WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

ANNA VANDERLAAN, THOMAS SMITH,
AND SARAH DANIEL,
Grievants,

v. **Docket No. 2008-0868-CONS**

WEST VIRGINIA DEPARTMENT OF
TRANSPORTATION / DIVISION OF
HIGHWAYS, AND DIVISION OF PERSONNEL,
Respondents.

DECISION

Grievants Anna Vanderlaan, Thomas Smith and Sarah Daniel are all Highway Engineers employed by the Department of Transportation in the Division of Highways ("DOH"). On December 10, 2007, all three Grievants filed level one grievance forms. The statements were not identical but raised the same claims as follows:

> Due to a recent change in policy I am no longer able to be re-classified [sic] from [Highway Engineer 1] HE-1 to [Highway Engineer 3] HE-3 as is traditionally done. As a result I am now faced with lost wages for an indefinite period of time while [Department of Personnel] DOP either overrules this or my job is posted.

As relief Grievants seek:

> To be treated fairly and like other employees in the past and to be reallocated to a Highway Engineer 3 (hereinafter "HE 3") with the effective date of October 1, 2007, including back pay.

All three Grievants signed agreements with Respondents to waive levels one and two of the grievance procedure and advance directly to level three. The waiver agreements were all signed the same day the grievances were filed. Since Grievants all raise the same issues with the same employer, they were consolidated at level three. On October 31, 2008, a level three hearing was held in the Charleston office of the Grievance Board before

the undersigned Administrative Law Judge. All three Grievants attended the hearing and were represented by Grievant Vanderlaan. The DOH was represented by Robert Miller, Esquire and the Division of Personnel ("DOP") was represented by Karen O'Sullivan Thornton, Esquire. Following the hearing all parties submitted written proposed findings of fact and conclusions of law. The fact/law proposals were received by the Grievance Board on December 15, 2008, and this grievance became mature for decision on that date.

Synopsis

At the time the level three hearing was held, all three Grievants had been reallocated to the new classification of Highway Engineer Associate ("HEA"). Grievants Smith and Daniel had been promoted to the classification of Highway Engineer 3 ("HE 3") prior to being reclassified to HEA. Their only remaining claim was that they should have been reallocated to HE 3 sooner and they claim back pay to October 1, 2007. Grievant Vanderlaan was denied promotion to the HE 3 classification. Therefore, she is claiming that she should have been reallocated to the HE 3 classification prior to the creation of the HEA classification and that she should have been placed in the HEA classification at the pay rate commensurate with a HE 3.

Grievants did not prove that the delay was a result of a violation of any statute, rules, policies or written agreements, nor were they able to prove that the delay was arbitrary or capricious. Therefore, the claims for back pay caused by the delay must be denied.

Grievant Vanderlaan was able to prove that she met the qualifications for the HE 3 classification when she applied for that position. Therefore, the grievance is granted to the

limited extent that Ms. Vanderlaan must be reallocated to the HE 3 classification effective April 1, 2008, and her salary must be adjusted accordingly.

The following findings of fact are based upon a thorough review of the record developed in this grievance.

Findings of Fact

1. Grievants Vanderlaan, Smith and Daniel are all employed by the DOH as Highway Engineers.

2. For a number of years prior to May 1, 2008, the Highway Engineer classifications were in a classification series which consisted of Highway Engineer 1 ("HE 1"), Highway Engineer 2 ("HE 2"), Highway Engineer 3 ("HE 3"), and Highway Engineer 4 ("HE 4"). The main difference among the first three classifications was the amount of experience the employee had as an engineer related to the classification. The HE 4 classification was reserved for highly experienced engineers who also had significant supervisory responsibilities.

3. Prior to July 1, 2007, the DOH moved engineers through the classifications in a routine way based upon the employee acquiring experience. For example, the HE 2 classification required "five years of professional highway engineering design." An engineer would be employed as a HE 1 and when he or she obtained five years of

experience he or she would fill out a position description form ("PDF")[1] and be reallocated to a HE 2.

4. On July 1, 2007, the Administrative Rule of the West Virginia Division of Personnel ("Administrative Rule") took effect[2] and established a different procedure for reallocation through the HE series of classifications. In order for an employee to be reallocated from a HE 2 to a HE 3 under the Administrative Rule, the supervisor in the section has to identify specific duties that need to be performed that are not covered in the classifications of the present employees. The supervisor then posts the new duties and the employees in the section apply for the position with the new duties added. The successful applicant and the supervisor then complete a PDF that includes the new duties in the description of the employee's job, and submit it to the DOP. The DOP determines the appropriate classification for the job based upon the PDF. If the job with the new duties best fits in the HE 3 classification, the position is reallocated to a HE 3 and the employee is moved to that classification.

5. In a memorandum dated October 25, 2007, the DOP provided guidance for Cabinet Secretaries and Agency Heads regarding rules and procedures for posting jobs pursuant to the Administrative Rule.

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[1] The Position Description Form is a document which describes the officially assigned duties, responsibilities, supervisory relationships and other pertinent information relative to a position. This document is the basic source of official information in position allocation. 143 C.S.R. 1 § 3.70.

[2] 143 C.S.R. 1 § 1.4

6. During the period between the effective date of the Administrative Rule and the issuance of the guidance memorandum by the DOP, there was significant confusion at the DOH as to how the reallocation of positions in the HE series would be effectuated. There was a general feeling in the Human Resources Division of the DOH that the new system did not fit the reality of the market for engineers.

7. On or about August 1, 2007, Grievants Sarah Daniel and Anna Vanderlaan submitted PDFs to the Human Resources Division of the DOH to be reallocated from HE 1s to HE 3s. Grievant Thomas Smith submitted his PDF for a similar reallocation on September 21, 2007. Under the procedure that was in place prior to the adoption of the Administrative Rule such reallocations were completed in six to eight weeks.

8. These PDFs were not forwarded to the DOP for consideration. Jeff Black, Director of the DOH Human Resources Division, testified that he might have held the PDFs while he awaited guidance regarding the appropriate procedure to follow under the new Administrative Rule.

9. In December 2007, Grievants inquired about the status of their PDFs. There was some discussion with their supervisor, Greg Bailey and Director, Jeff Black, regarding ways to accomplish Grievants' reallocation while the DOH worked out the best procedure for reallocations through the HE series of classifications under the Administrative Rule.

10. On December 21, 2007, the DOH posted three new positions for HE 3s. Grievants were ultimately the only applicants for these jobs.[3] The posting of the positions

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[3] One other person initially applied for one of the positions that ultimately went to Grievant Smith. However, that person withdrew his application before interviews were scheduled.

was done as a way to move the Grievants to the HE 3 classification while DOH was working out how the agency would comply with the new Administrative Rule. The DOH recommended to the DOP that all three Grievants be awarded the posted positions and reallocated to the HE 3 classification.

11. In February 2008, Grievant Daniel was reallocated to HE 3. Grievant Smith was reallocated to HE 3 on April 1, 2008. Grievant Vanderlaan's reallocation was denied because DOP determined that she did not have sufficient experience to meet the minimum qualifications for the HE 3 classification.

12. At the time Grievants applied for the HE 3 positions, the HE 3 classification contained the following requirements related to engineering experience:

> **Experience:**
> Seven years of professional highway engineering experience involving design, construction, or maintenance of highways.
> Note: The experience must have been acquired after bachelor's degree but may have occurred before or after registration as a professional engineer.
> **Substitution:**
> Master's of science degree in civil engineering from an accredited college or university may be substituted for one year of the required experience. *Registered* professional engineering experience may be substituted for the *registered* professional highway experience at a rate of two years of general experience for one year of highway related experience.

(Emphasis added) Respondent's Exhibit 1.

13. Prior to March 28, 2002, all of the experience required in the various levels of the HE series of classifications was required to be experience as a "registered" engineer. On that date, the Highways Commissioner requested that DOP remove the "registered" requirement from the experience section in all HE classifications for the following reason:

> . . . [T]he agency is finding it can no longer afford to restrict the experience required by the specification to that obtained after registration as a professional engineer. There are persons in the job market who have many

> years of professional experience in the engineering field who did not obtain professional registration status until later in their careers. This seems mostly due to the varying requirements for registration from one employer to another. Consequently, the current requirements tend to disqualify from consideration applicants who can and have performed the duties we require.

Jeff Black, Director of the DOH Human Resources Division, was listed as the contact person for this request. Grievant's Exhibit 6.

14. Shortly after the request, the experience sections of all the HE classifications were changed to remove the requirement that experience be as a "registered" engineer and the note was added to say that the required experience "may have occurred before or after registration as a professional engineer." *See* Finding of Fact 12, *supra.*

15. The intent of the DOH was to remove the requirement that the experience must be as a "registered" engineer from all of the sections related to engineering experience in the HE series of classifications. However, by mistake, it was not removed from the "substitution" section of the classifications.[4]

16. On February 20, 2008, Director Black submitted a written request to the DOP ". . . that in the substitution clause, the term 'registered' be removed so that any professional engineering experience is deemed acceptable. This would make the substitution clause consistent with the normal experience requirement." Grievant's Exhibit 7.

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[4] DOH Director of Human Resources, Jeff Black, testified that the same reasons for removing the "registered" requirement from the general experience sections applied to the "substitution" sections. The engineering experience of many excellent candidates was no less valuable to the DOH because it was accumulated prior to the candidate receiving professional registration. Mr. Black believed that the "registered" requirement was only left in the "substitution" sections due to drafting error or some similar mistake. This conclusion is consistent with the note that follows the experience section of each classification.

17. Barbara Jarrell, Senior Personnel Specialist for the Classification and Compensation Section of DOP, testified that she was unaware of the request from Mr. Black, but speculated that it would not have been considered by the DOP because the Respondents were in the process of developing the new HEA and Highway Engineer classifications. The request could not be effectuated prior to the effective date of the new classifications and the HEA classification did not contain the "registered" experience requirement, so the request seemed to be moot.

18. When Grievant Vanderlaan applied for the posted position of HE 3 in December 2007, she was a registered professional engineer serving as a Senior Permit specialist within the Permitting Unit of the DOH. Grievant Vanderlaan held six and one half years of experience as an engineer with the DOH. She also had three years of experience working as an engineer in the coal industry. *See* Respondent's Exhibit 2.

19. If the term "registered" had been removed from the substitution clause as was the intent of DOH, Grievant Vanderlaan would have met the minimum qualifications for the HE 3 position for which she applied.

20. Greg Bailey is the Director of the Engineering Division of the DOH and Grievant Vanderlaan's supervisor. Mr. Bailey has thirty-one years of structural engineering experience in areas related to highways and has participated in the evaluation of jobs for the creation of DOH classifications.

21. Director Bailey was familiar with Grievant Vanderlaan's three years of experience in the coal industry. It is Mr. Bailey's professional opinion that Grievant Vanderlaan's engineering experience in the coal industry, dealing with the transporting of coal and equipment, was identical to the type of engineering work she was doing in the

Permitting Unit as an engineer for the DOH. Director Bailey's opinion was that Grievance Vanderlaan's coal industry engineering experience was highway engineering experience even though it was not obtained while working for the DOH.

22. If Grievant Vanderlaan's experience as an engineer in the transportation of coal and mining equipment had been counted as highway engineering experience, she would have met the minimum qualification for the HE 3 position for which she applied.

23. Grievant Vanderlaan serves as the technical lead for the Permitting Unit of the Technical Section of the DOH. She has been serving in that capacity for approximately three years. Permitting is a very specialized area that requires a high level of expertise and experience. In the Permitting Unit, Grievant Vanderlaan performs advanced professional engineering duties and responsibilities that are consistent with the HE 3 classification.[5]

24. On March 6, 2008 DOH requested that DOP replace the HE 1, 2, 3, and 4 classifications with new classifications titled Highway Engineer Associate ("HEA") and Highway Engineer. An employee in the HEA classification receives a salary increase upon completing twelve months of engineering experience and another salary increase upon completing thirty-six months of engineering experience. The new classification allows DOH to give these salary increases as the engineers gain experience in a similar fashion as was done with the old HE series prior to the adoption of the Administrative Rule.

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[5] The Director of the DOH Engineering Division, Greg Bailey, testified that he supervises Grievant Vanderlaan and is very familiar with the complexity of her duties. He examined the "Nature of Work" sections for the classifications in the HE series and concluded that Grievant Vanderlaan's duties and responsibilities best fit between the HE 3 and HE 4 classifications. He testified that the only reason she did not meet the HE 4 classification was that she did not have direct administrative personnel duties such as evaluation and disciplinary authority over other personnel.

25. The new HEA and Highway Engineer classifications were established on March 30, 2008, and became effective May 1, 2008.

26. On May 1, 2008, all three Grievants were placed in the new classification of HEA. Grievants Daniel and Smith were placed at a pay rate commensurate with the HE 3 classification, but Grievant Vanderlaan was placed at a pay rate commensurate with the HE 1 classification because her previous application for the HE 3 classification was denied.

Discussion

As this grievance does not involve a disciplinary matter, Grievants bear the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). 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).

The first claim made by all Grievants is that the process for the reallocation of their positions from the HE 1 classification to the HE 3 classification took an unreasonable amount of time. Grievants presented evidence that indicated that prior to July 1, 2007, reallocations of this sort were generally accomplished in six to eight weeks under the process that was then in place at the DOH. Grievants assert that since they originally applied for reallocation at the first of August 2007, it would be reasonable for them to receive a reallocation to HE 3 by October 1, 2007, along with the appropriate increase in

compensation.[6] Unfortunately, there were intervening factors that disrupted the existing reallocation process.

The DOP Administrative Rule that established a new system for reallocation for state positions became effective on July 1, 2007. There was significant, legitimate concern that the process normally followed by DOH to move engineers through the HE series of classifications, was not in compliance with the newly adopted rule. The DOH received the first guidance from the DOP regarding how to apply this rule on October 25, 2007. *See* Grievant's Exhibit 2. The DOH Human Resources Division issued instructions on the new reallocation procedure on January 22, 2008. *See* Grievant's Exhibit 3. The Administrative Rule is extensive and established a complex system of classification and compensation for state employees. It is understandable that it took a considerable amount of time for the state agencies to study the new requirements and revise their procedures to bring them in compliance with the rule.

Grievants did not demonstrate that the delay in processing their requests for reallocation was a result of a violation, a misapplication or a misinterpretation of any statute, rule, policy or written agreement, which would constitute a grievable event under W. VA. CODE § 6C-2-2(l)(1).[7] Grievants appear to argue that the delay in processing their

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[6] Grievant Smith's PDF was signed on September 21, 2007. To follow the Grievants' reasoning, his reallocation should have become effective eight weeks after that date.

[7] W. VA. CODE § 6C-2-2(l)(1) defines the term grievance as "a claim by an employee alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee. . ."

reallocations was unreasonable and therefore arbitrary and capricious. 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))." However, there was no evidence to suggest that the Respondents were not diligent in their efforts to digest and implement the new procedures required by the adoption of the Administrative Rule.

The axiom that "timing is everything" is applicable to this situation. Because Grievants' reallocation requests lamentably occurred at the same time a complicated, new system of classification and compensation was adopted, there was considerable delay in their processing. In recognition that Grievants were caught in the flux of the changing procedures, DOH posted three HE 3 positions so that Grievants might move into the higher classifications without waiting for the finalization of the new reallocation process. The delay in moving Grievants to the HE 3 classification was not the result of any arbitrary, capricious or unreasonable actions by Respondents and this portion of their grievance must be denied.

The next issue is whether Grievant Vanderlaan should have been reallocated to the classification of HE 3 when she and the other Grievants applied for posted HE 3 positions. As has been stated many times, the key to the analysis in this type of case is whether Grievant's current classification constitutes the "best fit" for the duties the she performs. *Simmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, Docket No. 90-H-

433 (Mar. 28, 1991). The predominant duties of the position are class controlling. *Broaddus v. W. Va. Div. of Human Serv.*, Docket Nos. 89-DHS-606 through 609 (Aug. 31, 1990).

DOP is primarily concerned with administering a classification and compensation plan that equitably compensates similarly situated employees while maintaining appropriate recruitment and retention, thereby assuring that each state agency has sufficient qualified personnel to perform its assigned governmental function." *Travis v. Dep't of Health and Human Res.*, Docket No. 96-HHR-518 (Jan. 12, 1998). 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. *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (1993).

In this case, the DOP determined that Grievant Vanderlaan did not meet the minimum experience qualifications for the HE 3 classification. The failure to meet this requirement was the sole reason for denying her reallocation to the HE 3 classification.[8] Vanderlaan had six and one half years of specific highway professional engineering experience while the HE 3 classification requires seven years. The substitution section of the classification description allowed Grievant Vanderlaan to substitute professional engineering experience she obtained prior to becoming employed by the DOH, as highway

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[8]In the Proposed Findings of Fact submitted by DOP, at Finding of Fact 19, DOP indicates that an additional reason for disapproving Grievants selection for the HE 3 position was that Grievant "was not a registered PE" (Professional Engineer). However, Respondent's Exhibit 2 contains a copy of a document certifying that Anna Vanderlaan is a duly registered Professional Engineer and lists her registration number as WV PE # 016636. If this was a reason for disapproving Grievant's selection, it was clearly erroneous and not supported by the record.

experience on a two years to one basis. Grievant Vanderlaan had three prior years of experience with the coal industry as a professional engineer. If that experience had been counted, Vanderlaan would have an additional one and one half years of substitute engineering experience to count toward the highway engineering requirement. With the additional substitute experience Vanderlaan would have exceeded the minimum experience for the HE 3 classification.

DOP did not count the prior engineering experience earned by Ms. Vanderlaan because the substitute section of the classification description stated that the experience had to be as a "registered" engineer. However, the testimony clearly established that the DOH had attempted to remove the "registered" requirement from all of the experience requirements in the HE series because the pool of qualified candidates for these positions was extremely limited and the "registered" requirement was eliminating highly qualified candidates from consideration. *See* Findings of Fact 13 -19 *supra*. It is understandable that DOP applied the "registered " standard to the HE 3 experience qualification because it remained in the substitution section of the classification description, by mistake, after the 2002 amendment to the HE classification series descriptions. However, Grievant cannot be deprived of a reallocation due solely to an error of the Respondents. As one Administrative Law Judge has noted: "the purpose of the grievance procedure is for employees to correct mistakes by employers. . . " *Woolridge et al. V. McDowell County Bd. Of Educ. and Dep't of Education*, Docket No. 04-33-004 (July 9, 2004). Applying the "registered" requirement to discard Grievant Vanderlaan's prior engineering experience so that it could not be used to meet the minimum qualifications for the HE 3 classification was clearly wrong. The record supports the conclusion that the "registered" requirement was

in the substitution clause by mistake. Because DOP's decision that Grievant Vanderlaan did not meet the minimum experience requirement was clearly wrong, it cannot be upheld. *Adkins v. W. Va. Dep't of Educ.*, 210 W.Va. 105, 556 S.E.2d 72 (2001); *Powell v. Paine*, 221 W. Va. 458, 655 S.E.2d 204 (2007).

The main evidence offered as to Grievant Vanderlaan's duties and responsibilities came from the testimony of the Director of the DOH Engineering Division, Greg Bailey. Director Bailey is the supervisor for Ms. Vanderlaan and is very familiar with her duties and responsibilities. He also testified that he has received training in classification from the DOP and has served as part of a large reclassification project at the DOH through a consulting firm identified as the Heye Group. That project included the evaluation of jobs in state government for pay grade and classification placement. Director Bailey testified that he compared Grievant Vanderlaan's duties and responsibilities against the "Nature of Work" requirements of the HE classification series. From this comparison, Director Bailey concluded that the duties performed by Grievant Vanderlaan fit best in the HE 3 classification. Since DOP's determination that Ms. Vanderlaan did not qualify for the HE 3 classification was based solely upon the experience criteria, Director Bailey's determination regarding the best fit was virtually uncontested. Director Bailey admitted that he was not an expert in classification determination. However, his thirty-one years of engineering experience certainly qualifies him to properly characterize the nature of Grievant Vanderlaan's duties and responsibilities.

The record indicated that the best fit for Grievant Vanderlaan's position at the time she applied was the HE 3 classification. Therefore, DOP's denial of her reallocation was

clearly wrong and must be reversed. *See Adkins supra,* and *Powell supra.* The grievance is granted to the extent that Grievant Vanderlaan qualified for the HE 3 reallocation that was posted on December 21, 2007. Since she applied for the position at the same time as the other Grievants, it is reasonable that her reallocation be effective at the same time as the reallocation of the other Grievants. The last Grievant to be reallocated to HE 3 was Grievant Smith. Grievant Smith was reallocated to the HE 3 classification on April 1, 2008. That is the effective date for the reallocation of Grievant Vanderlaan. Further, since Grievant Vanderlaan should have entered the HEA classification as a HE 3 her salary as an HEA must be adjusted to reflect that she entered that classification as a HE 3 from the date she entered that classification until the present.

Conclusions of Law

1. This grievance does not involve a disciplinary matter. Grievants bears the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). 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).

2. Grievants did not prove that the delay in processing their requests for reallocation was a result of a violation, a misapplication or a misinterpretation of any statute, rule, policy or written agreement which would constitute a grievable event under W. VA. CODE § 6C-2-2(l)(1).

3. 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))."

4. Grievants did not prove that the delay in reallocating their positions to the HE 3 classification was the result of any arbitrary and capricious actions by Respondents.

5. The key to the analysis in reallocation cases is whether Grievant's current classification constitutes the "best fit" for the duties actually performed. *Simmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position are class controlling. *Broaddus v. W. Va. Div. of Human Serv.*, Docket Nos. 89-DHS-606 through 609 (Aug. 31, 1990).

6. Interpretations of statues by bodies charged with their administration are given great weight unless clearly erroneous. Syl. Pt. 4, *Security National Bank & Trust Co. v. First W. Va. Bancorp, Inc.,* 166 W. Va. 775, 277 S.E.2d 613 (1981); Syl. Pt.1, *Dillon v. Bd. of County of Mingo,* 171 W. Va. 631, 301 S.E.2d 588 (1983).This principle applies to DOP's interpretation of classification specifications. *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993) (*per curiam*). The clearly wrong standard requires the reviewing authority to 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); *Powell v. Paine*, 221 W. Va. 458, 655 S.E.2d 204 (2007).

7. Grievant Vanderlaan proved that the best fit for her position was Highway Engineer 3 and she should not have been denied a reallocation.

8. DOP's determination that Grievant Vanderlaan did not meet the minimum qualifications for the Highway Engineer 3 classification was clearly erroneous and must be reversed. *See* Syl. Pt. 4, *Security National Bank & Trust Co. v. First W. Va. Bancorp, Inc.,* 166 W. Va. 775, 277 S.E.2d 613 (1981); Syl. Pt.1, *Dillon v. Bd. of County of Mingo,* 171 W. Va. 631, 301 S.E.2d 588 (1983).

Accordingly, the grievance is DENIED in part and GRANTED in part.

Respondents are Ordered to reallocate Grievant Vanderlaan to the Highway Engineer 3 classification for the period beginning April 1, 2008 through the date when she was reallocated to the Highway Engineer Associate classification. Respondents are Ordered to pay Grievant Vanderlaan the difference between the salary she earned during that period and the salary she would have earned had she been classified as a Highway Engineer 3, plus appropriate statutory interest. Respondents are further Ordered to increase Grievant Vanderlaan's salary as an HEA, beginning May 1, 2008, to what it would be if she had been moved into the Highway Engineer Associate classification from the Highway Engineer 3 classification, plus back pay and appropriate statutory interest.

The Grievants' specific request for back pay to October 1, 2007 is DENIED.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

DATE: February 13, 2009

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WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE