SAMANTHA L. JAGGIE,

Grievant,

v. **Docket No. 06-DJS-136**

DIVISION OF JUVENILE SERVICES/

INDUSTRIAL HOME FOR YOUTH,

Respondent.

DECISION

Samantha Jaggie ("Grievant") initiated this proceeding on March 21, 2006, alleging that she has been paid an incorrect salary since beginning her employment with the Division of Juvenile Services ("DJS") three years ago. She seeks a pay increase with back pay to January 17, 2003. After denials at the lower levels, and a hearing at level three, Grievant appealed to the Grievance Board on April 25, 2006. A level four hearing was held in Westover, West Virginia, on July 19, 2006. Grievant represented herself and was accompanied by Chris Shingleton, and DJS was represented by Brenda Hoylman, Paralegal. This matter became mature for consideration upon receipt of Respondent's fact/law proposals on August 2, 2006.

The following material facts have been proven by a preponderance of the evidence.

Findings of Fact

1. Grievant began employment at the Industrial Home for Youth as a cook. Her starting salary was $14,544 annually. (See footnote 1) 2. Since 2002, pursuant to the provisions of W. Va. Code § 6-7-1, all new state employees are paid one pay cycle in arrears. This means that, at the end of their first month of employment, they receive payment only for the first two weeks they worked. Each pay period thereafter, they are not being paid for the immediately preceding two weeks of work, but for the two weeks prior to that. Therefore, Grievant did not receive her first paycheck until mid-February of 2003, and it was only for two weeks of work, rather than four. (See footnote 2)

3. Grievant's W-2 form for 2003 accurately reflects her annual salary of $14,544, minus one month's salary for which she had not been paid, and also shows appropriate retirement, insurance and tax deductions. Likewise, her 2004 and 2005 W-2's accurately reflect her annual salary with appropriate deductions.

4. Grievant received a merit increase in 2004 and an across-the-board salary increase in 2005, bringing her current salary to $16,908.00.

5. In February of 2006, Grievant was erroneously informed that a new cook had been hired at a higher salary than hers. This prompted Grievant to contact the payroll department at IHY and request a “proof of income” statement, in order to verify her salary.

6. Sharon Hayes, Human Resources Director, responded to Grievant's request on February 28, 2006, with a standard verification of income letter, which stated: “Ms.Samantha Jaggie is employed by the [IHY], effective January 17, 2003 as a Cook with an annual salary of $16,908.00.”

7. Grievant was confused by Ms. Hayes' letter, believing it meant that she should have been making $16,908 since the beginning of her employment. Therefore, she filed this grievance.

8. On April 7, 2006, Ms. Hayes wrote to Grievant to clarify her employment information. She stated that, when an employee requests a verification of salary, she provides only their current salary, and this is what she believed Grievant had requested. Ms. Hayes went on to provide Grievant's entire salary history, as set forth above.

9. After filing this grievance, Grievant discovered that the new cook had not been hired at a higher salary then hers, but she has continued to pursue this grievance, because of her belief that errors have been made regarding her salary.

10. The pay range for Grievant's position is $12,900 to $23,856 annually.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her claims 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 wouldaccept 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).

During the level four hearing, it became quite apparent that Grievant was quite confused regarding her actual yearly salary and the various deductions which must be made by her employer. Mainly, the “payment in arrears” issue seems to have led to many questions as to what Grievant's actual starting salary was in 2003 and whether or not she was actually paid it. Similarly, Grievant seems to have had difficulty understanding the 2004 and 2005 W-2 information provided by DJS.

The evidence introduced in this case does not reveal any improprieties regarding Grievant's salary. For each year of her employment, DJS documented and explained her gross salary and overtime pay and how retirement and insurance deductions were made to arrive at the information reflected on her W-2s. She has been paid an appropriate salary for her position, the required legal deductions were made, and she has not demonstrated that anything improper has occurred with regard to her pay.

The following conclusions of law support this decision.

Conclusions of Law

1. Grievant has the burden of proving her claims 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).
2. Grievant has failed to prove that she has not been paid the proper salary since 2003.

Accordingly, this grievance is **DENIED**.

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 § 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: August 18, 2006

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DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Although Grievant had been told in her job interview that her salary would be $12,900, she was actually given a higher entry level salary because of the security levelof the facility, as directed by the Division of Personnel.

Footnote: 2

Because of this system of keeping an employee's salary two weeks in arrears, Grievant would not receive payment for those two weeks of work until she resigns from state employment.