MARGUERITE ALEXANDER,

Grievant,

v. **Docket No. 05-HE-276**

WEST VIRGINIA UNIVERSITY,

Respondent.

D E C I S I O N

Marguerite Alexander ("Grievant") employed by West Virginia University ("WVU") as a Parking Assistant, filed a level one grievance on May 2, 2005, in which she alleged a violation of Policy HR-3, when she was not selected for a position of Accounting Assistant. For relief, Grievant requested instatement, back pay with interest, and all other benefits. After the grievance was denied at all lower levels, appeal to level four was made on August 4, 2005. Grievant, represented by Mary Snelson, a West Virginia Education Association Uniserv Consultant, and WVU counsel, Samuel R. Spatafore, Assistant Attorney General, agreed to submit the grievance for decision based upon the record. The grievance became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on or before October 31, 2005.

The following facts have been derived from a preponderance of the credible evidence made part of the record at levels one, two, and three.

Findings of Fact

1. Grievant has been employed by WVU for approximately fifteen years, and has held the position of Office Assistant, pay grade ten, at all times pertinent to this grievance.

2. On or about January 24, 2005, WVU posted a vacancy for the position ofAccounting Assistant II #106, in the Office of Student Accounts in the Finance Department. The position description provides that the incumbent, working with accountants, accounting assistants, manager and assistant director, "is responsible for the recording and recognition of all West Virginia University student revenue and student disbursements." Qualifications for the position included specific technical or business knowledge received from a formal registered training program or obtained through an Associate's degree of over 18 months and up to 3 years beyond high school. Eighteen

hours of accounting, finance, or a behavioral field for customer service aspects combined with one year of business experience, or another equivalent combination of education and experience could be acceptable.

3. The applicants were screened by the office of Human Resources where a paper review was conducted, and those who appeared to minimally meet the qualifications required by the position were referred for an interview. Whether an applicant does, in fact, meet the minimum qualifications is determined by the hiring manager.

4. Interviews were conducted by Michael Beto, Assistant Director of Student Accounts, and Brandon Twigg, Operations Coordinator Student Accounts. The candidates were each asked twenty-five questions ranging from very general to specific matters, such as please define debit/credit.

5. Grievant was referred for an interview based on her combination of business experience and education listed on her application and resume. Specifically, she has a high school diploma, and six hours of college accounting classes. Grievant was first employed by WVU in 1990 as an Accounting Clerk III/Interim Accountant, until 1993 when she transferred to a position of Accountant I/Accounting Clerk, a position she held untilJune 1995. Since that time she has worked as a Clerical Assistant/Office Assistant, a Classroom Scheduling Assistant, and an Office Assistant.

6. Grievant was determined not to be minimally qualified for the position because she did not have the formal education, or even 18 hours of accounting. Although her experience was considered, her demonstrated lack of knowledge was inadequate to compensate for her educational deficiency.

7. Steve Ullery was offered the position based upon his strong communication skills demonstrated during the interview, in addition to his Bachelor's degree with a minor in business, his extensive customer service experience, and relevant work experience in accounting. Mr. Ullery had been employed by WVU Mountaineer Temps since July 2004 as an Accounting Clerk II (#106) in the Office of Student Accounts.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); Howell v. W. Va. Dep't of Health & Human Res., Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of

Educ., Docket No. 33-88-130 (Aug. 19, 1988). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health & Human Res., Docket No. 92-HHR-486 (May 17, 1993).

Grievant argues that as a current employee who met the minimum qualifications, she was entitled to the position under W. Va. Code § 18B-7-1(d) and WVU HumanResources Policy HR-3. WVU asserts the determination that Grievant was not minimally qualified was not arbitrary and capricious, therefore, the preference awarded to current employees was not applicable in this case. W. Va. Code § 18B-7-1(d) provides:

> A nonexempt classified employee, who applies and meets the minimum qualifications for a nonexempt job opening at the institution where currently employed, whether the job is a lateral transfer or a promotion, shall be transferred or promoted before a new person is hired.

WVU Policy HR-3 states, in part:

WVU strives to hire the best-qualified employment candidates. The selection decision is to be based on comparative analysis of the job-related qualifications of all referred candidates. Selection determinations will apply the following:

* * *

Qualified internal non-exempt candidates for non-exempt positions will be selected before an external candidate, unless otherwise dictated by requirements or mandates of the Affirmative Action Program or the Americans with Disabilities Act.

Grievant erroneously believes that she is minimally qualified for the position of Accounting Assistant, as evidenced by the fact that Human Resources forwarded her application to the Finance Department. Jim Morris, Director of Employment and Employee Relations at WVU, testified at level three that Human Resources makes a broad determination of whether an applicant might be qualified, but that the hiring manager makes the final decision. In this case, the determination by Human Resources to forward Grievant's application was reasonable, given her education and experience stated on her application.

However, during the interview process, Mr. Beto and Mr. Twigg found that Grievant'sexperience from ten years earlier, did not compensate for her lack of formal training. They found that Grievant was unable to correctly define basic accounting terms, did not make direct eye contact, and that her

answers to questions were lacking and incomplete. In summary, Grievant was determined not to be minimally qualified for the front desk position in the very busy customer service area. Because Grievant was not determined to be minimally qualified for the position, the preference does not apply in this case.

___In addition to the foregoing findings of fact and discussion, the following formal conclusions of law are appropriate.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); Howell v. W. Va. Dep't of Health & Human Resources, Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also Holly v. Logan County Bd. of Educ., Docket No. 96- 23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993).

2. W. Va. Code §18B-7-1(d) and WVU Policy HR-3, provide that a current employee, who applies and meets the minimum qualifications for a nonexempt job opening shall be transferred or promoted before a new person is hired. 3. Grievant did not demonstrate a violation of W. Va. Code § 18B-7-1(d), or Policy WVU-HR-3, when she was not given preference for the position of Accounting Assistant II.

Accordingly, this grievance is **DENIED**.

Any party 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 § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

DATE: NOVEMBER 30, 2005

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE