**THE WEST VIRGINIA PUBLIC EMPLOYEES**

**GRIEVANCE BOARD**

**GEORGIA WHITE,**

**Grievant,**

**v.**

**Docket No. 06-HHR-334**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES/**

**OFFICE OF MATERNAL, CHILD AND FAMILY HEALTH,**

**Respondent,**

**and**

**DIVISION OF PERSONNEL,**

**Intervenor.**

**DECISION**

Grievant, Georgia White, filed this grievance on August 16, 2006, asserting she should be reallocated from Administrative Services Assistant ("ASA") III to Data Processing Supervisor. Her statement of grievance reads as follows:

> On August 7, 2006, I received the Division of Personnel's decision on my Position Description Form. I do not agree with this decision. Due to assuming 100% of the responsibilities of the Data Processing Unit on April 17, 2006, the majority of my responsibilities fall within the Data Processing Supervisor's classification.

Her stated relief sought is:

> To be properly classified as Data Processing Supervisor since this is the preponderance of my responsibilities. In addition, I am requesting back pay plus

interest.

This grievance was denied at the lower levels. A Level IV hearing was held in the Grievance Board's Charleston office on May 14, 2007. Grievant appeared in person and by counsel, Andrew Katz. Department of Health and Human Resources ("DHHR") was represented by Jennifer K. Akers, Assistant Attorney General, and the Division of Personnel ("DOP") was represented by Karen Thornton, Assistant Attorney General. Thematter became mature for decision on June 22, 2007, the deadline for filing of the parties' proposed findings of fact and conclusions of law. (See footnote 1) For administrative reasons, the matter was reassigned to the undersigned Administrative Law Judge on December 14, 2007.

## Synopsis

Grievant asserts she should be reallocated from ASA III to the position of Data Processing Supervisor due to a significant change in duties and responsibilities. Respondents maintain that Grievant's work does not match the same type of duties as performed by a Data Processing Supervisor. Respondent DOP maintains an ASA III classification is the best fit for Grievant.

After thorough review of the record, the undersigned Administrative Law Judge makes the following Findings of Fact.

## Findings of Fact

1. Grievant is employed by the West Virginia Department of Health and Human Resources/Bureau for Public Health/Office of Maternal, Child and Family Health ("OMCFH") as an ASA III.

2. Grievant is the Director of the Claims and Benefits Unit under the Division of Financial Services for OMCFH.

3. On April 17, 2006, the unit that Grievant supervises was changed due to the consolidation of the Claims and Benefits Unit and the Data Processing Unit.

4. On May 28, 2006, Grievant submitted a Position Description Form to the DOP seeking reallocation to the position of Data Processing Supervisor. 5. In the section labeled "Duty Statements," Grievant stated 25% of her time was spent performing the following tasks:

> Supervise the data entry and claims processing operations of financial and medical information for services provided for the Office of Maternal, Child and Family Health's Claims and Benefits Unit. Monitor employees' performance expectations/goal [sic] in

> order to assist them in professional growth and areas for improvement. Approve sick and annual leave request, conduct performance evaluations, initiate disciplinary actions, employee improvement plans and serve as a Level I grievance evaluator.

Grievant then explained 20% of her time was spent performing the following:

> Coordinates the data processing operations which includes providing technical support, initial and continual training and problem solving to staff on the operational functions and policies for services provided in order to present accurate data and financial reporting.

Grievant then indicated 15% of her time was spent performing the following:

> Schedule distribution jobs to ensure timely completion of data entry and claims processing which requires determining job priorities, assigning duties to support staff and implementing new procedures when a new data entry job has been assigned to the Unit or staff shortage.

Grievant then indicated 10% of her time was spent performing the following:

> Evaluate Unit's data entry and claims processing for efficiency and work process improvements. Evaluation is based upon daily data entry work activity reports, employee work loads, and reports generated from various databases compared to standard requirement. Looking for possible problem trends or equipment problems and work with Program Directors and support staff.

6. The Position Description Form listing the remaining 30% of duties related to her position as the Director of the Claims and Benefits Unit. Grievant acknowledged she still performs all of the duties of her ASA III position as the Director of the Claims and Benefits Unit.

7. The classification specifications for ASA III are as follows: **Nature of Work**

Under general direction, performs complex administrative and/or supervisory work in providing support services such as fiscal, personnel, payroll or procurement on a statewide basis or serves in a specialty role of a complex support program with extensive federal oversight. Responsible for the development and implementation of policies and procedures for the work unit; for the monitoring and evaluation of the specialized functional area. Works within general statute and regulatory parameters, but has considerable latitude to vary work methods, policy applications to achieve desired results. The work includes supervision of subordinate professional, technical or office support staff. The work is typically complex, varied and requires considerable interaction with local, state and federal

agencies and the general public. Performs related work as required.

**Distinguishing Characteristics**

Positions in this class are distinguished from the Administrative Services Assistant 2 by the responsibility for unit operation and results obtained. Positions in this class are typically responsible for a complex, statewide administrative support program or function in a specialized role of considerable difficulty and complexity involving sensitive and controversial issues and the lack of standard procedures and/or precedent for programmatic guidance. Has considerable authority to vary work methods and may be assigned responsibility to commit the agency to alternative courses of action.

**Examples of Work**

Develops technical procedures for the effective implementation of the work of the unit, to include forms, operating procedures, and proposed policies; confers with unit management and other staff regarding revisions to budgetary, purchasing, and other administrative services, policies, and procedures.

Develops operating manuals necessary for the instruction and training of unit staff, agency officials, and other state officials; conducts periodic training sessions for new initiatives and procedures in the area of responsibility.

Analyzes the budget document and appropriate enabling legislation to determine the need for revised operational procedures for the budgetary cycle.

Prepares or supervises the preparation of required fiscal and budgetary reports in the area of responsibility.

Monitors the expenditures of state agencies and higher education systems to ensure compliance with budgeted appropriations; confers with state officials and budget specialists in the resolution of expenditure level problems; advises on the transfer and reallocation of funds to resolve such problems; briefs management on potential areas of appropriation level difficulties.

Prepares or assists in the appropriation of grant proposals and budgetary recommendations for the agency; monitors the execution of appropriations throughout the fiscal year.

Develops procedures, forms, and controls necessary for the effective operation of the unit.Within State Purchasing Rules and Regulations, examines purchasing requests for conformity to

specifications and budgeted amounts; may negotiate contracts and agreements for the procurement of equipment, supplies and services.

Supervises other professional, technical and clerical employees in the unit.

8. The classification specifications for Data Processing Supervisor are as follows:

**Nature of Work**

Under general supervision, performs full-performance technical and supervisory level [work] in a major operational data processing unit such as computer operations, distribution, data entry, or teleprocessing, in the central data processing facility or a major agency, or serves as data processing coordinator for a small agency where programming and operational functions are performed by the central data processing facility; responsible for supervising computer operations, scheduling user jobs submission and distribution work, evaluating user data entry and distribution requests, and planning initial and continuation training. In a small agency, supervises a small data entry unit and coordinates the data processing work of the agency by submitting production jobs to operations for processing and assisting programmers in the development and modification of user programs; serves as a liaison between user personnel and data processing personnel in meeting the programming and operational needs of the agency; irregular work hours are required. Performs related work as required.

**Distinguishing Characteristics**

Supervises a discrete unit of data processing personnel. Authority to commit the agency to action is very limited and the assignment of duties is reactive to the solution of data problems and needs rather than proactive in planning and projecting the future data processing capabilities of the agency's centralized facility.

**Examples of Work**

Supervises a computer operations unit of a major agency or coordinates data processing functions for a small agency; schedules jobs, runs reports, trains users in day-to-day operations; trouble-shoots operational problems.

Schedules distribution jobs; allocates personnel and equipment resources to meet peak demands; determines job priorities.

Supervises small user data entry staff and coordinates other user data processing needs with Support Services.

Performs output audits to evaluate individual and group performance; evaluates equipment utilization data.

Evaluates and resolves personnel and equipment problems; makes recommendations on acquisition of new equipment.

Recommends personnel changes; counsels employees; directs initial and continuation training, instructs supervisors in operation of new equipment and implementation of new procedures.

9. The Data Processing Supervisor classification was meant for a position performing technical supervisory work in a major operation of data processing unit, such as computer operations in a central data processing facility for the State or a major agency.

10. Grievant's position is neither located in a central data processing facility, nor does she serve as a data processing coordinator for a small State agency where programming and operational functions are performed by a central data processing facility. Grievant does not supervise a data entry unit as she suggests. Grievant supervises a claims and benefits unit having the responsibility of processing and paying claims.

11. Grievant's primary duties are complex administrative and/or supervisory type work, in that she provides support services. While data entry supervision is a part of Grievant's responsibility, the function of Grievant's Unit is the processing of claims and benefits, and that is the functional name of the Unit. The Unit is located in the Financial Services section of the Agency, not the Data Processing section of the Agency. The ASA III class encompasses providing support services, such as fiscal, personnel, payroll, procurement, and processing of claims. While the entry of claims and other information is a data entry function, the overall purpose of Grievant's Unit is to process the claims and benefits. Grievant does not supervise a discrete data entry unit, rather a claims and benefit unit.

## **Discussion**

As this grievance does not involve a disciplinary matter, Grievant bears the burdenof proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board, 156 C.S.R. 1 § 156-1-3 (2007); *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). (See footnote 2)

In order for Grievant to prevail upon a claim of misclassification, she must prove by a preponderance of the evidence that her duties for the relevant time period more closely match another cited DOP classification specification than that under which she is currently assigned. *See generally, Hayes v. W. Va. Dep't of Natural Res.*, Docket No. NR-88-038 (Mar. 28, 1989). DOP specifications are to be read in "pyramid fashion," i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical. *Captain v. W. Va. Div. of Health*, Docket No. 90-H- 471 (Apr. 4, 1991). For these purposes, the "Nature of Work" section of a classificationspecification is its most critical section. *See generally, Dollison v. W. Va. Dep't of Empl. Security*, Docket No. 89-ES-101 (Nov. 3, 1989).

Grievant alleges she has been performing the duties of a Data Processing Supervisor and should be classified as such. Respondents argue Grievant is properly classified. DOP's Rule 3.78 defines "Reallocation" as "[r]eassignment by the Director of Personnel of a position from one classification to a different classification on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position." The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." *Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301 (Mar. 26, 1997). An increase in the type of duties contemplated in the current class specification does not require reallocation. *Id*.

Grievant has not demonstrated a significant change in job duties to warrant a reallocation. While it is undisputed Grievant supervises several employees who perform data entry activities, Grievant has not proven those additional duties amounted to a significant change in the kind of duties and responsibilities assigned to her position. Grievant continues to supervise employees who provide support services in the fiscal area and the emphasis is not on data entry. The primary focus remains the processing, analysis, and payment of claims. As previously noted, an increase in the type of duties in the current class specification does not mandate reallocation. As reflected in the classification specification, the Data Processing Supervisor performs full-performance technical supervisory work in a major operation of a data processing unit. The distinguishing characteristic applied to this set of facts is the supervision of a discrete unit of data processing personnel. Grievant's primary duties are complex administrative and/or supervisory type work in providing support services. The support services include the review of applications for treatment funds, budget

review, preparing monthly reports on claims processing status, and providing current codes and rates for services provided by OMCFH. Grievant does not supervise a data entry unit as she suggests, rather she supervises a claim and benefits unit having the responsibility of processing and paying claims. Grievant's position is neither located in a central data processing facility, nor does she serve as a data processing coordinator for a small State agency where programming and operational functions are performed by a central data processing facility. Grievant's position is located in the Financial Services section of the Agency, not the Data Processing section of the Agency. The record in this matter clearly shows Grievant does not perform the work done by an individual in the position classified as Data Processing Supervisor.

Finally, and in general, an agency's determination of matters within its expertise is entitled to substantial weight. *Princeton Community Hosp. v. State Health Planning*, 328 S.E.2d 164 (W. Va. 1985). As stated by the West Virginia Supreme Court of Appeals, an employee who alleges impropriety regarding a reclassification action or challenges the pay grade to which his or her position is assigned, bears the burden of proving the claim by a preponderance of the evidence. This is a difficult undertaking. *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (1993); *Bennett v. Dep't of Health and Human Res.*, Docket No. 93-HHR-518 (June 23, 1995); *Johnston v. W. Va. Dep't of Healthand Human Res.*, Docket No. 94-HHR-206 (June 15, 1995); *Thibault v. W. Va. Div. of Rehab. Serv.*, Docket No. 94-RS-061 (May 31, 1995); *Frame v. W. Va. Dep't of Health and Human Res.*, Docket No. 94-HHR-140 (Nov. 29, 1994).

This standard of entitlement to substantial weight applies when an employee grieves DOP's interpretation of its own regulations, classification specifications, and pay grades. *Farber v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, Docket No. 95-HHR- 052 (July 10, 1995). The Grievance Board's role is not to act as an expert in matters of classification of positions, job market analysis, and compensation schemes, or to substitute its judgment in place of DOP. *Moore v. Dep't of Health and Human Res./Div. of Personnel*, Docket No. 94-HHR-126 (Aug. 26, 1994). Rather, the role of the Grievance Board is to review the information provided and assess whether the actions taken were arbitrary and capricious or an abuse of discretion. If a Grievant can demonstrate his or her classification or pay grade was made in an arbitrary and capricious manner or was an abuse of discretion, then he or she has met the required burden of proof. *See Kyle v. W. Va. State Bd. of Rehab.*, Docket No. VR-88-006 (Mar. 28, 1989). 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.*, No. 29066 (W. Va. 2001)(*citing In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996)).

"Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that itcannot be ascribed to a difference of opinion. *See Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Eads, supra* (*citing Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). The arbitrary and capricious standard is a high one, requiring willful and unreasonable action and disregard of known facts.

The DOP's interpretation of the classification specifications at issue is not clearly erroneous as applied to this set of facts. The Data Processing Supervisor classification was meant for a position performing technical supervisory work in a major operation of data processing unit, such as computer operations in a central data processing facility for the State or a major agency. In addition, DOP's determination that Grievant is properly classified as an ASA III is not clearly wrong. Grievant does supervise several employees who perform data entry activities. The primary duties of her job fall within the ASA III classification. Grievant has not established by a preponderance of the evidence that she should be reallocated to the position of Data Processing Supervisor. Based on the duties and responsibilities encompassed in the “Nature of Work” section of the class specification, Grievant is properly classified as an ASA III and that classification is the “best fit” for her position. That is not to say Grievant's position is not important. Clearly, Grievant is an asset to OMCFH, and has many strengths. Unfortunately, her duties do not meet the requirements set forth in the Data Processing Supervisor classification specification.

The discussion will be supplemented by the following Conclusions of Law.

## Conclusions of Law

___1. In order for Grievant to prevail upon a claim of misclassification, she must prove by a preponderance of the evidence that her duties for the relevant period more closely match another cited DOP classification specification than that under which she is currently assigned. *See generally, Hayes v. W. Va. Dep't of Natural Res.*, Docket No. NR- 88-038 (Mar. 28, 1989).

2. DOP specifications are to be read in "pyramid fashion," i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical. *Captain v. W. Va. Div. of Health*, Docket No. 90-H-471 (Apr. 4, 1991). For these purposes, the "Nature of Work" section of a classification specification is its most critical section. *Atchison v. W. Va. Dep't of Health*, Docket No. 90-H-444 (Apr. 22, 1991); *See generally, Dollison v. W. Va. Dep't of Empl. Security*, Docket No. 89-ES-101 (Nov. 3, 1989).

3. The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." An increase in number of duties and the number of employees supervised does not necessarily establish a need for reallocation. *Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301 (Mar. 26, 1997). "An increase in the type of duties contemplated in the [current] class specification,does not require reallocation. The performing of a duty not previously done, but identified within the class specification also does not require reallocation." *Id*.

4. The State Personnel Board has wide discretion in performing its duties, although it cannot exercise its discretion in an arbitrary or capricious manner. *Moore v. Dep't of Health and Human Res./Div. of Personnel*, Docket No. 94-HHR-126 (Aug. 26, 1994).

5. Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous, and an agency's determination of matters within its expertise is entitled to substantial weight. Syl. pt. 3, *W. Va. Dep't of Health v. Blankenship*, 431 S.E.2d 681 (W. Va. 1993); *Princeton Community Hosp. v. State Health Planning*, 328 S.E.2d 164 (W. Va. 1985); *Dillon v. Bd. of Ed. of County of Mingo*, 301 S.E.2d 588 (1983).

6. "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. *See Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir.

1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Eads*, *supra* (*citing Arlington Hosp. v. Schweiker*,547 F. Supp. 670 (E.D. Va. 1982)). The arbitrary and capricious standard is a high one, requiring willful and unreasonable action and disregard of known facts.

7. 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 his judgment for that of DOP. *See generally*, *Harrison v. Ginsberg*, 286 S.E.2d 276, 283 (W. Va. 1982).

8. Grievant has not met her burden of proof and failed to demonstrate a significant change in the kind or level of duties and responsibilities to warrant a reallocation. The ASA III classification is the best fit for Grievant's position, and DOP's determination that Grievant is properly classified as an ASA III is not clearly wrong.

For the foregoing reasons, 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, *See Footnote 1, supra)*. Neither the West Public 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.

**January 18, 2008**

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**Ronald L. ReeceAdministrative Law Judge**

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*Footnote: 1*

*Grievant submitted her own proposals due to Mr. Katz's services as counsel having been terminated prior to the submission date.*

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*Footnote: 2*

*In 2007, the Legislature, 2007 Acts ch. 207, abolished the West Virginia Education and State Employees Grievance Board, replacing it with the Public Employees Grievance Board. W. Va. Code §§ 18-29-1 to 18-29-11 and W. Va. Code §§ 29-6A-1 to 29-6A-12 were repealed and replaced by W. Va. Code §§ 6C-2-1 to 6C-2-7 and W. Va. Code §§ 6C- 3-1 to 6C-3-6 (2007). Grievances which were pending prior to July 1, 2007, are decided under the former statutes, W. Va. Code §§ 18-29-1 to 18-29-11, for education employees, and W. Va. Code §§ 29-6A-1 to 29-6A-12, for other state and higher education employees. See Executive Order No. 2-07, May 8, 2007. References in this decision are to the former statutes and rules, which continue to control the proceedings in this case.*