was a new supervisor. He also stated that more is expected of supervisors. He believed supervisors are expected to work extra hours, to check on all shifts if they have employees working different shifts, to look for ways to save money, to be alert to ways to operate their units more efficiently, and to do whatever needs to be done. Thus, he found that the things Grievant did which she believed went above and beyond what was expected, were indeed simply what was expected of a supervisor, and, under the current rating system, meant she should be rated as meeting the expectations of the job. Mr. Fetty did not believe that Grievant's volunteering to relieve the switchboard operator should garner her an exceedsexpectations in any category, because this work was not supervisory level work, and he felt that as a supervisor, she

should be devoting her time to her staff. The same can be said of Grievant's frequent furniture moving activities.

Grievant has demonstrated that if she sees something which needs to be done, she does it without hesitation, even if it is someone else's job responsibility. She recognized that her actions can appropriately be characterized as teamwork. As Mr. Fetty pointed out, it is important here to view Grievant's undertakings, not as simply those of an employee, but as a supervisor. The undersigned cannot find fault with Mr. Fetty's conclusions that it is a part of a supervisor's job to promote teamwork, and to make sure problems which they observe are taken care of, regardless of whether the problem is within their area of responsibility. While reasonable minds could differ, the undersigned cannot conclude that Mr. Fetty abused his discretion in not rating Grievant as exceeds expectations in any area, given the current rating system, even though he felt Grievant does a very good job and is a very good employee, and he in fact commented positively on her work. He felt she was doing what she was supposed to be doing. The fact that Grievant received a rating of exceeds standards last year when Mr. Fetty was a new supervisor, and it was a different rating system which allowed the supervisor to score an employee from 1 to 5 in each category, does not make Mr. Fetty's present evaluation of Grievant's performance wrong.

The following Conclusions of Law support the decision reached.

CONCLUSIONS OF LAW

1. An employee grieving his evaluation must establish by a preponderance of the evidence that his evaluation is wrong because his evaluator abused his discretion in rating the grievant, Messenger v. W. Va. Dep't of Health & Human Resources, Docket No. 92-HHR-388 (Apr. 7, 1993); Wiley v. W. Va. Workers' Compensation Fund, Docket No. WCF-89-015 (July 31, 1989); or the performance evaluation was the result of some misinterpretation or misapplication of established policies or rules governing the evaluationprocess. Maxey v. W. Va. Dep't of Health & Human Serv., Docket Nos. 92-HHR- 088/224/362 (Aug. 16, 1993); Hurst v. W. Va. Dep't of Transp., Docket No. 91-DOH-326 (Feb. 27, 1992). Wiley v. W. Va. Div. of Natural Resources, Docket No. 97-DNR-397 (Mar. 26, 1998). In order to prove that a supervisor has acted in a manner that constitutes an abuse of discretion, the grievant must prove that the evaluation was the result of arbitrary or capricious decision-making. Kemper v. W. Va. Dep't of Transp., Docket No. 91-DOH- 325 (Mar. 2, 1992).

2. In determining that a discretionary decision was arbitrary and capricious, a reviewing body applies a narrow scope of review, limited to considering whether relevant factors were considered in reaching the decision, and whether there has been a clear error of judgment. Generally, an agency's decision is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. Moreover, under the arbitrary and capricious standard of review, an administrative law judge may not simply substitute his or her judgment for that of the agency decision maker. Bradley v. Bd. of Directors, Docket No. 96-BOD-030 (Dec. 29, 1997); Bedford County Memorial Hosp. v. Health and Human Services, 769 F.2d 1017 (4th Cir. 1985).

3. Grievant's supervisor did not abuse his discretion in not rating Grievant's performance in any area as exceeds expectations.

Accordingly, this grievance is **DENIED**.

Any party or the Division of Personnel may appeal this Decision to the circuit court of the county in which the grievance arose, or the Circuit Court of Kanawha County. Anysuch 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 § 29A-5-4(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.

BRENDA L. GOULD

Administrative Law Judge

Dated: October 16, 2001

Footnote: 1

This grievance was filed on October 12, 2000. Grievant's supervisor denied the grievance on October 16, 2000. Grievant appealed to Level II, where the grievance was denied on October 27, 2000. Grievant appealed to Level III, where three days of hearing were held on November 23, 2000, March 8, 2001, and June 1, 2001. A Level III decision was issued on

June 8, 2001, granting the grievance in part, and denying it in part. Grievant appealed to Level IV on May 4, 2001. A Level IV hearing was held on July 26, 2001. Grievant represented herself, and HHR was represented by Jon Blevins, Esquire. This matter became mature for decision upon receipt of Grievant's post-hearing written arguments on August 24, 2001. Respondent presented oral argument at the close of the Level IV hearing, and declined to submit written argument.