WEST VIRGINIA PUBLIC EMPLOYEES

GRIEVANCE BOARD

SHELLIE RODEHEAVER,

Grievant,

v. Docket No. 06-HHR-406

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/HOPEMONT HOSPITAL,

Respondent.

DECISION

Shellie Rodeheaver ("Grievant") initiated this grievance on June 19, 2006, alleging she should have been selected for the position of Therapeutic Program Director. She seeks as relief to be placed in the position. After denials at the lower levels, Grievant appealed to the Grievance Board on November 3, 2006. A level four hearing was held in Westover, West Virginia, on March 30, 2007. Grievant was represented by counsel, S. Ramani Pillai, and Respondent was represented by Jennifer K. Akers, Assistant Attorney General. This matter became mature for consideration upon receipt of the parties' fact/law proposals on May 1, 2007.

Synopsis

Grievant alleged she should have been selected over the successful applicant for the position of Therapeutic Program Director **.** Grievant failed to prove her allegations of improprieties in the interview process or that she was the most qualified applicant. Respondent demonstrated legitimate justifications for selecting the successful applicant, based upon experience and knowledge.

Findings of Fact

1. Grievant has been employed by the Department of Health and Human Resources ("DHHR") at Hopemont Hospital for over 17 years.

2. Hopemont Hospital is a long-term nursing facility which provides services to geriatric residents of West Virginia requiring long-term care and behavioral interventions to maximize their functioning ability and independence. It provides care to persons with behavioral disabilities and those whom the private nursing facilities are unable to serve and treat.

3. Grievant's current position is Recreation Specialist, which has been her assignment for approximately 14 years. She works within the Recreation Therapy department, administering recreational services to patients, according to their specific needs and care plans. She assesses their progress, whether the programs are appropriate to their level of functioning, and whether their needs are being met by the services. Grievant also developed the Art Therapy program, which is currently being used at Hopemont Hospital.

4. Grievant has a bachelor's degree in Fine Arts. Prior to working at Hopemont, she was employed by Appalachian Crossroads as a Program Coordinator. This was an "activity center" for physically and mentally disabled individuals, along with some psychiatric patients. Grievant had a caseload of psychiatric patients assigned to her for services, and she also supervised building maintenance and transportation for the facility. She interacted with the patients and participated in periodic team meetings. She was employed as an instructor for 2½ years, then for an additional 2½ years as a program coordinator. She has also worked as a consultant. 5. On May 5, 2006, Hopemont posted a vacancy for the position of Therapeutic Program Director. This individual manages programs in the Social Service, Recreation and Psychology Departments. Responsibilities of the position include supervision of the department heads of these departments, along with overseeing their programs and services. The Director serves as a management team member, takes turns being the administrator on call, and is charged with interpreting state and federal regulations applicable to these departments, to constantly ensure that the hospital is in compliance.

6. Four applicants, including Grievant, were interviewed by a committee which included Kitty Dilley, Hopemont's Director of Personnel, Nancy Harsh, the outgoing Therapeutic Program Director, and Sherri Snyder, Director of Nursing.

7. All applicants were asked the same questions, and responses were scored, using a rating sheet. Applicants were evaluated in the areas of oral expression, intelligence and reasoning, tact, confidence, and leadership potential. Specific questions were asked regarding knowledge of the position, experience, management background, and licensure standards in the applicable program areas.

8. Applicants were also asked to provide references, and the interview committee sent questionnaires to these individuals, along with making phone calls to them.

9. After the interviews were completed, the ratings were added together. Of the four applicants, Grievant was rated lowest, and the highest score went to Maria Carr, who was selected to fill the position.

10. At the time of her selection, Ms. Carr had been employed at Hopemont for 15 years and was Director of Social Work. She has a bachelor's degree in Psychology. She is a licensed social worker and had worked directly with the outgoing TherapeuticProgram Director for several years, giving her extensive knowledge of the requirements of the position. She had quality experience both as a supervisor and social worker, had experience serving as the administrator on call, and displayed knowledge of regulations applicable to patient rights, social services, and treatment. All references provided excellent recommendations for Ms. Carr.

11. Grievant was very personable during her interview, but her responses to the committee's questions were confusing. She gave so much information that the interviewers had difficulty determining what information was relevant to the question, a tendency which Grievant also displayed during her level four testimony. The committee determined that Grievant did not have pertinent experience or regulatory knowledge in the psychology and social work areas, and she did not have experience or knowledge of regulations regarding patient rights. Grievant received two positive recommendations and two negative ones.

Discussion

In a selection case, a grievant must prove, by a preponderance of the evidence, that she was the most qualified applicant for the position in question. *See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). In a selection case, the grievance procedure is not intended to be a

"super interview," but rather, allows a review of the legal sufficiency of the selection process. *Thibault v. Div. of Rehabilitation Serv.*, Docket No. 93-RS-489 (July 29, 1994). This Grievance Board recognizes selection decisions are largely the prerogative of management, and absent the presence of unlawful, unreasonable, or arbitrary and capricious behavior, such selection decisions will generally not be overturned. *Skeens-Mihaliak v. Div. of Rehab. Serv.*, Docket No. 98-RS-126 (Aug. 3, 1998). An agency's decision as to who is the best qualified applicant will be upheld unless shown by the grievant to be arbitrary and capricious or clearly wrong. *Thibault, supra*. The "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105; 556 S.E.2d 72 (2001)(*citing In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996)). “While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the employer].” *Trimboli v. Dep't of Health and Human Resources*, Docket No. 93-HHR-322 (June 27, 1997)*; Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001).

Grievant contends that the interview committee was “tainted,” due to a possible bias on the part of Nancy Harsh, who had been Ms. Carr's supervisor for several years. Grievant believes that this prior “relationship” would make Ms. Harsh an inappropriate person to be involved in the interviews, and that an inquiry should have been conducted as to whether or not these two had a personal friendship outside the workplace. She also contends that she has far more pertinent experience to the position, which should have resulted in her being selected over Ms. Carr. Grievant's allegations regarding any impropriety regarding Ms. Harsh's involvement are simply unfounded and unsupported by any evidence offered in this case. Despite Grievant's contentions, neither Ms. Carr nor Ms. Harsh were called to testify at either hearing in this matter so that these issues could be explored. Moreover, Ms. Harsh's involvement in the interviews was logical, given that she was the person who had been performing the duties of the position being filled, making her insight regarding the applicants' abilities to perform these duties extremely pertinent. There is simply no evidence of bias or any inappropriate relationship between Ms. Harsh and the successful applicant.

There is also no basis upon which to conclude that this selection was arbitrary and capricious or an abuse of discretion. While Grievant has many years of experience providing services to special

populations, there were other aspects of this position of which she did not have the necessary knowledge or experience. Moreover, Ms. Carr had been the Director of Social Work, giving her experience with working in a management position at Hopemont, along with more knowledge of applicable regulations and familiarity with the areas of psychology and social work. These factors, combined with the difficulties presented during Grievant's interview and some unfavorable reference results, provided sufficient justification for selecting Ms. Carr to fill the position. The interview process appears to have been conducted in a fair and logical manner, and the highest-rated applicant was accordingly selected.

Therefore, the undersigned concludes that Grievant has failed to establish that the selection of Ms. Carr was arbitrary and capricious, an abuse of discretion, or clearly wrong. The following conclusions of law support this Decision.

Conclusions of Law

1. In a selection case, a grievant must prove, by a preponderance of the evidence, that she was the most qualified applicant for the position in question. *See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. The grievance procedure is not intended to be a "super interview," but rather, allows a review of the legal sufficiency of the selection process. *Thibault v. Div. of Rehabilitation Serv.*, Docket No. 93-RS-489 (July 29, 1994).

3. This Grievance Board recognizes selection decisions are largely the prerogative of management, and absent the presence of unlawful, unreasonable, or arbitrary and capricious behavior, such selection decisions will generally not be overturned. *Skeens-Mihaliak v. Div. of Rehab. Serv.*, Docket No. 98-RS-126 (Aug. 3, 1998). An agency's decision as to who is the best qualified applicant will be upheld unless shown by the grievant to be arbitrary and capricious or clearly wrong. *Thibault, supra*.

4. Grievant has failed to prove by a preponderance of the evidence that this selection decision was arbitrary and capricious, clearly wrong, or an abuse of discretion.

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 thisdecision. *See* W. Va. Code § 29-6A-7 (repealed) (*but see Executive Order No. 2-07*, May 8, 2007). 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 27, 2007

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DENISE M. SPATAFORE

Administrative Law Judge