WEST VIRGINIA PUBLIC EMPLOYEES

GRIEVANCE BOARD

KIMBERLY DAVIS,

Grievant,

v. **Docket No. 07-HHR-044**

DEPARTMENT OF HEALTH AND

HUMAN RESOURCES//BUREAU

FOR CHILDREN AND FAMILIES,

Respondent.

DECISION

Kimberly Davis ("Grievant") initiated this grievance on August 4, 2006, challenging her non-selection for the position of Social Service Supervisor. She seeks as relief to have Respondent "Review and Re-score [sic] my education and experience scores on my job interview for Social Service Supervisor based on my degree and years of work related experience." After denials at the lower levels, Grievant appealed to level four on February 2, 2007. A hearing was conducted in Westover, West Virginia, on May 2, 2007. Grievant represented herself, and Respondent was represented by B. Allen Campbell, Senior Assistant Attorney General. The parties elected not to file fact/law proposals, so this matter became mature for consideration at the conclusion of the level four hearing.

Synopsis

Grievant alleges that she was not given sufficient credit for education and experience during the

selection process for a Social Service Supervisor position. There was little evidence regarding the successful applicant's qualifications, other than that he/she had a Bachelor of Regents degree and was enrolled in a Master's of Social Workprogram. Because this position was charged with administrative and supervisory duties exclusively in the social work field, the successful applicant's enrollment in the master's program was given preference over Grievant's master's degree in an unrelated field. Grievant did not establish that she was the most qualified applicant.

Findings of Fact

1. Grievant has been employed by the Department of Health and Human Resources ("DHHR"), Bureau for Children and Families ("BCF"), as a Child Protective Services Worker since 1999. (See footnote 1)

2. Grievant has a master's degree in Counseling and Guidance.

3. In April of 2006, Grievant applied for a Child Protective Service ("CPS") Supervisor position and was interviewed. Grievant was not selected to fill that position. (See footnote 2)

4. In July of 2006, Grievant applied for the position of Social Service Supervisor for Marion County's BCF. This is an administrative position in the social work area, requiring development and maintenance of programs, supervision of workers, knowledge and administration of applicable laws, regulations and policies, and various other administrative duties. 5. Three applicants were interviewed for the position, including Grievant. Each interviewer completed a "Candidate Interview Evaluation" sheet, rating each applicant in various areas, using a 1-5 scale, with 5 being the best score.

6. When interviewed for the Social Service Supervisor position, Grievant received a score of 3 from each interviewer in the areas of experience and education, meaning that her experience was somewhat related, but both her experience and education were "less than desirable" for the position.

7. When Grievant previously interviewed for the CPS Supervisor position, she had received a score of 4 from the interviewers in the experience and education areas, meaning that her background was desirable for the particular position.

8. "Candidate Comparison Charts" were prepared to compare overall ratings of each candidate, using a 1-3 scale, with 1 being the best score. Based upon total scores, Grievant was rated third by all members of the interview committee, and the lowest-scoring applicant was selected

to fill the position.

9. The successful applicant for the position has a Board of Regents degree and is currently enrolled in a Master's of Social Work program. Although that person's specific experience was not discussed in the record, he/she did receive the highest score in the experience category from all interviewers.

10. When selecting someone to fill the Social Service Supervisor position, Respondent placed greater emphasis on degrees and/or experience in the social work area, which Grievant did not have. The successful applicant was rated higher because he/she was and is pursuing a Master's in Social Work.

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 HumanRes.*, Docket No. 93-HHR-322 (June 27, 1997)*; Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001).

It appears that Grievant's chief complaint is that her master's degree and experience should have been given greater weight than they were during the interview process. However, this case is somewhat difficult to evaluate, due to the scant evidence introduced. Grievant's evidence focused on the interview committee's reasoning for not giving her the credit she believed she was due, and their logic was explained through testimony. Although the successful applicant only possessed a bachelor's degree, that individual is pursuing a Master's in Social Work, which DHHR believes is more pertinent to the position at issue. This being an administrative/supervisory position in the social work area, the undersigned cannot find fault with this reasoning. It is also undisputed that Grievant's experience has been in the area of child protective services, not broadly-based social work. Grievant bears the burden of proof, and she did not compare her own experience to that of the successful applicant.

The evidence provided does not establish that Grievant was the most qualified applicant for the position at issue. Accordingly, she is not entitled to any relief. 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 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*.

3. “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 Res.*, Docket No. 93-HHR-322 (June 27, 1997)*; Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001).

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. *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

Footnote: 1

Grievant introduced no evidence at level four and very little evidence at the level three hearing, specifically regarding her own qualifications or those of the successful applicant. Accordingly, much of the information here has been taken from the level three grievance evaluator's decision, which Grievant apparently does not dispute with regard to those specific issues.

Footnote: 2

Although this is not the position at issue, Grievant has argued that her ratings during the interviews for the CPS Supervisor position differed from the ones that she received for the Social Services Supervisor position, which is her basis for contending that she was rated unfairly.